



australian network of environmental defender's offices

Inquiry into Australia's national parks, conservation reserves and marine protected areas

1st March 2006

The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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CONTENTS

Introduction

Part 1: (a) The values and objectives of Australia's national parks, other conservation reserves and marine protected areas

Background

Discussion

Categories and objectives

Values

Case study: World Heritage values

Part 2: (b) Whether governments are providing sufficient resources to meet those objectives and their management requirements

Background

Discussion

Commonwealth funding

Off-park initiatives

Case study: Tasmania Marine Protected Area Strategy

Case study: Resource allocation in Western Australia

Part 3: (c) Any threats to the objectives and management of our national parks, other conservation reserves and marine protected areas

Background

Discussion

Permitted activities

Tourist developments

Case study: Cockle Creek Tasmania

Fishing

Case study: Shark fishing in Kent group marine protected Area Tasmania

Case study: Western Rock Lobster fishery Western Australia

Invasive species

Revocation

Part 4: (d) The responsibilities of governments with regard to the creation and management of national parks, other conservation reserves and marine protected areas, with particular reference to long-term plans

Background

Commonwealth responsibility

International obligations

Discussion

EPBC Act 1999

Long term considerations

Part 5: (e) The record of governments with regard to the creation and management of national parks, other conservation reserves and marine protected areas

Background

Discussion

Freshwater aquatic reserves

Indigenous co-management

Wilderness

State of the Park Reporting

Recommendations

Introduction

The Australian Network of Environmental Defenders' Offices Inc (ANEDO) welcomes the opportunity to provide comment to the Senate Inquiry into Australia's national parks, conservation reserves and marine protected areas.

ANEDO consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia. Each EDO is dedicated to protecting the environment in the public interest. Each office provides legal representation and advice, takes an active role in environmental law reform and policy formulation, and offers a significant education program designed to facilitate public participation in environmental decision making. The protection and management of national parks, conservation reserves and marine protected areas is a fundamental public interest environmental law issue, and of key interest to ANEDO.

Australia has a long history of recognising the values of natural and wilderness areas through the creation of national parks and protected areas. In the tradition of most western nations, the development of national parks initially began with the objectives of conserving scenic and recreational values in close proximity to urban centres. However, throughout the twentieth century, there has been an increasing awareness in the need to protect land and ecosystems for their biodiversity values and for their natural and cultural heritage values. This is discussed in Part 1 in response to Term of Reference (a). ANEDO strongly supports the creation of protected areas, both terrestrial and marine, for a range of values and objectives. We note that the continued creation and maintenance of sanctuaries and wildlife corridors will become increasingly important in planning for long term impacts of climate change.

Creation of protected areas may be ineffectual in the absence of committed resources for ongoing management. ANEDO recommends an increased allocation of resources from the Commonwealth and States. This is discussed in Part 2 in response to (b).

As well as insufficient resources for ongoing management of protected areas, there are a number of other threats to the protection of the values of these areas. These include certain permitted activities such as mining in terrestrial parks and fishing in marine parks; encroachment and impacts of activities adjacent to parks; and the impacts of invasive species on native flora and fauna. These threats are discussed in Part 3 in response to (c).

The introduction of the World Heritage Convention and the Convention on Biological Diversity (CBD), both of which Australia is party to, has encouraged Australia to designate vast tracts of land as protected areas, either as world heritage sites or national parks. The management of Australia's natural resources and the protection of the environment generally have traditionally been within the purview of the States. The Commonwealth has historically been content to maintain this arrangement, only intervening in strategic cases and otherwise seeking to foster a co-operative approach. In recent years, the Commonwealth has become more interventionist in relation to nationally significant environmental matters. The *Environment Protection and Biodiversity Conservation Act 1999* currently gives effect to many of Australia's international obligations, including the aforementioned treaties. The responsibility to implement these conventions and for ongoing management of protected areas is discussed in Part 4 in response to (d).

Part 5 examines the record of governments in relation to creation and ongoing management of protected areas in response to Term of reference (e). One gap identified is in relation to the creation of freshwater aquatic reserves.

Part 1:

The funding and resources available to meet the objectives of Australia's national parks, other conservation reserves and marine protected areas, with particular reference to:

a. The values and objectives of Australia's national parks, other conservation reserves and marine protected areas

Background

In order to assess the current values and objectives of national parks, conservation reserves and marine protected areas, it is necessary to identify the different categories. Each category of protected area is reserved in order to conserve specific values related to the site, such as cultural, scenic, recreational, heritage or ecological values. As such, different categories have different management objectives. Below is a brief overview of existing categories across Australian jurisdiction, and some examples of correlating objectives.

Across Australian jurisdictions there are various categories of park, conservation reserve, and protected areas. These categories include:

NSW: national parks, wilderness areas, historic sites, state conservation areas, regional parks, karst conservation reserves, nature reserves, Aboriginal areas.

Victoria: national parks, wilderness parks, state parks, marine and coastal parks and reserves, regional parks, crown reserves, key heritage properties, historic places, and sanctuaries.

Tasmania: national parks, state reserves, nature reserves (including marine reserves), game reserves, conservation areas, nature recreation areas, regional reserves, historic sites, private sanctuaries and private nature reserves.

South Australia: national parks, conservation parks, wilderness protection areas, game reserves, regional reserves, recreation parks, and conservation reserves.

Western Australia: national parks, marine parks, conservation parks, regional parks, State forests and timber reserves, nature reserves, and marine nature reserves.

Northern Territory: parks, reserves, sanctuaries, and wilderness zones.

Queensland: national parks (scientific); national parks (Aboriginal land); national parks (Torres Strait Islander land); national parks (recovery); conservation parks; resources reserves; nature refuges; coordinated conservation areas; wilderness areas; World Heritage management areas; and international agreement areas.

The **Commonwealth** approach is included in section 347 of the *EPBC Act 1999* which provides:

Assigning Commonwealth reserves and zones to IUCN categories

Prerequisite to making Proclamation

(1) Before the Governor-General makes a Proclamation assigning a Commonwealth reserve, or a zone within a Commonwealth reserve, to a particular IUCN category, the Minister must be satisfied:

(a) That the reserve or zone:

- (i) has the characteristics listed in subsection (2) for the category; and
- (ii) meets the criteria (if any) prescribed by the regulations for the category; and
- (b) that the reserve or zone should be managed in accordance with the Australian IUCN reserve management principles for the category.

Characteristics for IUCN categories

(2) The characteristics are as follows:

- (a) for a strict nature reserve—the Commonwealth reserve or zone contains some outstanding or representative ecosystems, geological or physiological features or species;
- (b) for a wilderness area—the Commonwealth reserve or zone consists of a large area of land, sea or both that:
 - (i) is unmodified, or only slightly modified, by modern or colonial society; and
 - (ii) retains its natural character; and
 - (iii) does not contain permanent or significant habitation;
- (c) for a national park—the Commonwealth reserve or zone consists of an area of land, sea or both in natural condition;
- (d) for a natural monument—the Commonwealth reserve or zone contains a specific natural feature, or natural and cultural feature, of outstanding value because of its rarity, representativeness, aesthetic quality or cultural significance;
- (e) for a habitat/species management area—the Commonwealth reserve or zone contains habitat for one or more species; and
- (f) for a protected landscape/seascape—the Commonwealth reserve or zone contains an area of land (with or without sea) where the interaction of people and nature over time has given the area a distinct character with significant aesthetic, cultural or ecological value;
- (g) for a managed resource protected area—the Commonwealth reserve or zone contains natural systems largely unmodified by modern or colonial technology.

Generally, each particular category has a specific object related to its acknowledged value. For example, wilderness objectives in most states have the more strict conservation and protection objectives, compared with recreational use objectives in regional parks. Similarly different management principles apply to different categories. Two contrasting examples are outlined below.

The NSW *Wilderness Act 1987* provides that:

3 Objects of Act

The objects of this Act are:

- (a) to provide for the permanent protection of wilderness areas,
- (b) to provide for the proper management of wilderness areas, and
- (c) to promote the education of the public in the appreciation, protection and management of wilderness

9 Management principles for wilderness areas

A wilderness area shall be managed so as:

- (a) to restore (if applicable) and to protect the unmodified state of the area and its plant and animal communities,
- (b) to preserve the capacity of the area to evolve in the absence of significant human interference, and
- (c) to permit opportunities for solitude and appropriate self-reliant recreation.

In contrast, the South Australian Department of Environment and Heritage describes the objectives of mixed use categories as follows:

Game Reserves (GR) - areas set aside for the conservation of wildlife and the management of game for seasonal hunting;

Regional Reserves (RR) - areas proclaimed for the purpose of conserving wildlife or natural or historical features while allowing responsible use of the area's natural resources;

Recreation Parks (RP) - areas managed for public recreation and enjoyment in a natural setting.

