BirdLife Australia's Submission to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999*

April 2020

Introduction

Who is BirdLife Australia

BirdLife Australia is an independent non-partisan grassroots charity with over 175,000 supporters throughout Australia. Our primary objective is to conserve and protect Australia's native birds and their habitat. Our organisation is the national partner of BirdLife International, the world's largest conservation partnership.

BirdLife Australia has played a major role in the conservation and monitoring of Australia's birdlife throughout our almost 120-year history. We have invested in long-term threatened bird conservation programs, often in partnership with other organisations and communities, bringing together research, education, on-ground remediation, advocacy and campaigning. The organisation relies on thousands of volunteers and citizen scientists who play a key role in delivering our bird conservation programs.

Our core programs adopt a long-term, multi-species and landscape scale approach to conservation for Coastal Birds, Woodland Birds, Mallee Birds and others. Our Key Biodiversity Areas program does the same for sites of recognised global importance for birds and biodiversity more broadly. Our Preventing Extinctions program focuses on threatened birds that are most likely to become extinct and require leadership from BirdLife Australia.

The need to reform the EPBC Act

Australia is facing an extinction crisis. Not only are more taxa becoming threatened, but listed taxa are edging closer to extinction. As the primary national law tasked with protecting Australian birds, plants and animals, the implementation of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has not succeeded.

BirdLife Australia submits that the EPBC Act must be reformed to provide stronger legislative protection for threatened species and their habitat. The implementation of the Act has failed to address key drivers of biodiversity decline: the destruction, fragmentation and degradation of habitat; altered fire regimes; invasive species and climate change. While it includes some strong provisions, for example those that provide for protection of critical habitat, these are rarely used.

The Act also allows for high levels of ministerial discretion in decision making and contains loopholes and exemptions such as Regional Forest Agreements that undermine the objectives of the Act. Science is frequently ignored and developments are allowed in areas that are known to provide important habitat for listed threatened species.

Failure to protect habitat

Habitat destruction is one of the major causes of threatened species decline and securing and improving habitats for threatened species is one of our most powerful and cost-effective

conservation tools. This is demonstrated by the results of the United States Endangered Species Act, which has delivered recovery of almost 99% of listed species.

The key drivers of recovery are robust protection of critical habitat and the use of species recovery plans that intensively manage species across the entirety of their ranges within a strong, clear, well-established regulatory context.

In comparison the EPBC Act enables decision makers to easily approve projects that damage the environment and biodiversity. Many key concepts in the EPBC Act are poorly defined, leaving them vulnerable to subjective interpretation and exploitation. This is exacerbated by the absence of a strong national environmental monitoring program to coordinate and provide data and insufficient resources to ensure compliance.

Under the EPBC Act protection of dispersed species has been particularly weak, in part due to the poor definition of what constitutes 'significant impact'. For many species, low population densities mean demonstration of 'significant impact' is rarely possible and cumulative impact of multiple development projects within the species' range are not considered.

Time for a new generation of national environment laws

As a founding member of the Places You Love alliance (PYL), BirdLife Australia supports PYL's longstanding position that under the EPBC Act Australia is failing to protect and conserve our environment. The Act is not able to address contemporary challenges including the increasing risk of species' extinction and impacts of climate change. At best Australia is slowing species' trajectories towards extinction, rather than arresting and reversing declines as they should.

The PYL position, supported by BirdLife Australia, is that the EPBC Act should be replaced with new federal environmental laws that mandate for the protection and restoration of our natural environment, strengthen our democracy and support community involvement. A new national environmental framework must be built on five key principles:

- National leadership
- A central role for communities in decision making
- Trusted and independent institutions
- Delivering strong environmental outcomes
- Ensuring resilience in the face of climate change

These principles underpin the PYL Alliance's vision[1] for a new national environment Act that would see the federal government:

- retain responsibility for Matters of National Environmental Significance (MNES) and protect them effectively. National oversight must be expanded to land clearing, biodiversity and ecosystems, water resources, climate change, air pollution and protected areas.
- establish an independent National Environment Commission to set national environmental standards, undertake strategic regional planning and report on national environmental performance. The Commission would also develop enforceable national, regional, threat abatement and species-level conservation plans.
- establish an independent National Environmental Protection Authority that operates at arm's length from government to conduct transparent environmental assessments and inquiries, as well as undertake monitoring, compliance and enforcement actions.
- guarantee community rights and participation in environmental decision making, including open standing provisions, open access to information about decision making and environmental trends, review of decisions based on their merits, third-party enforcement provisions and protections for costs in the public interest.

[1] http://www.placesyoulove.org/australiawelove/naturelaws/

For the Commonwealth to hold an effective leadership role in managing Australia's environment it requires a suite of regulatory tools that are fit for purpose. A new federal environmental law should be simpler, contain clear obligations for decision-makers, put a greater focus on bioregional planning, improve community participation, and contain clear and measurable outcomes that the Commonwealth and the states must achieve. It must also include prescriptions (such as limiting the loss of habitat), or processes to achieve those outcomes where doing so would provide certainty, efficiency and better environmental outcomes.

Lasting reform must be built on the foundations of accountability and transparency. Reform must therefore include mechanisms to significantly empower the community to ensure compliance, and to provide for full participation in decision making. 'Free, prior and informed' consent of Indigenous communities must become a mandatory principle of the Act.

As an organisation delivering programs to recover species, BirdLife would like to see a greater focus on the proactive provisions in the EPBC Act (such as declaration of Critical Habitat, Recovery Plans and Bioregional Plans). Moving away from reactive and piecemeal assessments will deliver greater efficiency and certainty for businesses and industry and better environmental outcomes.

In particular, reform must include mandatory Recovery Plans for threatened species or ecological communities which limit the loss of important habitat and include detailed recovery goals, actions and timeframes to measure progress. Multi-species plans should be encouraged where this is efficient, cost effective and scientifically sound. Stronger provisions are also required to register and protect critical habitats and climate refugia in all areas for species.

Reform of recovery planning will require a step change in the availability of data, with mandated public reporting against agreed targets in recovery or bioregional plans.
The EPBC Act also facilitates Australia's efforts to meet international obligations (e.g. the United Nations Convention on Biological Diversity (CBD)) through the designation of MNES. Our failure to meet those obligations could be addressed by measures such as expanding the MNES to include Key Biodiversity Areas (an internationally agreed standard) and vulnerable ecological communities.

BirdLife Australia's role in delivering solutions

BirdLife Australia is ready to be part of the solution to our extinction crisis. We know conservation works when we apply science and invest in long-term partnerships between government, universities, zoos, experts, landowners, volunteers and community groups.

BirdLife Australia facilitates the delivery of landscape scale multi-species programs, working with many thousands of amazing volunteers. We secure funding from thousands of wonderful philanthropists. And we have a strong focus on measuring and demonstrating impact.
But it's nowhere near enough to fix the extinction crisis. Governments must lead the way in developing policy and genuine law reform; and investment models which deliver long-term funding stability and certainty.

Paul Sullivan,
Chief Executive Officer
BirdLife Australia

About this Submission

Section one of this submission provides strong evidence that the EPBC Act is failing to achieve its key objectives: to provide for the protection of the environment, especially matters of national environmental significance and to conserve Australian biodiversity. To illustrate key points we provide links to our 2018 report, *Restoring the balance: the case for a new generation of Australian environmental laws*[2] (hereafter the 2018 BirdLife Report) which outlines key weaknesses and failures of the Act through case studies.

Section two provides a more comprehensive examination of the failures to use proactive provisions of the Act, including recovery plans, critical habitat and bioregional planning and argues that these provisions must be mandated under a new national environment Act.. We provide linkages to the joint BirdLife Australia, Australian Conservation Foundation, and Environmental Justice Australia report, *Recovery planning: Restoring life to our threatened species report*[3] (hereafter the ACF-BLA-EJA Recovery Planning Report), which demonstrates the multiple failures of the EPBC Act to protect and recover threatened species in Australia and provides recommendations for legislative and policy changes to address these failures.

[2] BirdLife Australia (2018). *Restoring the Balance: the case for a new generation of environmental laws.* BirdLife Australia, Carlton. https://birdlife.org.au/documents/OTHPUB-Restoring-the-Balance-Report.pdf
[3] https://www.birdlife.org.au/documents/OTHPUB-Recovery-Planning-Report.pdf

Section 1: Failure to achieve the objectives of the Act - the case for change

(Review Terms of Reference 1 (a) and 1 (b))

The Australian Government's State of Environment series provides clear evidence that the objectives of the EPBC Act have not been met, and that Australia is facing an extinction crisis. Not only are more taxa becoming threatened, but listed taxa are edging closer to extinction. This trend is evidenced by increasing numbers of critically endangered taxa (Fig. 1).

