



Environmental
Defenders Office

**Submission to the Discussion Paper - Developing a new
threatened species strategy for Tasmania**

20 December 2023

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

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INTRODUCTION

Thank you for the opportunity to comment on the *Discussion Paper - Developing a new threatened species strategy for Tasmania* (**Discussion Paper**).

EDO is a community legal centre specialising in public interest environmental law. We have a long history of providing legal advice on laws relating to biodiversity and threatened species conservation.

Our submission considers the Discussion Paper through a legal lens, including with regard to the *Threatened Species Protection Act 1995* (Tas) (**TSP Act**) (under which the Strategy is made) and how the framework as a whole can deliver improved outcomes for threatened species.

Our submission:

- 1) provides overarching comments about the threatened species regulatory framework in Tasmania; and
- 2) responds to several questions set out in the Discussion Paper.

Overall, the review of Tasmania's Threatened Species Strategy provides an opportunity to modernise the Strategy, increase capacity and resourcing for threatened species conservation, and strengthen Tasmania's threatened species legislative and regulatory framework.

1. OVERARCHING COMMENTS

Tasmania is renowned for many iconic species and communities, like the Tasmanian Devil, Swift and Orange-bellied Parrots, Maugean Skate, Red and Spotted Handfish, Alpine Sphagnum Bogs, Morrisbys Gum, Risdon Peppermint and Miena Cider Gum. Unfortunately, all these species and communities are threatened, with some, like the Maugean Skate and Orange-bellied and Swift Parrots, now on the precipice of extinction.

A review of Tasmania's Threatened Species Strategy is well overdue. Since the publication of the current Threatened Species Strategy in 2000, biodiversity has continued to decline, including in Tasmania; and there have been significant developments in scientific understanding, international and domestic policy goals, and legislative and regulatory tools.

Australia's 2021 State of the Environment report¹ found that:

- Our biodiversity is declining, and the number of threatened species is increasing;
- Climate change, habitat loss and degradation, and invasive species are the key threats to Australia's biodiversity; and
- We can expect further extinctions of Australian species over the next 2 decades unless current management effort and investment are substantially increased.

¹ <https://soe.dcceew.gov.au/biodiversity/introduction>

There is no up-to-date State of the Environment report in Tasmania, although a new report is expected in 2024.² However, as noted in the Discussion Paper:

- A total of 686 species are currently listed as threatened under the Act in Tasmania.
- The total number of listed threatened species has increased from 642 to 686 since 1990.³
- New threats, such as climate change and associated risks have emerged.

In Tasmania, threatened species management is governed by the TSP Act, the Threatened Species Strategy (which is required to be prepared under the TSP Act), recovery plans, threat abatement plans, land management plans and Interim Protection Orders made under the TSP Act.

Threatened native vegetation communities are listed under the *Nature Conservation Act 2002* and managed principally through the *Forest Practices Act 1985*. The TSP Act interacts with other resource laws, including the *Land Use Planning and Approvals Act 1993*, and *Water Management Act 1999* (Tas).

The development of a new Threatened Species Strategy for Tasmania provides an opportunity to modernise and improve Tasmania’s approach to threatened species conservation. In particular, we highlight the following key matters that should inform and guide a new threatened species strategy:

- International and domestic ambition
- Common Assessment Method
- Improved understanding of key threats
- Best practice legislative and regulatory tools
- Interaction with other laws
- Resourcing and use of existing legal mechanisms

These are discussed in more detail below.

- **International and domestic ambition**

Since the commencement of the TSP Act and the current Threatened Species Strategy, there has been updated and strengthened international commitment in response to the biodiversity extinction crisis including the international Kunming-Montreal Global Biodiversity Framework, Glasgow Leaders’ Declaration on Forests and Land Use, Leaders’ Pledge for Nature and Federal Government’s Nature Positive Plan and Threatened Species Action Plan: Towards Zero Extinctions.⁴ These policies set bold ambitions for halting and reversing extinction and habitat loss and restoring ecosystems and landscapes.

² <https://www.planning.tas.gov.au/other-resources/state-of-the-environment>

³ However, many more may be eligible to be listed, see for example, Quarmby, J & Kutt, Alex & Dickson, C & Hamer, Rowena. (2023). Evaluating extinction risk in Tasmania's vascular flora using rapid IUCN Red List assessments. *Pacific Conservation Biology*. on-line early. 10.1071/PC23005.

⁴ See:

- **Kunming-Montreal Global biodiversity framework** (<https://www.cbd.int/gbf/>): The Kunming-Montreal Global Biodiversity Framework (**GBF**) was adopted during the 15th Biodiversity Conference of the Parties (COP 15) in December 2022. The GBF sets out 4 goals (Section G) including that “the integrity, connectivity and resilience of all

The vision and objectives for the new Threatened Species Strategy should match international and national ambition, including to halt extinctions, recover species, protect, conserve, and restore land. The Strategy should also include a clear action to review the TSP Act and modernise its objectives accordingly.

