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Submitted to **Native vegetation issues paper**

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Your details

1 What is your name?

Name:

Anne Poelina

2 Can we publish your response?

Yes, you may publish my response in full

3 What is your email address? (optional)

Email:

[REDACTED]

4 What is your postcode? (optional)

Postcode:

[REDACTED]

5 Do your views officially represent those of an organisation?

No, these are my personal views

If yes, please specify the name of your organisation.:

6 Which of the following best describes the group or person you represent?

Other

If other, please specify.:

Traditional Owner

7 Which of the following best describes the sector you represent?

Indigenous

If other, please specify.:

8 Are there specific parts of your submission that you want to keep confidential?

If yes, please outline which specific parts of your submission must be kept confidential and explain why. :

No

A State native vegetation policy

9 Referring to the proposed policy objective statements below, how well do you support each one in guiding our development of a policy?

Objective 1 matrix - Objective 1:

Strongly opposed

Please explain in the text box below.:

Objective 2 matrix - Objective 2:

Strongly opposed

Please explain in the text box below.:

Objective 3 matrix - Objective 3:

Strongly supported

Please explain in the text box below.:

10 What opportunities are presented by the development of a State Native Vegetation Policy focused on how government manages vegetation?

Please provide your answer in the text box below.:

Better information

11 How do you use native vegetation data within your sector? (Choose as many options as you require)

For baseline information for monitoring

If you have chosen 'other', please specify:

12 Which of the following elements of better information provision would be most relevant to your sector? (Choose as many options as you require)

Evidence-base for decisions

If you have chosen 'other', please specify:

13 What other opportunities are presented by improved information and improved access to information?

Please provide your answer in the text box below.:

BETTER INFORMATION

Native vegetation and biodiversity, also known as nature, is integral to human health and well-being, for nature and humans are inextricably one. The air we breathe, the water we drink, the minerals, plants and animals we eat nurture and revitalize each cell of our bodies and help to determine our life's energy, which in turn influences how we think and feel. So, the more we cultivate a state of vitality in Nature, including with our own bodies and minds, the more Nature "within us" and "outside of us" fosters human health and well-being.

Gaps in knowledge: The problem of the reactive nature of environmental law generally and Australian biodiversity law specifically is well-established. There is, limited systematic analysis of how to reform Australian biodiversity laws to shift Australia's extinction trajectory in the context of the climate crisis.

The following definitions can be found under Guidance Statement No. 6

Rehabilitation of Terrestrial Ecosystems (Environmental Protection Authority, 2006).

Key Words: rehabilitation, restoration, revegetation, disturbance, clearing, natural

ecosystems, biodiversity, natural resources, mining, completion criteria, environmental impact assessment, monitoring, auditing. "The primary purpose of this Guidance Statement is to ensure the return of biodiversity in rehabilitated areas by increasing the quality, uniformity, and efficiency of standards and processes for rehabilitation of native vegetation in Western Australia and to allow more effective monitoring and auditing of outcomes. The Guidance Statement promotes the use of completion criteria and definitions for the rehabilitation of natural ecosystems.

The following are related policies of the Environmental Protection Authority which may be of relevance to the Native Vegetation in Western Australia policy:

1.2.4.1 Position Statement No. 2 on the protection of native vegetation

This statement outlines EPA policy on the protection of native vegetation in Western Australia, particularly in the agricultural area (EPA 2000).

1.2.4.2 Position Statement No. 3 on terrestrial biological surveys

This document concerns the use of biological surveys to assess the significance of biodiversity in Western Australia (EPA 2002).

1.2.4.3 Position Statement No. 7 Principles of environmental protection

This document includes key principles such as the precautionary principle, conservation of biological diversity, ecological integrity, shared responsibility, integrated environmental management, best practice, continuous improvement, accountability, transparency and enforcement, which are of particular relevance to this Guidance Statement (EPA 2004a).

1.2.4.4 Position Statement No. 9 Environmental offsets

This document summarizes principles concerning the use of offsets to mitigate adverse environmental impacts (EPA 2005b).