Discussion

Categories and Objectives

Resource allocations differ across jurisdictions between reserve categories. ANEDO submits that increased resources be directed to national parks and wilderness areas to ensure the natural values are properly protected. This is necessary where additional management revenue cannot be raised through recreational or other use of the area due to the appropriate limitation of permitted activities.

The fact that different levels of protection apply to different categories of reserve means that correct categorisation is crucial to ensure natural and cultural values are adequately protected.

ANEDO recommends a review be undertaken across jurisdictions to determine whether any conservation areas need upgrading to park status. There should be clear protocols in place to provide that downgrading of status, for example from wilderness or park to recreation, must not occur except in exceptional circumstances. (Revocation of parks is discussed in Part 4 below).

Similar to terrestrial protected areas, marine protected areas are categorised differently in different jurisdictions, for example into marine parks, aquatic reserves and sanctuaries. Each category allows a different level of permitted activity (such as commercial or recreational fishing). ANEDO recommends that resources be directed to the creation of additional marine park areas with clear objectives which translate into no-take zones. To ensure that these areas achieve their conservation objectives, resources must also be directed to compliance and enforcement of the no-take zones.

Values

As noted above, there has been a history of reserving and protecting areas for their scenic and recreational values, and that current legislative categories of protected areas recognise a range of different values which warrant special protection and management for the relevant area. While there is general consensus as to the need to protect a range of values, the identification of relevant values can be crucial in determining the degree of government involvement in protection.

In addition to site-based gazetted reserved areas, the Commonwealth also takes a broader values-based approach to environmental protection. As noted, the Commonwealth is a signatory to several international conventions including the World Heritage Convention, RAMSAR, and the Convention on Biological Diversity. The implementation of obligations under these instruments is currently via the *EPBC Act 1999* which focuses on actions that may impact upon relevant values, rather than sites (with the exception of Commonwealth land). Consequently the way in which “values” are determined is crucial in defining Commonwealth involvement.

Case study: World Heritage values¹

Currently under the *EPBC Act 1999*, an action will require approval from the Environment Minister if the action has, will have, or is likely to have a significant impact on the World Heritage values of a declared World Heritage property.² This includes one or more of the World Heritage values being lost, or one or more of the World Heritage values being degraded or damaged. A declared World Heritage property is an area that has been included in the World Heritage list or declared by the Minister for the Environment to be a World Heritage property in accordance with sections 14 and 15 of the Act. As noted by the DEH Administrative Guidelines on Significance,³ a relevant action might take place outside the boundaries of a World Heritage property. This is confirmed by the case law: *Booth v Bosworth*⁴ and the “Nathan Dam” decision⁵ (the latter case confirming a major expansion of environmental powers for the federal Government).

The fact that the current wording of the world heritage trigger focuses on the “values” rather than the land is contentious. By focusing on world heritage values only, the Act is falling well short of protecting the integrity of the area or the *outstanding universal value* for Australia’s world heritage properties. This is consistent with the World Heritage Committee’s interpretation of the Convention. In March 2003 the World Heritage Committee agreed to have the text read “*outstanding universal value*” instead of values wherever it appears in the World Heritage Convention’s Operational Guidelines and to add a reference to the integrity of the property so that these two points are read together. The World Heritage Committee’s interpretation of the Convention rejected Australia’s values-based approach, confirming the more conservative property-based approach.⁶

ANEDO recommends that in relation to World Heritage properties, the *EPBC Act 1999* should operate on the *outstanding universal value* and preservation of the integrity of the properties listed under the Convention, rather than solely on consideration of particular listed values.

Furthermore, the *EPBC Act 1999* should be amended to facilitate implementation of the World Heritage Convention’s Operational Guidelines. The Australian World Heritage management principles should be considered potential actions under the Act and should be rewritten as to operate on the *outstanding universal value* and preservation of the integrity of the World Heritage properties. A definition of World Heritage property should be inserted in the dictionary to the Act, and Section 12 be amended to ensure protection arising from the Act is comprehensively property-based, rather than simply values-based.

¹ See ss 12-15A *EPBC Act 1999*.

² DEH Administrative Guidelines on Significance, July 2000: <http://www.deh.gov.au/epbc/assessmentsapprovals/guidelines/administrative/index.html#wh>

³ *Ibid.*

⁴ *Booth v Bosworth* (2001) 114 FCR 39; 117 LGERA 168; [2001] FCA 1453 - “Flying Fox Case”. See Elisa Nicholls, EDO Queensland Impact article December 2001. the judgment is available on the federal Court website at <http://www.fedcourt.gov.au/gfx/j011453.pdf>.

⁵ *Minister for the Environment and Heritage v Queensland Conservation Council Inc and WWF Australia* [2004] FCAFC 190 30 July 2004 - “Nathan Dam Case”. See “EDO Queensland Wins Nathan Dam Appeal” Larissa Waters, Solicitor, EDO Queensland. *Impact* June 2004. The judgment is available online at www.austlii.edu.au/au/cases/cth/FCAFC/2004/190.html.

⁶ Source: K. Muir, Colong Foundation for Wilderness, NSW 2005.

Part 2:

The funding and resources available to meet the objectives of Australia's national parks, other conservation reserves and marine protected areas, with particular reference to:

b. whether governments are providing sufficient resources to meet those objectives and their management requirements

Background

Each State and Territory currently allocates funds to meet objectives and management requirements of protected areas. ANEDO has not analysed each state budget for the purposes of this submission due to time constraints. We have however, received feedback in many jurisdictions regarding the inadequacy of current funding levels to adequately provide for acquisition and on-going management costs.

In relation to term of reference (b), we would like to note the income generated by protected areas. For example, each year Queensland's national parks host more than 12.5 million visitors, generating more than \$1.2 billion in economic activity for the State.⁷ Increased investment in managing such areas is therefore cost effective and a worthy investment.

Discussion

Each jurisdiction has numerous specific examples of conservation initiatives delayed by funding constraints and resource limitations. Often it is not a lack of data or scientific knowledge, ie, it is clear what is vulnerable and in need of protection, it is rather a matter of human and financial resource allocation.

Case study: Tasmanian marine protected Areas Strategy

The implementation of worthy initiatives in Tasmania over the past five years – particularly the development of the Marine Protected Area Strategy and the Conservation of Freshwater Values Project – have been frequently hindered or delayed by lack of resources. For example, the Marine Protected Area Strategy identifies nine marine bioregions and supports the establishment of an MPA in each bioregion. However, only two bioregions are currently represented – the Kent Group and Macquarie Island. The Resource Planning and Development Commission is currently undertaking an inquiry into the possible establishment of an MPA in the Bruny bioregion. The MPA Strategy is a comprehensive document and the current Minister has shown a lot of support for the project. However identifying, assessing and implementing MPAs continues to be a very protracted process.

In addition to each State and Territory reviewing and providing increased resources to fast track conservation initiatives, ANEDO strongly supports increased Commonwealth funding to meet objectives of reservation and ongoing management of national parks, conservation reserves and marine protected areas. This is consistent with our recommendation for increased Commonwealth involvement in conservation and management of protected areas to better implement international obligations. This is discussed below in Part 4.

⁷ See <http://www.deh.gov.au/parks/hoa/index.html#qld>.

Case Study: Resource Allocation in Western Australia

[The following comments have been submitted as part of a separate submission on behalf of the Western Australia EDO].

“In Western Australia, resources for protection have been inadequate over the past three governments to supplement the reserves system appropriately. These resources are needed to fund the conversion of long-standing pastoral land acquisitions to formal conservation reserves (approximately 2% of the State) and to purchase land to complement the formal reserve requirements according to the CAR principles that have been adopted as reserves acquisition policy by past Liberal as well as Labour State governments.

At Federal level, the Department of Environment and Heritage resources its management of its WA responsibilities under the *EPBC Act 1999* entirely from Canberra, despite:

- Western Australia being the size of India, containing several World Heritage Areas, four MPAs and other conservation assets of critical size and importance; and
- having to fly people in regularly to deal with EIA issues arising under the *EPBC Act 1999* and referred species threats both of which would benefit from the expertise of local trained and based ecologists.

Its policy is to have no permanent staff on the ground. Although in recent times it had a single worker based in Fremantle to work on marine issues, that person was a contractor. These resources may be adequate (it is impossible to tell from outside the Department) but it does not appear to be the most effective use of resources.”⁸

ANEDO also supports increased funding to encourage conservation on private land adjacent to reserves, or on private land constituting corridors between reserves. There needs to be resources directed at reviewing integration and coordination of off-park initiatives.

Funding required to address specific threats is discussed further in Part 3. Funding for co-management regimes is discussed in Part 5.

Part 3:

The funding and resources available to meet the objectives of Australia's national parks, other conservation reserves and marine protected areas, with particular reference to:

c. Any threats to the objectives and management of our national parks, other conservation reserves and marine protected areas

Background

There are numerous threats to the effective management and protection of areas under review in this Inquiry. Different stakeholders have contrasting views on acceptable levels of access and use of different areas. For specific detail on conservation concerns

⁸ For further information on EDO WA see: <http://www.edowa.org.au/>.

surrounding activities such as horse riding, motor vehicles, and roads in national parks, please refer to policies of groups such as the National Parks Association of NSW.⁹

For the purposes of this submission, ANEDO has limited discussion of threats to selected examples relating to certain contentious permitted activities in protected areas, the impact of invasive species, and issues surrounding revocation of areas.

