

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100, Parliament House
Canberra ACT 2600
By email: ec.sen@aph.gov.au

30 September 2022

Dear Committee Secretary,

RE: Senate Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Save the Koala) Bill 2021 – Call for Submissions

The National Environmental Law Association Ltd ACN 008 657 761 ('NELA') welcomes the opportunity to contribute to the Senate Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Save the Koala) Bill 2021 (the 'Bill').

1. NELA's Object and Interest

NELA is a peak body for advancing Australian environmental law. We are a national, multidisciplinary, member-based association focused on environmental law and sustainability. We are managed by a national board that includes Directors with expertise in climate markets and international climate agreements, international and domestic legal frameworks for climate mitigation and adaptation, environmental regulation and regulatory theory, natural resource laws and legal frameworks for natural disasters and biodiversity conservation.

One of NELA's core objectives is to provide a forum for, and otherwise assist in the discussion, consideration, and advancement of, environmental law across the legal profession and the wider community. Australia's protection of threatened species, ecological communities, and efforts to mitigate and reverse broader biodiversity loss, are key concerns for NELA's members. We are grateful for the opportunity to make a supplementary submission to this Inquiry.

2. Submission Overview

NELA welcomes the Australian Government's decision to introduce stricter prohibitions on clearing the habitats of at-risk species. In particular, NELA supports the introduction of a specific statutory test for significant impacts on koalas as it can work to mitigate the highly qualitative nature of the existing significant impact test under the *Environment Protection and Biodiversity Act 1999* ('EPBC Act'),¹ and Significant Impact Guidelines.² The targeted nature of the proposed koala significant impact test ensures that decision makers cannot read down the likely impacts of a project on koalas.

The koala was changed from being listed as a 'vulnerable' species to an 'endangered' species in Queensland and New South Wales, in February 2022. However, the clearing of koala habitat only continued to increase from when the species was initially listed as 'vulnerable' in 2012,³ illustrating

¹ *Environment Protection and Biodiversity Act 1999* s 18-19.

² Department of Environment, 'Matters of National Environmental Significance: Significant Impact Guidelines 1.1 - *Environment Protection and Biodiversity Conservation Act 1999*' (Guidelines, 2013) <https://www.agriculture.gov.au/sites/default/files/documents/nes-guidelines_1.pdf>.

³ WWF, *Destruction of Koala Habitat Increased after 'Vulnerable Listing* (Web Page, 14 April 2020) <<https://www.wwf.org.au/news/news/2020/destruction-of-koala-habitat-increased-after-vulnerable-listing>>.

the overall ineffectiveness of Australia's current listing processes. The koala also suffers from various threatening processes other than habitat loss, including urbanisation, disease, and climate change.⁴

To adequately protect at-risk species, the Australian Government must introduce more restrictive measures to protect biodiversity loss that goes beyond current listing processes. However, introducing a Bill that only focuses on one particular species (i.e., koalas) and one particular means of biodiversity loss (i.e., land clearing) limits the long-term benefits that the Bill will pose to Australia's broader at-risk flora and fauna. The need for more comprehensive biodiversity protections is highlighted by the impact of the recent 2019-2020 bushfires, which not only impacted more than 60,000 koalas,⁵ but also approximately 3 billion other native vertebrates.⁶

3. Targeting Specific Species

Having the Bill focus on the protection of ecological communities that house koala habitat will help to protect more general habitat loss within these areas. While the Bill derives the conservation value of these areas by the presence of koalas, other species that also reside within these ecological communities will benefit by-proxy.⁷ However, giving koalas preferential treatment under the Bill may undermine the scientifically assessed threat status of koalas and other species. For example, land clearing may encroach on the habitats of other species in order to prevent clearing koala habitat. As the benefits of the Bill primarily relate to its broader implications for biodiversity conservation, the Bill should reflect a more comprehensive framework for the protection of ecological communities that benefit koalas as well as many other at-risk species.

4. Regional Considerations

The Bill takes a national approach to reducing habitat loss for koalas and therefore does not adequately consider the need to vary conservation approaches in different jurisdictions. At a local-level, southern koala populations sit at stable or increasing levels and are actively managed to halt overgrazing of food trees.⁸ The Bill may therefore not reflect conservation best practice if it only provides a blanket, nationwide approach to mitigating koala habitat loss without considering where koalas are most at-risk. In many Australian States, remaining koala habitat also exists primarily on private land.⁹ The Bill has a clear focus on development impacts to koala habitats, and no provision for the protection of koalas on private land is provided.

5. Consequential Amendments

⁴ D. Lunney et al, 'Koalas and climate change: a case study on the Liverpool Plains, north-west New South Wales' in Daniel Lunney and Pat Hutchings (eds), *Wildlife and Climate Change: towards robust conservation strategies for Australian fauna* (Meridian-Allen Press and Royal Zoological Society of New South Wales, 2012) 150-168; Leonie Seabrook et al, 'Drought-driven change in wildlife distribution and numbers: a case study of koalas in south west Queensland' (2011) 38 *Wildlife Research* 509.

⁵ WWF, *Impacts of the Unprecedented 2019-20 Bushfires on Australian Animals* (Report, November 2020) 15 <

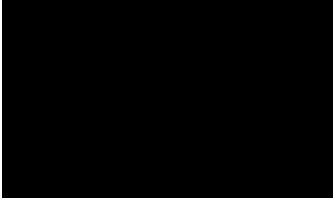
⁶ Ibid 7.

⁷ Lunney et al (n4)

⁸ D.S. Ramsey et al, 'Long-term fertility control reduces overabundant koala populations and mitigates their impacts on food trees' (2020) 253 *Biological Conservation* 108870; D.A. Whisson and K.R. Ashman, 'When an Iconic Native Animal is Overabundant: The Koala in Southern Australia' (2020) 2(5) *Conservation Science and Practice* 188.

⁹ Australian Koala Foundation, 'Koala Habitat Atlas' (Web Page) <

The Bill should take a more targeted approach to each Australian State, factoring in the relevant circumstances of the jurisdiction and its koala populations. The Bill should also provide broader ecological community conservation mechanisms to provide more long-term benefits for koalas and many other at-risk species. There is also no specific timeline provided for the temporary moratorium, or conditions under which the moratorium may be lifted. Without the specifics of the moratorium, the operational effectiveness of the Bill is far more difficult to gauge.



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