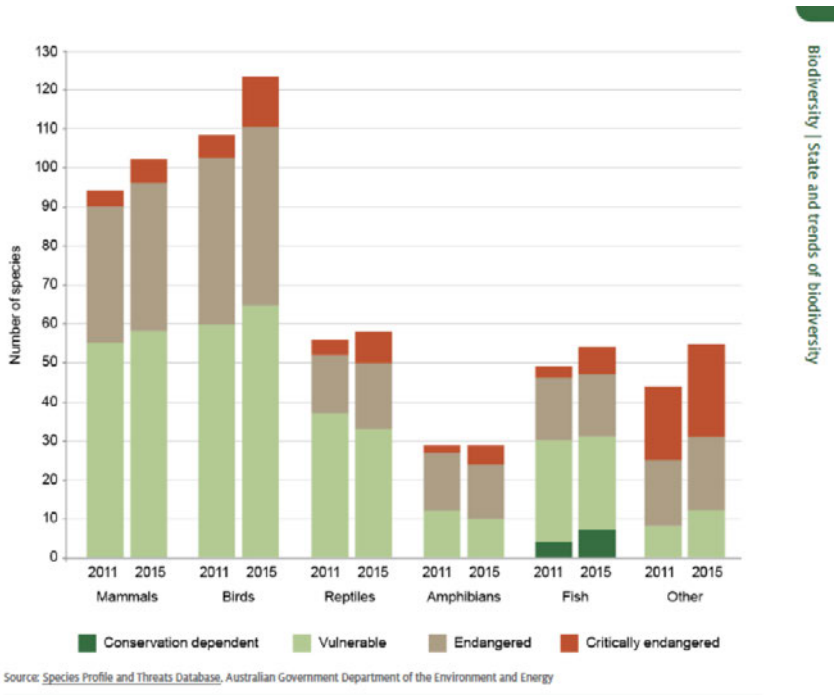

Figure 1: Number of fauna species listed under the Environment Protection and Biodiversity Conservation Act 1999, 2011 and 2015[4].

Trends in Australian birds

There are two contrasting threads of evidence on birds overall. For threatened species there has been a levelling of what had been a steep decline in the Red List Index, an index that accommodates changes up and down in IUCN Red List status from one time period to the next.

Indeed, in 2016 there was a slight improvement because the status of many seabird taxa nesting on Macquarie Island improved five years after the last rabbit was found; the culmination of a successful pest eradication program on the Island (Fig. 2).

[4] Copied from Cresswell ID & Murphy HT (2017, p. 57). *Australia State of the Environment 2016: biodiversity*, independent report to the Australian Government Minister for the Environment and Energy, Australian Government Department of the Environment and Energy, Canberra

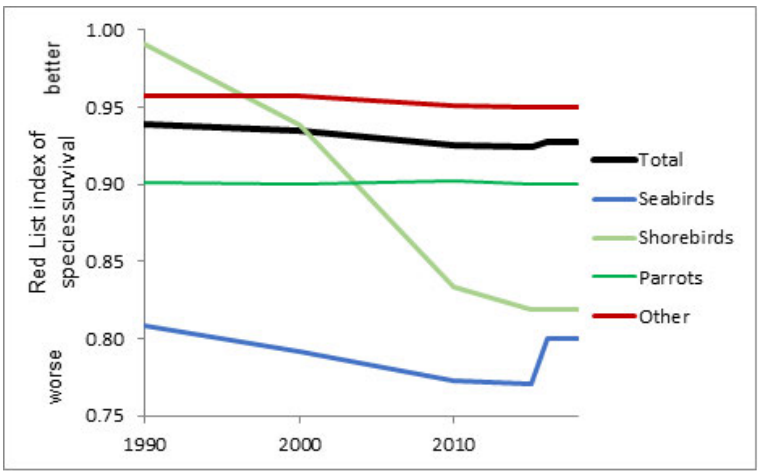

Figure 2: IUCN Red List Index for all threatened Australian birds as well as shorebirds, seabirds, parrots and other taxa, from 1990 to 2018.

This improvement is reflected in the number of taxa improving in status compared to those declining. As illustrated in Garnett et al. (2018)[5], recovery of threatened species is possible, but only when resources are committed for extended periods. The results from Macquarie Island and elsewhere reflect substantial investment in threatened species management in the 20 years up to 2010.

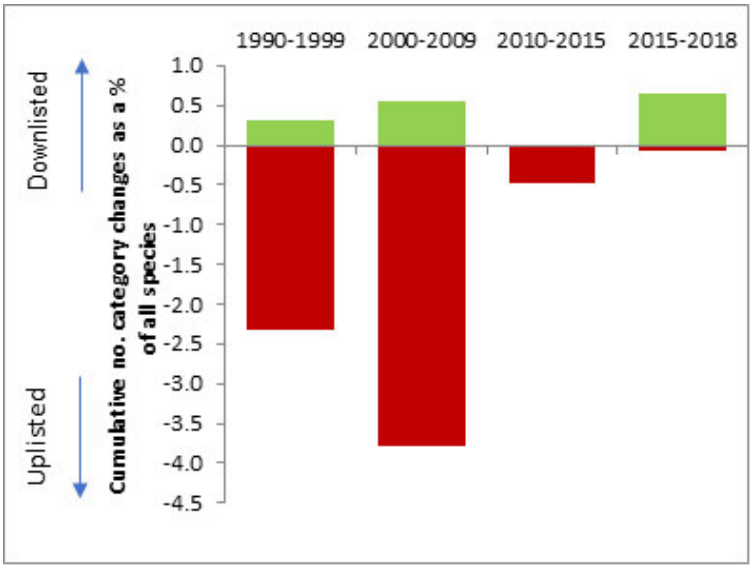

Figure 3: The number of species and subspecies of bird increasing or decreasing in IUCN Red List status in the last 28 years as a proportion of all Australian bird taxa

Unfortunately, there are strong indications that this levelling off is a hiatus before further declines. The *Threatened Species Index for Australian Birds 2018*[6] (Fig. 4) suggests ongoing declines. An average population decrease of 52% was reported for threatened birds with adequate monitoring data available for calculating trends. This will translate into changes in IUCN Red List status unless urgent action is taken to halt and then reverse declines.

[5]Garnett ST, Latch P, Lindenmayer DB, & Woinarski JCZ (Eds.) (2018). *Recovering Australian Threatened Species: A Book of Hope*. CSIRO Publishing
[6]https://tsx.org.au/visualising-the-index/2018-tbx/

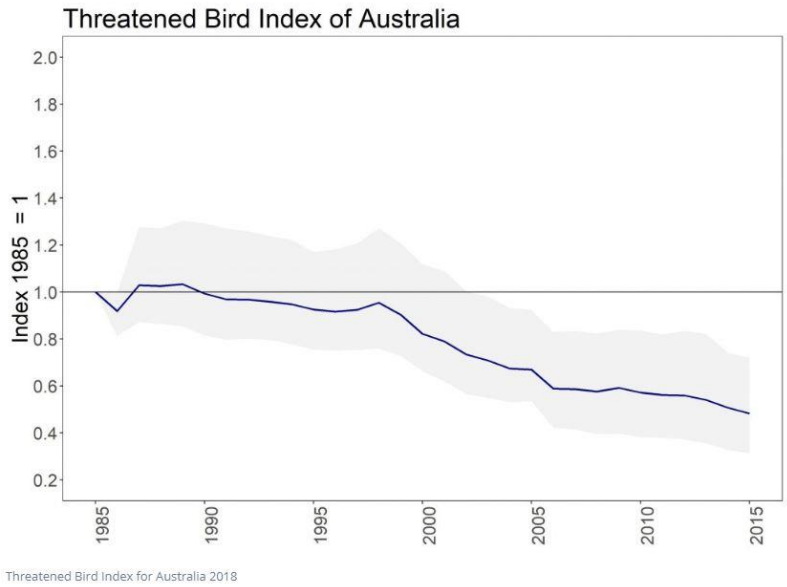

Figure 4: Threatened Species Index for Australian Birds 2018

There is also compelling evidence that many so-called common bird species are experiencing significant declines in abundance and distribution[7], and we anticipate the rate of EPBC listings (new listings and uplistings) will only increase (in volume and pace) over the next 10-50 years.

Likely extinctions

Four bird taxa have recently been the subject of extensive searches that have not yielded sightings – the southern Star Finch (last seen 1980s), White-chested White-eye (1980s), Tiwi Hooded Robin (1990s) and Mt Lofty Ranges Spotted Quail-thrush (1980s) – and are likely to be judged extinct when assessed for the next Action Plan for Australian Birds. Although these species' scarcity was long known, little effort was made to find remaining populations, let alone undertake research to identify and manage threats. Instead the occasional observations and warnings of likely extinction evoked no action by responsible authorities.

Multiple taxa perilously close to extinction, ignored by government

Recent research by Geyle et al. (2018)[8] identified a group of threatened birds at high risk of extinction in the next 20 years (Table 1). More than half of the top 20 taxa are not prioritised under on the national threatened species strategy. Typically, these are taxa that have not attracted significant recovery effort, funding and/or lack recovery plans, representing the failure of successive Australian Governments to meet our international obligation to protect and conserve them. As a result, BirdLife Australia was compelled to prioritise these taxa in a new program that aims to prevent the extinction of our most endangered birds.

[7] BirdLife Australia (2015). *The State of Australia's birds: 2015 Headline trends for terrestrial birds.* BirdLife Australia, Carlton. https://birdlife.org.au/documents/SOAB-2015.pdf

[8] Geyle et al (2018). *Quantifying extinction risk and forecasting the number of impending Australian bird and mammal extinctions.* Pacific Conservation Biology 24(2) 157-167. https://www.publish.csiro.au/pc/PC18006

Table 1: The probability of extinction among the 20 Australian bird taxa thought most likely to be made extinct in the next 20 years under current management *(from Geyle et al. 2018). Taxa listed in bold were not included in the 20 priority species of the national Threatened Species Strategy.*

Taxon name	Estimated probability of extinction in the next 20 years
King Island brown thornbill, *Acanthiza pusilla archibaldi*	**0.94**
Orange-bellied parrot, *Neophema chrysogaster*	0.87
King Island scrubtit, *Acanthornis magna greeniana*	**0.83**
Western ground parrot, *Pezoporus wallicus flaviventris*	0.75
Houtman Abrolhos painted buttonquail, *Turnix varius scintillans*	**0.71**
Plains-wanderer, *Pedionomus torquatus*	0.64
Regent honeyeater, *Anthochaera Phrygia*	0.57
Grey range thick-billed grasswren, *Amytornis modestus obscurior*	**0.53**
Herald petrel, *Pterodroma heraldica*	**0.52**
Black-eared miner, *Manorina melanotis*	**0.47**
Northern eastern bristlebird, *Dasyornis brachypterus monoides*[A]	0.39
Mallee emu-wren, *Stipiturus mallee*	0.34
Swift parrot, *Lathamus discolour*	0.31
Norfolk Island boobook, *Ninox novaeseelandiae undulata*[A]	0.27
Mount Lofty Ranges chestnut-rumped heathwren, *Calamanthus pyrrhopygia parkeri*	**0.24**
Fleurieu Peninsula southern emu-wren, *Stipiturus malachurus intermedius*	**0.17**
Helmeted honeyeater, *Lichenostomus melanops cassidix*	0.17
Cocos buff-banded rail, *Hypotaenidia philippensis andrewsi*	**0.17**
Western bristlebird, *Dasyornis longirostris*	**0.16**
Alligator Rivers yellow chat, *Epthianura crocea tunneyi*	0.15

Global biodiversity decline, Australia as one of the worst performers.