- **Common Assessment Method**

The Australian Government and all states and territories in Australia have agreed to establish a Common Assessment Method (**CAM**) for the assessment and listing of threatened species.⁵ Tasmania signed onto the *Intergovernmental Memorandum of Understanding - Agreement on a Common Assessment Method for listing of threatened species and threatened ecological communities (MOU)* in December 2015. All jurisdictions are required to bring their threatened species frameworks into line with the CAM MOU, including by adopting processes and criteria set out in the agreement. These are based on threat criteria and categories developed by the International Union for the Conservation of Nature (**IUCN**). The MOU provides for ecological communities to be an additional ‘opt-in’ for states and territories. Only two states (NSW and ACT) have opted to bring ecological communities within their MOU obligations. Currently, Tasmania identifies native vegetation communities under the *Nature Conservation Act 2000* (Tas) and manages native vegetation communities under the *Forest Practices Act 1985* (Tas).

To date, Tasmania has not updated its laws consistent with the CAM. While Tasmania updated its *Guidelines for eligibility for listing under the Threatened Species Protection Act 1995* in March 2023,⁶

ecosystems are maintained, enhanced, or restored, substantially increasing the area of natural ecosystems by 2050” and “human induced extinction of known threatened species is halted” (Goal A). It also sets out 23 targets (Section H) including targets of conserving 30 per cent of terrestrial and inland water areas, and of marine and coastal areas, by 2030 (Target 3).

- **Glasgow Leaders’ Declaration on Forests and Land Use** (<https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>): During the 26th UN Climate Change Conference of the Parties (COP26) in Glasgow from 31 October – 12 November 2021 over 100 countries, including Australia, pledged to halt and reverse deforestation and land degradation by 2030 through the *Glasgow Leaders’ Declaration on Forests and Land Use (Glasgow Declaration)*. The Glasgow Declaration includes six key commitments, including to conserve forests and accelerate their restoration; and to reverse forest loss and degradation while ensuring robust policies and systems are in place to accelerate the transition to an economy that is resilient and advances forest, sustainable land use, biodiversity and climate goals.
- **Leaders’ Pledge for Nature** (<https://www.leaderspledgefornature.org>): In September 2022, Prime Minister Albanese, announced that Australia would sign on to the *Leaders’ Pledge for Nature* to reverse biodiversity loss by 2030.⁴ Under the pledge, political leaders have committed to undertake urgent action, as part of the UN Decade of Action to achieve Sustainable Development, to put nature and biodiversity on a path to recovery by 2030.
- **Nature Positive Plan** (<https://www.dcceew.gov.au/environment/epbc/publications/nature-positive-plan>): In December 2022, the Australian Government released its Nature Positive Plan, its response to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Nature Positive Plan sets out the government’s commitment to reform Australia’s environmental laws to better protect, restore and manage our unique environment.
- **Threatened Species Action Plan: Towards Zero Extinctions** (<https://www.dcceew.gov.au/environment/biodiversity/threatened/action-plan>): In October 2022, the Federal government released its *Threatened Species Action Plan: Towards Zero Extinctions*. The Action Plan includes objectives of preventing new extinctions of plants and animals (Objective 3) and ensuring at least 30 per cent of Australia’s land mass is protected and conserved (Objective 4).

⁵ <https://www.dcceew.gov.au/environment/biodiversity/threatened/cam>

⁶ <https://nre.tas.gov.au/Documents/Threatspeciesguidelines.pdf>

the updates only adopted the latest criteria for the categories of endangered and vulnerable. The TSP Act has not been amended to align the threat criteria and categories with the CAM or IUCN (e.g. the TSP Act categories are extinct, vulnerable, endangered and rare; whereas the CAM adopts the following IUCN categories – Vulnerable, Endangered, Critically Endangered, Extinct in the Wild, Extinct and Conservation Dependent). Tasmania has not opted into the CAM for ecological communities.

An updated Threatened Species Strategy should require Tasmania’s framework to be updated, consistent with its obligations under the CAM.

- **Improved understanding of key threats**

Over the past two decades, our understanding of key threats, such as climate change and invasive species has improved. For example, advancements in technology, improved monitoring and data and more sophisticated climate modelling have improved climate science. Similarly, improved monitoring and research have deepened our understanding of invasive species and improved the way we can respond to threats. These improvements have led to more targeted and adaptive conservation management.

An updated Threatened Species Strategy should acknowledge and respond to new threats (in addition to ongoing threats). See further our response to Discussion Paper Question 2 below.

