

30 September 2008

Committee Secretary
Senate Standing Committee on Environment, Communications and the Arts
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Secretary,

Submission to the Senate Standing Committee on Environment, Communications and the Arts — Inquiry into the Operation of the *Environment Protection and Biodiversity Conservation Act 1999* (C'th)

1. Introduction

This submission is made by Professor Lee Godden, Faculty of Law at the University of Melbourne. The author is a specialist in the field of environmental law and has researched and written extensively on issues of environmental protection and environmental impact assessment ('EIA'), including the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (C'th) ('*EPBC Act*').

This submission addresses the Terms of Reference for the Inquiry into the Operation of the *Environment Protection and Biodiversity Conservation Act 1999* (C'th) by indicating general points about the overall operation of the current legal framework of the *EPBC Act* and surrounding natural resource protection programmes, and then provides more specific comments on points a-g of the Terms of Reference. It raises some particular concerns in relation to the effective conservation of Australian ecosystems under the *EPBC Act*, in a period marked by climate change, drought and increasing urbanisation.

2. Biodiversity Protection and the *EPBC Act*

Loss of biodiversity remains one of Australia's most serious environmental problems. Much of Australia's biodiversity loss is caused by habitat destruction, fragmentation and modification from clearing of native vegetation and from increasing urbanisation. Given the range of threats to biodiversity it is imperative that Australia has a robust federal legislative regime. The key objectives of the *EPBC Act* endorse *inter alia* the international obligations that Australia has for the protection of biodiversity under an expansive range of international treaties and conventions; primary among which is the *Convention on Biological Diversity 1992*. Central to the obligations undertaken by States pursuant to Convention is the conservation of biological diversity and ecological integrity. It is critical that the federal 'flagship' legislation for biodiversity protection reflects the implementation of these principles within the broader pursuit of the goals of ecologically sustainable development, to provide an effective and 'best

practice' legal framework for the conservation and protection of Australia's unique flora and fauna.

In concert, there is a need to more effectively integrate the federal biodiversity legislation, with its focus on Matters of National Environmental Significance (MNES), with the various natural resource protection programmes in operation such as the Natural Heritage Trust projects. This linkage would recognise that an approach which regulates for biodiversity protection in isolation from other land use and resource regimes, risks fragmentation and ineffectual management outcomes. In particular, the separate regulation of water remains problematic where issues of water quality, aquatic biodiversity and even associated land degradation, seem to be displaced by issues of water trading and administrative reorganisation, rather than the biodiversity outcomes remaining central. Australia has long been dominated by a sectoral legislative and regulatory approach to biodiversity, which is exacerbated by jurisdictional and administrative segmentation. There is a strong need for Commonwealth leadership, working in partnership with other levels of government, to implement more integrated perspectives to deal with the endemic decline of species that will face further challenges with the onset of climate change.

3. General Operation of EPBC

The *EPBC Act*, enacted in 1999 was formulated at a time when a number of pervasive 'threats' to biodiversity such as global warming and the associated climate change, extreme weather events and drought, were less evident in Australia and globally than is now acknowledged (Bonyhady and Christoff 2007). The legislation also predates the widespread use of an expansive range of regulatory instruments including the adoption of 'market mechanisms' as the predominant form of regulatory instrument in a wide range of environmental law contexts. The EPBC Act needs to take cognisance of the opportunities and also the **disadvantages** of including biodiversity 'offsets', carbon sequestration and potentially avoided de-forestation into biodiversity protection regimes. Thirdly, while the 'Biodiversity Conservation' regime clearly employs techniques of forward planning and management, it was implemented prior to the more widespread adoption of concepts such as adaptive management, and acknowledgement of the need to strategically engage with cumulative and indirect impacts on biodiversity; including the continuing effects of land clearance, and the acknowledged, but growing threat of invasive species. Accordingly, in light of these changed circumstances, and the pressing need for integrated responses, it is argued that a comprehensive review of the operation of the *EPBC Act* is required, in concert with a re-examination of its interface with other natural resource protection programmes, in order to reshape the legislation to meet new challenges and to effect a comprehensive regime that can integrate with state and territory initiatives.

