



Bird Observation & Conservation Australia

Incorporating Bird Observers Club of Australia

Helping today's birds survive tomorrow

24th September 2008

The Secretary
Senate Standing Committee on Environment
Communications and the Arts
PO Box 6100 Parliament House
Canberra ACT 2600

Re: Inquiry into the operation of the Environment Protection and Biodiversity Conservation Act 1999 (the Inquiry)

Dear Secretary,

Bird Observation & Conservation Australia (BOCA) is a national non-government organisation with more than 3,000 members throughout Australia. BOCA's objectives may be summarised as appreciation, education and conservation relating to Australian birds and their habitat.

An important component of our conservation work is the preparation of submissions on a wide range of issues where proposed actions may have significant, detrimental impacts on birdlife and their habitat. We regularly review and comment on matters when initially referred to the Department of Water, Heritage and the Arts (DEWHA) and on EES/EIS relating to controlled actions. BOCA is well placed to provide constructive comments on the operation of the EPBC Act.

As noted in the terms of reference (TOR) for the Inquiry, many of Australia's plants and animals continue to decline and many face the threat of extinction. The failure of the EPBC Act to fulfil its aim of protecting matters of national significance has a myriad of causes. BOCA has chosen to provide comments on those aspects of the EPBC Act it regards as most urgently in need of attention.

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Listing process

The EPBC Act (the Act) only provides protection for species and ecological communities listed under the Act. A strength of the Act is that any person can make a nomination for listing, however the listing process is ad hoc. It is entirely dependent on fortuitous, piecemeal data collection and reporting, coupled with 'voluntary' nomination for listing.

For the Act to be effective Australia must develop a comprehensive system of biological monitoring coupled with a systematic process for listing threatened species and communities.

Cumulative impacts

Under the Act there is minimal scope for DEWHA to assess the cumulative impacts of a series of unrelated developments on a matter of national environmental significance. It may be difficult to prove that an individual development, when examined in isolation, will have a significant impact on a species or community. However the cumulative impact of several developments across a species'/community's range may constitute a significant threat to the species/community. This is particularly relevant for a large number of bird species that do not congregate during the non-breeding season (eg. Eastern Great Egret) or for species that utilise a particular habitat/area infrequently but are highly reliant on the critical resources/habitat in the area under certain climatic conditions (eg. Regent Honeyeater, Swift Parrot).

The Act must incorporate a process whereby the cumulative impact of developments within a listed species'/community's range can be assessed.

Period for public comment

The 10 day period for public comment on matters referred to DEWHA severely limits the capacity for individuals and organisations to review, assess and provide critical comment on lengthy technical documents. In the first instance, BOCA finds it difficult to determine whether a referred matter is of relevance to the organisation. Matters listed on the DEWHA website provide little clue as to the major concerns or issues that have triggered the referral.

There should be provision within the Act whereby relevant national organisations are automatically notified of relevant referred matters.

For BOCA, this means referred matters that may have a significant impact on birdlife.

Secondly, for referred matters that are of relevance to birdlife, the 10 working day period is insufficient for critical analysis of information contained in technical reports. For large areas of Australia, baseline information on species distribution and habitat requirements is lacking. In many instances BOCA must rely on local knowledge and records to support or refute the claims of proponents and their representatives. The collation and analysis of relevant information (both published and local) is time consuming, often requiring much longer than the 10 day period for adequate analysis and submission preparation. As a result, there may be many referred matters requiring assessment and approval under the Act that 'slip through the system'.

The short period for public comment skews the referral system in favour of proponents. Proponents have both the time and resources to develop arguments to support their proposal.

The period for public comment on referred matters needs to be increased to a minimum of 30 working days.

Assessment process

Despite many years of involvement in reviewing and commenting on referred matters, DEWHA's protocols for assessing and verifying proponent's information remain unclear.