Discussion

Permitted Activities

Tourist and commercial Developments

A tension exists between preserving areas for their scenic, ecological or heritage values, and facilitating general public enjoyment of those values. The latter pressure has caused an increase in recent years of development applications for tourist and commercial developments within parks and reserves. A good example is in relation to the demand for ski lodges and tourist facilities in the Australian snow fields, much of which constitute alpine national park. The inherent problem is the inconsistency between conservation objectives contained in legislation and management plans, and proposed developments.

Case study: Cockle Creek, Tasmania.

The Tasmanian Wilderness World Heritage Area and the adjacent national park areas are managed in accordance with the *Tasmanian Wilderness World Heritage Area Management Plan 1999*. The management plan sets out management prescriptions for the area and identifies activities that can and cannot be undertaken. Development is generally restricted to Visitor Services Zones and Recreation Zones, with the objective of protecting natural and cultural values.

The Management Plan originally provided:

In the Southwest National Park, development of infrastructure, including huts, is not allowed in view of the natural character of the area (at p154).

In 2000, Staged Development Australia submitted a proposal for a tourist resort at Planter Beach, Cockle Creek, within the Southwest National Park. The development included a lodge, 60-80 accommodation units, roadwork and a jetty. Conservationists were concerned that the proposed development was inconsistent with the management objectives of the national park, and would jeopardise any chance of having the area incorporated into the World Heritage Area in future.

In order for the development to proceed, it was necessary to amend the Management Plan – a process that requires ministerial approval at federal and state level. In December 2001, the Ministerial Council recommended approval of the proposed amendment. In 2002, the Management Plan was amended to establish a new ‘Cockle Creek East Visitor Services Site’ and authorise the tourist development. The Management Plan now relevantly provides:

In the Southwest National Park, in view of the natural character of the area, development of accommodation infrastructure, including huts, is not allowed except within the Cockle Creek East Visitor Services Site (at p154).

This example demonstrates the ‘flexibility’ of protection offered in protected areas. The Management Plan clearly recognised that development in the South West National Park

⁹ See www.npansw.org.au.

was inconsistent with the natural character and values of the area. However, a management plan cannot provide adequate protection if the response to a development that is inconsistent with the plan is to alter the plan, rather than refuse the development.

Amendment of Management Plans on an ad hoc basis to permit new developments periodically has the potential to significantly undermine the management planning process and purpose. ANEDO supports entrenched legislative processes that require public participation and consultation as well as Federal assessment in such circumstances. As noted by the National Parks Association of NSW, the management planning process needs to be reviewed in order to reduce delays and make plans more readily available to the public.¹⁰

Fishing

Similar to terrestrial protected areas, marine protected areas are under threat from certain permitted activities, which conflict with the conservation objectives of the reservation. An obvious example is in relation to inappropriate fishing activities.

Case study Shark fishing in Kent Group Marine Protected Area, Tasmania

The Kent Group Marine Protected Area (the *MPA*), situated in eastern Bass Strait, was declared in 2004. In 2005, regulations came into force designating half of the marine reserve as a no-take zone ('Sanctuary Zone') and restricting fishing activities in the balance area ('Habitat Protection Zone'). Under Tasmanian law, shark fishing was not permitted in either zone.

However, under the Offshore Constitutional Settlement between the Commonwealth and Tasmanian governments, the AFMA has responsibility for managing school and gummy sharks in the Southern and Eastern Scalefish and Shark Fishery, which includes the Kent Group MPA. This arrangement meant that restrictions imposed by the Tasmanian government did not apply to Commonwealth permit holders authorised to fish for shark in Tasmanian coastal waters.

In February 2005, the Tasmanian government advised AFMA that the MPA was being implemented in accordance with the Marine Protected Areas Strategy and was intended to protect the diversity of the area. State Environment Minister, Judy Jackson MHA, requested that Commonwealth permits be amended to prevent fishing in the MPA. Despite this request, Commonwealth permits continued to allow commercial shark fishing in the MPA. The continuation of shark fishing in the area was clearly inconsistent with the management objectives of the marine reserve and threatened to compromise biodiversity in the area.

Following determined lobbying by conservation groups and the Tasmanian government to secure protection for the Kent Group MPA, former federal Fisheries Minister, Senator Ian Macdonald, recently announced that shark fishing would be banned in the reserve. The *Southern and Eastern Scalefish and Shark Fishery 2006 Management Arrangements* confirm that, from 1 January 2006, Tasmanian coastal waters permits will not allow shark fishing in the Kent Group marine reserve.

The ultimate outcome in this example is positive. However, it demonstrates the problems that result from lack of coordination between parties responsible for management of protected areas.

¹⁰ See www.npansw.org.au.

Case study: Western Rock Lobster Fishery in Western Australia

A similar inconsistency of permitted activity exists in Western Australia. Ministerial decisions made under Part 13A of the *EPBC Act 1999* have allowed at least one protected species to be taken ancillary to the decision on the proviso that a management plan is in place. This can undermine State law protecting individuals of that species.

In Western Australia, for example, the Western Rock Lobster Fishery is allowed to take an Australian Sealion a year “on average” before the fishery has to make any management response, whereas it is an offence at State law to even take one Australian Sealion. In the past few years, the WRLF has reported up to six a year, and continues to operate with impunity.

ANEDO submits that there needs to be a review of Commonwealth activities in state marine areas and improved coordination of prohibitions in order to more effectively achieve conservation outcomes.

Invasive Species

As noted by the NPA, exotic species of flora and fauna, both aquatic and terrestrial, while being a serious concern for agriculture, also diminish public enjoyment of natural areas.¹¹ Invasive species affect land of all tenure and therefore a broader landscape approach is needed, which of necessity would include management action in protected areas.

We note that considerable funding has been allocated to various weed research initiatives, but we recommend additional funding be made a priority due to the potential costs of failing to comprehensively address the issue. Weeds have a major impact on both agricultural land and natural ecosystems in Australia. Weeds already cost Australia an estimated \$4 billion each year, and that the cost will increase without concerted prevention and control efforts across all Australian jurisdictions. Current legislative and regulatory regimes at a national, State and Territory level vary greatly in approach and effectiveness. There is a lack of uniformity and some serious deficiencies in implementing a precautionary approach to this trans-boundary problem across the landscape. Whilst there have been coordination efforts such as the development of Weeds of National Significance (WONS), the National Weeds Strategy, and Australian Weed Committee (AWC); there is a lack of a coordinated and uniform effort across all jurisdictions.¹²

ANEDO strongly supports increased funding to explore and implement measures to control and eradicate invasive species in natural areas. Funding should also be made available to assist landholder control feral species on land adjacent to protected areas. Eradication plans should be public available and take into account the impacts of control actions on both the target species and native species.

Incremental revocation of park boundaries

Case study: New South Wales Revocation Policy

Over the last 5 years legislation has been introduced on a regular basis to revoke areas of the New South Wales national park estate. After debate in 2001, the NPWS developed

¹¹ See www.npansw.org.au.

¹² For further analysis of the impacts of invasive weed species more generally, see: <http://wwf.org.au/ourwork/invasives/>.

principles to guide the revocation process, including offset requirements for compensatory habitat. At the time of writing, a new *National Parks and Wildlife (Further Adjustment of Areas) Bill 2006* has been introduced to revoke 1000 ha of Bargo State Conservation Area in order to expand a shooting range and associated commercial facilities. The offset ratio is 3:1 and consequently 3000 ha are being added to Yengo National Park and Dharawal State Conservation Area to compensate for the revocation.

While ANEDO opposes revocation of gazetted areas in principle, we acknowledge that occasional boundary adjustments may be necessary in exceptional circumstances. Where this occurs, it is desirable to have a clear and transparent process in place. The following excerpts from the NSW NPWS *Revocation of Land Policy 2002*¹³ provide a useful model.

Revocation of Land Policy

...

Objectives

To ensure a consistent administrative and consultative approach for the preparation of park revocation proposals.

To ensure an optimal conservation outcome and appropriate compensation in the event of a revocation.

Scope / Application

This policy applies to all NPWS parks and reserves.

...

Policy

1. The revocation of lands reserved or dedicated under the NPW Act will generally be undertaken as an avenue of last resort and only where appropriate, for example to correct a boundary error or encroachment

where no other practical options are available.

...

Boundary encroachments

4. Where a boundary encroachment is discovered, the NPWS will consider a range of options to rectify or ameliorate the encroachment before revocation may be considered.