Another important aspect is the need to ensure continued transparency and accountability of government decision-makers under the *EPBC Act* through retention, and indeed extension, of the third-party judicial review, and injunctive relief provisions under the *EPBC Act*. Further, consideration needs to be given to implementing a merits-based review system. In this context, the recent, vigorous pursuit of costs orders by the federal environmental department against community groups that sought review of decisions under the EPBC Act represents a major blot on

our democratic society. Given the paucity of funding that is devoted to biodiversity protection in our society, much of the work of biodiversity protection falls to volunteer and community efforts. The legal system already presents a number of barriers to groups seeking to act in the public interest. Accordingly, reform of the rules relating to costs awards in areas of public litigation concerned with biodiversity protection – and indeed other environmental areas - is urgently required to ensure all citizens have equal access to the judicial system and accountability and transparency of government processes is maintained.

4 a) Protection of Critical Habitat/ National Audit

In relation to the protection of threatened species, key concerns in relation to the *EPBC Act* include:

- The heavy reliance on Ministerial discretion for the new listing of threatened species. By contrast an expert, independent panel, properly funded and resourced, building on scientific findings would be preferable. Models, such as the IUCN nomination committees, at an international level offer possible alternatives;
- The excessive delays in the listing of threatened species: for example, for 9 fish species the average listing time was nine years due to delays in conveying information between the department and the Minister;¹
- The failure to provide an up-to-date status for the list of threatened species: only 183 new species have been added since 2000²;
- Many species only receive nomination and/or listing in ‘crisis’ situations; (an example in point might be the listing of the spectacled flying fox under pressure of litigation under the *EPBC Act*.);
- The lack of readily available data in regard to threatened species to support comprehensive strategic and forward planning: The ANAO note that there is a ‘considerable risk’ that incorrect decisions will be made in relation to listings due to deficiencies and gaps in available scientific information;³ and
- The chronic delays and underfunding of certain projects; for example, the Biodiversity Hotspot Program.

Accordingly a number of recommendations are made to provide more effective biodiversity protection and conservation of threatened species:

- A current and dynamic list of threatened species, critical habitats and ‘linking’ biodiversity corridors that is regularly reviewed, with provision for public review and appeal procedures;
- Further research and data collection appropriate for the prompt listings of threatened species (see funding section below);

¹ Australian National Audit Office (ANAO), *The Conservation and Protection of National Threatened Species and Ecological Communities: Audit Report No. 31* (2006–07) p 16.

² Australian National Audit Office (ANAO), *The Conservation and Protection of National Threatened Species and Ecological Communities: Audit Report No. 31* (2006–07) p 16.

³ Australian National Audit Office (ANAO), *The Conservation and Protection of National Threatened Species and Ecological Communities: Audit Report No. 31* (2006–07) p 17.

- A co-ordinated approach between federal and state/territory organs and mechanisms; for example, the ANAO states that more effort is required to align federal and state endangered species lists;⁴
- Implementation of research to ascertain the effects of climate change on threatened species/ critical habitats e.g. it is predicted that there may be major changes to the geographical range of species as warmer/ drier conditions leading to species displacements or the need to adapt or ‘move’. A corresponding review of the reserve/ protected areas systems in concert with the operation of natural resource regimes should be considered; and
- The operation of threatened species listing and management processes need to be more closely integrated with impact assessment procedures, especially regarding conditions to be placed upon proponent project approvals.