An example of the failure of any existing assessment protocols is a recent proposal for a residential development on the Powling Street Wetland in Port Fairy, Victoria. In this case, inaccurate information provided by the proponent was not questioned by DEWHA. The Powling Street Wetland is well-recognised as very important bird habitat supporting a number of species which are listed under the Act and/or the Victorian Flora and Fauna Guarantee Act, such as Latham's Snipe, Baillon's Crake and Eastern Great Egret. This information was not included in the proponent's referral and the accuracy of the referral was not checked by DEWHA. DEWHA mistakenly determined that the development was not a controlled action.

Assessment protocols should be stipulated within the Act, including a requirement to consult relevant State and Local government agencies and recognised non-government organisations on referred matters.

Assessment protocols should be made transparent to the public.

Survey standards

Correct assessment of the potential impact of referred matters is dependent on the accuracy and quality of surveys and information provided by proponents. This is often prepared by specialist consultants. It is BOCA's opinion and experience that surveys vary in their quality and accuracy, and therefore in their reliability. As consultants are employed by proponents, their 'fee for service' reports are usually limited in scope by financial constraints and could be skewed to favour the proponent's viewpoint.

To improve survey quality, consistency and reliability, DEWHA should develop a set of survey standards supported by an accreditation system for ecological consultants.

Under this system, accredited ecologists would be required to undertake ongoing professional development. An independent system of peer review, survey audits and 'spot checks' of survey accuracy would provide the public with greater confidence in the quality and credibility of information provided by proponents.

Republic of Korea-Australia Bilateral Migratory Bird Agreement (ROKAMBA)

While migratory birds listed under the Japan-Australia and China-Australia Migratory Bird Agreements (JAMBA and CAMBA) are automatically listed under the Act, those listed under ROKAMBA are not.

Australia must show its commitment to ROKAMBA and migratory bird species by acknowledging this agreement within the Act and by automatic inclusion of all species listed under ROKAMBA.

BOCA has grave concerns over the Republic of Korea's ongoing reclamation of tens of thousands of hectares of tidal flats in the Yellow Sea; areas that are crucially important staging areas for migratory birds. The advocacy efforts of BOCA and other environmental groups would be given greater weight if the Australian Government demonstrated its commitment to ROKAMBA by including it under the Act.

Off-setting and mitigation

Many projects are approved under the Act subject to off-setting and mitigation measures. In many instances these measures will be ineffective because decision makers have a poor understanding of the complexity of ecological systems and the time scales required for measures to become effective. For example, mature Buloke trees are an important food source for endangered Red-tailed Black-Cockatoos in south-western Victoria. These trees take over 100 years to become high quality feed trees. Today's Red-tailed Black-Cockatoo population cannot wait 100 years to feed on trees planted as an off-set. In short, the effects of projects which remove mature Bulokes cannot be off-set in any biologically meaningful way. Similarly, the impacts of removing hollow bearing trees in a wide variety habitats can never be off-set by planting seedlings. No matter how many seedlings are planted they are useless to species reliant on hollows as nesting sites.

The impacts of many actions can never be off-set in a biologically meaningful way.

Similarly, revegetation or restoration schemes designed to off-set or mitigate the removal of complex ecological communities will take decades (or in some cases, centuries) before they will truly mimic or off-set the community that has been removed.

The Act must put a greater emphasis on avoiding rather than mitigating or off-setting project impacts. The intrinsic value and irreplaceable nature of a healthy, functional ecosystem is not sufficiently reflected in the protection provided to species and communities listed under the Act.

Climate change imperative

Uncertainty over the impacts of climate change on Australia's plants and animals increases the imperative to apply the precautionary principle in situations where scientific knowledge is lacking. It is certain that many species face an increased risk of extinction due to the compounding impacts of climate change and habitat fragmentation, degradation and loss, increasing the predicted impacts of many projects.

The high level of uncertainty surrounding our knowledge of climate change and its potential impact on species and communities increases the imperative to apply the precautionary principle to proposed actions.

Thank you for the opportunity to participate in the Inquiry. We hope that the above comments are useful. If you wish to have clarification or require further information please contact BOCA's Conservation Officer, Jenny Lau on 9877 5342 or email conservationprojects@birdobservers.org.au.

Yours sincerely



Richard Hunter
Chief Executive Officer