Biodiversity is declining globally, with species losses over the last century many times higher than the background rate. The drivers of decline largely result from the human population pressures; the need for resources to support agriculture, extractive industries and urban development.

But in many respects, Australia is a global anomaly. Australia is renowned worldwide for its unique and diverse flora and fauna. We are a wealthy nation with comparatively good governance and a high degree of political stability. Yet Australia is one of the worst performers for addressing threatened species' declines to prevent extinction[9,10] . Most of the continent is remote from urban communities and intensive areas of human development, yet we have high rates of extinction, with many of these having occurred in remote areas.

[9] International Union for Conservation of Nature, the IUCN Red List, table 5, June 23, 2015 http://cmsdocs.s3.amazonaws.com/summarystats/2015_2_Summary_Stats_Page_Documents/2015_2_RL_Stats_Table_5.pdf

[10] International Union for Conservation of Nature, the IUCN Red List, table 6a, June 23, 2015 http://cmsdocs.s3.amazonaws.com/summarystats/2015_2_Summary_Stats_Page_Documents/2015_2_RL_Stats_Table_6a.pdf

Failure to meet our international obligations to conserve biodiversity

Australia is party to numerous international conventions and agreements committing Australia to the protection and conservation of biodiversity. The EPBC Act is the key piece of national environmental legislation that facilitates Australia's efforts to meet these international obligations through the designation of MNES as matters to be protected under the Act.

As a party to the United Nations Convention on Biological Diversity (CBD), our National Biodiversity Strategy (NBS) provides the main instrument that should deliver on our obligations under the convention. The recently finalized NBS - "Australia's Strategy for Nature 2019-2030"[11] lacks important characteristics of best-practice strategies and does not meet Australia's biodiversity crisis with sufficient ambition and leadership. Importantly, the NBS falls well short of the national strategy required under Article 6(a) of the CBD[12]; perhaps partly because the federal government sought consensus with states and territories before public consultation, resulting in a strategy that met the lowest common denominator.

Australia's failure to conserve Australia's threatened flora and fauna, evidenced by growing lists of threatened species and a lack of genuine commitment to the management of key threatening processes, demonstrates our failure to meet our international obligations. In failing to meet its international obligations, the Commonwealth Government seriously undermines our international credibility and fails to show the leadership expected of a wealthy nation.

Failure to respect Ramsar

The Australian Government's recent decision to declare a development proposal at Toondah Harbour (QLD) a 'controlled action' rather than 'clearly unacceptable' provides stong evidence of the Australian Government's disregard for our international obligations (2018 BirdLife Report pp 16-17). The proposal will cover over 40 hectares of the Morton Bay Ramsar site in an area that provides habitat for listed migratory bird species, including the Critically Endangered Eastern Curlew and Vulnerable Bar-tailed Godwit (ssp. *baueri*). The decision sets a dangerous precedent for future development proposals that may impact on Australia's 66 Ramsar-listed wetlands.

Loopholes, exemptions and poorly defined key concepts

The Act contains loopholes and exemptions such as Regional Forest Agreements (RFAs) that undermine the objectives of the Act. Under the Act, science is frequently ignored, and developments are allowed in areas that are known to provide important habitat for listed threatened species.

Many key concepts are poorly defined, leaving them vulnerable to subjective interpretation and exploitation. This is particularly the case for significant impacts, with negative implications exacerbated by the absence of a strong national environmental monitoring program, and insufficient resources to ensure compliance. Dispersed species suffer acutely, as low population densities mean demonstration of 'significant impact' is rarely possible and cumulative impact of multiple projects within the species' range is not considered. For example;

- Exemptions under the Tasmanian RFA have allowed routine felling of critical habitat for Swift Parrot over the last 20 years despite its status as a 'Priority Species' under the Tasmanian RFA, and despite having been declared Critically Endangered in 2016 (2018

[11] https://www.australiasnaturehub.gov.au/national-strategy
[12] https://www.cbd.int/convention/articles/?a=cbd-06

BirdLife Report, pp. 12-13). Ongoing loss of breeding habitat is a key threat identified in the Swift Parrot National Recovery Plan, but Recovery Plan recommendations do not have to be operationalised under RFAs.

- Ambiguous exemptions for fire management make it difficult for scientists and advocates to stop ecologically damaging planned burns from going ahead—even where there is strong evidence that burns will not contribute to the protection of life and property but may threaten endangered species, such as the South-eastern Red-tailed Black-Cockatoo. (2018 BirdLife Report, pp. 14-15).

- Despite formal protection, habitat destruction for the Endangered Southern Black-throated Finch has continued resulting in large cumulative loss (2018 BirdLife Report, pp. 8-9). Even though the species is facing a steep population decline and range contraction, both State and Commonwealth governments approved five large coal mines between 2012 and 2015; together these projects will remove most of the bird's remaining high-quality habitat, pushing it further towards extinction[13].

Of particular concern, the current Objective of the Act, '***to provide for*** *protection of the environment' i*s poorly defined. The primary and overarching objective of the Act should be clearly and simply to protect Australia's environment and its diversity.

Ministerial discretion

The Act allows for high levels of ministerial discretion in decision making. This allows the Minister of the day to use his or her discretion to override scientific evidence, disregard new information and even ignore the expert advice of their Department.

The Act provides powers to the Minister to 'call in' an action. However, these powers are open to the discretion of the Minister and point to a legal system vulnerable to politicisation. Even when the case for the Minister to 'call in' an action is clear, the Minister may not be compelled to act.
The case studies below demonstrate how Ministerial discretion undermines the objective of the EPBC Act:

- In 2013, a significant new population of Endangered Southern Black-throated Finch was discovered within the footprint of the proposed Carmichael Coal Mine. The then Minister disregarded this new scientific evidence when a new referral process for the mine was initiated after a legal challenge overturned the first mine referral (2018 BirdLife Report, pp. 8-9). Despite acknowledging the new evidence in the Statement of Reasons for the decision on the new referral, the Minister did not adequately consider its significance and approved the mine for a second time, in October 2015.

- Two EPBC referrals for the Toondah Harbour proposal appear to have been subject to an extraordinary, discretionary ministerial decision-making process (2018 BirdLife Report, pp. 16-17). Documents obtained by the Australian Broadcasting Commission[14] under Freedom of Information laws in 2017 revealed that the then Minister ignored expert advice from the Department of Energy & Environment; the Minister was formally advised that the 2017 referral was "clearly unacceptable" due to the "permanent and irreversible damage to the ecological character of the Moreton Bay Ramsar site" it would cause. Since then, a third

[13] Reside, A.E., Cosgrove, A.J., Pointon, R., Trezise, J., Watson, J.E.M., Maron, M. (2019). *How to send a finch extinct*. Environmental Science & Policy, 94, 163-173.
[14] Cannane, S., Trigger, R. (2018, December 9). Background Briefing: The developer, the whistleblower, and the minister. ABC. Retrieved from https://www.abc.net.au/news/2018-12-09/the-developer-the-whistleblower-and-the-minister-toondah-harbour/10487806

proposal has been referred under the Act and declared a "controlled action" by the Minister, despite consistent concerns from the Department regarding the impacts to the ecological character of the Ramsar site.

- With more than 70 per cent of banksia woodland now cleared, Endangered Carnaby's Black-Cockatoo have become increasingly reliant on pine plantations north of Perth to survive. Despite legal advice that harvesting of these pine plantations without replacement met criteria for 'significant impact' on Carnaby's Black-Cockatoo, and repeated requests for the action to be called in under the Act, the discretionary powers of the Act do not compel the Minister to call in a referral (2018 BirdLife Report, pp. 6-7).

Lack of transparency and barriers to community participation

The weaknesses of the Act outlined above are compounded by administrative and legislative processes that lack transparency, contain significant barriers to community participation and are heavily skewed towards the protection of business and economic interests.

The environmental assessment process lacks transparency, with third parties often forced to use Freedom of Information (FoI) laws to access information relevant to decisions. For example:

- The Black-throated Finch Recovery Team was forced to use FOI laws to access Offset Strategies and Species' Management Plans for the proposed Carmichael mine (2018 BirdLife Report, pp. 8-9). These revealed the use of inadequate survey methodologies and the gross miscalculation of compensatory actions associated with offset proposals.

Prohibitive legal costs also represent a significant barrier to individuals and non-government organisations. These costs are a further deterrent to robust environmental checks and balances, and underminee the effectiveness of the legal system that should protect federally listed species. For the South-eastern Red-tailed Black-Cockatoo (2018 BirdLife Report, pp. 14-15) this means the legality of planned burns that have marginal value in reducing fire risk to the community but that represent a significant risk to the species remains in question.