5 b) Ten Years of EPBC Act Operation

Whilst the *EPBC Act* has been in operation for almost a decade, Australia’s biodiversity remains in decline. For example, the continent still has the highest percentage of threatened plant species in the world – a situation which would seem, at the very least inconsistent, with international obligations for biodiversity protection. As of 30 June 2006, there were 1684 species listed in six categories ranging from extinct to conservation dependant under the *EPBC Act*. The continuing deterioration of the natural environment and biodiversity as evidenced in ‘State of the Environment’ reporting over the past decade requires immediate and far-reaching action to be taken; including the provision of more adequate funding. One of the key aspects of reform is broadening the range of ‘triggers’ for assessment pursuant to the listed MNES under the *EPBC Act*. Suggested triggers include a MNES relating to land clearance of native vegetation beyond a set area or where high levels of biodiversity value are involved; (potentially an associated ‘greenhouse trigger’ that relates to land clearance), as well as more general greenhouse emission reduction objectives (McIntosh 2007).

The potential for ‘avoided’ land clearance and carbon sequestration values of biodiversity, together with an expansive concept of ecosystem services needs to be adopted as a prevailing strategic and managerial paradigm for the legislation and associated natural resource regimes. This approach would recognize the widespread economic and structural changes that international and national GHG targets and carbon pricing, through an emissions trading scheme, will introduce. The effect evaluation of biodiversity and the incorporation of externalities associated with biodiversity loss has the potential also to re-energise initiatives in many community-based programmes such as Landcare.

6 c) ‘Cumulative Impacts’ and the *EPBC Act* Approvals Process

Biodiversity losses typically occur over extended time-frames as each new project or development, however small in scale, represent ‘a cut’ in previously cohesive habitat. Effects typically extend beyond the immediate site of activities, often diminishing the long-term viability of protected areas elsewhere in the landscape, as species may become ‘trapped’ in the ‘islands’. While Australia has an extensive protected areas

⁴ Australian National Audit Office (ANAO), *The Conservation and Protection of National Threatened Species and Ecological Communities: Audit Report No. 31 (2006–07)* p 19.

reserve system, this is insufficient as it is essential also to protect areas of remaining biodiversity which exist on private land and Crown lands. The bulk of land clearance and hence biodiversity loss occurs through the planning system or other 'EIA type regimes, where development values, typically takes precedence over biodiversity conservation. For example, of the 152 projects submitted for approval under the EPBC Act up to 30 June 2006, only four were refused.⁵

Environmental impact assessment (EIA) represents the primary institutional, legal and regulatory tool that is employed in implementing environmental protection and management. As such the dimensions of EIA have a critical bearing on whether biodiversity conservation and protection outcomes can be achieved. Moreover, it is crucial that EIA, itself, encompasses an integrated and holistic perspective able to deal with complex, competing factors. Predicting environmental impacts is an uncertain business at the best of times given the variability seen in natural ecosystems and the paucity of available knowledge about the effects of development activities on biological diversity and ecological integrity.

Under the scheme of EIA in the EPBC Act, the crucial point for determining whether a particular 'action' will invoke Commonwealth decision-making powers or be left to State regulation, is at the stage when the Commonwealth Environment Minister determines if there is a 'controlled' action. A controlled action is, one that has, will have or is likely to have significant impacts on an MNES or several MNES.⁶ If this 'prima facie' assessment suggests potential adverse impacts on MNES, the Commonwealth, together with the State in which the action is taking place, will be involved in the decision-making process.⁷ The assessment will need to consider the potential impacts of the proposal on the identified MNES.⁸ Hence, for all projects that fall within the scope of the EPBC Act, environmental issues of national concern will be assessed.

Cumulative impacts – additive over time or space – have proven problematic for EIA regimes traditionally focussed on assessing on a project-by-project basis. By contrast there is now clear scientific and technical managerial data that indicates that most significant environmental problems (biodiversity loss, land degradation, salinity, invasive species, marine pollution and climate change) have their source in the accumulation and compounding of smaller scale impacts over a number of years.

