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The Secretary  
Senate Standing Committee on Environment, Communications and the Arts  
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Dear Committee Members,

Birds Australia writes to you regarding the inquiry into the operation of the Environment Protection and Biodiversity Conservation Act 1999. We understand that the Committee is concerned about the continuing decline and extinction of a significant proportion of Australia's unique plants and animals, and the likelihood that accelerating climate change will exacerbate challenges faced by Australian species. Birds Australia shares these concerns and we ask that the Committee give particular attention to the operation of the EPBC Act in the areas where we have most concern, outlined below.

The objectives of the Act are ambitious and highly laudable, but currently too vague to actually achieve or implement in any practical way. Clear and quantifiable objectives would greatly strengthen the Act and enable a more transparent review of the Act's effects. For example, if an object of the Act is to promote the conservation of biodiversity, clear guidelines on quantifiable limits of acceptable change, and quantified measures of the biodiversity values that Australia wishes to conserve, need to be identified, and ongoing scientific assessment of those goals need to be embedded in the Act. Assessment should be based on systematic monitoring of biodiversity, and standards for such monitoring should also be an embedded feature of the legislation.

The act is fundamentally inadequate in its stated objective of protecting biodiversity because it fails to take into account prior habitat loss. Over the past 200 years, the extent of clearing and modification of native vegetation, especially for agriculture and urban expansion, has left many of Australia's landscapes highly fragmented. Even though broadscale vegetation clearing has now come to an end, the resultant loss of connectedness of natural habitats remains one of the biggest threats to the survival of Australia's birds. Landscape fragmentation drives the ongoing loss of a whole host of species – the process of 'extinction debt' continues to deplete bird populations today as a result of activities that occurred some time ago.

The Act currently rests on the assumption that existing biodiversity is adequately protected and that no further loss is likely to occur. This assumption is invalid under a changing climate scenario. We need to go beyond 'protection' and 'conservation' and to address 'restoration' to enable populations and communities to persist in the future. Birds Australia believes that the primary conservation priority for Australia is reversing the loss of landscape-scale habitat connectivity. With landscape remediation, bird populations can recover, as evidenced through the increase of some woodland species in some north-east Victorian districts that have been the target of strategic revegetation and regeneration activities with an emphasis on improving

habitat linkages. Strategic action is needed to restore enough connectivity and habitat to support viable populations of birds. The long-term survival of bird populations in Australia depends on the retention of enough native forests, woodlands, shrublands, grasslands and wetlands to provide supportive, connected habitats at a landscape scale. To achieve this we must retain and maintain intact native vegetation, repair degraded habitats, replace habitat that has been removed in the past, and reconnect natural habitats to recreate a functional landscape. Action to address this requires political will but something can be done about it. However, the mantra of retain, repair, replace and reconnect is not enshrined in the Act.

### ***Exemptions under the Act***

There are several exemptions which need to be examined for their long-term effects on the objectives of the Act:

- Regional Forest Agreements are problematic because of the reliance on State legislation does not provide a guarantee that forest ecosystems will be protected in line with the objectives of the EPBC Act. There are some good examples of the RFA process undermining the protection of forest species and communities and the operation of the Act (see below).
- Projects which have received an exemption from the EPBC Act under the transitional arrangements of the *Environmental Reform (Consequential Provisions) Act 1999*. Under the transitional arrangements, projects which have complied with the Administrative Procedures of the *Environment Protection (Impact of Proposals) Act 1974*, need not be assessed under the EPBC Act, and are further exempt from Part 3 and Subdivision A of Division 4 of Part 11. The lack of a sunset clause or any review process under this arrangement was and is totally inappropriate, especially in light of rapidly changing environmental conditions, including changes to listings of threatened species and communities.
- Ministerial discretion as it relates to exemptions is extremely broad and limited only by considerations of the 'national interest', which could be taken to apply to almost any circumstance. The circumstances under which exemption via ministerial discretion apply need to be tightly defined to provide more certainty and confidence in the operation of the Act.

