PRODUCTIVITY COMMISSION

Productivity Commission Submission to the Queensland Parks and Wildlife Service

April 2001

Key messages

- Conservation of biodiversity can be undertaken by both the private and public sectors. Efficient and effective provision of conservation of biodiversity by both the public and private sectors is desirable.
- Private conservation of biodiversity should not be 'crowded out' through inappropriate public provision and/or subsidy, or thwarted by unnecessary regulation.
- Property rights for native wildlife may improve the incentives for management and use of individual species and their habitat.
- If regulation is necessary, the preferred focus should be to specify the desired outcomes that are to be achieved, rather than prescribing the end use through discrete licence or permit categories.
- The Queensland native wildlife licensing system and broad range of controls on keeping, use and trade in native wildlife may not be necessary to meet the Queensland Nature Conservation Act's objective of 'conservation of nature' and may unnecessarily constrain private conservation initiatives.
- The Queensland native wildlife legislation may not be the most appropriate mechanism to address animal welfare objectives. Desired outcomes for animal welfare should apply regardless of whether an animal is domestic, exotic or native.
- The Queensland native wildlife legislation appears to be more complex than necessary, and more so than in some other jurisdictions such as South Australia.
- The Queensland native wildlife licensing system has been designed to address and control specific pre-conceived end-uses, for example, keeping or exhibiting native wildlife. Private conservation initiatives, especially for threatened native wildlife, do not easily 'fit' within the current system of licences and permits, as there is no specific category of licence or permit for these activities.
- The review provides an opportunity to develop consistent and transparent administration and assessment procedures with standard conditions. The lack of a central permit system, combined with three separate administrative regions across the state, may result in inconsistent approvals and conditions, and increase the costs for business and the community.

Background

The Productivity Commission is undertaking a broad stream of research in the area of improving the effectiveness and efficiency of public and private sector conservation of biodiversity. Some aspects of this work may be relevant to the Queensland Parks and Wildlife Service review: 'Towards more practical legislation for keeping and using native wildlife'.

A Productivity Commission research project is examining institutional impediments to private conservation of biodiversity. It is considering how taxation, competitive neutrality, wildlife legislation, and land tenure may affect the private sector's involvement with conservation of biodiversity. This builds on, and extends, an earlier project for the OECD 'Creating markets for biodiversity: a case study of Earth Sanctuaries Limited' (Productivity Commission in press).

This submission may assist the development of more practical legislation for keeping and using native wildlife in Queensland. Ideally, native wildlife legislation accommodates public and private provision of conservation of biodiversity.

This submission highlights elements of a regulatory framework that may contribute to more efficient and effective provision of conservation of biodiversity by the public and private sectors. It also illustrates how Queensland's native wildlife legislation may inadvertently affect private conservation initiatives and possibly impede the achievement of the purpose of the Act — conservation of nature.

The private sector and conservation of biodiversity

The private sector can include commercial enterprises, landholders, and not-for-profit non-governmental organisations and community groups. The private sector can directly address the conservation of biodiversity through establishing, managing and supporting dedicated conservation areas. The private sector can also indirectly address conservation of biodiversity when undertaking any use or development of natural resources. Private sector initiatives can complement activities by the public sector, both by adding to the resources used for conservation purposes and freeing up government resources for other purposes.

In countries such as the United States of America and United Kingdom, the private sector has a significant involvement with conservation of biodiversity (Binning 2000, Clough 2000). In Southern Africa, sustainable use and conservation of wildlife has been facilitated by transferring ownership and management responsibilities for wildlife to local communities (Rural and Regional Affairs and Transport References 1998, Environment and Natural Resources Committee 2000).

In Australia, the private sector has been involved in various conservation activities for many years. The sector's philanthropic and commercial approaches to conservation include:

- Using private funds to preserve native wildlife and habitat or to help solve environmental problems.
- Donating land for placement under a covenant or agreement to ensure conservation into the future (this may involve public assistance or encouragement to do so).
- Sponsoring native wildlife management programs or campaigns to save particular endangered species.
- Small private zoos have contributed to ex-situ conservation of genetic diversity.

Examples of private sector involvement with conservation of biodiversity in Australia include Birds Australia, Bush Heritage Fund, Earth Sanctuaries Ltd, and Fund for Wild Australia.

Notwithstanding the private sector's involvement in the provision of conservation of biodiversity in Australia, the major role has been undertaken by the public sector through national parks and reserves on public land. However, conservation of biodiversity cannot be adequately addressed only on public land, as more than 60 per cent of Australia is managed by private landholders. The strengthening of 'off-reserve' conservation of biological diversity is widely recognised as a critical issue that needs to be urgently addressed (for example, DEST 1996, SEAC 1996).