1.2.4.5 Other position and guidance statements

Position Statement No. 6 - Towards Sustainability is relevant to projects where land is rehabilitated (EPA 2004d). Position Statements No. 4 - Environmental Protection of Wetlands (EPA 2005a), and No. 5 Environmental Protection and Ecological Sustainability of the Rangelands in Western Australia (EPA 2004e)

It is critical to developing the right policies and practices to ensure Western Australia has Native Vegetation Policy that directly contributes to Australia's Strategy for Nature 2019-2030 (Commonwealth, 2019) - Australia's overarching framework for nature-related strategies and regulation at all governance scales. The Strategy envisions Western Australia's natural heritage as being 'healthy and resilient to threats' today and into the future. In doing so, one of the State Native vegetation policy objectives should develop and implement innovative mechanisms for enhanced decision-making by developing connections between multiple disciplines and all levels of government. It also requires acting on each of the five priority interventions identified by the IPBES Global Assessment. In particular, managing for resilient social-ecological systems that deliver robust decisions under a wide range of plausible futures; strengthening environmental law; and reforming for integrated cross-sectoral decision-making.

Better regulation

14 Which of the following elements of better regulation would be most important to your sector? (Please rank your top three)

Rank better reg elements - Improved protection for native vegetation:

1

Rank better reg elements - Ensuring development is sustainable:

2

Rank better reg elements - Streamlined regulation for cost saving:

Rank better reg elements - Clearer requirements for business certainty:

Rank better reg elements - Improved assessment timeframes:

Rank better reg elements - Transparent, evidence-based decisions:

Rank better reg elements - Improved compliance and enforcement of unauthorised clearing:

Rank better reg elements - Equitable treatment of all proponents:

Rank better reg elements - Confidence in the regulatory system for all stakeholders:

3

Rank better reg elements - Other:

If you selected Other, please provide further information.:

15 What other opportunities are presented by better regulation?

Please provide your answer in the text box below.:

BETTER REGULATION

The Intergovernmental Agreement on the Environment (IGAE) recognises that the Commonwealth, the states and local government share responsibility for 'ensuring the survival of species and ecological communities'. States have primary responsibility in the broad area of nature conservation. There is growing recognition across the sciences and social sciences that the prevailing dominant capitalist worldview is a key driver of inequity and unsustainability. Imagining the new and more desirable law, therefore, requires new ethics and a new politics and a serious reckoning.

I advocate there needs to be more effective communication to the public to inform them of the role and powers of the Commissioner and Deputy Commissioner of Soil and Land Conservation, through the Department of Primary Industries and Regional Development (DPIRD). Importantly, when and how to access these Commissioners in the event of possible breaches to policy and law in events where unlawful clearing may occur?

Important to note when developing this policy is the need to advocate for the Environmental Protection ACT definition of remedial action related to Land Clearing be used in applying penalties. Under the Environmental Protection Act under offense may be committed Remedial Action means: "remedial action means any activity that is required to ensure successful re-establishment of vegetation to its pre-clearing composition, structure, and density, and may include a combination of soil treatments and revegetation." NOTE: THIS IS NOT IN LINE WITH THE DEFINITION OF REMEDIAL ACTION UNDER THE ENVIRONMENTAL LEGISLATION FOR WHICH OFFENCES MAY BE COMMITTED.

In the event of unlawful and or illegal clearing, the role of traditional owners' knowledge of the site including spiritual, cultural and biophysical must be the first response to lead the remediation. This must be a matter of urgency and be fully resourced in partnership with traditional owner governance arrangements. This would secure the investment and expertise required to ensure successful restoration under the definitions provided within the EP Act Guidance Statement (Department of Water and Environmental Regulation, 2018).

Furthermore, Under Guidance Statement No. 6

Rehabilitation of Terrestrial Ecosystems (Environmental Protection Authority, 2006)

This Indicates that revegetation in the northwest needs to be mindful of correct timings with the season for direct seeding between October to December, with no planting without irrigation during this time.

Conflicting policy and regulation

In cases of unlawful and possible illegal clearing the policies, laws, regulations for compliance are not clear and appear to conflict with information published by the Pastoral Lands Board (the 'Pastoral Purposes Framework 2018') (Department of Planning Lands and Heritage, 2018). This sets out the types of activities that 'may be characterized as a pastoral purpose activity that is authorised under the pastoral lease', and therefore do not require any separate approval to be implemented. Relevant to the appeal, the appellant stated that the Framework (Department of Planning Lands and Heritage, 2018) states that the construction, maintenance, expansion and replacement of 'stock waters' on a pastoral lease falls within the notion of pastoral purposes, as stock waters is essential to operating a pastoral business.