### ***Cumulative impacts and development offsets***

Incremental loss of habitat that does not trigger the Act is a major shortcoming which needs to be urgently addressed. There are a myriad of situations in which incremental loss threatens biodiversity. Widely dispersed species, such as migratory and resident shorebirds, are under grave threat from this loophole. Inappropriate fire management might be considered another example of incremental loss which needs to be considered under the Act. Approved actions need to include appropriate offset conditions (i.e. the offset needs to be equal to or better than what is being cleared, and include the same habitat type, same structural and *ecological and functional* attributes. An example of current problems with incremental loss and offsets as they relate to threatened species is given below:

### ***Case study – Red-tailed Black-Cockatoo***

Despite cessation of broad-scale clearing, the most important threat for many species in agricultural areas continues to be incremental habitat loss, a threat which is poorly dealt with under the Act. The South-eastern Red-tailed Black-Cockatoo (RtBC) relies on Buloke trees, and most suitable trees are scattered across private land. Only a few percent of this habitat type remains, yet scattered trees continue to be lost at a rate of 1.4% per year. Over just seven years to 2004, this meant almost 10% of the last scattered Buloke trees. Any individual clearing application appears insignificant, yet the cumulative impact of small-scale clearing is the threat most likely to drive the taxon to extinction.

These incremental losses are typically approved under the condition that offsets are secured. Three major weaknesses in the implementation of offset policy are of particular concern, each of which is contributing to ongoing habitat loss for the RtBC.

Firstly, offsets typically comprise other buloke trees, but which are located in woodland remnants. Such remnants are protected as threatened vegetation communities and at far less risk of deliberate clearing, and therefore, their specific 'protection' as offsets contributes nothing to offsetting the original impact. Offsets must comprise similarly at-risk vegetation (e.g. other scattered trees) to have any effect.

Secondly, revegetation is frequently used as an offset action, yet trees must be > 100 years old before being of use to the cockatoo. Over this period, there is considerable uncertainty over site security and revegetation success. Again, such an action contributes nothing to offsetting the original impact for a considerable period, within which the population may decline irreversibly.

Finally, current DEWHA offset guidelines suggest a one for one, like for like offset. In the case of Buloke tree removal, even if this offset protected similarly threatened paddock trees, it effectively sanctions the loss of half the remaining few percent of Buloke habitat. Recent modelling suggests that Buloke offsets must be in the vicinity of 8 to 1 before they reduce the severity of the original impacts.

### ***Recovery Plans***

There is a cloud over the influence of Commonwealth endorsed threatened species recovery plans on the operation of the Act. For example, the Swift Parrot is a nationally endangered EPBC listed species which has been the subject of a Commonwealth adopted recovery plan in the past [a draft recovery plan relevant to the current period (2006-2011) is presently being considered by each of the appropriate States]. The greatest threat to the Swift Parrot is the ongoing loss of old-growth breeding habitat in southern Tasmania – the very forests that are continually subjected to forestry operations and, under the RFA, are exempt from triggering the Act. These forestry operations are having a significant impact on the population and the Act needs to be enforced as it would in the case of other significant impacts on matters of National Environmental Significance. The status of recovery plans needs to be clarified in the Act.

Resourcing for the drafting and implementation of recovery plans should be mandated in the Act, and the process should begin as soon as a taxon, community or process is listed.

### ***Species, Communities and Key Threatening Processes listing process***

The current approach to listing threatened taxa, communities and processes is ad hoc and the introduction of annual themes for listing is inappropriate. The listing process needs to be timely, rigorous and comprehensive, and it needs to clear a large backlog of neglected taxa. The only way to do this is to resource it adequately. The listing process also needs to be much broader in scope (species, subspecies, communities, threatening processes etc). Peak bodies such as Birds Australia are well placed to guide the strategic listing process and we would welcome any opportunity to assist the Threatened Species Scientific Committee.

Sufficient resources need to be invested in scientifically defensible listing processes for threatened species or ecological communities, and for other areas of conservation value. If items listed under the Act are being impacted (population declines of listed species, degradation of habitats of listed communities etc.) the act needs to seek, with legal enforcement, to reverse those impacts if there is to be any real hope of meeting the Act's objectives.

The Act should be a mechanism to protect declining taxa and ecological communities that are still very much 'saveable'. It needs to address threats to taxa known to be declining in parts of their range but that may not be listed under the Act (e.g. the south-eastern nominate race of the Grey-crowned Babblers in Victoria and New South Wales and the Black-backed form (*melanotis*) of the Brown Treecreeper on Cape York).