5. Options that may be considered include (but are not limited to):

- _ Removal or relocation of the encroaching development;
- _ Demolition of the encroaching development;
- _ Adaptive re-use of the encroaching development;
- _ Issuing a lease, licence or easement for the encroaching development where the development is consistent with the objects of the reserve and plan of management (ie. where a nexus between the development and the reserve can be established); or
- _ Revocation of the land supporting the encroaching development.

6. A number of factors should be considered in assessing the most appropriate options. These include (but are not limited to):

- _ Positive or negative impacts (if any) on integrity of the park and its boundaries (including connectivity and manageability);
- _ Positive or negative impacts (if any) on the natural and cultural values of the park;
- _ Positive or negative impacts (if any) on current and future visitors to the park (including access and amenity);
- _ Social, economic and financial costs and benefits of any action with respect to the development (including costs of removal etc); and
- _ Legal advice, including whether penalties or legal action should be pursued.

¹³ Policy reference No: Pmopa/011/jul02/SP, file no. 02/05503. During the passage of the *National Parks and Wildlife (Adjustment of Areas) Act 2001*, the Minister for the Environment established an internal review of NPWS revocation procedures. The goal of the NPWS Review of Revocation Procedures was to improve the administrative and consultative processes with respect to revocations, and to put in place the necessary procedures to reduce, or preferably eliminate, the prevalence of boundary incursions and other situations which create the need for revocations. The Review resulted in 17 recommendations, all of which were adopted by the Minister for the Environment. One of these required the development of policy guidelines intended to reflect the majority of the Review's recommendations.

7. The Director-General and the Minister are to be briefed about any boundary encroachments, as they become known.

8. The relevant Regional Manager will seek the advice of the National Parks and Wildlife Advisory Council and the relevant local Advisory Committee regarding any revocation proposals. Any formal comments or resolutions prepared by those advisory bodies must be noted in any advice to the Director-General or Minister.

Development proposals that require revocation

9. Where a non-permissible activity or development (eg. a major highway rerouting or upgrade) is proposed by another party and requires the use of NPWS land, either the park boundary can be re-defined to exclude the proposed development or the development cannot proceed because it would encroach upon the park.

10. In exceptional circumstances and where no suitable alternative sites are available outside of NPWS land, the Minister (only) may direct the NPWS to examine the potential revocation of the area. Circumstances where this may be required may include major Government infrastructure initiatives.

11. In such circumstances, the proponent is to provide the Director-General and the Minister with details regarding the proposal, including any land proposed as compensation. The proponent is required to demonstrate to the Director-General, and ultimately the Minister, that the revocation is essential and that the public value of the proposed activity outweighs any conservation loss.

12. The advice of the National Parks and Wildlife Advisory Council and the relevant Advisory Committee is to be sought by the relevant Region. This is to occur following in-principle ministerial approval to examine potential revocation and the development of the revocation proposal through negotiation with the proponent.

13. In providing advice to the Minister regarding development proposals that would require revocation, factors that should be considered include (but are not limited to):

- _ Any formal advice or resolutions prepared by the National Parks and Wildlife Advisory Council and relevant Advisory Committee;
- _ Positive or negative impacts (if any) on the integrity of the park and its boundaries (including connectivity and manageability);
- _ Positive or negative impacts (if any) on the natural and cultural values of the park;
- _ Positive or negative impacts (if any) on current and future visitors to the park (including access and amenity);
- _ Adequacy of proposed compensation for the revocation (refer to policy sections 15, 16 and 17);
- _ Social, economic and financial costs and benefits of any action with respect to the proposed development.

...

Compensation

15. Where the NPWS seeks compensation for revocations, it will generally be in the form of the transfer of land to the Minister for reservation or dedication under the NPW Act (and preferably as an addition to the park that is subject to the revocation).

...

17. When negotiating compensation, the NPWS will be guided by the following heads of consideration:

- (a) Compensatory land should be of greater size than the area of land being revoked (and at least of equal size);
- (b) It is desirable to match the area, type and quality of habitat, and cultural heritage on land being revoked with the area of land proposed as compensation where possible. Exceptions to this may include, for example, compensation that includes a different habitat type (eg. That is poorly reserved) where the habitat to be impacted is commonly represented within the relevant park;
- (c) It is desirable that land to be transferred as compensation is close to the area being revoked and is adjacent to the relevant reserve; and
- (d) Information gathered on lands to be revoked and on proposed compensatory land should include:
 - _ Biodiversity . eg. species present, including populations and community presence, and habitat types;
 - _ An assessment of habitat quality, habitat connectivity, and adjoining habitat uses;
 - _ The home range and territories of target species,
 - _ Rarity of species;
 - _ Landform; and
 - _ Cultural heritage values.

18. For all revocations requiring compensation, a written agreement is to be made between the Minister and the party to whom the Minister will transfer the revoked land prior to the introduction of revocation legislation. This agreement shall identify the proposed compensation and its natural and/or cultural heritage values and will ensure the transfer of the compensation to the Minister. An agreement may occur through the exchange of letters between both parties.

19. The Minister must be satisfied that proposed compensation is of equal or greater conservation value both in terms of natural and cultural heritage than the land that is proposed to be revoked.

20. It is desirable that compensatory land is transferred to the Minister prior to, or simultaneously with, the transfer of the revoked land.

Lands subject to international agreements

21. Where it is proposed to revoke any part of a park that is listed on an International Convention, such as World Heritage, Ramsar or Man and the Biosphere, the relevant Regional Manager will consult Environment Australia regarding the proposal.

ANEDO submits that revocation must only occur in exceptional circumstances, and does not support revocation to facilitate commercial developments in parks or wilderness areas. If there is no alternative to revocation, there must be clear protocols in place including large offset ratios of compensatory reservation.

Part 4:

The funding and resources available to meet the objectives of Australia's national parks, other conservation reserves and marine protected areas, with particular reference to:

d. The responsibilities of governments with regard to the creation and management of national parks, other conservation reserves and marine protected areas, with particular reference to long-term plans

As noted above, natural resource management and environmental protection has historically been the realm of the states, with Commonwealth intervention on specific issues. As such, the responsibilities of States and territories to create and manage protected areas are reasonably clear in the legislation of each jurisdiction. (As noted, a key issue is the need for increased funding to more comprehensively meet these responsibilities). Therefore for the purposes of this submission, we would like to focus on the responsibilities of the Commonwealth government.

ANEDO submits that the Commonwealth needs to shoulder more responsibility for the creation, management and resourcing of national parks and protected areas, in order to more fully meet obligations under international conventions.

Background

Commonwealth responsibility

The role of the Commonwealth Government in managing the environment is bounded by the related factors of the Australian Constitution and the historical nature of Federal/State relations. As noted, the Commonwealth has historically been content to, intervene only in strategic cases¹⁴ and otherwise seeking to foster a co-operative approach to natural resource management and environment protection.¹⁵

¹⁴ For example, the Commonwealth used its external affairs power, amongst others, to stop the damming of the Gordon below Franklin River.

¹⁵ Inter-Governmental Agreement on the Environment 1992.

The basis upon which the Commonwealth Government of Australia has made provisions relating to the subject matter of the treaties and conventions is via section 51(xxix) of the *Constitution 1901* which enables the Commonwealth to make laws and regulations in respect of external affairs. In recent years, the Commonwealth has become more interventionist in relation to nationally significant environmental matters. The *EPBC Act 1999* currently gives effect to many of Australia's international obligations in domestic law. The responsibility of the Commonwealth in relation to treaty obligations that are relevant to protected areas and the conservation of values in those areas is discussed below.

International Obligations

- *Convention concerning the Protection of the World Cultural and Natural Heritage - World Heritage Convention*

The World Heritage Convention provides for the listing of sites that have outstanding universal value, based on natural and cultural heritage values. In respect to natural heritage values, Article 2 of the World Heritage Convention defines "natural heritage" as being

"natural features consisting of physical and biological formations and groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiological formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science and conservation; natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty."

The World Heritage Convention requires each Party to the Convention to ensure the identification, protection, conservation, preservation and transmission to future generations of the cultural and natural heritage identified in its territory.¹⁶ This places obligations on the country in which a world heritage site is located to ensure effective and active measures are taken, including developing policies, carrying out scientific studies and putting in place legal and other mechanisms for protecting/conserving natural and cultural heritage.¹⁷

- *Convention on Biological Diversity*

The CBD operates as a framework treaty seeking to achieve the conservation of the earth's biodiversity, including terrestrial, marine and other aquatic sources. The substantive obligations of Parties are expressed in broad terms, including Article 8 which provides:

Article 8. In-situ Conservation

Each Contracting Party shall, as far as possible and as appropriate:

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;

¹⁶ Article 4 WHC

¹⁷ Article 5 WHC

- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas;
- (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies;
- (g) Establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health;
- (h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species;
- (i) Endeavour to provide the conditions needed for compatibility between present uses and the conservation of biological diversity and the sustainable use of its components;
- (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;
- (k) Develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations;
- (l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities; and
- (m) Cooperate in providing financial and other support for in-situ conservation outlined in subparagraphs (a) to (l) above, particularly to developing countries.