The new definition inserted into s527E *EPBC Act* in 2006 is a welcome recognition of the need for more holistic impact assessment processes. The meaning of impact under the Act, while arguably not fully endorsing a cumulative impact test, clearly substantially widens the scope of activities and consequences potentially caught by the EPBC assessment triggers. In concert with the prevailing interpretations of 'impact' by the courts, the potential for the EPBC Act now to adopt a more integrated framework that can contemplate successive and incremental changes that cumulatively may constitute 'death by a thousand cuts' has been enhanced. On the other hand, the expansion of the EPBC Act's EIA process represents a relatively modest move towards more comprehensive assessment, given the integrated and

⁵ Department of Environment and Water Resources, *Environment Protection and Biodiversity Conservation Act 1999 Activity Report* (2006) p 5.

⁶ EPBC Act, ss. 67 & 75.

⁷ EPBC Act, s.3 (2)(a).

⁸ EPBC Act, s. 87(4)(c) & (d).

wide-ranging alternative forms of assessment that are potentially available. These limitations are compounded by the scope of the ‘triggers’ for assessment.

The *EPBC Act* outlines a relatively limited number of ‘matters of national environmental significance’ (‘MNES’) that act as ‘triggers’ for the operation of the Commonwealth assessment and approval processes under the legislation. In order to fulfil the stated objectives of the EPBC including the fulfilment of Australia’s international obligations under the *Biodiversity Convention*, new triggers that can address cumulative impacts across time and space are urgently required.

In summary, some key concerns in relation to the *EPBC Act* approval processes include:

- The restrictive limited number of EIA triggers currently legislated within the *EPBC Act*;
- The practice of referring actions to Environment Australia in stages means that the cumulative impact of a project may not be recognised, thereby circumventing the ecologically sustainable development objectives of the *EPBC Act*;⁹
- The definition and interpretation of ‘action’ such as that employed in *Blue Wedges Inc v Minister for the Environment I* (2008) 165 FCR 211, 226. In *Blue Wedges* despite massive changes to the scope and scale of the dredging operations in question the activity was regarded as substantially the same ‘action’. If even major changes to a project do not alter the legal character of an ‘action’ that is to be assessed, i.e. a channel deepening is a channel deepening, irrespective of altered scope and presumably scale of impact, then this represents a serious gap in attempting to deal with the progressive and cumulative effects of activities;
- The practice of delegating EIAs for certain projects to state-based processes; where state-based laws and processes have highly discretionary requirements.
- The failure to adopt strategic assessment and adaptive management processes for EIA.
- The reduction of EIA to a ‘rhetorical’ exercise where Government or statutory authorities make financial decisions and project ‘approval’ decisions, such as entry into contracts that ‘lock’ governments into courses of action, well in advance of the public processes of impact assessment being conducted. This situation is particularly problematic in regard to public/ private partnership arrangements.

In relation to the *EPBC Act* approval processes the recommendations include:

- A more expansive legislative understanding of EIA ‘triggers’ is required, including the potential incorporation of a land clearance and ‘greenhouse trigger’. Such a trigger would assess the impact of projects (such as large scale land clearing) in relation to their greenhouse gas emission in light of climate change. The CSIRO Climate Adaptation Flagship report state that Australia’s natural species and ecosystems remain ‘highly vulnerable’ to climate change.

⁹ Australian National Audit Office (ANAO), *Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999: Audit Report No. 38 (2007-08)* (see Key Findings, p 16, para 21).

Therefore, it is necessary for planning and conservation mechanisms under the *EPBC Act* to integrate a sound climate change analysis into its frameworks.¹⁰

- The re-definition in 2006 of ‘impacts’ (under s 527E) is welcome in capturing indirect effects but arguably still could be widened further to explicitly include many ‘cumulative’ impacts, especially those associated with climate change. In association the redefinition of ‘an action’ to exclude major changes in scale and scope of referred ‘actions’ would be beneficial.
- The introduction of ‘triple-bottom line’ impact assessment could be a benefit to the overall *EPBC Act* approval process including the need for the EIA processes to reach further ‘upstream’ in the decision-making channel for governments.
- Adoption of adaptive management ‘feedback loops’ into EIA processes where ongoing monitoring and audit of projects is given appropriate importance.
- Extension of third party enforcement and review processes including reform of costs rules in public litigation.

