



A Community Legal Centre specialising
in public interest environmental law

28 March 2014

Melanie Carson
Department of Environment, Water and Natural Resources
GPO Box 1047
Adelaide SA 5001

Dear Ms Carson

Native Vegetation Council Draft Guideline

The Environmental Defenders Office (SA) Inc. ("the EDO") is a community legal centre with over twenty years of experience specialising in public interest environmental and planning law. EDO functions include legal advice and representation, law reform and policy work and community legal education.

The EDO appreciates the opportunity to consider the Native Vegetation Council Draft Guideline "Clearance of native vegetation for preserving or enhancing ecological processes through Aboriginal cultural resources use activities under regulation 5(1)(zi)" ("the Draft Guideline").

The Draft Guideline recognises the significance of Aboriginal culture and its strong affiliation with the environment. The Draft Guideline provides specific guidance in relation to cultural resource use activities which involve the clearance of native vegetation. The purpose of the Draft Guideline is to acknowledge Aboriginal cultural resource use and explain this within the legislative framework that is in place under the *Native Vegetation Act 1991* ("the Act").

The EDO understands that the main intended audience is the Aboriginal community. The EDO's key concern is that the Draft Guideline contains technical language which may not convey the significance of the legislative framework to members of the Aboriginal community, who are engaged in cultural resource use activities, nor to the general public. The EDO makes the following submission:

1. *The language of the Draft Guideline should be simplified.*

The EDO acknowledges that the intent of the Draft Guideline is to consolidate legal and scientific concepts and explain them within Aboriginal cultural concepts. However, the language used is somewhat legalistic and may not adequately convey the significance of the information contained therein. There is scope, with the use of plain English, to simplify the concepts and processes set out in the Guideline.

Two sections which could be simplified are (a) the section entitled "Purpose of this Guideline"; and (b) the first part of the definition of "cultural resource use". In contrast, the language used to

describe the examples of cultural resource use activities, listed in the Guideline, employs plain English more appropriate to the intended audience.

2. A simple explanation of the legislative framework should be included so that the intended audience understands the context of the Guideline.

The Draft Guideline simply states that clearance of native vegetation through Aboriginal cultural resource use activities may occur without specific consent from the Native Vegetation Council (“the Council”). The EDO recommends that an explanation of the legislative framework should also be included because it would place the Draft Guideline within the context of the Act and convey the significance of the Act and the Draft Guideline with regard to native vegetation clearance. The EDO recommends that the Draft Guideline be expanded to include:

- A summary of the objects of the Act, which include preserving, protecting and enhancing native vegetation by preventing loss of native vegetation and biodiversity and degradation of land. The Guideline provides that clearance can be undertaken without consent so long as it is consistent with the objects of the Act, but does not explain what those are ;
- The role of the Council as a body which is involved with review of the condition of South Australia’s native vegetation, determination of applications for consent to clear native vegetation, and drafting guidelines for the management of native vegetation; and
- A description of the key legislative process of the Act which is that it is an offence to clear native vegetation except where consent of the Council has been granted or there is provision in the Regulations for clearance, which is the case here.


3. Additional definitions for inclusion in the Draft Guideline.

The Draft Guideline defines “cultural resource use” and “ecologically sustainable use”. However, there are some terms contained in the Draft Guideline which, without proper definition, may be unclear to the intended audience. Two notable examples are “Heritage Agreement” and “ecological process”.

The EDO recommends: (a) the inclusion of a definition of “Heritage Agreement” to avoid any confusion with the management and regulation of heritage under separate legislative frameworks, such as the *Heritage Places Act 1993*. Ecological processes should also be defined and a connection should be made, within the Draft Guideline, between “ecologically sustainable use”, “ecological processes” and the role that Aboriginal cultural plays within these concepts.

Please contact me on 8410 3833, should you have any queries in relation to this submission.

Yours Faithfully



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Environmental Defenders Office (SA) Inc.