

March 8, 2013

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Senate Standing Committees on  
Environment and Communications  
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**Re: The effectiveness of threatened species and ecological communities' protection in Australia**

**Response to Questions on notice**

The responses to Questions 1 and 2 have been provided by Ms Samantha Vine, Head of Conservation BirdLife Australia. Response to Question 3 by Professor Stephen Garnett, Coordinator, Threatened Species Committee, BirdLife Australia.

**Q1.** *Response to Senator Waters question on notice to "expand on which parts of the Hawke review that are environmentally protective and have not been adopted and which ones we would like to see adopted."*

The Independent Hawke Review of the EPBC Act, commissioned by the Environment Minister, proposed a reform package to streamline development balanced by better environmental provisions and increased accountability, transparency, oversight and public participation. The Government response rejected most of these "balancing" reforms, ignoring the relevant safeguards, thereby placing the environment at greater risk than it is under the present Act.

Principles for national environment law

Our national environment law, the EPBC Act, should:

1. Be accountable
2. Be transparent
3. Deliver on our international commitments
4. Specify measurable ecological outcomes
5. Have a mandate to intervene on matters that are national in scope
6. Be resourced and enforced
7. Give the Australian Community a voice on national environmental matters
8. Be based on independent advice

We have organised the protective Hawke review recommendations that we would like to see adopted under these principles:

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### **Be accountable**

- a. The Act should require that **national environmental accounts** are developed (*Recommendation 67*), produced annually, and include Matters of National Environmental Significance (MNES). Within this the IUCN Red List Index could be used to provide a measure of performance in the threatened species protection and management.
- b. The Act should establish an **Independent Environment Commission** to provide objective, science-based advice to the Minister to improve decision-making and ensure greater transparency and accountability (*Recommendation 71*). The Commission should be responsible for independent monitoring, audit, compliance and enforcement activities under the Act.
- c. The Act should prescribe mandatory **decision-making criteria** for ecological outcomes (*Recommendation 43*). All actions should be legally required to maintain or improve ecological outcomes, or to demonstrate a net improvement in national environmental accounts (for each relevant MNES).
- d. **Regional Forest Agreements** require an **independent review** and a more rigorous approach to auditing. A process for public input and sanctions for serious non-compliance are required. The full protections of the Act should apply to forest activities where the terms of the RFAs are not being met (*Recommendation 38*).

### **Be transparent**

- a. Transparency in decision-making must be maintained and improved. Current proposals do not go far enough, for example **statements of reasons** for all decisions made by the Minister and delegates under the Act should be released at time of the decision (*Recommendation 44(1)(c)*).
- b. The Act must provide **greater access to the courts** for public interest litigation. The Government's Rejection of **Recommendations 48-53** is a key failure of the Government's response to provide suitable checks and balances for proposals to "streamline" processes.
- c. A core element of Hawke's reform package was to provide for environmental performance audits and inquiries. The Australian Government should be subject to regular environmental performance audit under a new specialist Environmental Performance Audit Unit in the Australian National Audit Office, provided for under the Auditor-General Act 1997.

### **Deliver on our international commitments**

- a. **Critical habitat** must be protected, with impacts on critical habitat equated to impact on species, and consideration given to the critical habitat required under climate change (*Recommendation 12 (1)*). However we feel that the critical habitat register should be retained and its remit expanded.
- b. The Environment Minister requires **powers to develop and implement management plans** to protect the values of World Heritage properties, National Heritage Places and Ramsar wetlands where the collaborative processes have not produced effective plans (*Recommendation 34*).



### **Specify measurable ecological outcomes**

a. The Act should specify required ecological outcomes. This could be delivered through specified reporting periods for MNES, such as on recovery plans and threat abatement plans to ensure accountability. The Government agreed the Act should include provisions that enable the auditing of environmental outcomes (performance audits) (*Recommendation 61*).

### **Have a mandate to intervene on matters that are national in scope**

- a. The **primary object** of the Act should be 'to protect the environment' (*Recommendation 3*).
- b. The Act, and the way it is administered, needs to better reflect the **principles of Ecological Sustainable Development** (*Recommendation 2*).
- c. The process proposed in the Government response for listing **ecosystems of national significance** under the Act is too restrictive and inflexible.
- d. The **National Reserve System** should be included as a MNES.