7 e) The *EPBC Act* and Regional Forest Agreements

Section 38 of the *EPBC Act* exempts certain forestry operations from approval processes within the *EPBC Act* provided that they are carried out ‘in accordance with’ Regional Forest Agreements (‘RFAs’). This is an issue of principal concern as it fails to adequately consider the ‘significant impact’ of land/ biodiversity clearance under RFAs. The *Wielangta Forest Cases*¹¹ highlight how the exclusion of Regional Forestry Agreement (RFA) forestry operations from the environmental assessment and approval requirements under the *EPBC Act* pursuant to section 38 of the legislation pose significant problems for the enforcement of legislative protections for forest species and habitats. In *Weilangta Forest* region Brown contended that the presence of the RFA in Tasmania did not exempt Forestry Tasmania from the usual requirements of the *EPBC Act* not to take actions with a significant impact on listed threatened species without federal approval.

The analysis of Justice Marshall in *Brown v Forestry Tasmania (No 4)* [2006] FCA 1729 is endorsed here. His Honour held that in order for the section 38 exemption to be effective, the State of Tasmania was obliged to ensure that forestry operations carried out in the State through Forestry Tasmania were conducted ‘in accordance with requirements set out in the RFA’.¹² His Honour’s evaluation of whether the requirements of the RFA were being met turned on whether the State had met its obligations under clause 68 of the RFA. This provision obliged the State to protect ‘Priority Species’ through the Reserve system or by applying relevant management prescriptions. Each of the three species in the case was listed as a Priority Species. In light of expert evidence given about the level of inadequate protection afforded to the

¹⁰ See Lee Godden and Jacqueline Peel, ‘The *Environment Protection and Biodiversity Conservation Act 1999* (C’t): Dark Side of Virtue’ (2007) Melbourne University Law Review 106.

¹¹ *Brown v Forestry Tasmania (No 4)* [2006] FCA 1729 (Unreported, 19 December 2006, Marshall J), *Forestry Tasmania v Brown* [2007] FCAFC 186 (Unreported, 30 November 2007, Sundberg, Finklestein and Dowset JJ)

¹² *Brown v Forestry Tasmania (No 4)* [2006] FCA 1729 (Unreported, 19 December 2006, Marshall J) [238].

species at issue by Forestry Tasmania forest management practices, Justice Marshall concluded that the State had failed to meet the protection requirements. As a result, forestry operations in Wielangta were found to be not undertaken in accordance with the RFA and did not have section 38 exemption.

On appeal in *Forestry Tasmania v Brown* [2007] FCAFC 186, the Full Federal Court overturned Justice Marshall's construction of the section 38 exemption. The court concluded that the EPBC Act does not apply to forestry operations in areas under RFAs. The court subsequently construed that the Tasmanian RFA imposed only a weak level of obligation upon the State, and subsequently there was "no guarantee that the environment, including the species, would not suffer as a result"¹³ of forestry operations. Consequently clause 68 did not represent an enforceable obligation under the EPBC that Tasmania actually protect the species in question.

The cases bring to light the deficiencies both of the EPBC Act and the limits of protections for species and habitat afforded under RFAs. Justice Marshall based his interpretation of section 38 in light of the objects of the EPBC Act, in particular its objectives to "promote the conservation of biodiversity", provide for the protection of "matters of national environmental significance" (including the protection of listed threatened species) and to "assist in the co-operative implementation of Australia's international environmental responsibilities".¹⁴ By providing for RFA exclusions under section 38, the EPBC is failing to implement these key objectives and meet its international obligations. RFAs encompass a very large proportion of Australia's forests, which are known to be 'hotspots for diversity' across and between different species. Consequently, a large portion of Australia's existing biodiversity, including listed threatened species, is not subject to protections and procedures afforded under the EPBC Act.