Section 2: Strategic approaches to the protection of nature

One of the major failings in the implementation of the current EPBC Act is the under-utilisation of its proactive provisions (such as declaration of Critical Habitat, Recovery Plans and Bioregional Plans) and overuse of its reactive provisions (case-by-case assessments of proposed actions). This leads to piecemeal decision-making, inefficiencies and uncertainty for businesses and industry, and poor environmental outcomes for Australia's biodiversity.

A new federal environment Act must place a greater focus on national and bioregional planning and specify clear, measurable outcomes that the Commonwealth and states must achieve. It should include prescriptions or processes for how to achieve those outcomes, where doing so would provide certainty, efficiency and better environmental outcomes. It must also expand Matters of National Environmental Significance to include Ecosystems of National Importance. Ecosystems of National Importance would include Key Biodiversity Areas, High Conservation Value Vegetation, nationally important wetlands, other biodiversity hotspots, and climate refugia) and other matters (see below).

National Environment Plans

The lack of clear and consistent national environmental goals, standards, indicators and data is a major barrier to effective environmental decision-making in Australia. The State of the Environment 2016 report[15] identified the "lack of a nationally integrated and cohesive policy and legislative framework that deals with the complex and systemic nature of the issues facing our environment, and provides clear authority for actions to protect and maintain Australia's unique natural capita" as a key challenge.

BirdLife Australia believes environmental legislation should require a National Sustainability or Environment Commission to set national goals to achieve positive environmental outcomes under rolling National Environment Plans (National Plans). National Plans would establish short and long-term environmental goals, standards, indicators and reporting to inform policy and decision-making, including for biodiversity conservation (among other things). For example, biodiversity goals could include specific aims to prevent extinction of native species and ecosystems, and meet goals in recovery plans (such as increase quality and quantity of habitat, population increases or decreases, mitigation of key threats).

National Plans would enable Australia to develop a long-term, shared environmental vision. This will require adequate Commonwealth funding to encourage state and territory cooperation. Reviews and updates would facilitate adaptive management, giving National Plans the flexibility to adapt to emerging threats and new opportunities. To achieve this, the Act will need to set out processes to inform, develop, and, most importantly **implement** National Plans, including:

- setting long-term national environmental goals and shorter-term targets based on the best-available science, evidence and expert advice;
- developing goals, strategies and indicators that are Specific, Measurable, Attainable, Relevant, Timely (SMART), and aim to achieve Ecologically Sustainable Development;
- developing high-level goals that are informed by international agreements and strategies, and domestic environmental issues and strategies;

[15] Cresswell ID & Murphy HT (2017). *Australia State of the Environment 2016: biodiversity*, independent report to the Australian Government Minister for the Environment and Energy, Australian Government Department of the Environment and Energy, Canberra

- developing relevant evidence that includes National Environmental Accounts and State of the Environment reporting;
- ensuring the Commission engages the community, consults publicly on draft plans and goals, and demonstrably takes public submissions into account;
- ensuring the Commission takes into account the advice of the Environment Department and Commonwealth, State and Territory Environment Ministers;
- ensuring the Commission has the power to determine goals and finalise national plans with the Environment Minister's concurrence, in accordance with the Act;
- ensuring National Plans include clear and accountable responsibilities to resource and implement strategies and actions within specific timeframes;
- ensuring the Commission (or an expert panel appointed by it) reviews and consults on National Plans every five years to inform the next iteration;
- a statutory duty that will ensure non-regression and continuous improvement of environmental goals, standards and protections in National Plans – this will insulate National Plans from political cycles, ensure efficiency and continuity.

Bioregional planning

Bioregional plans give Commonwealth, State and Local Governments the opportunity to map areas of environmental significance (such as critical habitat) across bioregions and make decisions about the need for protection of those areas. The Commonwealth has the power to make bioregional plans under the EPBC Act, but this has never been used for land assessments.

Bioregional planning can be used to proactively identify and protect nationally significant areas such as critical habitat, Ramsar wetlands, and national heritage. Bioregional planning provisions should be strengthened to allow the Commonwealth to identify 'no go zones' where development cannot occur, and a requirement that decision-makers must give effect to bioregional plans.

Bioregional planning could provide for a process of deep engagement with stakeholders, including indigenous groups. The plans could identify priorities for investment and integrate plans applicable to the bioregion (e.g. recovery and threat abatement, management plans for reserves, Ramsar sites), as well as explore culturally appropriate governance models for IPAs and co-managed areas. Current strategic impact assessments allow the Commonwealth and State Governments to conduct environmental impact assessments at a larger scale than individual project assessments, and for assessment of cumulative impacts from particular activities. However, there is also a significant risk that strategic assessments, like Regional Forest Agreements, can lock in perverse outcomes. This includes establishing an authorizing environment that lacks flexibility should environmental conditions change significantly (e.g. the 2019/20 fires) or when new information indicates that the assessment permits actions detrimental to MNES or the health of the environment. For this reason strategic assessment must only be used in combination with strict rules, most importantly:

- strong legislated standards, decision-making criteria and science-based methods, including a 'maintain or improve' environmental outcomes test (such as for biodiversity, water quality, vegetation, carbon storage) and requirements to be consistent with recovery plans and threat abatement plans;
- cumulative impact assessment requirements, taking account of past, present and likely (approved) future activities at the relevant scale;
- comprehensive and accurate mapping and baseline environmental data;
- mandating transparency and public participation at all phases of the process, including to verify post-approval compliance, to ensure community confidence and acceptable outcomes;
- requiring alternative scenarios to be considered, including for climate change adaptation, to enable long-term planning for realistic worst-case scenarios (i.e. plan against failure);

- adaptive management and review once a program is accredited, to respond to new discoveries, correct unsuccessful trajectories or implement best available technology;
- as complement to individual project assessment where appropriate, not necessarily to replace it; and
- robust oversight, including via legislated, independent performance audit requirements, transparent verification of compliance, and 'call-in' powers for higher-risk actions, trigger points for mandated review and clear penalty provisions for non-compliance.

The role of the National Reserve System

The National Reserve System (NRS), including the Indigenous Protected Area network, is a foundation for the conservation of Australia's threatened species. However, the NRS is not yet comprehensive, adequate or representative, and many threatened species occur outside the NRS. The existing reserve system is inadequate for the conservation needs of many species.

Some of the principal factors driving the decline of threatened species are tenure-blind, and the reserve system provides no (or inadequate) protection for threatened species against these threats. Further, the conservation value of the NRS is being subverted by inadequate management resources, degradation, downgrading, downsizing and de-gazettal. The NRS will lose many of its biodiversity values if it operates as a series of isolated fragments; its enduring value depends upon maintaining or re-building landscape-scale connectivity (informed by KBAs) and mobilising resources to actively manage the NRS for its biodiversity values.

The effectiveness of the reserve system is also contingent upon a complementarity in off-reserve management that is not currently being delivered.

Key Biodiversity Areas identify important gaps in the NRS where key bird species are unprotected

Globally important sites for the conservation of nature are now being recognised internationally as Key Biodiversity Areas (KBAs). Using IUCN international standards based on strict scientific criteria[16] BirdLife Australia has identified 315 Australian sites of global importance to the conservation of nature. KBAs are nature's hotspots; the most important places left for life on earth.

Based on extensive research and expert opinion, Australia's 315 KBAs cover 5.7% of the landmass. An additional suite of KBAs is being considered for marine birds in both near-shore and pelagic habitats. The non-statutory status of KBAs enables an independent, non-government approach to conservation, and appropriate management of these KBAs should guarantee the survival of almost all of Australia's bird species.

Under the CBD's 'Aichi' Target 11[17], world governments committed to conserving, by 2020, at least 17 per cent of terrestrial and inland waters, "*especially areas of particular importance to biodiversity…through protected areas and other effective area-based conservation measures*." KBAs can help Australia meet Target 11 by providing direction for the future expansion of the NRS to make it more ecologically representative and to ensure it is protecting areas of importance to biodiversity.

While Australia has made significant progress towards Target 11, by overlaying KBAs with Australia's protected areas we have shown important gaps in the NRS where key bird species are

[16] IUCN (2016) *A Global Standard for the Identification of Key Biodiversity Areas, Version 1.0. First edition.* Gland, Switzerland: IUCN. https://portals.iucn.org/library/node/46259
[17] https://www.cbd.int/sp/targets/rationale/target-11/

unprotected or under-protected. Around half of the KBA estate has some level of protection (53.75%) but the average overlap of the NRS per KBA is less than half (48.74%). Less than 21% of KBAs are fully protected (only 66 of 315 KBAs have more than 99% NRS overlap) and almost 17% (53 of 315) of our KBAs have no formal protection within the NRS.

The importance of functional connectivity

Birdlife Australia advocates for functional connectivity within the NRS and broader landscape; ensuring that birds have enough resources of the right kinds within their reach to persist. Functional connectivity means that populations can shift over large distances at a decadal timescale, which will be critical if species are to adapt to a changing climate. Functional connectivity is rarely the same thing as having an unbroken line of trees from one 'habitat patch' to another. Such 'structural connectivity' is typically not as important to birds as the total amount and suitability of habitat in a landscape for achieving functional connectivity.