Furthermore, Article 6 provides:

“Each contracting party shall, in accordance with its particular conditions and capabilities: Develop national strategies, plans or programs for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programs which shall reflect inter alia, the measures set out in this Convention relevant to the Contracting Party concerned ...”.

- *Convention of Wetlands of International Importance, Especially for Waterfowl Habitat - Ramsar Convention*

The Ramsar Convention provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. Wetlands of international importance are selected on the basis of their international significance in terms of ecology, botany, zoology, limnology or hydrology.¹⁸

¹⁸ The Convention has developed *Criteria for Identifying Wetlands of International Significance* at www.ramsar.org/about_infopack_5e.htm. The definition of a “wetland”, [for the purposes of the Ramsar Convention, includes: “areas of marsh, fen, peatland or **water, whether natural or artificial**, permanent

Once a wetland is included on the Ramsar Convention's list of Wetlands of International Significance, States are required to:¹⁹

- formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.
- promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the List or not, and provide adequately for their wardening.
- encourage research and the exchange of data and publications regarding wetlands and their flora and fauna.
- endeavour through management to increase waterfowl populations on appropriate wetlands.

- *Convention of the Conservation of Migratory Species of Wild Animals - Bonn Convention*

The Bonn Convention adopts a framework in which states with jurisdiction over any part of the range of a particular species co-operate to prevent migratory species becoming endangered. For Australian purposes, many of the species are migratory birds. Hence, mechanisms to protect the riverine habitat of those species may be relevant.

- *Australia's bilateral migratory bird agreements with Japan and China (JAMBA and CAMBA)*

In broad terms these two bilateral agreements provide obligations for Australia, Japan and China to take various actions to protect the migratory birds which are known to migrate between the respective countries. Both JAMBA and CAMBA expect actions to be taken to protect the indicated species of migratory birds and also their "environments."²⁰ There are currently 31 sites on the East Asian-Australasian Shorebird Site Network, with 11 of these being in Australia. While the declaration of sites on the East Asian-Australasian Shorebird Network does not by itself confer any special protection for these areas, the *EPBC Act 1999* does provide a legislative mechanism for protecting the species listed under the annexes appended to both JAMBA and CAMBA.

All the aforementioned Conventions are of relevance to protecting the values of protected areas in Australia and provide a mandate for increased Commonwealth involvement.

Discussion

Commonwealth responsibilities under the EPBC Act 1999

This part discusses the degree to which the Commonwealth has met international obligations through implementation of the *EPBC Act 1999*.

or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres."

¹⁹ See Articles 3.1, 4.1, 4.3 and 4.4.

²⁰ This commitment is largely pursued today through the Asian-Pacific Migratory Waterbird Conservation Strategy 2001-2005 and the East Asian-Australasian Shorebird Network. Launched in 1996 the East Asian-Australasian Shorebird Network aims to establish a network of the most important wetland sites used by migratory shorebirds on their annual pilgrimage to their Northern hemisphere breeding grounds and back.

The *EPBC Act 1999* establishes a framework whereby it is an offence to take an action regarding designated “matters of national environmental significance” without prior approval.²¹ The triggers relating to obligations under international Conventions relevant for this submission include:

- World Heritage Properties
- National Heritage Places
- Ramsar Wetlands
- Listed Migratory Species
- Commonwealth Land
- Threatened species²²

As is apparent, there is an overlap of these matters and existing protected areas. The *EPBC Act 1999* also establishes mechanism for the management of areas of land or species designated as places or items of national environmental significance.

- **World Heritage**²³

Under subsection 12(3) a property has *world heritage values* only if it contains natural heritage or cultural heritage. The *world heritage values* of the property are the natural heritage and cultural heritage in the property. Subsection 12(4) provides that cultural heritage and natural heritage have the meaning given by the World Heritage Convention. The natural and cultural heritage in World Heritage properties is usually described in the nomination documents and other materials prepared by the World Heritage Committee. To qualify for inclusion in the World Heritage Listing, the place needs to have “outstanding” natural and cultural heritage properties, as defined in the Operational Guidelines.²⁴

The Commonwealth may submit a property for inclusion in the World Heritage List only after seeking the agreement of relevant States, self-governing Territories and land-holders. The Minister must make plans for managing properties on the World Heritage List that are entirely in Commonwealth areas. The Commonwealth must try to prepare and implement management plans for other properties on the World Heritage List, in co-operation with the relevant States and self-governing Territories.

The Commonwealth and Commonwealth agencies also have duties relating to World Heritage properties in States and Territories. The Commonwealth can provide assistance for the protection or conservation of declared World Heritage Properties through financial and technical assistance and also through enforcing the offence provisions of the Act.

There are fifteen Australian properties on the World Heritage List. World Heritage properties are considered the ‘jewels in the crown’, representing places of outstanding

²¹ See Part 3, Division 1

²² For example: nationally vulnerable Murray cod.

²³ Section 528 provides the following definitions relating to world heritage: World Heritage Convention means the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as in force for Australia immediately before the commencement of this Act. *World Heritage List* means the list kept under that title under Article 11 of the World Heritage Convention. *World heritage values of a property* has the meaning given by subsection 12(3).

²⁴ Operational Guidelines for the Implementation of the World Heritage Convention, Articles 23 -45

natural or cultural value or both. World Heritage properties are usually managed under a Federal-State cooperative agreement that includes a cost sharing arrangements. This contrasts with the management approach for Ramsar wetlands which often involve private landholders.

- **National Heritage Places**

Section 324C provides a mechanism by which the Minister records a National Heritage List of National Heritage Places. The places that may be included on the list are defined at s324C(2) where:

A place may be included in the National Heritage List only if the Minister is satisfied that the place has one or more National Heritage values. A place that is included in the National Heritage List is called a National Heritage Place.

National Heritage values are defined at s324D as criteria prescribed by the Regulations and these criteria must include natural, indigenous and historic heritage values of places. An item will contain National Heritage values if it has “outstanding” significance. To qualify as “outstanding”, the place must demonstrate either importance in the course of Australia's natural or cultural history; a possession of uncommon, rare or endangered aspects of Australia's natural or cultural history; or potential to yield information that will contribute to an understanding of Australia's natural or cultural history.²⁵

Once the National Heritage Place is included on the list, the Minister must make plans to protect and manage the National Heritage values of the National Heritage place in Commonwealth areas in accordance with in s324S. A different management regime applies for National Heritage Places in State and self-governing Territories. These must be managed pursuant to s324X, where the Commonwealth must prepare and implement management plans in cooperation with States and self-governing Territories.

- **Wetlands of International Importance**

The designation of wetlands for inclusion in the List of Wetlands of International Importance kept under the Ramsar Convention is by agreement. Specifically, the Commonwealth must obtain the agreement of relevant States, self-governing Territories and land-holders.²⁶ The Minister has an obligation to make plans for managing wetlands listed under the Ramsar Convention within Commonwealth areas, and such plans should not be contravened.²⁷

The Commonwealth must try to prepare and implement management plans for other wetlands listed under the Ramsar Convention, in co-operation with the relevant States and self-governing Territories.²⁸ In particular, the Commonwealth must take all reasonable steps to exercise powers and functions in a manner not inconsistent with

- Ramsar Convention;
- management principles; and
- any applicable management plan.

²⁵ EPBC Regulations, cl 10.01A.

²⁶ Section 326.

²⁷ Sections 328 and 330.

²⁸ Section 333, For a definition of declared Ramsar wetland see section 17.

The Commonwealth and Commonwealth agencies have duties relating to declared Ramsar wetlands in States and Territories.²⁹ The Commonwealth can provide assistance for the protection or conservation of declared Ramsar wetlands³⁰ and can take legal action against persons who carry out unlawful activities that impact upon the wetlands. For example, in 2003 the Commonwealth brought a civil prosecution against a landholder who cleared native vegetation within the Gwydir Ramsar listed wetlands³¹.

Australia has 64 Wetlands of International Importance designated under the Ramsar Convention. These sites range across the IUCN protected area categories. The Convention's central pillar is the concept of wise use and it actively promotes Ramsar sites as 'demonstration sites' for this concept. Ramsar listing is tenure blind so designations of sites can occur across any land tenure. A number of sites include privately owned land and this offers significant potential for the future in terms of seeing significant wetland areas placed under appropriate management regimes.

Of the nearly 1400 Ramsar sites globally, 76 include river reaches. In Australia's *A Directory of Important Wetlands* several sites in Victoria, ACT and Tasmania include river reaches as part of sites recognized as being nationally important. However, in the north of Australia, for example the Kakadu National Park, there is yet to be a Wetland of International Importance declaration to protect a river reach or whole river system. Across northern Australia there are numerous rivers that would easily satisfy the Ramsar designation criteria. While the Ramsar Convention has not been used as a deliberate action to see a river or river reach protected in Australia that option is available should it be deemed appropriate.