- **Best practice legislative and regulatory tools**

Over the past two decades, we have seen strengthened legislative and regulatory tools aimed at supporting improved threatened species conservation and management. These include:

- **Specific objectives and operative provisions addressing climate change impacts.** For example:
 - In NSW, the *Biodiversity Conservation Act 2016* (NSW) (**BC Act NSW**) includes a specific objective “to support biodiversity conservation in the context of a changing climate”.⁷ New provisions in the BC Act NSW allow the Minister to declare Areas of Outstanding Biodiversity Values (AOBVs), including, for example, climate refuges.
 - New provisions inserted into the Victorian *Flora and Fauna Guarantee Act 1988* (Vic) (**FFG Act**) in 2019 provide that it is a principle of the Act that a decision, policy, program or process gives proper consideration to the potential impacts of climate change (amongst other things).
- **Improved legal safeguards for threatened species.** For example, in NSW the BC Act introduced new provisions that require the mandatory refusal of certain development that will have serious and irreversible impacts on biodiversity values.⁸

⁷ *Biodiversity Conservation Act 2016* (NSW), s 1.3(d).

⁸ *Biodiversity Conservation Act 2016* (NSW), s 7.16(2).

- **Responsive provisions that allow for adaptive management in response to major events.** In the wake of extreme major events, like bushfires and floods, jurisdictions are starting to recognise the specific need for legal measures to ensure timely protection of wildlife and plants following a major event that leads to a material change in conservation status or viability of a species and which may require rapid intervention. For example:
 - o NSW has introduced new provisions to declare and protect Assets of Intergenerational Significance (**AIS**) in protected areas.⁹ These provisions allow the NSW National Parks and Wildlife Service (**NPWS**) to prioritise management at these sites and identify emerging threats, so rapid interventions can take place.
 - o The Victorian Regional Forest Agreements (**RFAs**) include provisions that allow for a review of an RFA after a ‘Major Event’.¹⁰
 - o NSW Private Native Forestry Codes include provisions that provide for a review of harvest operations where an unforeseen event (such as wildfire, mass dieback or a forest biosecurity event) has caused or has the potential risk of causing, serious or irreversible environmental damage on private land at a bioregional scale.¹¹

EDO’s *Discussion Paper – Wildlife can’t wait – Ensuring timely protection of our threatened biodiversity* makes recommendations for how our legal frameworks can be strengthened to ensure additional measures are available and triggered to support recovery following major events such as floods, fire and disease.¹² While primarily focused on NSW, Victoria and Queensland in the wake of the 2019-2020 bushfires, many of the ideas can be applied in other Australian jurisdictions, including Tasmania.

- **Enhance opportunities for environmental stewardship.** Enhanced opportunities for environmental stewardship, including private land conservation or First Nations-led management of land, can contribute to improved opportunities for environmental outcomes, including for threatened species.
 - o *Increased investment in private land conservation.* In contrast to Tasmania, which has announced no new funding for new conservation covenants on private land,¹³ various jurisdictions have increased resourcing for conservation on private land to improve biodiversity and conservation outcomes. For example:
 - Since 2016/2017 successive NSW governments have committed regular, substantial funding to support private land conservation through the Biodiversity Conservation Trust.¹⁴

⁹ *National Parks and Wildlife Act 1974* (NSW), Part 12A.

¹⁰ See, for example, *Victorian East Gippsland Regional Forest Agreement*, clause 32A – 32E.

¹¹ See, for example, *Private Native Forestry Code of Practice for Northern NSW*, cl 4.3(5) and (6).

¹² <https://www.edo.org.au/publication/discussion-paper-wildlife-cant-wait-ensuring-timely-protection-of-our-threatened-biodiversity/>

¹³ No new funding was announced for the Private Land Conservation Program in the Tasmanian Budget, with the Departmental section responsible for the program forecast to receive substantially less money over the forward estimates: <https://www.treasury.tas.gov.au/Documents/2023-24-Budget-Paper-No-2-Volume-1.pdf> at p 174.