### **Be resourced and enforced**

- a. **Cost recovery** mechanisms under the Act are needed to ensure that the Environment Department is adequately resourced to ensure operation of the Act and monitor performance (*Recommendation 62*).
- b. A **Reparation fund** should be established (*Recommendation 60*).

### **Give the Australian Community a voice on national environmental matters**

a. We strongly support the creation of a **call in power** for 'plans, policies and programs' that may have a significant impact on a MNES to better deal with cumulative impacts.

### **Be based on independent advice**

- a. The quality of **Environmental Impact Assessment (EIA)** information needs to be substantially improved. An industry Code of Conduct for consultants supplying information for EIA and approval under the Act should be developed and the Minister, or the Environment Commission, should audit assessment information (including protected matters) to test assertions made in EIAs (*Recommendation 24*).
- b. The Environment Commission should also be tasked with establishing a process to free consultants from their **commercial dependency** on proponents.



**Q2.** *Response to Senator Cameron question on notice for "any recommendations from BirdLife Australia about the operations of COAG to improve its effectiveness in protecting threatened species."*

COAG's standing council on Environment stated aims of implementing a national partnership approach to the conservation and management of land, water, the marine environment and biodiversity at the landscape and ecosystem scale, and to building resilience in a changing climate provide a mandate to improve the effectiveness of threatened species protection.

**Deliverables include:**

1. Revised Native Vegetation Framework
2. Implementation Plan identifying priority elements of Australia's Biodiversity Strategy, National Reserve System Strategy
3. National Representative System of Marine Protected Areas and Native Vegetation Framework to be developed across jurisdictions.
4. Develop step change opportunities to improve biodiversity conservation and natural resource management activity in terrestrial and marine environments.

The implementation plan for Australia's Biodiversity Strategy should recommend mechanisms for **implementing recovery plans**. This would also be a 'step change opportunity to improve biodiversity conservation'.

In our submission we emphasised that recovery programs for threatened species are effective and can be cost efficient where adequate resources and expertise have been applied. However, despite the significant time that has been invested in listing and drafting recovery plans, progress in implementation has been poor. Progress in managing threats the threatened species has also been rated as poor nationally.

Given the escalating biodiversity crisis, responses will need to be substantially scaled up because the current level of conservation action is outweighed by the magnitude of threat. Resources available to the protection of Australia's threatened species are grossly inadequate to the task of preventing extinction and improving the conservation status of those species most in need.

We also refer to the committee an analysis of threatened species legislation and planning laws conducted by The Australian Network of Environmental Defenders Offices (ANEDO). They have found here too that the problem lies in implementation: while the laws in some jurisdiction look good on paper, they are not effectively implemented. Time frames for action and performance indicators are largely absent. Effective implementation is further hampered by a lack of data and knowledge about the range and status of biodiversity across Australia. A clear finding of this report is that threatened species laws in all jurisdictions needed to be reviewed, strengthened, and fully resourced and implemented. Given the decline in biodiversity noted in each state and territory, combined with increasing population pressures, land clearing, invasive species and climate change, now is not the time to be streamlining and minimising legal requirements in relation to threatened species assessment. Instead of pursuing the so-called 'green tape' agenda, COAG could be examining ways to strengthen and improve implementation of threatened species legislation across all jurisdictions.



**Q3.** *Response to Senator Waters question on notice to "to reflect on the success of the near-threatened category in Queensland and perhaps expand on any further recommendations for that to be applied nationally."*

Queensland is not the best place to look for success in threatened species management in any category as investment levels are low and concentrated on relatively few species. For the record, the Queensland Recovery Action Database identifies 23 species and 8 subspecies of bird listed as Near Threatened (NT) under the Nature Conservation Act. Of these 3 species and 3 subspecies are listed as medium to high priority for both the State and NRM Groups. While government has not funded actions relating to any NT species, there is an increased awareness of NT taxa within non-government with non-government groups. Both BirdLife Australia and private individuals have organized surveys of at least some taxa and made the results freely available as well as discussing the conservation requirements of the different NT species with land managers.