The opportunity to increase the role of the private sector in biodiversity conservation was recognised by the 1998 Senate inquiry into the commercial utilisation of native wildlife (including private conservation):

> The Committee concludes that the related issues of property rights in wildlife assets and public investment in biodiversity conservation are of considerable importance. The Committee believes that the current and potential role of the private sector in biodiversity conservation is significant, but currently considerably undervalued. The Committee recommends that the Federal Government investigate ways in which private sector investment in biodiversity conservation can be supported and encouraged (Rural and Regional Affairs and Transport References 1998).

This recommendation was accepted by the Commonwealth Government, which stated that 'the investigation of increased private sector investment in biodiversity conservation is strongly supported' (Commonwealth Government 1999).

A framework for the conservation of biodiversity

While not overlooking the important role the public sector should play, biodiversity conservation regulation should not unnecessarily constrain the private sector. The private sector can play an important role in complementing the provision of, and where feasible, alleviating some of the burden on, public sector conservation.

While conservation activities can be undertaken by both the private and public sectors, efficient and effective provision of conservation of biodiversity by both the private and public sectors is desirable. Private conservation should not be 'crowded out' through inappropriate public provision and/or subsidy, or thwarted by unnecessary regulation. Public and private sector conservation businesses (such as public zoos and private sanctuaries) should face a similar regulatory and competitive environment. Any regulations should also be flexible enough to allow private sector initiatives to complement public provision of conservation of biodiversity.

State and Commonwealth native wildlife legislation and controls on the taking, keeping, use and trade of native wildlife can affect private sector conservation activities. For example, while private sector initiatives can conserve native wildlife through improving natural habitat, at times the initiatives may need to take native wildlife from the wild, to develop new animal populations and conserve threatened species. Private conservation initiatives may also need to manage native wildlife populations in private conservation areas, possibly through developing new conservation areas or trading captive-bred native wildlife. There are opportunities for the Queensland review to establish an appropriate balance between 'capturing' private sector initiatives while ensuring any market failures and/or social and environmental objectives are addressed.

Some important considerations when designing an appropriate framework to facilitate more efficient and effective conservation of biodiversity outcomes include:

- *Removing existing institutional impediments:* existing markets for biodiversity may operate better if unnecessary regulation or structural hindrances are removed, and property rights are clearly defined. Societal attitudes, information deficiencies and a lack of public awareness can also affect the conservation of biodiversity.
- *Establishing an appropriate cost-sharing framework:* appropriate arrangements are needed for sharing the costs of conservation of biodiversity between various individuals, organisations and government. If government is involved, effective cost-sharing arrangements can help ensure that limited public funds are used efficiently and effectively to promote social (including environmental) goals.

- *Recognising the role that market based mechanisms can play:* markets and market-based mechanisms for private conservation of biodiversity are evolving as property rights over biodiversity are clarified.
- *Continuing development of consistent and complementary regulations with other jurisdictions:* as markets for conservation of biodiversity evolve, it is important that resources can move freely between jurisdictions, subject only to essential biodiversity constraints such as threats to established species or genetic pollution.
- *Ensuring any regulatory action is appropriate:* as with all regulation where government action is required, a careful assessment of policy options is important. Unwarranted or poorly designed regulations can impose significant costs on business and the community, and adversely effect the environment.

Some of the elements of the above framework — for example, the removal of institutional impediments, the development of market mechanisms and ensuring any regulatory action is appropriate — are directly relevant to the Queensland review of native wildlife provisions for keeping and using native wildlife.

The Queensland native wildlife legislation

Private conservation initiatives may need to both source, and manage, native wildlife populations. This section considers how particular aspects of the Queensland Nature Conservation Act 1992 can affect private conservation initiatives.

The focus of the Queensland native wildlife legislation

The stated object of the Queensland Nature Conservation Act 1992 is the 'conservation of nature' (s4). To achieve this object, among other things, the Act provides for a wide range of regulatory controls on the taking, keeping, trade and release of protected animals. Control of the taking of native wildlife from the wild, and the release of captive native wildlife to the wild, are needed for conservation of biodiversity. The legislation achieves this by prohibiting taking and release of native animals without an authority.

The Queensland licensing regime established by the legislation, while addressing taking and release, also regulates the keeping, use and trade of native wildlife (for example, see box 1).

Box 1 **Regulations controlling the keeping and use of native birds**

In Queensland, the taking, keeping and use of different classes of protected animal are subject to certain restrictions and limitations as specified in the Nature Conservation Regulation 1994.