- **Listed Threatened species and ecological communities**

Threatened species and ecological communities may be listed under the *EPBC Act 1999* as either extinct, extinct in the wild, critically endangered, endangered, vulnerable or conservation dependent³². Threatened ecological communities are categorised as critically endangered, endangered or vulnerable.³³ Once a threatened species or ecological community becomes listed, the Minister must keep a register in which the Minister may list habitat that is critical to the survival of a listed threatened species or listed threatened ecological community³⁴. There are provisions creating an offence to knowingly damage critical habitat³⁵ and regulating the sale or lease of Commonwealth land containing critical habitat³⁶. The Minister may accredit plans or regimes that do not adversely affect the survival or recovery in nature of the species³⁷.

- **Listed migratory species**

Migratory species are provided for in the *EPBC Act 1999* under s209, where the Minister must establish a list of migratory species that must include:

²⁹ Section 334.

³⁰ Section 336.

³¹ *Minister for the Environment v Greentree and others* (2004) FCA

³² Section 178(1)

³³ Section 181(1)

³⁴ Section 207A

³⁵ Section 207B

³⁶ Section 207C

³⁷ Section 208A

- (a) all species from time to time included in appendices to the Bonn Convention and for which Australia is a Range State under the Convention; and
- (b) all species from time to time included in lists established under JAMBA and CAMBA; and
- (c) all native species from time to time identified in a list established under, or an instrument made under, an international agreement approved by the Minister under subsection (4).³⁸

Under s 222A, the Minister may accredit a plan of management under an alternative Act (such as *Fisheries Management Act 1991* (Cth)) that “does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.”³⁹

There are a number of aquatic and riparian species listed as threatened or vulnerable under the *EPBC Act 1999* and many of both the listed domestic species and migratory species rely upon aquatic ecosystems for habitat.

- **Commonwealth land**

A further matter of national environmental significance under the *EPBC Act 1999* is Commonwealth land. The *EPBC Act 1999* provides for the Minister to be the relevant approvals authority for activities on Commonwealth land.⁴⁰

The Minister may declare Commonwealth reserves over areas of land or sea that the Commonwealth (a) owns or leases, (b) is within a Commonwealth marine area; or (c) outside Australia that the Commonwealth has international obligations to protect.⁴¹ For the purposes of this Division land includes the subsoil of land and any body of water (whether flowing or not) except the sea.⁴²

The Commonwealth has power to acquire land for the purposes of making a reservation on land other than land already described above. However, this power is limited in so far as the consent of the State or Territory is required. Specifically, consent is needed in respect of lands that are already designated by a State or Territory for purposes relating to nature conservation, protection of areas of historical, archaeological or geological importance or areas having special significance in relation to indigenous people⁴³.

In order for Commonwealth land to be proclaimed a designated reserve, the Proclamation must contain a number of specifics⁴⁴ including the purposes for which the reserve is designated and assigning a category to the reserve by reference to the IUCN’s protected area categories⁴⁵. As noted above, the characteristics of each of these IUCN categories are outlined in s347(2) of the *EPBC Act 1999*.

³⁸ Section 209(3)

³⁹ Section 222A(e)

⁴⁰ Part 9, Division 1

⁴¹ Section 344(1)

⁴² Section 345(2)

⁴³ Section 344(2)

⁴⁴ Section 346

⁴⁵ These categories are: (i) strict nature reserve; (ii) wilderness area; (iii) national park; (iv) natural monument; (v) *habitat*/species management area; (vi) protected landscape/seascape;

Commonwealth land is generally used by Federal agencies for Commonwealth purposes such as Defence. Whilst some of the land may have significant natural and heritage values, it is usually only the coastal or marine areas (such as Jervis Bay) that would have significant aquatic ecological values.

While significant efforts have been made under the Act to facilitate cooperation between the Commonwealth and States, the Commonwealth could play an enhanced role. We note above how the Commonwealth could better implement their obligations under the World heritage Convention in relation to assessing value. It is not sufficient to gazette world heritage areas or designate RAMSAR wetlands, with adequate resources for management, and the political will and commitment to properly assessing actions which may impact upon those areas. An increased Commonwealth role regarding establishing co-management regimes is discussed further in Part 5.

Long term planning

As noted in the introduction, the comprehensive protection of reserves, sanctuaries, and wildlife corridors will be a vital part of planning to mitigate the impacts of climate change. Already the impacts of climate change can be observed in marine parks such as the Great Barrier Reef and terrestrial areas such as the Wet Tropics,⁴⁶ and alpine national parks.⁴⁷ Protected areas will not only act as carbon sinks, but could provide buffer areas with species moving to cooler high latitudes or altitudes.⁴⁸

While the CAR system is a good basis for establishing reserves, strategic planning must go further than simply creating parks. More attention needs to be directed at assessing whether the reserve system is **adequate** (CAR) in terms of mitigating the effects of climate change. Dr Ian Mansergh, from the Department of Sustainability and Environment, Victoria asserts:

“The primary conservation pillar, a comprehensive, adequate and representative (CAR) reserve system, is challenged as changing distributions effect the long term capacity to protect biodiversity assets (primary purpose). Furthermore, what we do now define as vegetation communities (surrogates for habitat) will reconfigure into new amalgams. Maximising the resilience (health) of the reserves provides a time buffer. Nevertheless, the inevitability of change requires a move from a static (cadastral view) to a long- term landscape approach. In order for the areas between these reservoirs to maintain some ecological capacity to allow for large scale climate change, migration space is required. These living spaces have been termed “biolinks.””

ANEDO submits that the Commonwealth and State governments cooperatively develop strategic long term transboundary plans to incorporate biolinks.⁴⁹

Part 5:

The funding and resources available to meet the objectives of Australia's national parks, other conservation reserves and marine protected areas, with particular reference to:

⁴⁶ See Dr Stephen Williams, James Cook University, “Macroecology in the Mountains of the Australian Wet tropics: the impacts of global climate change on rainforest biodiversity” paper presented at the Great Greenhouse Gamble, 2005 NCC Conference.

⁴⁷ See Roger Lembit, “Climate Change – Implications for the Management of the Reserve System” paper presented at the Great Greenhouse Gamble, 2005 NCC Conference

⁴⁸ Department of Sustainability and Environment, Victoria, “BioLinks” Ian Mansergh, David Cheal and Nevil Amos; presented at The Great Greenhouse Gamble, 2005 NCC Conference.

⁴⁹ See also Michael Dunlop “Implications of climate change for biodiversity management” CSIRO Sustainable Ecosystems; and Roger Lembit, “Climate Change – Implications for the Management of the Reserve System” papers presented at the Great Greenhouse Gamble, 2005 NCC Conference.

e. The record of governments with regard to the creation and management of national parks, other conservation reserves and marine protected areas

Background

The following table summarises the establishment of parks and reserves in each Australian jurisdiction.⁵⁰

State/Territory	Protected areas and reserves etc
Commonwealth	There are currently 21 Commonwealth reserves: 6 national parks, 13 marine protected areas, and 2 botanic gardens.
NSW	NSW NPWS manages over five million hectares of parks and reserves - more than six per cent of all land in NSW. The 600-plus protected areas managed by the NPWS include national parks, nature reserves, Aboriginal areas, historic sites, state recreation areas and regional parks.
Victoria	Victoria currently has: 36 National Parks; 3 Wilderness Parks; 31 State Parks; 11 Marine and Coastal Parks and Reserves; 83 Regional Parks; 3,000 Crown Reserves; Key Heritage Properties and over 200 historic places; as well as Sanctuaries; Gardens; Port Phillip Bay and Western Port; Yarra, Maribyrnong and Patterson Rivers (recreational management). These assets total approximately 16% of the total land area of Victoria.
Tasmania	The Tasmania Parks and Wildlife Service manages 384 reserves covering 2,450,200 hectares, or about 35.86% of the area of the State. This includes National Parks, State Reserves, Nature Reserves (including marine reserves), Game Reserves, Conservation Areas, Nature Recreation Areas, Regional Reserves and Historic Sites. The Tasmanian Wilderness World Heritage Area covers approximately 20% of Tasmania - 1.38 million hectares.
South Australia	South Australia has: 9 icon parks, 12 key parks, 21 minor parks and 288 other reserves. The seven categories of parks are: National Parks; Conservation Parks; Wilderness Protection Areas; Game Reserves; Regional Reserves; Recreation Parks; and Conservation Reserves.
Western Australia	The Department of Conservation and Land Management manage more than 22 million hectares, including more than 8.5 percent of WA's land area: its national parks, marine parks, conservation parks, regional parks, State forests and timber reserves, nature reserves, and marine nature reserves.
Northern Territory	The Parks and Wildlife Commission of the Northern Territory is responsible for planning and developing the Territory's system of terrestrial and marine parks and reserves, along with other lands. It acts as a management agency for the Conservation Land Corporation, Aboriginal and other land owners, managing 91 parks and reserves for conservation and the provision of high quality nature-based tourism/recreational experiences for visitors. A total of approximately

⁵⁰ Source: <http://www.deh.gov.au/parks/hoa/index.html>

	4.5 million hectares of land are managed for conservation purposes.
Queensland	Queensland's 212 national parks and 223 other protected areas cover seven million hectares. World Heritage-listed areas include the Great Barrier Reef, the Wet Tropics rainforests, Fraser Island, the south-east Queensland temperate rainforests and the Riversleigh Fossil Field. Additionally, the Queensland Parks and Wildlife Service is responsible for the management of 4 million hectares of state forest in Queensland.
ACT	The Environment ACT website currently lists: Tidbinbilla Nature Reserve; Googong Foreshores; Namadgi National Park; Murrumbidgee River Corridor; Jerrabomberra Wetlands and Canberra Nature Park.