Also noted that: the Framework references the requirement in section 108(2) [of the Land Administration Act] for pastoral lessees to use methods of best pastoral and environmental management practice and encourages 'active rehabilitation' (which includes earthworks). The Pastoral Lands Board considers that no additional approvals are required ... so long as the activities are consistent with the pastoral lessee's requirements under section 108 of the [LA Act]

The implication of this can lead to grounds of appeal that section 109(1) of the LA Act operates to the exclusion of the operation of the EP Act is not supported.

Section 117 of the LA Act provides that the Pastoral Lands Board must not grant a permit (including a permit to clear land) unless it is satisfied that any requirements in relation to the proposal arising from the operation of (among other things) the EP Act have been complied with. Importantly, the reference to a 'permit' in section 109(1) of the LA Act is a permit issued under that Act, and not a clearing permit within the meaning of Division 2 of Part V of the EP Act.

Furthermore, Inconsistent laws Section 5 of the EP Act relevantly states:

Whenever a provision of this Act ... is inconsistent with a provision contained in, or ratified or approved by, any other written law, the provision of this Act ... prevails. In some situations the purpose of improvements could be interpreted as aligning directly with the definition of 'pastoral purposes' in section 93 of the LA Act, which includes 'the commercial grazing of cattle' (part (a) of the definition) and activities ancillary to that land use (part (c) of the definition).

Consistent with this, the [Framework] recognises access roads, fences and stock watering improvements as 'essential' aspects of the use of land for pastoral purposes. Improvements that are innovative or of a certain scale are not excluded by either the definition or the [Framework]. The reference [in clause 13 of Schedule 6] to 'clearing caused by the grazing of stock on land under a pastoral lease' is a reference to clearing caused by that grazing itself and does not extend to clearing caused by other means, such as managing a pastoral lease for pastoral purposes or carrying out any other activities that are permitted by the lease.

This is supported by the definition of clearing under section 51A of the EP Act specifically including reference to "the grazing of stock". This conclusion is not to say that clearing for the purposes identified by the appellant cannot be undertaken – rather, it requires the person wishing to undertake the clearing to make an application for an EP Act clearing permit, and furnish such information in support of that application to establish the potential impacts of the clearing. The requirement to clear under another law – Schedule 6, clause 1 Clause 1 of Schedule 6 relevantly provides that a permit to clear under the EP Act is not required for 'clearing that is done in order to give effect to a requirement to clear under a written law'.

This detail a substantive inequity in policy and better practice and results in loss of native vegetation, failure to act in good faith and the inability to proceed with caution in the clearing of land for development sake.

A bioregional approach

16 Which of the following elements are the most important to you/your sector? (Please rank your top three)

Rank bioregional elements - 1. Transparent outcomes and objectives:

2

Rank bioregional elements - 2. Leveraging local knowledge:

Rank bioregional elements - 3. Strategic and innovative approach to conflicting interests:

Rank bioregional elements - 4. Clear targets and thresholds:

Rank bioregional elements - 5. Planned approach to dealing with cumulative impacts:

1

Rank bioregional elements - 6. Effective monitoring and evaluation framework:

3

Rank bioregional elements - 7. Supporting public-private partnerships for conservation:

Please explain in the text box below.:

17 What other opportunities are presented by a bioregional approach?

Please explain in the text box below.:

A bio-regional approach provides the opportunity to develop statutory authority or agreement making processes, which consider acting in good faith, precautionary principles, free prior and informed consent as an evidenced-based approach that requires investigating the cumulative impacts of all development.

It further provides the opportunity to recognise and invest in Indigenous land, water and biodiversity as the new economies to transition away from the destruction of our environments to ensure that citizens in the region have the human right to live in a clean environment as a basic human right whilst ensuring environmental justice.

18 What concerns are presented by a bioregional approach, for your sector?

Please explain in the text box below.:

There is concern over live cases in Western Australia which have resulted in major disturbance to terrestrial ecosystems resulting from human activities where it is anticipated that native vegetation will be rehabilitated. The primary concern is for the management of biodiversity, especially terrestrial vascular plants, but also concerns the re-establishment of habitats for animals, fungi and microorganisms; concerns effective monitoring and auditing of compliance with environmental conditions;

The terms revegetation, restoration, and rehabilitation refer to the process of returning vegetation to a previous or normal condition and healthy state (Section 6). However, most proponents and scientists view restoration to be distinct from 'rehabilitation' or 'reclamation' in that the latter activities do not necessarily lead to the recreation of pre-existing Indigenous ecosystems. Restoration attempts to return vegetation to its original state, while rehabilitation acknowledges that vegetation will be permanently altered, but seeks to return a self-sustaining native plant community that is as close to the original as possible. The definition of rehabilitation used in this Guidance Statement is consistent with industry practice in WA and most international practitioners.