'Chapter 3, Part 2, Licences for birds' of the Regulation provides a framework for the keeping and use of birds via a series of exemptions, and controls on recreational and commercial licences. The purpose of 'Chapter 3, Part 2, Licences for birds' is 'to control the taking, keeping, and use under a licensing system' that helps conserve populations of birds in the wild, controls threatening processes, and recognises the keeping and breeding of birds in captivity as a legitimate recreational pursuit'.

Specific controls on the keeping and trading of birds include:

- A licence may be granted only if the Parks and Wildlife Service is satisfied 'the proposed activity is not likely to adversely affect the ecological sustainability of the wildlife stated in the application for the licence, either generally, or in a particular locality or ecological system'.
- A licence may be granted only if the Parks and Wildlife Service is satisfied the place where the birds are to be kept has permanent facilities for keeping the birds, including permanently roofed areas and cages.
- A commercial licence holder must not sell certain birds to a person without an appropriate licence.
- Any changes in the number or species of birds that are kept must be recorded by a commercial licence holder and a 'return of operations' must be submitted annually.
- Restrictions on the number and type of birds that may be kept under a recreational licence.
- A general restriction on displaying birds for trade or commerce under a recreational licence.

The broad range of controls on keeping, use and trade of native wildlife may not be necessary to meet the Act's object of 'conservation of nature' and may unnecessarily constrain private conservation initiatives. There may be opportunities to specifically target the taking and release of native wildlife in the wild, while reducing the regulation of the keeping and trade of captive-bred native wildlife. The additional controls on keeping, use and trade of native wildlife may have been intended to meet other goals, such as animal welfare. While such goals may be important, native wildlife legislation may not be the most appropriate mechanism to address such issues. For example, desired outcomes for animal welfare should apply regardless of whether an animal is domestic, exotic or native, and hence could perhaps be better achieved through overarching legislation.

Property rights in protected native wildlife

Property rights are the rights to own and/or use a particular resource, commodity or service. The specification of property rights is a crucial prerequisite to the efficient exchange of a resource or commodity through a market. For a market to function effectively, property rights need to be: clearly defined; completely and exclusively allocated (that is, holders of property rights should be guaranteed exclusive use); secure; and legally enforceable.

If property rights do not exhibit the above characteristics, the development of an effective market will not be possible. For example, it is difficult, if not impossible, to sell an asset which is not well defined and whose ownership could be disputed. Without clear property rights, there is little incentive to manage, use or conserve the resource in a way that maximises its longer-term value (Industry Commission 1998).

Property rights for native wildlife may improve the incentives for management and use of individual species and their habitat. However, the amount of the incentive depends on the value given to the wildlife. Less valued species may be neglected in favour of higher value species which could adversely affect overall biodiversity (Clough 2000). Therefore, property rights for biodiversity may need to be supported by other measures such as a 'duty of care' to the environment, and the development of an appropriate framework for sharing the costs of conservation of biodiversity.

The Commonwealth Minister for the Environment and Heritage stated that the Senate inquiry into commercial utilisation of native wildlife had highlighted that the issue of property or access rights to native wildlife required attention. There was a lack of clarity as to what constitutes rights (including indigenous or Native Title rights) in native wildlife, and in practice, these rights are difficult to define and are not consistent across Australia. The Minister noted that by assigning property or access rights, native wildlife could become an asset rather than a liability to the landholder, and that if landholders receive a financial reward for living with native wildlife and bearing the cost to society of maintaining natural resources this may encourage conservation (Commonwealth Minister for the Environment and Heritage 1999).

The Queensland native wildlife legislation defines that 'all protected animals are the property of the state'. A protected animal is one prescribed under the Act as threatened, rare or common wildlife. A protected animal ceases to be the property of the state if it is taken under authority. It then becomes the property of the holder of the authority who would also own any progeny from native wildlife that have been taken (s83 Nature Conservation Act 1992).

Although not explicitly defined in legislation, it would appear that Queensland, on behalf of the Crown, assumes rights and responsibilities associated with ownership of captive native wildlife lawfully imported into Queensland, and ownership of any resulting captive-bred native wildlife. It would also appear that the rights and responsibilities associated with ownership of captive native wildlife would pass to another state or territory if captive native wildlife were lawfully exported from Queensland to another state or territory where different administration arrangements may apply.

The holder of an authority for keeping native wildlife may have some property rights — for example, the authority may provide for some native wildlife to be traded, displayed or bred. However, the holder of the authority will not have complete ownership of the native wildlife as any use outside the conditions of the authority would require a further application for another licence or permit.