To effectively address the needs of Australian avifauna, the NRS remains an essential part of ongoing efforts to sustain large scale ecological processes across land tenures. However, conservation based solely on system of protected areas will not ensure persistence of a significant proportion of native species. Species' ecology, and the ecosystem processes that underlie functional landscapes transcend local districts, regions, or even bioregion. Processes that manifest at large scale - such as annual dispersal and migration, or seasonal shifts in appearance of nectar sources for nomadic species - occur over large areas or at locations spread across vast distances. Connectivity conservation has emerged to address the need for actions to be coordinated at large scale and are centered on complementing the NRS. It involves the active management of natural and semi-natural landscapes across a range of tenures and working landscapes undertaken by individuals, communities, Traditional Owners, private organisations and governments and includes:

- Landscape conservation, where a continuum of natural vegetation is established and/or maintained across a landscape;
- Biodiversity and ecosystem conservation, where habitats critical for the movement of species across the landscape (permeability) are established and/or maintained;
- Ecosystem process conservation, where connectivity conservation actively manages for the retention of critical ecological processes; and
- Evolutionary process conservation, where connectivity conservation provides opportunities for the movement and interaction of individual animals.

The importance of the NRS as foundational to connectivity conservation is plainly acknowledged in the *National Wildlife Corridors Plan 2012* (NWCP). The NWCP and its supporting literature notes the vital role of cross-tenure efforts in which protected areas are managed as part of a network of areas that contribute to functionally connected systems. This requires actions that contribute to maintaining connectivity at all scales for the benefit of the species.

Such thinking is central to strategies contained within a plan currently being finalised by BirdLife Australia for Australia's temperate woodland birds. The 'Woodland Birds Conservation Action Plan' addresses the conservation needs of 49 threatened or declining woodland-dependent birds across south-eastern Australia. It covers a vast area from Port Augusta (South Australia) and Tasmania along the east coast, Dividing Range and western slopes and plains of New South Wales and the ACT, to southeast Queensland near Maryborough. The needs of woodland birds across this diverse area are varied. However, each relies on connectivity of habitat at local, regional, or continental scales. The NRS contributes to connectivity at each of these scales and is vital to ensuring the persistence of locally resident, seasonally dispersive, and migratory or nomadic threatened species. The Woodland Birds CAP is already stimulating collaborative efforts involving connectivity initiatives in the Great Eastern Ranges and Gondwana Link corridors. These initiatives involve protected areas

in cross-tenure efforts linked across multiple sites and regions, each connected and complimented by private land conservation efforts.

To promote functional connectivity that allows long-term persistence of species and ecological communities:

- MNES must be expanded to include:
    - Ecosystems of National Importance (whether or not they are threatened) including but not limited to refugia, KBAs and High Conservation Value vegetation.
    - Vulnerable ecological communities (as an extension of the existing trigger for endangered and critically endangered ecological communities)
    - Regulating significant land-clearing (identified by scale, sensitivity or protected area prohibitions)
    - Regulating significant greenhouse gas emissions (with reference to project type and scale, international and domestic commitments or targets)
    - A wider range of significant water resources (beyond coal and gas impacts) and
    - Powers to declare other matters of national environmental significance.

- Strategically increase the comprehensiveness, adequacy and representativeness of the NRS, by incorporating targets in the National and bioregional plans, as well as maintaining and restoring connectivity of the NRS within the landscape. Ensure policy and resourcing (such as stewardship arrangements) provide for more effective delivery of the complementary contribution of off-reserve management, especially in areas of particular importance to the conservation of biodiversity.

- Adopt the IUCN standard for % Key Biodiversity Areas (KBAs), which uses scientific criteria to identify the most important habitat for threatened species to help prioritise expansion of the NRS and identify areas to target with resources to support off-reserve management.

- Measure and report on the performance of park management plans in a way that ensures that threats affecting threatened species in reserves are managed effectively to recover populations of threatened species.

Addressing threatened species declines

National Recovery Plans

The joint ACF-BLA-EJA Recovery Planning Report[18] provides a comprehensive overview of the failures of the EPBC Act to protect and recover threatened species. However it also provides examples of provisions that, if used as was originally intended under the Act, could address the cumulative loss of habitat that is driving the decline of threatened species. Below we give a summary of the main failures of the Act and the major recommendations for addressing these failures.

When the Act was first passed into law, the listing of a species as nationally threatened triggered a legal requirement for the development of a National Recovery Plan; a document that captures current understanding of how present and past threats contributed to the species' decline and the key actions needed to recover the species. While such plans are not directly enforceable, a strong plan can impose measures to help protect a species, for example by identifying areas of critical habitat that must be protected, specifying limits to loss or specifying clear, time-bound

[18] https://www.birdlife.org.au/documents/OTHPUB-Recovery-Planning-Report.pdf

management objectives for a species and its habitat. Importantly, the Environment Minister cannot approve an action that is inconsistent with a Recovery Plan.

In the five years or so following the introduction of the Act, a number of Recovery Plans showed clear intent to use the full powers and provisions of the Act to protect and recover species; by clearly specifying areas of critical habitat (e.g. Black-eared Miner) or by placing limitations on activities that could be undertaken within important areas within a species' range (e.g Golden-shouldered Parrot, Hastings River Mouse).

But over time, Recovery Plans have become increasingly insipid as governments have sought to avoid strong prescriptions that might limit activities within a species' range or require resources for the implementation of priority actions.

In 2007, the Act was amended to allow the Minister to decide that a Recovery Plan is not required for individual listed species. In these cases, the only information required to be produced is a "Conservation Advice" produced at the time of listing; typically, a much shorter document that provides a high-level perspective on why a species has declined and the "simple" actions that are required for recovery. Most Conservation Advices lack the detail required to implement recovery actions. Worse still, these documents are not binding on decision makers.

As the lists of threatened species have grown, funding for the development and implementation of Plans has declined. Today, most listed species don't have Recovery Plans. For those that do, Recovery Plans were mostly drafted long ago and have not been updated within the required five-year time frame.

Our analysis (Fig. 5) shows that of the 71 nationally listed Endangered and Critically Endangered birds, only six are covered under up-to-date Recovery (three) or Regional (three) Plans; 37 species have out-of-date Recovery or Regional Plans and ten species that require an individual Recovery Plan do not have one (including Abbott's Booby, Australian Painted Snipe and Australasian Bittern). A further eighteen species only require a Conservation Advice, because it has been determined that they require "simple" recovery actions.

Governments are not compelled or obliged to implement Recovery Plans and Conservation Advices. They can pick and choose between species to support and species to ignore.

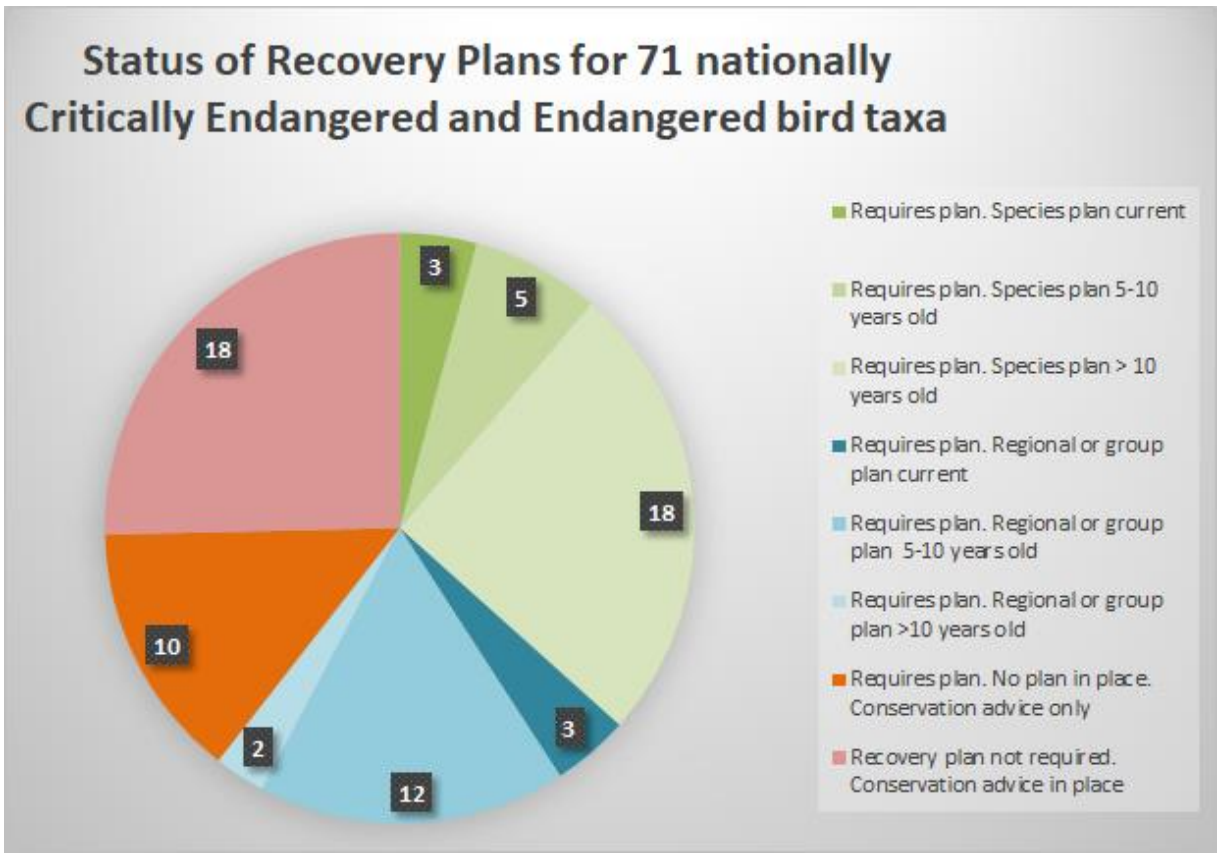

Figure 5: Status of recovery plans for Australia's endangered and critically endangered birds

Case Study 1: Despite having a National Recovery Plan and Recovery Team the Critically Endangered Swift Parrot is on a trajectory to extinction by 2032. (see also the 2018 BirdLife Report, pp. 12-13)

The Critically Endangered Swift Parrot is one of Australia's most threatened bird species with fewer than 1,000 breeding pairs left in the wild. The threats to Swift Parrots are well understood and the species' National Recovery Plan lays out the actions necessary to restore their population. Yet Swift Parrots could be extinct within the next 12 years, as a result of cumulative factors. Chief among these is that the RFA exemptions under the EPBC Act allow clearing of critical habitat.