#### ***Water entitlements and over-extraction***

Over-extraction by irrigation (cotton and rice) developments seriously threatens the Murray Darling Basin and with it a large suite of species and communities. The EPBC Act needs to acknowledge the key role environmental water flows play in biodiversity protection, and acknowledge that over extraction is a key threatening process. The EPBC Act also needs to take into account impending legislation on water and climate change as these will both impact significantly on biodiversity conservation.

#### ***Maintaining resilience in the face of climate change***

The absence of a trigger for greenhouse gas emissions is a very significant gap in the regulatory framework of matters of national environmental significance. In particular, range restricted, altitudinally restricted species and communities need to be protected more explicitly under the act through new triggers which consider impacts on projected ranges of taxa affected by climate change. Climate change will exacerbate the effects of fragmentation on most taxa through range alterations and altered hydrological and weather regimes. Enhanced habitat connectivity is a critical component of mitigating the effects of climate change, and therefore appropriate measure for offsetting and a requirement for habitat restoration need to be prominent in the Act.

#### ***Importance of international agreements***

The act and other government actions have strengthened the protections for migratory birds outlined in the bilateral agreements like JAMBA, CAMBA, and ROKAMBA, both nationally and internationally. Given the increasing threats to these species and the evidence of their declining populations, these efforts need to continue to be built upon. Further, there is room for the Act to strengthen the outlines requested in other international agreements such as the Bonn Convention, CITES, and the Convention on Biological Diversity. These later agreements receive relatively little acknowledgement, and yet work remains to meet these agreements.

#### ***National thresholds for identifying sites of national significance***

International levels of significance have proved insufficient for some species, and national thresholds are required for some species, if wild sustainable populations are to be preserved. Recent work by Birds Australia on shorebirds has clearly demonstrated that international criteria are not protecting the same proportion of shorebird populations as identical criteria identify in other countries. In the case of shorebirds this was due primarily to birds being more dispersed in Australia. Conservation of all species requires the identification of clear, scientifically defensible targets that often may mean lower thresholds than existing international thresholds.

#### ***Definition of significance***

Thresholds of what constitutes significant impacts to wild populations needs to be quantified for all listed species, with the understanding that revision may be required as better scientific information becomes available. Work is currently underway to do this within a policy statement for migratory shorebirds, but there is a clear need to develop these kinds of guidelines for all listed species, communities etc. For migratory shorebirds, areas of national significance need to be conserved. Areas that do not meet national thresholds would not fall under the Act.

Sufficient monitoring is required to be able to determine quantified conservation targets, and importantly to detect significant losses.

***Monitoring and compliance of actions***

The Act needs to include requirements for transparent, consistent and well resourced monitoring of the effectiveness of mitigation methods for approved actions, appropriate in each case to the timeframe of the action.

The administration of the Act needs to be standardized and made more transparent, and enforcement of the Act needs to be implemented by federal law. The ability of Ministerial discretion to exempt actions has effectively made the Act an administrative hoop rather than one which actually delivers on the stated objectives in the Act. The stark statistic of only 6 of around 1000 referrals being denied indicates that the act is not being effectively enforced.

The Act should specify a regular national environmental audit to identify dispersed habitats and populations of species using them: for example, for Latham's Snipe, we currently don't know where populations are, or the size of those populations, and where they may be in danger of extinction. We are losing species because we don't know where they are due to a lack of a suitable monitoring.

The Act has failed to slow the decline of Australia's bird fauna. Birds Australia's databases and the 2008 edition of *The State of Australia's Birds* (published annually by Birds Australia) clearly show continuing and in many cases accelerating decline in Australia's threatened, and migratory bird species, and this decline is increasingly mirrored now species considered to be common and widespread. Monitoring of Australia's biodiversity is piecemeal and more resources need to be invested to provide for systematic long-term monitoring if a timely picture of population trends is to be provided to decision-makers.

Birds Australia thanks the Committee in advance for its consideration of our comments.

Yours sincerely,

**Graeme Hamilton**

*Chief Executive Officer*

*Birds Australia*