



Australian Government

**Department of Climate Change, Energy,
the Environment and Water**

Senate Environment and Communications Legislation Committee

**Inquiry into the Environment Protection and
Biodiversity Conservation Amendment (Save the
Koala) Bill 2021**

**Submission from the Department of Climate Change, Energy,
the Environment and Water**

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This submission replaces the submission made by the former Department of Agriculture, Water and the Environment in April 2021.

Environment Protection and Biodiversity Conservation Amendment (Save the Koala) Bill 2021

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) establishes a strong legal framework to protect and manage matters of national environmental significance, including listed threatened species such as the koala. The framework for managing koalas includes using the best available science and information to determine status, targeted strategies and recovery plans. The EPBC Act also sets out the framework for conservation strategies as well as rigorous environmental assessment and approval processes to manage unavoidable impacts on threatened species.

In May 2012, the combined populations of koala in Queensland, New South Wales (NSW) and the Australian Capital Territory (ACT) were listed as vulnerable in the List of Threatened Species, established pursuant to section 178 of the EPBC Act. At the time of the listing, populations in Victoria and South Australia were considered to be stable or increasing.

The 2019-20 Black Summer bushfires impacted koala populations in southern Queensland, NSW, Victoria and South Australia. Since the bushfires, the Department of Climate Change, Energy, the Environment and Water (the department) has continued to discharge its responsibilities in assessing projects that may have, or are likely to have, a significant impact on matters of national environmental significance, including the listed koala.

Assessments have taken into consideration:

- Areas directly impacted by bushfire and whether that area may recover
- Unburnt areas within or adjacent to recently burnt ground that may provide refuge for impacted matters of national environmental significance
- Areas not impacted by bushfires, where species and communities that have been in the pathway of the bushfires are located, and/or potential habitat has been identified.

Since the bushfires, the department has requested proponents of projects to undertake additional analyses to better inform assessments. The department continues to apply a precautionary approach when considering bushfire impacts and ensures the principles of ecological sustainable development are applied.

In February 2022, the koala (combined populations of Queensland, NSW and ACT) was uplisted from 'vulnerable' to 'endangered' under the EPBC Act due to various impacts including loss of habitat, disease and the impact of bushfires. Koalas in Victoria and South Australia remain outside of the listing, with the Threatened Species Scientific Committee continuing to assess koala numbers as stable in Victoria and South Australia.

In April 2022, the Australian Government released the National Recovery Plan for the koala, setting a clear pathway for investment and action to support the recovery of the koala. In recognition of the koala's iconic status, the Australia government continues to invest significant funding in koala conservation and protection, including habitat, health and monitoring initiatives working in concert with a range of stakeholders (DCCEEW, 2022¹).

In relation to specific legislative changes, the Government is yet to formally respond to the findings of the independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (the Samuel review). Any proposed changes to the EPBC Act should be considered in that broader context.

¹ DCCEEW, [Koala conservation](#), accessed 2022

Framework for the protection and conservation of koalas

The listing of koala populations in Queensland, NSW and the ACT was accompanied by a substantial investment in funding to ensure a future for this iconic species. Regulatory protection sits within a wider framework of targeted strategies and recovery plans informed by the best available science. This wider suite of measures includes conservation advice, recovery plans and investment in koala conservation.

Environmental assessment and approval processes under the EPBC Act

A person who proposes to take an action that has, will have, or is likely to have, a significant impact on a matter of national environmental significance, including the listed koala, must refer the action to the Minister for a decision on whether assessment and approval is required under the EPBC Act.

To help determine whether an action is likely to have a significant impact on a matter of national environmental significance, the department has published *Matters of National Environmental Significance: Significant Impact Guidelines 1.1*. The criteria for a significant impact on an endangered threatened species include where there is a real chance or possibility that an action will:

- lead to a long-term decrease in the size of a population
- reduce the area of occupancy of the species
- fragment an existing population into two or more populations
- adversely affect habitat critical to the survival of a species
- disrupt the breeding cycle of a population
- modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline
- result in invasive species that are harmful to a critically endangered or endangered species becoming established in the endangered or critically endangered species' habitat
- introduce disease that may cause the species to decline, or
- interfere with the recovery of the species.

In deciding whether or not to approve the taking of an action that has, will have, or is likely to have, a significant impact on the koala, the Minister must have regard to the approved conservation advice and must not act inconsistently with the koala's recovery plan.

During the assessment, of an action that has, or will have, a significant impact on the listed koala, careful consideration is given to avoiding, mitigating and offsetting impacts to koalas. The department seeks to first avoid impacts to koalas and their habitat. Where avoidance is not possible, the department requires impacts to be mitigated, and then offset. Koala offsets under the EPBC Act ensure the protection of existing areas of high-quality habitat and drive the restoration of new habitat on sites that have been degraded or cleared.