The current Recovery Plan identifies habitat loss and modification as the main threat to the species' survival. Habitat loss from forestry activities is described as "the greatest threat to the survival of the Swift Parrot". In the 2018 BirdLife Report, we detail how RFAs allow for native timber harvesting within known Swift Parrot habitat as long as native forestry operations are carried out "in accordance with" an RFA. The RFAs act as an exemption from the EPBC Act. As a result, actions taken under an RFA do not need to be consistent with the recommendations of a national Recovery Plan. Under RFAs, deforestation continues across large areas of core Swift Parrot habitat, from their breeding grounds in south-eastern Tasmania to their overwinter feeding habitat in southern New South Wales.

A moratorium on conversion of Tasmania's Future Potential Production Forests (FPPF) to Permanent Timber Production Zone to allow logging ended on 8 April 2020. Large areas of FPPF zones intersect core Swift Parrot range and could potentially be released to become Permanent Timber Production Zone at any time from 8 April 2020.

The combination of existing logging permitted under the Tasmanian RFA and potential new areas of expanded logging through the conversion of FPPF land is a key threat in the Swift Parrot breeding habitat. As an example, a large forested area of south Bruny Island is in both PTPZ and FPPF zones, and contains critical nesting habitat within the Bruny Island Key Biodiversity Area– it is one of the few remaining areas in Tasmania's breeding habitat without an established population of Sugar Gliders, the parrot's major, introduced predator.

Meanwhile, birds returning to their mainland overwintering sites in 2020 will find a fire ravaged landscape on the south coast of New South Wales. The impacts of the 2019/20 bushfire crisis on Swift Parrots will not be fully known for months or even years. At a time when governments should be working together to protect remaining unburnt habitat, the NSW government will continue native forest logging under the State's three RFAs, including within and adjacent to known Swift Parrot feeding habitat.

Of conservation concern since the 1980's, the Swift Parrot has been the subject of multiple state and Commonwealth recovery plans which have been regularly reviewed. It has been listed under the EPBC Act since its inception. Over that same period logging of their native habitat has continued under RFAs. Since the release of the 2018 BirdLife Report, New South Wales has extended its three RFAs until 2039 and Victoria recently announced the extension of its five RFAs until 2030.

The Swift Parrot's decline provides a strong case for the removal of industry exemptions from national environmental law, and for new Commonwealth legislation that provides effective, strong protection for critical habitat. Without these changes, the Swift Parrot is likely to be extinct by 2032, with a multitude of other species likely to meet the same fate.

Lack of dedicated funding undermines action to recover threatened species.

There is no dedicated funding stream for the implementation of recovery plans. The ACF-BLA-EJA Recovery Planning Report clearly demonstrates that the resources currently allocated to the protection of Australia's threatened species are a small fraction os what is required to improve the conservation status of the species most in need and prevent their extinction.

Diminishing levels of government investment and constant changes to funding streams and priorities are a major impediment to species' recovery. The past two decades have seen numerous national conservation funding programs (e.g. Natural Heritage Trust, Caring for Country, National Landcare Programme), each with different levels of funding, timeframes and priorities. As a result, continuity in operation for long-term programs and recovery teams is hard, and always below levels required. The programs are also regularly over-subscribed and require at least an order of magnitude increase in funding to deliver stated objectives. Furthermore, as the Senate Standing Committee on Environment and Communications Legislation Committee explored in February 2017, reports of expenditure on threatened species can be highly inaccurate.

All this is despite findings that threatened bird conservation has broad support from the Australian public: threatened birds are valued as a group, not just particular species with which people might have a strong affinity. Conservatively, Zander et al. (2014)[19] found that Australians would be willing to pay about $14 million per year, and realistically about $70 million into a conservation fund for threatened Australian birds.

In any case the costs of recovering threatened species are not particularly high in the context of national budgets. Research suggests that most recovery plans could be implemented with a modest investment. Studies completed in 2009 highlighted that 50 per cent of recovery plans could be implemented for less than $200,000, with only 16 plans exceeding the $1 million mark[20]. When looked at in total, these costs average out to approximately $100,000 per annum per recovery plan. Similarly, McCarthy et al. (2008) estimated that for just $10 million annually all Australia's bird species could be secured from extinction[21].

The way forward

A new environment Act must mandate implementation of Recovery Plans as one of the simplest and most direct ways to arrest the extinction crisis in Australia. To be effective, Recovery Plans must provide unambiguous and appropriate prescriptions to prevent the cumulative loss of important and critical habitat, consistent with the best available science. Mandated Recovery Plans would require:

- An Independent Scientific Committee responsible for considering and listing threatened species, important populations, ecological communities, key threatening processes and areas of global or national importance, assisted by experts as required.
- The Scientific Committee have the power to list threatened and protected matters directly based on scientific evidence. Listings must continue to be on scientific grounds only and must not be subject to a disallowance motion by politicians.
- Listing processes to be simpler, faster, more accountable and better resourced. All valid nominations for listing must be assessed within three years of nomination. The Act should require the Minister to ensure statutory assessment and listing periods are met. Listing outcomes and timeframes would be monitored and reported on publicly.

[19] Zander, K.K., Ainsworth, G. B., Meyerhoff, J., and S. T., Garnett (2014) *Threatened Bird Valuation in Australia* PLoS One. 9(6): e100411. https://doi.org/10.1371/journal.pone.0100411
[20] Ortega-Argueta, A., 2009. Evaluating recovery planning for threatened species in Australia. University of Queensland.http://espace.library.uq.edu.au/view/UQ:178617/s40668237_PhD_totalthesis.pdf
[21] McCarthy, M. A., Thompson, C. J. and Garnett, S. T. 2008, Optimal investment in conservation of species. Journal of Applied Ecology, 45: 1428–1435. doi: 10.1111/j.1365-2664.2008.01521.

- Nomination, consultation and listing processes must be accessible to the community. Public nomination and participation should be encouraged. The Committee should be expected to prepare their own nominations to keep the lists up to date. The listing process must be scientifically rigorous but not administratively onerous, with clear stages to meet or exceed mandatory timeframes.
- The Scientific Committee and its staff must be well-resourced for efficient and effective listing, in accordance with ministerial duties.
- Mandatory development of Recovery Plans for threatened species or ecological community including detailed recovery goals, actions, estimated timeframes to achieve goals and milestones, and metrics to measure progress. Multi-species plans would be encouraged where this is efficient, cost effective and scientifically sound.
- Recovery plan instruments must be continually in force not simply expire after a period. The Minister must have duty to ensure Recovery Plans are in place, being implemented, and to review and update Recovery Plans at least once every 10 years.
- Robust guidelines governing the preparation of Recovery Plans must ensure Plans detail scientifically robust, specific, measurable and targeted restraints on the destruction of threatened species habitat and outline restorative outcomes that any approval decisions must work toward.
- Investment of $200 million a year to establish a threatened species recovery fund that invests directly in recovery plan implementation and strategic priority recovery actions for Australia's most threatened species, leveraging partnerships with civil society.
- Investment of at least $170 million per year for
    - the strategic growth of the National Reserve System, informed by Key Biodiversity Areas;
    - providing grants to public and private partners to purchase land for new protected areas;
    - establish and manage Indigenous Protected Areas (IPAs); and
    - establish and manage private land conservation covenants to protect identified priority habitat, informed by species recovery plans.
- Guaranteed expenditure for the length of time needed to make a measurable difference, albeit with sufficient oversight to allow adaptation to new circumstances.
- Monitoring and evaluation of measurable impacts of interventions (see below) so that expenditure is accountable and spent on priority actions that have the most impact.

Effective monitoring as part of National Recovery Plans requires:

- A dedicated section on long-term monitoring requirements (including resourcing) in each Plan
- For each Plan to spell out the design and the statistical strength expected of the species monitoring Plan, including the relevance of the monitoring and how it is linked to management.
- Management decisions to be made under a "best available science" standard that encourages iterative scientific updating while limiting the influence of contrary economic and political interests.
- Data from monitoring of publicly funded threatened species conservation projects to be made publicly available (or in the case of sensitive species available to qualified recovery stakeholders) within a defined, short, period after collection. Reporting should also include data from all regulatory approvals that include monitoring as a condition of approval.
- To be regularly audited so that progress is publicly reported.

Case Study 2: Recovery plans can and do save species … when they are enacted under strong nature laws.

Criticisms of the species recovery planning approach usually relate to the lack of progress and implementation of plans, rather than the approach per se e.g Chapter 3 – Parliament of Australia Under the US Endangered Species Act, management of listed species is generally guided by quantitative recovery goals established by federal recovery plans (indeed 90% of birds listed in the US have formal recovery plans - just over half of which specify the length of time expected to achieve the recovery goal. The average is 63 years – which illustrates how long it takes to recover species). A robust information base allowed a review of the impact of the US legislation indicating that 85% of birds protected under the Act increased or stabilized their population size as a result of protection by the Act. The average population increase was 624%.