¹⁴ <https://www.bct.nsw.gov.au/private-land-conservation-nsw>

- Queensland established the Land Restoration Fund to encourage improved co-benefits, including biodiversity benefits, from carbon farming projects.¹⁵
 - *Increased opportunity for First Nations-led land management.* In recent decades, new models have emerged to support enhanced First-Nations-led management of Country. For example:
 - Indigenous Protected Areas (IPAs) are areas of land or sea country that traditional owners have voluntarily agreed to manage for conservation.¹⁶ The agreement is made with the Australian Government. A 2016 report on five IPAs found IPAs and associated Indigenous ranger programmes “have demonstrated success across a broad range of outcome areas, effectively overcoming barriers to addressing Indigenous disadvantage and engaging Indigenous Australians on country in meaningful employment to achieve large scale conservation outcomes, thus aligning the interests of Indigenous Australians and the broader community.”¹⁷
 - Part 4A of the NSW *National Parks and Wildlife Act 1974* allows for land reserved under the NPW Act to be vested, on behalf of the First Nations owners, in one or more Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council, and subsequently leased back to the Environment Minister and managed as a reserve, with the Board of Management having a majority of its members appointed from the Aboriginal owners.
 - The Victorian *Traditional Owner Settlement Act 2010*. This legislation established a process for certain Crown land to be granted as ‘Aboriginal title’, to be managed jointly by First Nations peoples who are Traditional Owners in partnership with the state as national parks or other forms of public parks.
 - Relevant provisions of Queensland’s Indigenous Lands Acts (the *Aboriginal Land Act 1991* (ALA) and *Torres Strait Islander Land Act 1991* (TSILA) may allow for land to be transferred to First Nations peoples who are Traditional Owners and managed as a protected area.

The 2021 Pathway to Truth-Telling and Treaty Report¹⁸ recommended a statutory framework under which new Aboriginal Protected Areas can be established, there be greater resources for Tasmanian Aboriginal land management, and increased scope for joint management of reserves and Crown land, including but not limited to the Tasmanian Wilderness World Heritage Area. Unfortunately, progress in

¹⁵ <https://www.qld.gov.au/environment/climate/climate-change/land-restoration-fund/about>

¹⁶ <https://www.niaa.gov.au/indigenous-affairs/environment/indigenous-protected-areas-ipas>

¹⁷ Department of the Prime Minister & Cabinet, *Consolidated report on Indigenous Protected Areas following Social Return on Investment analyses*, February 2016, available at <https://www.niaa.gov.au/resource-centre/indigenous-affairs/social-return-investment-%E2%80%93-consolidated-report-indigenous-protected-areas>

¹⁸ Professor Kate Warner, Professor Tim McCormack and Ms Fauve Kurnadi, *Pathway to Truth-Telling and Treaty - Report to Premier Peter Gutwein*, November 2021, available at https://www.dpac.tas.gov.au/_data/assets/pdf_file/0029/162668/Pathway_to_Truth-Telling_and_Treaty_251121.pdf

responding to these recommendations, and in delivering the Government’s commitment to land handbacks to Tasmanian Aboriginal people has been slow.

Opportunities for enhancing environmental stewardship through both private land conservation and First Nations-led management of land as a way of improving environmental outcomes are discussed in EDO’s *Discussion Paper - Opportunities to expand and enhance environmental stewardship*.¹⁹ While primarily focused on NSW, Victoria and Queensland in the wake of the 2019-2020 bushfires, many of the ideas can be applied in other Australian jurisdictions, including Tasmania.

The review of the Threatened Species Strategy provides an opportunity to modernise and strengthen Tasmania’s threatened species legislative and regulatory framework by adopting some of these tools into the threatened species framework.

- **Interaction with other laws**

A key criticism of Tasmania’s threatened species management framework has been the failure of land use planning and resource management decisions to be made without the need to consistently consider impacts on threatened species.²⁰ Some steps have been taken to improve how land use planning and resource management decisions consider threatened species, including through the introduction of a statewide planning scheme that provides for consistent provisions for threatened species (which is still in the process of being rolled out). However, those provisions (including those in the Natural Assets Code) are subject to a huge number of exemptions and exceptions and have been roundly criticised, including by the Tasmanian Planning Commission.²¹

Additionally, the assessment of the impact of proposals on threatened species is not mandated in environmental impact assessment legislation. There is also no legislative guidance for approval agencies on what constitutes (un)acceptable impacts on threatened species.

Case Study – Assessment of roadkill impacts of a mine

In 2012, a mine that proposed to haul its ore to port 24 hours a day through takayna/the Tarkine was approved by Tasmania’s Environment Protection Authority (**EPA**). The permit was appealed by EDO’s client, the Tarkine National Coalition (**TNC**), to the Planning Appeal Tribunal due to the risks haul trucks posed to the endangered Tasmanian Devil (*Sarcophilus harrisii*) with vehicle strikes being responsible for 50% of devil deaths in some parts of Tasmania.²²

¹⁹ <https://www.edo.org.au/wp-content/uploads/2022/12/EDO-Opportunities...-environmental-stewardship.pdf>

²⁰ Australian Network of Environmental Defenders Offices, *Assessment of the adequacy of threatened species & planning law*, September 2014, available at <https://www.edo.org.au/wp-content/uploads/2022/07/Assessment-of-the-adequacy-of-threatened-species-planning-laws.pdf>