The Full Federal Court's finding also highlight the weak nature of obligations imposed on States under the RFA agreements. RFAs tend to operate under policy and regulatory instruments, that while allowing for some level of public participation and comment, do not always impose binding obligations on States with respect to protections afforded to biodiversity. For instance, RFAs in Victoria operate under Forest Management Plans, and Codes of Practice.¹⁵ The status of obligations under the *Conservation, Forests and Lands Act 1984* is problematic. Although, it is noted that areas within RFA come under the *Forest Act 1958* and incorporate Action Statements under the *Flora and Fauna Guarantee Act 1988*.

Finally, while community consultation was a major part of the Regional Forest Agreement (RFA) process during the 1990's, RFA are generally only subject to review by the State government every 10 years.

Some concerns in regard to RFA and the EPBC Act exemption include:

- The haste with which some RFA agreements have been concluded;

¹³ *Forestry Tasmania v Brown* [2007] FCAFC 186 (Unreported, 30 November 2007, Sundberg, Finklestein and Dowset JJ) [64].

¹⁴ Marshall J [264], [295].

¹⁵ *Code of Forest Practices for Timber Production*, and the *Code of Practice for Fire Management on Public Land*.

- The lack of provisions for meaningful public engagement in the RFA and meaningful review procedures in realistic time frames given the urgency of biodiversity decline;
- The relatively weak obligations to protect species imposed under the RFA structure that favour the development and logging operations; and
- The exclusion of the EPBC Act MNES EIA process itself, which is the main federal legislative tool for assessing impacts on endangered and threatened species.

In relation to the s 38 *EPBC Act* exemption for RFA processes the recommendations include:

- A review of the operation of s 38 EPBC Act to remove the exemptions for RFA from EIA and federal approvals under the Act. It needs to be remembered that bringing an action within the scope of the EPBC Act assessment process is not of itself a ‘halt’ to activities. Rather, it affords an opportunity to assess the activity; arguably taking into account cumulative impacts and adaptive management principles. Moreover, there are enhanced opportunities to integrate aspects such as management plans, identification of threatening processes etc that operate under the biodiversity conservation regime of the Act in approving proposals and imposing conditions that could promote more ecologically sustainable outcomes.
- The adoption of a mandatory status for RFA ‘obligations’ in conformity with intergenerational equity and biodiversity conservation principles, that are justiciable, i.e. open to judicial review.
- Introduction of an enhanced, public review and consultancy regime for RFAs.

8 f) Impact of other environmental programs.

This submission recognizes the importance of the myriad government-sponsored and community-based programs that operate in the biodiversity conservation and protection sphere. Long-standing community efforts have been important in addressing pervasive environmental degradation across many of Australia’s landscapes. In particular, the contribution of groups such as Landcare, Green Corps and Indigenous Protected areas schemes is vital to the protection and resilience of biodiversity. Nonetheless, despite valuable contributions there is a need to ensure all that such programs are coordinated and integrated with wider objectives. More effective integration of these programs within the framework of the EPBC Act would be beneficial. Many of these groups and programs are significantly under-funded.

Further, whilst the EPBC Act recognises the importance of indigenous peoples’ knowledge of country and Australia’s ecosystems, there remain particular problems in effectively implementing co-management regimes that provide sufficient autonomy to indigenous peoples. This aspect needs to be further resolved. However the submission points to the considerable potential that exists for indigenous peoples to be involved in biodiversity protection in innovative ways, such as through carbon sequestration or indigenous-managed fire regimes as ‘offsets’/ credits under emissions reduction schemes. Involvement of the indigenous peoples in this area of biodiversity protection has benefits not only for conservation values but for the long-term economic sustainability of indigenous communities.