This impressive recovery is credited to strong plans based on robust science and consistent federal funding which leverage land manager involvement (as well as limits to executive discretion and the citizen-suit provision which ensure compliance).

An important step for Australia is to ensure all recovery plans: include quantitative recovery goals; have a suitably sensitive monitoring program in place; describe governance triggers for action should trajectories fail to improve; and be subject to public review and enforcement. Most importantly recovery plans must identify areas of critical habitat that must be protected and include strong prescriptions that limit the loss of habitat, if we are to address the cumulative loss of habitat which is the primary driver of threatened bird declines.

Critical Habitat

In the current EPBC Act 'Habitat critical to the survival of a species or ecological community' refers to areas that are necessary:

- for activities such as foraging, breeding, roosting, or dispersal
- for the long-term maintenance of the species or ecological community (including the maintenance of species essential to the survival of the species or ecological community, such as pollinators)
- to maintain genetic diversity and long-term evolutionary development, or
- for the reintroduction of populations or recovery of the species or ecological community.

Such habitat may be, but is not limited to: habitat identified in a recovery plan for the species or ecological community as habitat critical for the survival that species or ecological community (S270(2)(d)); and/or habitat listed on the Register of Critical Habitat maintained by the minister under the EPBC Act (207A).

Identification and protection of critical habitat is vital to efforts to protect and recover threatened species. Despite their relative mobility, it is possible to define critical habitat for many threatened bird species. Unfortunately critical habitat declarations and provisions are rarely used in Australia, at either the Commonwealth or state level. Governments are not compelled or obliged to update or list new sites under the national Register of Critical Habitat. In fact, to date only five sites have been listed on the national register of critical habitat with the most recent being declared in 2005.

The brevity of the register is not due to a lack of technical information required to declare critical habitat, because this is available and we know the location for many of Australia's highly threatened birds. Instead critical habitats are rarely listed under the EPBC Act because listing is discretionary and the political will to declare areas of critical habitat is lacking. Even where critical

habitat is identified through the recovery planning process, placement of such areas on the register and the protection afforded to it has been limited (see Case Study 3 below). This may also be explained through the limited application of the register, which only applies to areas of land and sea owned or managed by the Australian Government.

Habitat destruction is not the only factor contributing to threatened species decline, but it is one of the major ones. Therefore, securing and improving habitats for threatened species remains one of the most powerful and cost-effective conservation tools at our disposal. Indeed, under the US Endangered Species Act, actual protection of Critical Habitat is one of the key drivers that has led to the recovery of almost 99% of species under its care (see Case Study 2 above).

Strong protection and prescriptions to limit losses of designated Critical Habitat also provides clarity and certainty to industries and businesses.

The way forward:

- Ensure new national environmental laws include strong provisions to protect critical habitats and climate refugia for species.
- Ensure registration of critical habitat occurs within 12 months of a species being added to the national threatened species list.
- Extend critical habitat provisions to protect habitats beyond Commonwealth areas, to all areas of land and sea.
- Australia must undertake a systematic program of identifying and mapping critical habitat for threatened fauna, linking it to independent recovery planning processes.
- Ensure new national environmental laws reform the Register of Critical Habitat to ensure its effectiveness, including appropriate consideration in regulatory decision making, by ensuring that information is centrally accessible for conservation and planning purposes.
- Establish a National Sustainability Commission to set national threatened species recovery standards, including working with the Threatened Species Scientific Committee to identify and list critical habitat.

Case Study 3: Critical Habitat listing fails to protect Endangered Black-eared Miner *Manorina melanotis* habitat.

The Endangered Black-eared Miner was historically widely distributed through the Murray Mallee of Victoria, South Australia and New South Wales. Its range has now contracted, with over 95% of the species' population occurring within Gluepot Reserve (leasehold land managed by BirdLife Australia), and Taylorville and Calperum Stations (leasehold land managed by Australian Landscape Trust) in north-east South Australia. Together these properties constitute some of the most significant conservation land in this part of South Australia

In 2004 the Australian Government listed these areas on the national Register of Critical Habitat under the EPBC Act. The register makes it an offence to knowingly damage listed Critical Habitat but these penalty provisions only apply to habitat in or on Commonwealth land.

At the time of listing, Calperum and Taylorville Station (pastoral leases) were managed by the Australian Landscape Trust under contract to the Commonwealth Government as part of the NRS. In the 2013/14 financial year, the Australian Government transferred the titles of Calperum and Taylorville Stations to Austland Services Pty Ltd, a company owned by the Australian Landscape Trust, meaning they are no longer considered Commonwealth land. Calperum and Taylorville Stations remain on the list of Commonwealth Heritage places.

Critical Habitat listing does not prohibit current or future actions within the boundaries of the site but instead requires that any actions should be "undertaken in a way that will not significantly damage Critical Habitat for the Black-eared Miner."

Calperum Station's listing as Critical Habitat for Black-eared Miner did not deter an electricity transmission specialist, from proposing that Project Energy Connect (EPBC 2019/8468) – a proposal for a major above ground transmission line – should follow a 13.8 km east-west route directly through Critical Habitat on Calperum Station. The Proponent's original referral documents indicated that the Critical Habitat listing, and the presence of MNES, was only considered a 'Tier 2' constraint; that 'the interconnector route must try to avoid where possible'. Critical Habitat was not given the same consideration as a 'Tier 1' constraints (e.g. Ramsar wetlands); areas that the proponent determined the interconnector route 'could not pass through'.

Our analysis indicated that the Proposal was likely to have a significant impact on Black-eared Miner through clearing, fragmentation and degradation of habitat. Close examination of the referral documents, and consultation with the Proponent by BirdLife Australia revealed that avoiding the Critical Habitat had not been given serious consideration; it was clear that the mitigation hierarchy of 'avoid, minimize and offset' had not been applied. Our submission to the referral process noted that there were multiple alternative routes for the transmission line on developed land that did not impose a large burden of added distance and would avoid impacts on Black-eared Miner habitat.

Despite our concerns about significant impacts on Critical Habitat for an Endangered species, the proposal was declared a controlled action.

Ensuring nationally consistent monitoring and reporting to support evidence-based decision making

Australia has multiple continental scale systems for monitoring elements of our environment, from the climate, atmosphere, water and oceans, to earthquakes, vegetation and land cover. These environmental monitoring systems allow the Australian Government to make informed continental scale decisions, and they support many industries including maritime, aviation and agriculture.

The same cannot be said for Australia's biodiversity. There is no long-term continental scale monitoring and reporting program to support national decision-making about conserving biodiversity. We do not even have a consistent, comprehensive system for monitoring priority species such as threatened or flagship species. This impedes Australia's capacity to set national priorities, manage threats and understand the effectiveness of our actions to conserve threatened species.

In other publicly-funded policy areas such as health and education about 10% of the budget is spent on monitoring. A recent review of threatened species monitoring found that many taxa were not monitored at all, including about 25% of all threatened bird taxa. For taxa that are monitored, the quality of data is often unsuitable to support robust analyses of trends in either the target taxa or the threats affecting them, making it difficult for management to respond with confidence. The most pressing deficiencies are in monitoring design, data curation and availability, and links to management.

A lack of nationally consistent monitoring and reporting makes evidence-based decision making difficult for governments and increases costs for businesses attempting to comply with eight different, often-changing regulatory regimes. Similarly, a move to outcomes-based reporting will require a step change in data collection and information management.

A 2015 review of the National Biodiversity Strategy found that Australia could not report its achievements against its ten targets because Australia lacks a comprehensive, national biodiversity monitoring program.

We need transparent, publicly available national environmental accounts with accurate threatened species data as a critical first step to improving the performance of any regulatory system reform. The Australian Government requires comprehensive, accurate and consistent environmental information to improve evidenced based decision- making, to inform policy development, and to measure the effectiveness of its plans and investment in programs.

A truly national approach to environmental protection would build on Australia's international responsibilities and the federal government's capacity to bring authority and resources to environmental governance.

The way forward:

Analyses of threatened species trends by the Australian Government National Environmental Science Programme's Threatened Species Recovery Hub Project "A Threatened Species Index for Australia" (2018)[22], and including the Threatened Bird Index, demonstrate the power of a national coordinated approach and should be institutionalised to ensure its resourcing and continuity.

A new Act should require the National Sustainability Commission or Environment Minister to establish a National Environmental Accounts framework. National Environmental Accounts, underpinned by a peer reviewed scientific method, would assess the extent, condition and trends in key natural resources and environmental assets at a range of spatial scales. Assets to be monitored must include, for example:

- threatened species and other biodiversity;
- native vegetation cover and condition;
- carbon stocks and flows;
- soil health; and
- water quality.

An annual series of accounts would track:

- the extent, condition and threatened status of key environmental assets over time;

[22] https://tsx.org.au/visualising-the-index/2018-tbx/

- stocks and flows of environmental assets and natural resources (i.e. whether they are being depleted, replenished or sustainably used); and
- information on the extent and impact of key threatening processes such as invasive species, inappropriate fire regimes, habitat loss, and climate change.

Decisions under the Act must refer to legislative instruments such as recovery plans, bioregional plans and biodiversity goals, and be informed by reliable data. Effective monitoring is critical to conserving threatened species and environmental accounting is an important and complementary part of this approach, enabling adaptation to changes in environmental health, pressures and outcomes. The Accounts would support a range of functions under the new Environment Act: policy-making, bioregional planning, strategic environmental assessment, decision-making on project proposals and actions, as well as State of the Environment reporting. National Environmental Accounts would also enable authorities like the Sustainability Commission to assess progress against national biodiversity goals and targets.