Avoidance, mitigation and offset measures are enforced through the imposition of conditions on EPBC Act approvals.

The recovery of listed threatened species is guided by conservation advices and recovery plans. Species included on the List of Threatened Species are protected as a matter of national environmental significance under Part 3 of the EPBC Act. Actions that have, will have, or are likely to have, a significant impact on a matter of national environmental significance, such as the listed koala, require assessment and approval under the EPBC Act.

Conservation advices

On 19 February 2007, the EPBC Act was amended to require the Minister to ensure there is an approved conservation advice for all listed threatened species and listed threatened ecological communities (see section 266B²). Conservation advices are periodically updated and provide guidance on threat abatement and actions to ensure the protection and recovery of listed threatened species.

Recovery Plans

Section 269AA of the EPBC Act requires the Minister to decide whether a recovery plan is required for a species included on the List of Threatened Species. The *Recovery Plan for the Koala Phascolarctos cinereus (combined populations of Queensland, New South Wales and the Australian Capital Territory)* jointly made by the NSW Government and the Australian Government was published in April 2022. The Queensland and ACT governments supported the plan. It builds on the conservation advice by setting out coordinated national action necessary to stop the decline and support the species' recovery.

The department is also coordinating a National Koala Recovery Team, chaired by the Threatened Species Commissioner. The recovery team will take a collaborative approach to implementing koala conservation measures that address the actions identified in the recovery plan, with a view to ensuring conservation effort, policy settings, regulatory frameworks and investments by all levels of government, universities, non-government organisations, zoos, First Nations Peoples and the community are having the maximum benefit and helping to recover the koala.

Regional Forest Agreements

The EPBC Act establishes a special regime for forestry operations covered by a Regional Forestry Agreement (RFA) (see section 38 of the EPBC Act). There are ten RFAs across four states (New South Wales, Victoria, Tasmania and Western Australia).

The exemption of RFA operations from Part 3 of the EPBC Act recognises that in each RFA region, a comprehensive regional assessment has been undertaken to address the environmental, economic and social objectives of the EPBC Act. The exemption also recognises that RFAs have established Comprehensive, Adequate and Representative (CAR) reserve systems and that forestry operations must adhere to the principles of Ecologically Sustainable Forest Management (ESFM). ESFM includes the application of forest management strategies, usually through prescriptions, and adaptive management to protect rare and threatened species, and ecological communities.

State governments have made commitments under the renewed RFAs to maintain forest management systems that provide for the protection of matters of national environmental

² Section 266B was inserted by Item 469 of Schedule 1 to the Environment and Heritage Legislation Amendment Act (No. 1) 2006

significance, including listed threatened species and communities, taking into account conservation advices and recovery plans.

RFAs do not exempt forestry operations from obligations in state-based legislation for the protection of species.

Forest management under RFAs is adaptable to new information and changing circumstances, including bushfires. For example:

- In NSW, the Forestry Corporation have completed a recalculation of the long-term sustainable yield of hardwood forests due to the impacts of the 2019-20 bushfires. Post-bushfire research is being undertaken by a range of agencies and research partners to better understand the impact of the 2019-20 bushfires including impacts on threatened species populations, habitat and subsequent recovery.
- In Victoria, the Australian and Victorian Governments have concluded a Major Event Review to assess the impacts of the 2019-20 bushfires on the Victorian RFAs (DAFF, 2022)³.

Investment in koala conservation

Actions in recovery plans and conservation advices inform Australian Government investment through initiatives such as the Regional Land Partnerships program, the Environment Restoration Fund and the \$200 million bushfire response package for native wildlife and habitat recovery.

In May 2022, \$24.5 million was committed towards koala conservation under the Saving Native Species Program. This builds on existing investments in koala conservation with a total of more than \$70 million of investment into koala conservation. This includes community grants, large-scale habitat restoration activities, monitoring and koala health initiatives. The recent commitment of \$10 million to the next phase of the National Koala Monitoring Program is part of this investment.

State and territory governments are also investing in on-ground action and research to support koalas. The Australian Government and state governments work together to ensure efforts are complementary. For example, when co-designing koala habitat restoration projects with states, territories and other project partners, the Australian Government specifies that project designs, where possible, leverage previous koala conservation investments and are consistent with and informed by relevant koala and other strategic conservation documents and plans at the local, state and national levels.

³ DAFF, [Major Event Review of the Victorian Regional Forest Agreements](#), 2022