²¹ See, for example, EDO, *Submission on the Scope of the State Planning Provisions Review (lutruwita/Tasmania)*, August 2022, available at <https://www.edo.org.au/wp-content/uploads/2022/09/220812-EDO-Submission-on-the-Scope-of-the-State-Planning-Provisions-Review-lutruwita-Tasmania.pdf>

²² Species Profile and Threats Database, [Sarcophilus harrisii — Tasmanian Devil](#), Department of Climate Change, Energy, the Environment and Water

Taking account of the expert evidence called by EDO, the Tribunal imposed more stringent conditions on the mine permit to protect Tasmanian Devils and other species, limiting the transport of ore to daylight hours. In 2020, the mining company applied to the EPA to seek changes to the permit conditions to, again, allow 24-hour ore transport. The only new roadkill mitigation measure proposed by the company was to install 2.1 km of “virtual fencing” along sections of the 112 km route. Even though there was considerable scientific doubt over whether virtual fencing was even effective at mitigating Tasmanian devil roadkill, the EPA Director used his broad statutory powers to vary the conditions to allow night ore trucking.

There was no option for TNC to appeal against the merits of this decision, and so it had to challenge it by way of a more limited judicial review application. In upholding the EPA Director’s decision, the Supreme Court found that the *Environmental Management and Pollution Control Act 1994* (Tas) objectives, which included an objective of maintaining genetic diversity and adopting a precautionary approach to assessments, “are not binding rules of law that a decision-maker is obliged to obey”. As this example shows, without clear statutory criteria and guidelines for environmental assessments and decision-making addressing the precautionary principle and so-called “adaptive management”, Tasmania’s threatened species will remain at risk from inappropriate developments.

- **Resourcing and use of existing legal mechanisms**

Any strategy can only be successful if properly resourced and implemented, with tracking of implementation and monitoring of outcomes. In our view, many of the deficiencies of the current Strategy and the TSP Act more broadly, can be attributed to a historical lack of resourcing and implementation. For example, existing legal mechanisms (such as critical habitat provisions and recovery plans) are underutilised, and there has been no regular monitoring and reporting against the plan. While we are encouraged that there has recently been an increase in staffing within the Threatened Species Section of the Department of Natural Resources and Environment Tasmania, resources need to be sustainably allocated to this section to address both the historical backlog of work (e.g. in recovery planning and listing statements) and keep pace with growing needs arising from climate change and increased pressure from development and industry. Our response to Question 1 below further elaborates on these concerns.

The review of the Threatened Species Strategy provides an opportunity for the current Government to affirm its commitment to threatened species conservation and restoration, and ensure the new strategy is appropriately resourced and effectively implemented.

2. RESPONSE TO DISCUSSION PAPER QUESTIONS

QUESTION 1: What key elements in the 2000 Threatened Species Strategy should be considered when developing the new Strategy?

The Threatened Species Strategy has the potential to be a key policy document to drive the conservation and recovery of threatened species in Tasmania over the next decade and beyond. Unfortunately, the TSP Act’s lack of crucial governance provisions (such as mandatory reporting against actions set out in the Strategy, regular reviews of the Strategy etc.) makes it difficult to

understand how well the current strategy has worked, progress against key actions, strengths of the strategy and areas for improvement. Similarly, irregular State of the Environment reporting in Tasmania has made it difficult to understand trends in the threat status of threatened species.

We provide comments on some of the key elements of the 2000 Threatened Species Strategy below:

- **Principle Aims and Guiding Principles**

As noted above, we recommend that the aims, objectives and principles of a new Strategy should be strengthened to align with international and domestic ambition, including halting and reversing extinction loss, recovering species and improving the condition of biodiversity. Similarly, we recommend that this is a timely opportunity to update the objectives of the TSP Act as well.

- **Key threatening processes**

Section 10(2)(b) of the TSP Act requires that the Threatened Species Strategy includes proposals for ensuring the identification, and proper management of, threatening processes. The current strategy lists 6 key threatening processes (**KTPs**): native vegetation clearance; pests, weeds and diseases; degradation of water systems; inappropriate use of fire; bycatch and illegal harvesting; and impact of stock.

In our view, these KTPs are still relevant and should be retained. However, as discussed in response to Question 2 additional KTPs should be added to the Strategy.