There may be opportunities for the Queensland legislation to give greater recognition to the role of property rights based solutions to promote biodiversity conservation on private land in conjunction with other measures. One option which may merit exploration would be for wild native animals to be owned by the Crown, and for lawfully taken and captive-bred native animals to be owned by the person responsible for keeping the native wildlife.

The Queensland licensing system

The Queensland native wildlife legislation appears to be more complex than necessary, and more complex than in some jurisdictions such as South Australia. Queensland has eleven different types of licence (ie commercial wildlife, recreational wildlife, recreational wildlife (specialist), international wildlife, commercial wildlife harvesting, recreational wildlife harvesting, wildlife demonstrator, wildlife exhibitor, wildlife farming, museum and herbarium) in association with eight different schedules of native wildlife. In contrast, South Australia classifies native animals as either ‘unprotected’, ‘exempt’ (from requiring a permit), ‘basic’ and ‘specialist’. The last two categories relate to the required level of expertise to keep and care for the native wildlife. There is no prohibited list of native animals that cannot be kept in South Australia.

There are also eight types of permit (ie damage mitigation, educational purposes, keeping of protected or prohibited wildlife, rescue of wildlife, scientific purposes, wildlife movement, commercial whale watching and clearing) within the Queensland system. The permit system should also be included in the review of Queensland legislation for keeping and using native wildlife.

Private conservation initiatives, especially for threatened native wildlife, do not easily 'fit' within the current system of licences and permits, as there is no specific category of licence for these activities. This is because of the design of the licensing system and the specific purpose of the different licence and permit categories.

The current licensing system appears to have been designed to address and control specific pre-conceived end-uses, for example, keeping, harvesting, demonstrating and exhibiting native wildlife. If regulation is necessary, the preferred focus should be to specify the desired outcomes that are to be achieved, rather than prescribing the end use through discrete licence and permit categories. The desired outcomes could be specified according to ecological, conservation, and health and safety criteria to manage the effects of the conservation and use of native wildlife.

An exhibition licence or a permit for educational or scientific purposes may provide some of the features of a licence that a private conservation operator may desire — for example, the ability to keep and trade native wildlife. However, there are also restrictions according to the particular class of native wildlife, and general requirements to keep and return records. As noted above, under the legislation, a private conservation provider would not own any captive native wildlife that were being kept or used.

An educational or scientific permit would appear to be the only way that private conservation initiatives may receive approval to take and keep rare or threatened native wildlife from the wild. There are also restrictions on these permits that may prevent them from being granted to any private conservation initiative:

- The educational or scientific purpose for which the wildlife is proposed to be taken, used or kept has to be a genuine educational or scientific purpose.
- An applicant for a scientific permit would need to demonstrate that either:
  - they are associated with a recognised scientific organisation, or a professional organisation involved in scientific research or 'a non-profit community organisation with a genuine interest in the conservation of wildlife, or
  - is completing postgraduate training in scientific research or has achieved a satisfactory level of competence in scientific research (s113 Nature Conservation Regulation 1994).

Over and above the apparent complexity and design challenges of the licence and permit system, some specific regulations and their contribution to conservation of biodiversity could be revisited by the review. For example, the distinction between recreational and commercial licence categories, and those activities which have been declared exempt from licence requirements, does not appear to address conservation of biodiversity issues. The different licence categories appear to be

based on the number and type of captive-bred native wildlife that are kept or traded within a certain period, for example, monthly and six monthly. A recreational licence holder cannot keep more than two birds of certain listed species, and must not display certain categories of birds for either trade or commerce — these activities would require a commercial wildlife licence.

Taking from the wild

Ideally the objectives and strategies related to the maintenance and conservation of biological diversity and the functioning of ecosystems should govern the design of regulations addressing the taking of any native wildlife from the wild.

At times, a private sector conservation provider may seek to take native wildlife from the wild, to develop a conservation enterprise and further conservation of biodiversity via a species recovery program. As noted above, the Queensland legislation only provides a limited opportunity for the private sector to take native wildlife from the wild for conservation purposes, even if not for a rare or threatened species. The legislation should not automatically prevent such private conservation activity but rather enable an application to be considered on its merits through a transparent and accountable process.