A key aim of rehabilitation is to ensure the long-term stability of soils, landforms and hydrology required for the sustainability of sites (Section 3.3). The second main purpose of rehabilitation is to partially or fully repair the capacity of ecosystems to provide habitats for biota and services for people (see Section 3.4.2).

Consequences of failure to rehabilitate natural ecosystems to appropriate standards can include:

1. Reduction in the quality and quantity of habitats for plants, animals, fungi and microbes resulting in net loss of biodiversity.
2. Reductions in essential ecosystem functions such as carbon sequestration, water table stabilisation, etc.
3. Impacts on adjacent natural vegetation due to weed invasion, changes to hydrology, loss of connectivity, etc.
4. Environmental hazards and management costs that must be borne by society.
5. Reductions in the economic values of sites (forestry, grazing, tourism, etc.).
6. Loss of visual amenity and heritage values.
7. Failure to meet environmental conditions/commitments requiring additional remediation work or loss of bonds.
8. Loss of image and reputation for proponents.

The fundamental importance of biodiversity, for its own sake but also the contributions it makes to human well-being, are well-established in the literature and recognised by governments. The multiple contributions that biodiversity makes to human well-being range from food security, fresh air and water, disaster protection and cultural and spiritual health. The attention to robust legal design under uncertain futures is likely to result in improved conservation outcomes, and thus contributions to economic and social well-being, through the development of approaches that facilitate the development of integrated regulatory regimes and decision-support tools. Interactions between international biodiversity obligations and implementation through legislation is unsurprisingly identified as a critical issue.

This would enable the design and reform of Australian biodiversity laws to become robust under multiple scenarios of future change. It will empower biodiversity law to steer towards just and sustainable futures for nature. Building better information, regulation and compliance to inform implementation state regulation and strategies which contribute to stakeholder defined priorities for the future.

This submission advances the 'environmental change' priority required to emphasise the critical importance of integrating biological, physical, social and economic systems to build Western Australia's capacity to respond to environmental change and protect our natural and human environments. These reforms are critical to reviewing the Native Vegetation in Western Australia Issues Paper (November 2019). There is overwhelming evidence throughout the state that what is needed is the robust and future-oriented design of legal frameworks for biodiversity which are fundamental and are, therefore, an essential component of addressing integrated frameworks for the management of Western Australia's natural and iconic systems.

Other initiatives

19 What initiatives do you think would work best to improve native vegetation outcomes in your region?

Pricing, incentives and markets (e.g. biodiversity banking, offsets, carbon farming etc), Aboriginal land management, Nature-based or cultural tourism

Please explain in the text box below.:

The state government to work with traditional owners and their relevant governance mechanism to collaborate on developing a skilled workforce to invest in Indigenous land and water governance and management strategies to give effect to valuing the contribution natures makes to people, economies, happiness and wellbeing.

20 What else could be done to improve the management of native vegetation to arrest the decline of native vegetation extent and condition?

Please provide your answer in the text box below.:

Put the control of sustainable development of Western Australia native vegetation back into the management of Western Australia's native title holders.

Upload a document

21 If you would like to upload a document to support your submission, please upload it here.

Upload document 1 here.:

10th Feb 2020 DEWR Submission.docx was uploaded

Please describe which question(s) document 1 relates to. :

The references to my submission

Upload document 2 here.:

No file was uploaded

Please describe which question(s) document 2 relates to. :

A state native vegetation policy

9. Referring to the proposed policy objective statements, below how well do you support each one in guideline

Objective 1 matrix – Objective 1

Strongly opposed

Please explain in the text below:

Objective 2 matrix Objective 2:

Strongly opposed

Please explain in the texts below:

Objective 3 matrix Objective 3:

Strongly supported

Please explain in the texts below:

Better information

11 How do you use native vegetation data within your section?

If you chose other please specify

12 Which of the following elements of better information would be most relevant to your section.

Evidence-base for decisions

13 What other opportunities are presented by improved access to information?

Please provide your answers in the texts below:

- Evidence on gaps in information
- Evidence for the need for increase government funding for research on fire management, the effects of climate change and to monitor biodiversity
- Evidence for considering inter-generational equity

Better regulation

14 Which of the following elements of better regulation would be most important to your section?