Equally important, however, we recommend that the process for identifying and addressing KTPs be strengthened. For example:

- At present KTPs are identified in the Strategy. Given there is no mandatory requirement to review the strategy and no other process to identify KTPs, there is a risk that additional or emerging KTPs are not identified promptly. This contrasts with other jurisdictions where there are stand-alone legislative provisions for the identification of KTPs, meaning KTPs can be added as required, without the need to amend a Strategy. For example, Part 4, Division 5 of the NSW BC Act sets out the process for listing KTPs. Similarly, Part 3 of the Victorian FFG Act sets out the process for listing KTPs. However, it is noted that the TSP Act does include provisions for the development of threat abatement plans (Part 3, Division 6).
- It is not clear in the TSP Act itself how the threat abatement plan (**TAPs**) provisions of the TSP Act interact with the Strategy and KTPs identified in the Strategy. For example, there are no explicit provisions requiring TAPs to be prepared for KTPs identified in the strategy, and no indication that the detailed objectives and actions for KTPs in the Strategy essentially amount to a TAP. Notably, a TAP is required to be reviewed every 5 years which is more rigorous than the Strategy (which has no review requirements). While it is noted that the Strategy indicates a TAP will be prepared for each KTP identified in the Strategy (p 9), to the best of our knowledge no TAPs have been prepared. This is also in direct contrast to other actions in the Strategy which suggest Tasmania will support national TAPs, including for specific invasive species such as feral goats and feral cats.

- While the Strategy sets out objectives and actions for each KTP, there are no accountability mechanisms (e.g. mandated reporting against actions, or consequences for failure to implement the strategy).
- There should be clear requirements to consider KTPs in decision-making and implement TAPs. For example, in NSW a species impact statement prepared in support of a project application must address how KTPs are impacting species impacted by the proposal (*Biodiversity Conservation Regulation 2017* (NSW) cl 7.6(2)(c) and (3)(b)).

Changes could be made to the TSP Act to strengthen the processes for identifying and considering KTPs and improving accountability.

- **Priority threatened species approach**

See our specific comments on the proposed Prioritisation Framework and Strategic Priorities below.

More generally, we provide the following comments on certain elements of this section of the existing Strategy:

- *Critical habitat*: The critical habitat provisions of the TSP Act are underused. Our understanding is that no critical habitats have been listed (and no interim protection orders have been declared) in Tasmania. Critical habitat, by definition, refers to areas of land that are critical for the survival and recovery of a species or ecological community. If these areas are degraded or lost, then species or ecological communities are likely to go extinct or will not be able to recover. If the Tasmanian Government wants to improve outcomes for threatened species, then properly identifying, protecting and managing critical habitat is the key action it can take.
- *Recovery Plans* – We understand that of the 686 species currently listed under the TSP Act, recovery plans have been developed for less than 30 per cent of listed threatened species, and the vast majority of the recovery plans are out-of-date.²³ Again, recovery plans are a key, existing tool in conservation management that has been underutilised.
- *Listing statements* – We understand that many listed species, particularly listed flora species, do not have a listing statement.²⁴ While notes sheets on the species are provided, they are lacking in the detail and information that listing statements provide concerning distributional and biological data, recovery program information, actions carried out and actions required, advice on threats and management of species.
- *Land Management Plans and Agreements*. Similarly, we understand land management plans and agreements are underutilised.

As noted above, a lack of resourcing to properly implement the current Strategy and a failure to utilise existing legal mechanisms including those identified in the current Strategy are also key

²³ <https://nre.tas.gov.au/conservation/threatened-species-and-communities/recovery-plans>

²⁴ By 2 July 2023, only 48% of listed species had a listing statement, see *Department of [Natural Resources and Environment Tasmania Annual Report 2022-23](#)* at p 31

matters for consideration. To be effective, any new Strategy must be supported with sufficient resourcing so that it can be properly implemented and deliver outcomes for threatened species.

- **Recognising Threatened Ecological Communities**

Currently, Tasmania identifies native vegetation communities under the *Nature Conservation Act 2000* (Tas) and manages native vegetation communities under the *Forest Practices Act 1985* (Tas). This process provides an opportunity to consider whether this is still the most appropriate way to manage threatened ecological communities, or whether Tasmania should opt into managing threatened ecological communities under the CAM and bring the conservation and management of threatened ecological communities into the TSP Act.

QUESTION 2: Are there any key threats to Tasmania’s native species that may be missing, and why are they important?

It is unclear from the Discussion Paper whether currently identified threatening processes (native vegetation clearance; Pests, Weeds and Diseases; Degradation of Water Systems; Inappropriate Use of Fire; Bycatch and Illegal Harvesting; and Impact of Stock) will be retained; or whether it is intended to replace them with the examples identified in Figure 2 (Habitat Loss, Declining Quality and Fragmentation; Invasive Species and Predation; Disease, Pathogens and Pollutants; Decisions Guided by Incomplete Knowledge; Climate Change and Unsuitable Fire Regimes).