Appropriate procedures to provide transparent and accountable decisions may need to be developed to address any concerns that the approval of such applications to take and use rare and threatened native wildlife may create a precedent. In other states, such as South Australia, it would appear that some discretion is applied to the consideration of these applications with more flexible processes to grant approvals for use of native wildlife. Western Australia has supported a partnership between the public and private sectors that has enabled the taking and keeping of five threatened bird species to reduce pressure on wild populations, develop a captive-bred population and improve knowledge about the different species. The knowledge gathered from the keeping of native wildlife can bring broader public benefits such as supporting threatened species recovery programs.

The taking and use of threatened native wildlife by the private sector may be affected by the level of government research into threatened species and the development of appropriate recovery programs. A possible role for the state may, in addition to undertaking basic research, be to encourage recovery programs that allow a number of providers, both public and private, to undertake suitable conservation activity within the defined framework.

Licence and permit administration

The review of native wildlife legislation provides an opportunity to develop consistent and transparent administration and assessment procedures with standard conditions. The lack of a central permit system, combined with three separate administrative regions across the state, may result in inconsistent approvals and conditions, and increase the costs for business and the community.

A private conservation provider would currently require different licences or permits for the taking, keeping, displaying, trading and movement of native wildlife. The review could consider the option of a master licence system that gives general authorisation for the above activities in accordance with specified outcomes, rather than having a separate licence or permit for each activity.

Most native wildlife licences require records to be kept and then submitted annually to the Queensland Parks and Wildlife Service. Holders of native wildlife farming licences must provide monthly returns. If records are required, the keeping and return of records could be simplified to enable self-administration and targeted monitoring of compliance as is being examined in the ACT. There are opportunities for accreditation of the private sector and greater use of codes of practice with an associated reduction in regulation. There are also opportunities to use electronic transfer of licence records, and DNA testing and microchip identification, to bring greater efficiencies and improvements in monitoring.

The review of native wildlife legislation in other jurisdictions may assist the Queensland review. For example, the Victorian Government is reviewing the Wildlife Regulations 1992 prior to their sunset in June 2002. The review will build on an associated review of the Victorian Flora and Fauna Guarantee Act 1988 which may bring changes or revision of the licensing regime that provides for the utilisation of native flora and fauna. The regulation review will also consider the improvement of customer service, including on-line delivery, and explore ways in which the structure of private and commercial licences could be simplified recognising that the licensing regime must provide for a variety of distinctly different commercial operations (Victorian Government 2001).

Inter-jurisdictional issues

Inconsistent legislation and policy and/or lack of complementary legislation and policy between jurisdictions can affect conservation-related activities by the private sector. For example, in the crocodile industry, the Northern Territory and Western Australia allow ranching of eggs whereas Queensland does not. This may not allow businesses in the industry to compete equally. Western Australia provides for the

transfer of native wildlife permits from one person to another whereas Queensland does not. Conversely, Queensland provides for corporations to hold licences whereas Victoria does not.

Reform of the Queensland native wildlife legislation could also address inter-jurisdictional and interstate coordination issues. The 1998 Senate inquiry into commercial utilisation of native wildlife noted that 'duplicated and onerous administrative procedures are unnecessarily hindering legitimate industries in Australia'. The Committee recommended that State and Federal Governments together review all administrative procedures relating to commercial utilisation of native wildlife in Australia with a view to increasing their efficiency so as to ensure that there are no unnecessary hindrances to industry (Rural and Regional Affairs and Transport References 1998). This recommendation was accepted by the Commonwealth Government (1999).

Conclusions

The Queensland native wildlife legislation appears to be more complex than necessary and may unnecessarily constrain existing and potential private conservation initiatives, hence reducing incentives for private conservation of native wildlife.

Property rights and ownership of native wildlife are not always explicitly defined in the Queensland native wildlife legislation. There is an opportunity to give greater recognition to the role of property rights based solutions to promote biodiversity conservation on private land.

The Queensland licensing system and broad range of controls on keeping, use and trade in native wildlife may not be necessary to meet the Act's objective of 'conservation of nature' and may impede private conservation initiatives. There may be more efficient and effective solutions that specifically target the taking and release of native wildlife in the wild, while reducing the regulation of other activities such as private conservation initiatives and the keeping and trade of captive-bred native wildlife.

Private conservation initiatives, especially for threatened native wildlife, do not easily 'fit' within the current system of licences and permits, as there is no specific category of licence for these activities. If regulation is necessary, the preferred focus should be to specify the desired outcomes that are to be achieved, rather than prescribing the end use through discrete categories of licence and permit.

The review by the Queensland Parks and Wildlife Service provides an opportunity to develop consistent and transparent administration and assessment procedures with standard conditions. The lack of a central permit system, combined with three separate administrative regions across the state, may result in inconsistent approvals and conditions, and increase the costs for business and the community.

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