Nationally, we see greater scope for NT within the EPBC Act as a flag for potential developments, particularly for sites where development could push taxa from NT into threatened categories if conducted inappropriately. Thus the presence of NT taxa at a site would not preclude development but would be accounted for in any management.

**Point 4.** *Revisions to the EPBC Act list. This was not a question on notice but I am taking the opportunity to provide greater context to my answer to the first question put to me by the Chair on the reliability of the IUCN Red Listing process run by BirdLife Australia (BLA).*

Since 2003 BirdLife Australia has had a process, praised by BirdLife International as being among the most thorough in the world, for maintaining currency in the list of threatened Australian bird species. The basis of the process is the Threatened Species Committee (TSC), a committee of about 20 technical experts deliberately chosen from across the country for their knowledge of birds and bird listing practices, and including many government officers, a leading bird taxonomist and two members from BirdLife International (BLI). BLI has responsibility for bird listing under the IUCN and their members on the TSC ensure that the IUCN Red List categories and criteria are applied in a manner consistent with international practice. Committee procedures and membership are governed by BirdLife Australia subcommittee rules with membership endorsed by BirdLife Australia's Research and Conservation Committee.

Each year there is a scan of all Australian bird species to assess whether there is any reason to change their status. If a reason for change is suspected, a short query is put to the TSC that lists the current status, the proposed status and the reasons for change. This is backed by whatever supporting evidence can be assembled. The scanning and query development has usually been undertaken by the committee's coordinator, but often at the behest of, and in collaboration with, BirdLife Australia members or others. There is then an email discussion of the merits of the change, extra experts are invited into the discussion if required, the veracity of claims is interrogated and a response to the question negotiated. The question, final response and a transcript of the email discussion is then passed to BirdLife Australia's Research and Conservation Committee, which has additional technical expertise, for consideration. If they endorse the recommendation it is sent



to the BirdLife Australia Council for approval. This recommendation is then also sent to BLI. For endemic Australian species the recommendation is used to change the IUCN Red Listing. For non-endemic taxa the recommendation and discussion is used to inform global discussions about the status of the species. Of 18 species considered through this process since 2003, the status of 8 has gone up – i.e. they were listed in a more threatened category, 6 has gone down and 4 have remained unchanged.

In addition to the process listed above, which has been used only for species, the TSC had oversight of the preparation of the Action Plan for Australian Birds 2010 in which the status of about 1200 Australian species and subspecies were assessed. Over the course of a year TSC members participated in the workshops that were held in each capital city and some regional centres then reviewed all changes recommended by the Action Plan. They also participated as members of an expert panel to determine the status of nine bird taxa on which no agreement could be reached after discussions with experts. The process, run by Professor Mark Burgman, Director of the Australian Centre of Excellence for Risk Analysis (ACERA) at Melbourne University, was later demonstrated and used by the Commonwealth's Threatened Species Scientific Committee to help with the recommendations on a number of contentious taxa and is considered current best practice for eliminating bias from expert judgments<sup>1</sup>. We believe this process is probably about as thorough an assessment as can be carried out by a non-government organization. In my response to the Chairman's question I suggested that the BirdLife Australia process could afford to be more precautionary than government. However in practice I believe that the process has probably arrived at the same conclusions as the TSSC would have provided with the same information. Its merits are the level of technical expertise, its speed (recommendations can happen within weeks for urgent cases) and that it is entirely voluntary.

We hope these responses help your deliberations

Yours sincerely,

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Threatened Species Committee

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<sup>1</sup> McBride, M.F., Garnett, S.T., Szabo, J.K., Burbidge, A.H., Butchart, S.H.M., Christidis, L., Dutson, G., Ford, H.A., Loyn, R.H., Watson, D.M. and Burgman, M.A. 2012. Structured elicitation of expert judgments for threatened species assessment: a case study on a continental scale using email. *Methods in Ecology and Evolution* 3:906–920