The Discussion Paper also fails to explain if and how the objectives and actions for currently identified threats have been addressed and whether those threats remain. We also understand that no specific TAPs have been prepared for the 6 currently identified KTPs despite this being an identified action in the Strategy.

In **Table 1 – Comments on existing and proposed key threatening processes**, we comment on existing KTPs and proposed KTPs.

Table 1 – Comments on existing and proposed key threatening processes

Current KTPs from the 2000 Threatened Species Strategy	Examples of KTPs in proposed Discussion Paper	EDO comments
Clearance of Native Vegetation	Habitat Loss, Declining Quality and Fragmentation	We support the reframing of ‘clearing of native vegetation’ to ‘Habitat Loss, Declining Quality and Fragmentation’. This recognises that it is not just clearing but fragmentation and modification of habitat that is a key threatening process. This is consistent with the Australian State of the Environment Report which identifies habitat loss and degradation as one of the key threats to biodiversity in the State of the

Impacts of Pests, Weeds and Diseases	Invasive Species and Predation Disease, Pathogens and Pollutants	We agree that Invasive Species and Predation and Diseases, Pathogens and Pollutants are key threatening processes that should be addressed by the Strategy. There has been no detailed explanation as to the apparent separation of Disease into a standalone threat (this is not opposed, just noted). More importantly, we suggest that the Strategy should go further and identify and address specific invasive species, diseases, pathogens and pollutants that are a specific threat in Tasmania, and develop objectives, actions and TAPs for those. This would be consistent with other jurisdictions that do single out specific threats within this broader category (see, for example, KTPs listed under the Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i> , ²⁵ and NSW BC Act. ²⁶
Degradation of Water Systems		In our view degradation of water systems remains a key threatening process and should be retained in the new strategy. It is unclear why it has not been provided as an example in the Discussion Paper. Ward et. al. 2021 identify ‘changed surface and groundwater regimes’ as a threatening process to Australia’s biodiversity. ²⁷ Similarly, ‘Alteration to the natural flow regimes of rivers and streams and their floodplains and wetlands’ is listed as a KTP in NSW. ²⁸ We further consider that this KTP should be expanded to address changing flow regimes due to dams and flood mitigation infrastructure which can impact riverine and flood-dependent ecosystems.
Inappropriate Use of Fire	Unsuitable Fire Regimes	We agree that unsuitable fire regimes are a key threat to threatened species. This threat should also cover the increase in fire risk and intensity due to a changing climate. For reference ‘Fire regimes that cause declines in biodiversity’ was listed as a KTP under the EPBC Act in 2022. ²⁹

²⁵ <https://www.environment.gov.au/cgi-bin/sprat/public/publicgetkeythreats.pl>

²⁶ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063#sch.4>

²⁷ Ward, Michelle & Carwardine, Josie & Yong, Chuanji & Watson, James & Silcock, Jen & Taylor, Gary & Lintermans, Mark & Gillespie, Graeme & Garnett, Stephen & Woinarski, John & Tingley, Reid & Fensham, Rod & Hoskin, Conrad & Hines, Harry & Roberts, Dale & Kennard, Mark & Harvey, Mark & Chapple, David & Reside, April. (2021). A national-scale dataset for threats impacting Australia’s imperiled flora and fauna. *Ecology and Evolution*. 11. 10.1002/ece3.7920. (**Ward et. al. 2021**).

²⁸ <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/2000-2003/alteration-to-the-natural-flow-regimes-key-threatening-process-listing#:~:text=Alteration%20to%20the%20natural%20flow%20regimes%20of%20rivers,and%20ecological%20function%20in%20aquatic%20ecosystems%2C%20including%20floodplains.>

²⁹ <https://www.dceew.gov.au/sites/default/files/documents/ktp-fire-regimes-that-cause-declines-in-biodiversity-advice.pdf>

Inappropriate and Illegal Harvesting		In our view 'Inappropriate and Illegal Harvesting' remains a key threatening process and should be retained in the new strategy. It is unclear why it has not been provided as an example in the Discussion Paper. Ward et. al. 2021 identify 'Overexploitation and other direct harm from human activities' as a threatening process. ³⁰
Impacts of stock		It is unclear why Impacts of Stock has not been provided as an example in the Discussion Paper. Given the projected expansion of irrigated agriculture and dairy farming under the Tasmanian Government's AgriVision 2050 policy and Rural Water Use Strategy this threat is likely to only increase into the future.
	Climate Change	We strongly agree that this is a KTP that should be included in the new Strategy. Both the Commonwealth and NSW have identified KTPs relating to climate change. Ward et. al. 2021 identify Climate Change and Severe Weather as a threatening process. ³¹
	Decisions Guided by Incomplete Knowledge	We agree that decisions guided by incomplete knowledge are problematic. However, we question whether this is KTP, as opposed to a systematic problem which needs to be addressed separately within the strategy, by a clear proposal to address and resource the plugging of statutory decision-making and knowledge gaps.