In terms of national coordination, the National Reserve System (NRS) program was launched in the 1996/97 financial year with an allocation of \$85 million over 5 years. The NRS sought to draw the eight State/Territory-based systems of (essentially terrestrial) protected areas under one umbrella, with that of the Commonwealth Government. Later, the corresponding marine programs from each jurisdiction also joined the NRS. Linked with these is the Regional Forest Agreement process designed to establish forest reserves and promote ecologically sustainable forest management.

All of these reserve systems use the approach of comprehensive, adequate and representative (CAR) to drive their acquisitions. The Interim Biogeographic Regionalisation of Australia (IBRA) and its marine counterpart (IMCRA) have been developed in an attempt to systematically address the way each jurisdiction expands its protected area networks. It is widely acknowledged that the IBRA approach was designed for application with terrestrial ecosystems first and foremost, and that this is unlikely to be a suitable planning tool for aquatic ecosystems. This was reflected in the draft *'Directions for the National Reserves System – A Partnership Approach'* (*Directions*) released for public comment in February 2004. In summary, the NRS has been moderately successful in expanding both land based and marine reserve systems. However freshwater reserves have been a notable omission, which is likely to be addressed through the studies currently underway.

Discussion

It is clear that each jurisdiction has made an effort to categorise and gazette land of high conservation or recreational value, and that effort has been made through the NRS to facilitate national cooperation. However, ANEDO submits that there are gaps undermining an effective comprehensive, adequate and representative reserve system. These gaps include: inadequate creation of freshwater reserves, establishment of co-management regimes, and in relation to wilderness. These are discussed below.

Fresh water aquatic reserves

Many types of aquatic protected areas exist globally. Most often, these areas are called Marine Protected Areas (MPA), but also parks, sanctuaries, reserves, wilderness and wildlife areas, to name only a few. Aquatic Protected Areas (APA) or Freshwater Aquatic

Reserves (FAR) are two acronyms that have been specifically used for protected freshwater areas.

Table 5.1 indicates that there have been ongoing policy commitments for freshwater aquatic reserves over at least 10 years in Australia at the national and state level but there has generally been no implementation with the exception of some reserves in the ACT.

Table 5.1 National and state commitments to freshwater aquatic reserves and progress in implementation (modified from Nevill and Phillips, 2004)⁵¹

	Commitment contained in:	Specific implementation program
National	National Strategy for Ecologically Sustainable Development 1992 Intergovernmental Agreement on the Environment 1992 National Strategy for the Conservation of Australia's Biological Diversity 1996 Saving our natural heritage 1996	National Reserve System Program
WA	Wetland Conservation Policy 1997	None
NT	A Strategy for Conservation of the Biological Diversity of Wetlands 2000	None
Qld	Wetlands Strategy 1999	None
NSW	Rivers and Estuaries Policy 1993 Wetlands management Policy 1996 Biodiversity Strategy 1999	None
ACT	Nature Conservation Strategy 1998	Yes- Murrumbidgee, Molonglo
Vic	State Conservation Strategy 1987 Biodiversity Strategy 1997 Healthy Rivers Strategy 2002-3	Yes ⁵²
Tas	Nature Conservation Strategy 2000 Conservation of Freshwater Ecosystem Values Project, a component of the State Water Development Plan	
SA	Wetlands strategy for SA 2003	None

The lack of action in freshwater protected areas contrasts with numerous national marine protected areas, including the Great Barrier Reef Marine Park which is largest marine protected area in the world, as well as the 216 state marine protected areas.⁵³

Victoria has legislation specifically designed to protect freshwater aquatic environments, namely, the *Heritage Rivers Act* 1992; and more recently Queensland has introduced Wild Rivers legislation. New South Wales, Victoria, South Australia and Western Australia have fisheries or reserves legislation that provides for the declaration and management of aquatic reserves. Queensland, Tasmania, and the Territories have no legislation specifically providing for freshwater aquatic reserves, but freshwater areas can be protected within terrestrial national parks or nature reserves and in some cases there is limited protection in fisheries legislation.

⁵¹ From Nevill J and Phillips N (eds) (2004), *The Australian Freshwater Protected Areas Resourcebook: the policy background, role and importance of protected areas for Australian inland aquatic ecosystems*. OnlyOnePlanet Australia; Hampton Melbourne.

⁵² Note that in relation to the *Heritage Rivers Act 1992* (Vic), heritage river management plans have not been finalised or implemented, and the wetlands reserve network has never been assessed for representativeness.

⁵³ Department of Environment and Heritage (2001), *Australia State of the Environment 2001: Independent Report to the Commonwealth Minister for the Environment and Heritage*, Canberra.

There are no international treaties that provide a direct mandate for, or obligations on, Australia to declare wild or heritage rivers. However, as noted above in Part 4, there are a number of international Conventions that provide a mandate for Australia to pursue aquatic protected areas and which could also facilitate the conservation of wild rivers.

In relation to the conservation of biodiversity associated with freshwater ecosystems, the provisions of the CBD relating to in-situ conservation and the establishment of protected areas⁵⁴ apply equally to terrestrial and freshwater habitats, as do provisions relating to education, exchange of information and technical and scientific cooperation. The World Conservation Union (IUCN) notes that these provisions deal with the institutional and legal arrangements for the management of inland water ecosystems, the adoption of plans, strategies and the integration of biodiversity into other relevant policies⁵⁵.

The CBD Conference of the Parties (COP)⁵⁶ for the CBD has adopted several resolutions dealing with the biodiversity of inland waters. Since 1998 there has been a commitment from the Contracting Parties to pursue a working program on inland water ecosystems and to support national and sectoral plans to conserve the sustainable use of the biological diversity of inland water ecosystems. In February 2004, at its 7th Conference of Parties, the CBD adopted a revised program of work on inland water biodiversity. The new global blueprint for promoting the conservation, sustainable use and sharing of the benefits arising from inland water biodiversity has the following as one its goals:

Goal 1.2: To establish and maintain comprehensive, adequate and representative systems of protected inland water ecosystems within the framework of integrated catchment/watershed/river-basin management.⁵⁷

Of note are the references to collaboration and convergence of approach between the CBD and the Ramsar Convention which have a Memorandum of Cooperation and Joint Work Plan to facilitate and guide their united actions.

At the 7th COP Decision VII/28 on Protected Areas was also adopted. One of its targets is to establish a global network of comprehensive, representative and effectively managed national and regional protected area systems by 2010 terrestrially (including inland water ecosystems) and 2012 in the marine area. A specific action is for parties, as a matter of urgency, to take action to address the under-representation of marine and inland water ecosystems in existing national and regional systems of protected areas.

The various Conventions provide a clear mandate for protecting freshwater areas that meet the criteria under the Conventions. In other words, they give Governments such as Australia the ability (at a Federal level) to become involved in environmental and water protection issues that it would not otherwise have direct power to do. However, Australia, and many other countries have been slow to use the Conventions to protect freshwater ecosystems. This is arguably because the Conventions, with the exception of the Ramsar Convention, have been drafted with terrestrial biodiversity or protected areas

⁵⁴ Article 8 CBD

⁵⁵ Dyson M, Bergkamp G and Scanlon J (eds) , *Flow- the essentials of environmental flows*, 2003, IUCN, Cambridge UK, p.77

⁵⁶ The COP is the primary mechanism by which parties seek to implement and assess strategies to implement, international Conventions.

⁵⁷ Decision VII/4, CBD CoP7, Malaysia, 2004.

in mind. Accordingly, criteria for listing and management strategies are often ill equipped to address the unique values of freshwater ecosystems. That said, in the past 5 years, the various Conferences of the Parties, particularly the COP for the CBD, have identified the need to prioritise the protection of inland water systems. As member States take up the challenge to adopt resolutions that are directed to freshwater protection, it is likely that we will see an increased number of States nominating rivers, reaches and watersheds for inclusion on the various Convention lists.