Including threatened species monitoring and indicators relating to our international commitments in National Environmental Accounts

National Environmental Accounts must include biodiversity metrics and indicators that will allow us to report on our progress toward plans developed under legislation as well as our international commitments, such as the UN Convention on the Conservation of Biological Diversity (CBD).

Currently National reports to CBD vary significantly so that they are not comparable, do not report indicators that can be summed across countries, and are highly resource-intensive to keep up to date. This means that assessments of global progress derived from the national reports are necessarily unsystematic and anecdotal. To improve transparency and better track progress BirdLife are advocating for a suite of global indicators that will give us the ability to aggregate data across all countries to obtain a global assessment of progress and identification of shortfalls in progress.

For example, we are advocating for a new species target under the new Global Biodiversity Framework to read:

> "Species extinctions are halted from 2020, the overall risk of species' extinctions is reduced by 20% by 2030 and to zero by 2050, and the average population abundance of native species is increased by 20% by 2030 and 60% by 2050."

Indicators for the new target should therefore include (but not be limited to):

- Trends in species' population abundance
- Trends in species' extinction risk
- Trends in number of species becoming extinct or qualifying as Critically Endangered
- Number of extinctions prevented owing to conservation actions
- Trends in the proportion of threatened species that have improved in status relative to 2020

BirdLife International are advocating for a site conservation target to read:

> "Effectively conserve, restore, and document the value of all key biodiversity areas and other sites of particular importance for biodiversity, including all Key Biodiversity Areas, through connected and integrated networks of protected areas and other effective area-based conservation measures, by 2030 covering at least [100%] of such sites and at least [30%] of all freshwater, marine and terrestrial ecosystems."

Proposed indicators should include (but are not limited to):

- Mean percentage of Key Biodiversity Area extent covered by protected areas and OECMs
- Proportion of KBAs in favorable condition
- Number of countries where KBA inventories have been updated with the global KBA Standard

Case Study 4: Extinction by neglect - Grey Range Thick-billed Grasswren.

The Critically Endangered Grey Range Thick-billed Grasswren (the Grasswren) is one of 20 Australian birds found to be most likely to go extinct in the next 20 years (Geyle et al. 2018). The Grasswren was once found from north of Broken Hill to north-west New South Wales near the Queensland border. It was presumed to be extinct prior to its rediscovery in 2008. Since 2008, there have been occasional sightings by amateur ornithologists on large grazing properties between Packsaddle and White Cliffs, NSW.

Despite being listed as Critically Endangered since 2014, and past estimates that there may be fewer than 10 individuals left, there have been no systematic surveys to determine the Grasswren's current and potential distribution. At the time of listing, the Minister determined that the Grasswren does not require a Recovery Plan.

In 2019, reconnaissance surveys by BirdLife Australia demonstrated that the Grasswren's population is much larger than previously thought and that state legislation is allowing destructive actions, such as mineral exploration, to proceed in likely habitat without the EPBC Act being triggered.

Most of the mineral exploration is being undertaken by small, local operators in remote locations away from the scrutiny of agencies and communities alike. When applying for a licence, proponents need only "tick" whether a threatened species could potentially be impacted and there appears to be little or no checking of the veracity of this statement by the relevant agency.

Despite repeated requests from the affected landowners for the actions to be referred under the EPBC Act, to date there has not been a single referral for any of the mineral exploration activities being undertaken in likely Grasswren habitat.

This case study demonstrates major flaws in the administration of the EPBC Act:

1. Listing does not trigger research to underpin impact assessments or recovery planning. Numerous species listed under the Act are not monitored and have not been the subject of basic ecological research (2018 BirdLife Report, pp. 10-11, 18).
2. The Act relies on self-referral of proposed actions for environmental assessment. In the case of mineral exploration, small operators without a social license to uphold are unlikely to either self-refer actions or face compliance or enforcement actions from the Federal Government.
3. Poor inter-governmental communication and coordination means proposals may be approved by one level of government or agency without the EPBC Act being triggered.

Ensuring strong compliance and enforcement

Compliance with the EPBC Act has historically been poorly monitored and enforced. Recent analysis[23] indicates that over 7.7 million ha of potential habitat for nationally listed species and ecological communities was cleared in the period 2000-17. Of this, more than 93% was not referred to the Federal Government for assessment under the EPBC Act. The authors recommended that when scientifically determinable, critical habitat must be demarcated for listed species and communities, to provide absolute protection that is enforced, monitored, and investigated by the regulator.

[23] Ward, M.S., Simmonds, J.S., Reside, A.E., Watson, J.E.M., Rhodes, J.R., Possingham, H.P., Trezise, J., Fletcher, R., File, L., Taylor, M. (2019). *Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia*. Conservation Science and Practice 2019; 1:e117.

A 2014 Australian National Audit Office (ANAO) Report, *Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval*[24], which examined the Commonwealth Environment Department's monitoring of compliance was damning in relation to management of compliance with conditions under the Act. It concluded that:
"Environment had limited assurance regarding approval holders' compliance with approval conditions and was generally passive in its approach to managing non-compliance with EPBC Act conditions of approval".

Findings of the follow up Audit, *Monitoring Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval: Follow-on audit*, released in 2017 suggests that the Department has made progress in improving compliance mechanisms. However, it notes that;

"performance information reported externally by Environment does not currently provide stakeholders with sufficient insights into the extent to which compliance monitoring activities have been effective in protecting the environment from significant impacts".

Whilst recent progress may have been made in improving regulatory 'maturity', conditions imposed on developments are often difficult to monitor, do not provide adequate data regarding the impacts (or planned controlling provisions) on threatened species likely to be affected, and do not have adequate safeguards if developments exceed stated impact thresholds after approval.
Offsets are increasingly being used to compensate for impacts on species, despite the success of offsetting being unproven. As noted in Maron et al. (2016)[25], "Offsets typically involve trading relatively certain and immediate losses for less certain and potentially delayed gains".

[24] https://www.anao.gov.au/work/performance-audit/managing-compliance-environment-protection-and-biodiversity-conservation-act
[25] Maron, M., Ives, C.D., Kujala, H., Bull, J.W., Maseyk, F.J., Bekessy, S., Gordon, A., Watson, J.E., Lentini, P.E., Gibbons, P., and Possingham, H.P. (2016). *Taming a wicked problem: resolving controversies in biodiversity offsetting.* BioScience, 66(6), 489-498.

Offsets – inappropriate and inefficient

BirdLife Australia maintains that offsets are rarely an appropriate response to proposed biodiversity or native vegetation loss, particularly where these relate to threatened species and threatened ecological communities. The task of reversing these losses is urgent, the imperative to avoid (rather than minimise or offset) such losses is paramount, and the technical complexities of delivering full and valid offsets are often prohibitive. To effectively counterbalance a development impact, a biodiversity offset must deliver the same amount of the same biodiversity values as are to be lost. Despite the Australian Government having an Environmental Offsets Policy, the Commonwealth regularly approves developments with 'offset' packages that do not align with its own policy.

We do not support the inclusion of offsets in new legislation. If offsets are legislated, changes must be made to:

- Mandate that proponents must provide evidence of steps taken to avoid and minimise impacts prior to offsetting.
- Offsets must a 'like-for-like' requirement so that the species and ecological communities being protected by the offset are those that are being adversely affected by a proposed development.
- Offset regulations must ensure that there is 'no net loss' of the affected species and/or ecological communities.
- Disallow measures that enable a proponent to 'pay their way ' out of biodiversity protection through a cash contribution to other activities such as environmental research.
- Not permit discounting of offset requirements where the offsets may cause a proposed project to become unviable.
- Exclude from offsetting provisions any species or ecological community listed as threatened under the provisions of the EPBC Act, since the risks associated with reliance on offsetting place at further risk these already highly vulnerable aspects of biodiversity.
- Ensure that lag-times between an impact occurring and the offset being established are minimised, and where this is not possible, do not permit the offset.

Clearly further improvements are needed to ensure conditions placed on developments which affect threatened species are having the stated effects. For example, conditions on projects that are likely to have significant impact on threatened species or deemed high risk should receive independent scientific review. Greater investment needs to be made in improving the quality of conditions to ensure that they both benefit the target threatened species and that compliance can readily be monitored in a manner that makes compliance easy to assess and enforce. The use of novel technologies such as remote sensing, automated recording for example, should be explored. This may require some research to develop efficient automated data analysis and reporting to enforcement agencies, but such research will then establish approaches to monitoring compliance that can be built into conditions.

Indeed, improvements need to begin at the earliest phase of project planning. Environmental Impact Assessments should be completed by consultants from a certified pool of competent suppliers, selected by the government not the developer. This would promote removal of the

commercial dependency between consultants and proponents to ensure the best possible advice was provided regarding avoiding and/or mitigating projects impacts on threatened species. Consideration should be given to the suggestion made by the Australian Panel of Experts on Environmental Law (APEEL)[26] that a team is set up within the Australian National Audit Office to monitor and report on the performance of Commonwealth environmental agencies, and to advise the National Sustainability Commission on improvements required. The Commissioner should also set best practice national standards (e.g. for environmental assessments and offsets), and ensure these standards are met.

The way forward

- Establish an independent National Sustainability Commission to set enforceable national environmental standards and report on national environmental performance.
- Empower the community to ensure compliance by providing citizens the ability to question and challenge decisions, ensure outcomes are enforced and hold decision makers to account, including through broad standing provisions, merits review and third-party enforcement rights and protections for costs in the public interest.

For further information, please contact Jenny Lau:
BirdLife Australia
[redacted]

[26] Australian Panel of Experts on Environmental Law (2017) *Blueprint for the Next Generation of Australian Environmental Law*. http://apeel.org.au/