9 g) Budgetary Cuts and Funding Arrangements

The protection of Australian Biodiversity is considered of ‘incalculable value’ to current and future generations.¹⁶ Since 2002, some \$251 million has been spent on biodiversity protection (approx 22 per cent of the total National Heritage Trust expenditure), of which \$78 million has been spent directly on threatened species and ecological communities.¹⁷

Despite this, the 2006 Senate inquiry identified the chronic under-funding of the Department of Environment and Water Resources as a major obstacle to the effective administration of the *EPBC Act*. Therefore, in order to realise effective protection, increased federal resources are required. In particular, the following issues have been identified as areas that require increased funding:

- The chronic underfunding and underinvestment in biodiversity conservation projects.
- The \$10 billion plus being devoted at a federal level to environmental water ‘buyback’ is welcome but it is suggested that the scheme may have unintended consequences if the money is not used to buy back water that can most effectively be devoted to maintaining biodiversity values, rather than just ‘paper’ environmental water. Further a similar amount may be needed to ‘buy back’ critical habitat as climate change induces species ‘shift’ or in order to reserve areas as critical ecosystem service spheres;
- The lack of ‘long-term, systematic biodiversity information’ to enable firm conclusions about the decline of Australian species.¹⁸ This hampers efforts at adaptive management and is important for many processes from species listing decisions to effective assessment and monitoring.
- The lack of ‘standard, meaningful and quantified monitoring and evaluation systems for the national investment stream’, i.e. so that we can measure biodiversity ‘improvements’ into the future.¹⁹

In particular, a marked increase in the quantity of federal funding allocated to the implementation of the *EPBC Act* is necessary. Funding is required to:

- Co-ordinate effective data collection and research;
- Enable effective governmental review and scrutiny of the *EPBC* processes, rather than relying in many instances on the community-based and community initiated enforcement actions. In this regard it needs to be noted that there has only been **one** successful prosecution under the Act;
- In conjunction with state and territory governments develop a series of ‘best practice’ biodiversity projects in novel areas, such as old growth forest/ carbon sequestration contexts; and

¹⁶ State of the Environment Advisory Council, *Australia: State of the Environment Report* (1996) p 4.

¹⁷ Australian National Audit Office (ANAO), *The Conservation and Protection of National Threatened Species and Ecological Communities: Audit Report No.31* (2006–07) p 21.

¹⁸ State of the Environment Advisory Council, *Australia: State of the Environment Report* (1996).

¹⁹ Australian National Audit Office (ANAO), *The Conservation and Protection of National Threatened Species and Ecological Communities: Audit Report No.31* (2006–07) p 22.

- Provide an effective funding base for the Commonwealth to take leadership on biodiversity protection measures that are commensurate with Australia's international obligations for biodiversity protection.

I have not specifically addressed invasive species issues within the submission. However I would draw the committee's attention to a publication by myself and two colleagues that did canvass invasive species issues in relation to the EPBC Act. In that publication we argued that decisive Commonwealth leadership was needed to address invasive species problems and that the largely voluntary measures that were recommended failed to provide an integrated approach. The publication endorsed the need to move from an agricultural pests focus to a broadly based sustainability agenda, prioritising a biodiversity conservation perspective. Significant funding is required to support initiatives to address invasive species. The relevant publication is - Godden, L. Nelson, R., and J. Peel, 'Controlling Invasive Species: Managing Risks To Australia's Agricultural Sustainability and Biodiversity Protection', (2006) *Australian Journal of Environmental Management*, 165.

I thank the Senate Standing Committee for the opportunity to provide this submission. I welcome the opportunity to address the Senate Standing Committee in relation to my submission.

Yours faithfully,

Dr Lee Godden,
Professor, Law School
The University of Melbourne
Victoria 3010.