Some other threats that could be considered in the Strategy are:

- Collision (e.g. Roadkill is one of the single biggest threats to many of Tasmania's threatened fauna and needs to be addressed systemically statewide;³² collision with electricity infrastructure (including transmission lines and wind turbines) is a recognised major threat to Tasmanian threatened species).³³

³⁰ Ward et. al. 2021

³¹ Ward et. al. 2021

³² It has been estimated that between 377 000–1 500 000 animals die on Tasmanian roads each year, with roadkill mortality of the endangered Tasmanian devil each year, for example, estimated to be between 3.8–5.7% of the total population: Hobday, Alistair & Minstrell, Melinda. (2008). Distribution and abundance of roadkill on Tasmanian highways: Human management options. Wildlife Research - WILDLIFE RES. 35. 10.1071/WR08067. Over 60,000 animals were reported as roadkill on a voluntary reporting app between 2018 and 2021: <https://www.abc.net.au/news/2022-04-17/roadkill-tas-app-data-details-shocking-toll-on-wildlife/100984710>; with over 220 endangered Tasmanian devils reported to be killed on the roads over an 18 month period to 2022. At least 158 healthy devils were killed on a 25 kilometre stretch of the industrial Woolnorth Road in the period of 18 months: <https://tasmps.greens.org.au/parliament/tasmanian-devils-road-kill-numbers>

³³ In recognition of the threat electricity infrastructure poses to threatened birds, TasNetworks has entered into a Public Authority Management Agreement to manage threats of its infrastructure to birds. See <https://www.tasnetworks.com.au/config/getattachment/444edffd-e96d-441d-9664-dcc7727f118f/threatened-bird-strategy-2022-2032-.pdf>. The [Recovery Plan for the Tasmanian Threatened Eagle Species 2006 – 2010](#) recognises electricity infrastructure as a key threat.

- Disrupted ecosystem and population processes (e.g. Genetic introgression/hybridization, Lack of recruitment, Problematic native species, Small, restricted, and reduced population).³⁴
- Alteration of habitat (e.g. bush rock removal, removal of dead wood etc.)³⁵

QUESTION 3: Do the proposed Vision, Objectives and Guiding Principles provide a sound foundation for the Strategy and Implementation Plan? If not, why not? Are there any important elements missing and, if so, what are they?

As noted above, we recommend that the aims, objectives and principles of a new Strategy should be strengthened to align with international and domestic ambition, including halting and reversing extinction loss, recovering species and improving the condition of biodiversity. Similarly, we recommend that this is a timely opportunity to update the objectives of the TSP Act as well.

QUESTION 4: How important are each of the prioritisation principles proposed above? Should they be weighted with some being more important than others? Are there any important principles missing and, if so, what are they?

We generally support the prioritisation principles outlined in the Discussion Paper, however suggest that the principles could be expanded to address habitat, in addition to species, given habitat loss and fragmentation is one of the biggest threats to biodiversity.

For example, the principle titled ‘Urgency’ could be expanded as follows: “Prioritising species based on their likely threat of extinction *and habitats based on their likely threat of being lost or degraded to a point that they can no longer support threatened species*”.

We also suggest the following addition to the ‘Iconic species’ principle: Prioritising species that are endemic to Tasmania or Australia or are at the limits of their range *or species that are taxonomically and ecologically distinct* (i.e. species that have no close relatives and those that have a unique function in the ecosystem).

It is unclear how the prioritisation principles will be implemented in practice. For example, current tools, such as critical habitat provisions, could be used to implement some of these principles e.g. urgency – but as noted above, these provisions are currently underutilised.

QUESTION 5: Do you think the proposed Prioritisation Framework and Strategic Priorities are appropriate? What would you add or change?

We generally support the Strategic Priorities outlined in the Discussion Paper, but note the following recommendations for improvement:

³⁴ Ward et. al. 2021

³⁵ See NSW KTPs (<https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063#sch.4>), specifically:

- Alteration of habitat following subsidence due to longwall mining
- Bushrock removal
- Removal of dead wood and dead trees

- Science and knowledge – This item should include a specific action to integrate Indigenous knowledge systems and experience into threatened species conservation and management.
- Risk-based conservation and protection – Dot point 1 in this item should also reference restoration for habitat and recovery for species. For example, Strategic species interventions based on risk management are supported to help avert extinctions and further declines, *recover species and restore habitat*.
- Partner and engage – This item should specifically identify the opportunities for First Nations partnership and engagement, such as opportunities for environmental stewardship such as Indigenous Protected Area or co-management arrangements (see comments above).