The NRS *Directions* paper noted that there is a need to better understand and incorporate freshwater values in the NRS. In particular, it identified that further work is needed to clarify what comprehensiveness, adequacy and representativeness mean for freshwater systems and whether the IBRA categorisations are appropriate for freshwater systems. The paper suggested that using the existing IBRA system, but at a finer sub-regional scale, may be useful to set targets and reserve criteria for freshwater reserves. However, others have suggested that the IBRA categorisation is inherently problematic for identifying and prioritising freshwater ecosystems because it does not explicitly take account of hydrology or aquatic ecology, and a dedicated freshwater bioregionalisation may be appropriate.⁵⁸

The NRS *Directions* paper identified the need for further work to describe and map the full range of freshwater ecosystems at an appropriate scale and to develop appropriate criteria and protection mechanisms for reserves. ANEDO submits that this work should be undertaken as a matter of priority.

Indigenous Co-management arrangements

ANEDO strongly supports increased use of joint management models for protected areas. Recognising the fundamental role that traditional owners should have in stewardship and managing culturally significant areas, ANEDO submits that the co-management models used by the Commonwealth⁵⁹ and NSW⁶⁰ be considered for application in other jurisdictions.

In this context, we endorse the submission by the Cape York Land Council.

Wilderness⁶¹

The Federal Government has previously acknowledged wilderness protection as a matter of importance nationally. Wilderness protection was one of the key outcomes of the National Forest Policy Statement (NFPS).⁶² The NFPS defined wilderness as:⁶³

‘land that, together with its plants and animal communities, is in a state that has not been substantially modified by, and is remote from, the influences of European settlement or is capable

⁵⁸ Whittington J and Liston P (2003), “Australian rivers”, published in *Australian Bureau of Statistics Year Book Australia 2003*.

⁵⁹ See Division 4 EPBC Act 1999 regarding Commonwealth reserves.

⁶⁰ See Part 4A *National Parks and Wildlife Act 1974* NSW.

⁶¹ The following information has been provided by the Colong Foundation for Wilderness, NSW, Keith Muir 2005.

⁶² “National Forests Policy Statement. A New for Australia’s Forests”, 2002 Department for Agriculture Forestry and Fisheries: <http://www.affa.gov.au/content/output.cfm?ObjectID=D2C48F86-BA1A-11A1-A2200060B0A03131>.

⁶³ *Ibid.* p50.

of being restored to such a state; is of sufficient size to make its maintenance in such a state feasible; and is capable of providing opportunities for solitude and self reliant recreation.’

The strategy achieved interim protection, value assessment, and protection through a comprehensive, adequate and representative reserve system. A consistent nationwide approach to identifying wilderness was adopted (the National Wilderness Inventory (NWI))⁶⁴ through a co-operative process agreed to by the Commonwealth, States and Territories. Under the RFAs 90 percent, or more wherever practicable, of the areas of high quality wilderness (NWI equal to or greater than 12) that meet the 8,000 ha minimum area requirement were protected. The Commonwealth’s wilderness criteria make clear that non-forest vegetation types can be included in largely forested wilderness areas, as wilderness does not relate to forests only. Wilderness embraces measures of remoteness, naturalness and lack of disturbance, regardless of the composition of the vegetation.

As previously submitted by ANEDO,⁶⁵ the *EPBC Act* should require wilderness areas, defined as NWI 12+ lands that are within formal reserves, to be new matters of national environmental significance. With the possible exception of NSW, wilderness is not effectively protected under the NFPS process as reservation in national parks is inadequate. While the interim protection measures required protection of wilderness for the deferred forest areas during the Regional Forest Agreement process, the final reserves did not adequately protect wilderness.

The majority of wilderness within formal reserves can and is being degraded by development and access, including through the making of plans of management, without consideration of wilderness values for which the area may have been originally reserved. Most states do not formally protect wilderness within the formal reserve system by either statute or management plan. Outside of NSW and Victoria very little progress has been made in the formal protection of these areas. This deficiency could be addressed by a federal trigger.

State of the Park Reporting

In New South Wales a *State of the Parks* Report was published in 2001 by the National Parks and Wildlife Service, with a second Report published in 2004.⁶⁶ The reports include specific detail on all aspects of management of the States reserves system. The Chair of the IUCN World Commission Protected Areas made the following remarks on the reports:⁶⁷

I commend your commitment to this open evaluation of the state of your protected areas ... Your openness, if not courage, to reveal areas where improvement is needed alongside your significant successes is a testament to your recognition of the value of transparency, a fundamental tenet of stakeholder consultation ... The report sets a world wide standard in the comprehensiveness of the issues examined and for the systematic analysis of the best available information ... It is an excellent report that will be copied world wide.

⁶⁴ Lesslie and Maslen 1995.

⁶⁵ Possible new matters of National Environmental Significance under the *EPBC Act 1999 - May 2005*: www.edo.org.au/edonsw/site/policy/php.

⁶⁶ National Parks and Wildlife Service, *State of the Parks 2001*; *State of the Parks 2004*. See: <http://www.environment.nsw.gov.au/publications/parks.htm>.

⁶⁷ Nikita Lopoukhine, Chair IUCN World Commission protected Areas, *State of the Parks 2004*, p2: <http://www.environment.nsw.gov.au/sop04/summarysop04.htm>.

ANEDO recommends that State of the Park reporting requirements be introduced in all Australian jurisdictions, based on the New South Wales model.

Recommendations

The recommendations that have been discussed in the body of this submission can be summarised as follows:

- ANEDO recommends a review be undertaken across jurisdictions to determine whether any conservation areas need upgrading to park status. There should be clear protocols in place to provide that downgrading of status, for example from wilderness or park to recreation, must not occur except in exceptional circumstances.
- ANEDO recommends that resources be directed to the creation of additional marine park areas with clear objectives which translate into no-take zones. To ensure that these areas achieve their conservation objectives, resources must also be directed to compliance and enforcement of the no-take zones.
- ANEDO recommends that in relation to World Heritage properties, the *EPBC Act 1999* should operate on the *outstanding universal value* and preservation of the integrity of the properties listed under the Convention, rather than consideration solely of particular listed values. The *EPBC Act 1999* should be amended to facilitate implementation of the World Heritage Convention's Operational Guidelines. The Australian World Heritage management principles should be considered potential actions under the Act and should be rewritten as to operate on the *outstanding universal value* and preservation of the integrity of the World Heritage properties. A definition of World Heritage property should be inserted in the dictionary to the Act, and Section 12 be amended to ensure protection arising from the Act is comprehensively property-based, rather than simply values-based.
- ANEDO supports increased funding to encourage conservation on private land adjacent to reserves, or on private land constituting corridors between reserves. There needs to be resources directed at reviewing integration and coordination of off-park initiatives.
- Amendment of Management Plans on an ad hoc basis to permit new developments periodically has the potential to significantly undermine the management planning process and purpose. ANEDO supports entrenched legislative processes for management planning that require public participation and consultation as well as Federal assessment where appropriate. Management planning processes need to be reviewed in order to reduce delays and make plans more readily available to the public.
- ANEDO submits that there needs to be a review of Commonwealth activities in state marine areas and improved coordination of prohibitions in order to more effectively achieve conservation outcomes.
- ANEDO strongly supports increased funding to explore and implement measures to control and eradicate invasive species in natural areas. Funding should also be made available to assist landholder control feral species on land adjacent to protected areas. Eradication plans should be public available and take into account the impacts of control actions on both the target species and native species.

- ANEDO submits that revocation must only occur in exceptional circumstances, and does not support revocation to facilitate commercial developments in parks or wilderness areas. If there is no alternative to revocation, there must be clear protocols in place including large offset ratios of compensatory reservation.
- ANEDO submits that the Commonwealth needs to shoulder more responsibility for the creation, management and resourcing of national parks and protected areas, in order to more fully meet obligations under international conventions.
- ANEDO submits that the Commonwealth and State governments cooperatively develop strategic long term transboundary plans to help mitigate the effects of climate change, including the establishment of biolinks.
- ANEDO submits that there are gaps undermining an effective comprehensive, adequate and representative reserve system. These gaps include: inadequate creation of freshwater reserves, establishment of co-management regimes, and in relation to wilderness.
- ANEDO submits that there are a number of international Conventions that provide a mandate for Australia to pursue aquatic protected areas and which could also facilitate the conservation of wild rivers. The NRS *Directions* paper identified the need for further work to describe and map the full range of freshwater ecosystems at an appropriate scale and to develop appropriate criteria and protection mechanisms for reserves. ANEDO submits that this work should be undertaken as a matter of priority.
- ANEDO strongly supports increased use of joint management models for protected areas. Recognising the fundamental role that traditional owners should have in stewardship and managing culturally significant areas, ANEDO submits that the co-management models used by the Commonwealth and NSW be considered for application in other jurisdictions.
- As previously submitted by ANEDO, the *EPBC Act* should require wilderness areas, defined as NWI 12+ lands that are within formal reserves, to be new matters of national environmental significance.
- ANEDO recommends that State of the Park reporting requirements be introduced in all Australian jurisdictions, based on the New South Wales model.