



**Conservation Council
of South Australia Inc**

EPBC Review Submission.

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Conservation Council of South Australia Inc (CCSA) is the peak conservation body for South Australia, representing over 55 of the State's environment and conservation organisations.

CCSA is an independent non-profit, non party-political, community based organisation which provides resources, advice and representation for the SA environment movement, and which leads many of the key conservation campaigns in SA.

CCSA is known for its success in developing long term community development, education, and on-ground environmental restoration programs.

CCSA regularly liaises with Local, State and Federal Governments, Government agencies, media, educational institutions, NGOs, unions, industry, business and other groups on matters relating to the environment and social justice.

As a community organisation, much of what CCSA achieves is through a large network of skilled volunteers from all walks of life – for its office, on-ground, governance and campaign activities.

CCSA is committed to a healthy environment for South Australia.

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Opening Comments:

The **Conservation Council of South Australia (CCSA)** welcomes the opportunity to make comment to this review of the *Environment Protection and Biodiversity Conservation Act (1999)* (*EPBC Act*). If adequately supported and appropriately amended, the EPBC Act could be a powerful instrument for tackling the environmental issues that confront our nation today, including the global consequences of climate change.

Since enactment, we believe the *EPBC Act* has not been given the opportunity to achieve its full potential. Lack of political will to fully implement, utilise and resource the legislation has been a fundamental flaw in the meaningful operation of the *EPBC Act*. Legislative amendments that have reduced the scope of protection and recovery obligations and allowed greater discretionary Ministerial power have compromised the legislation's ability deliver on its objectives. Misuse of bilateral agreements, which are potential mechanisms to improve intra-state environmental performance, will further reduce the ability of the legislation to achieve environmental benefit. However, the legislation holds great opportunity for reform, if the political will can be found to do so.

To be a relevant and holistic piece of environmental legislation, the *EPBC Act* must be broadened to take account of threats not currently recognised in the Act. Without provision to account for cumulative impacts on Matters of National Environmental Significance (MNES), evidence suggests that further decline of these entities will occur and the Act will not deliver on its objectives. Without a mechanism to explicitly account for certain activities' contribution to climate change and their associated impact on MNES (eg. the Great Barrier Reef), Australia will undermine other national initiatives to tackle this global problem. An election commitment of the incumbent Federal government was to include a 'greenhouse trigger' in the Act, and we call for this to be enacted as a matter of the highest priority.

The above statements are intended to provide context for the following comments.

CCSA's submission is primarily focused around the scope of the Act, reporting issues, addressing the issue of significant impact and providing a case study in relation to some of its activities and operations that highlight some of the concerns raised in this submission.

Our submission is partially framed in response to questions raised in the discussion paper and reiterates points made in our submission to the Senate Environment, Communications and the Arts Committee Inquiry into the *EPBC Act* in 2008.

Our comments are also informed by the Mount Lofty Rangers Southern Emu-wren (MLRSEW) and Fleurieu Peninsula Swamps (FPS) Recovery Program which CCSA has run for fifteen years.

Included in Appendix 1 is CCSA's response to the recommendations that emerged from the findings of the ANAO Audit 38 Referrals, Assessments and Approvals under the *EPBC Act 1999*. This originally formed part of our submission to the Senate Inquiry.

The Scope of the Act

Are the objects of the Act appropriate to the Commonwealth's role in environment protection and management?

CCSA does not believe that the objects of the Act are appropriate to the Commonwealth's role in environment protection and management. CCSA strongly believes that the Act must live up to its name, that is, be predicated upon protecting the environment and conserving biodiversity. It should have clear 'bottom lines' that ensure this will occur. This may require a fundamental revision of the Act.

Whilst superficially, the Act "provides for the protection of the environment", recent legal challenges (eg the *Wielangta* case¹) have confirmed that this 'provision' does not in fact equate to protection per se.

The failure to appropriately frame the objects results in an overly high use of Ministerial discretion, with stated outcomes not being achieved.

Are the principles of Ecological Sustainable Development (ESD) appropriate to the Commonwealth's role in environment protection and management? Does the legislation provide an adequate framework to guide ESD decisions made under the Act?

CCSA believes that the principles of Ecological Sustainable Development (ESD) contained within s3(1) (b) and (c) of the Act refer to the necessity for "promotion [of] ecologically sustainable development", not ESD itself. This framework is inadequate and inappropriate to the Commonwealth's role.

It is clear that the construction of the objects of the Act is 'mission critical' in framing how the legislation is applied and how subsequent actions derived from it are processed.

Given the very high rates of extinction and habitat loss since European settlement, CCSA believes a much greater application of the 'precautionary principle' is warranted than what we have seen to date.

Are the existing matters of national environmental significance (NES) appropriate?

As it currently stands, definitions for Matters of National Environmental Significance are too narrow and permit exemptions for industry, such as forestry activities conducted under the auspices of Regional Forest Agreements (RFAs). Although this is not applicable in SA, CCSA nonetheless recognises that the RFA exemptions need to be removed in the interests of improved conservation outcomes.

¹ See *Brown v Forestry Tasmania* (No 4) [2006] FCA 1729; and *Forestry Tasmania v Brown* [2007] FCAFC 186, para 72-73, 80 and 92.

Do you think that there should be any additional matters of NES, and if so, how should such matters be framed?

NES should take into account overarching issues such as climate change, water, land clearing and wilderness protection. For example, the Great Barrier Reef Marine Park should be considered a matter of NES.

What kind of impacts should be considered under the Act? Does the Act adequately encompass not just direct but also indirect impacts?

There is ample evidence that the Act does not address the notion of cumulative impacts at all effectively or appropriately. Cumulative impacts by definition cannot be adequately addressed in isolation. See *Case Study: Victor Harbor Road* below.

The EPBC Act's individual project and species-based approach is fundamentally unsuited to the ecological reality of interacting biological communities and ecosystems.

As an alternative, regional planning, strategic assessment and other approaches that take a more holistic approach to landscape-wide ecological processes and issues should be developed and integrated into a re-vamped EPBC framework.

This is particularly important in relation to climate change, which unbelievably, is currently not identified or recognised as a "threat" under the existing Act.

Threatened Ecological Communities (TECs) & Cumulative Impacts

CCSA believes the provisions to list and vary protection for TECs across condition classes reduce the protection for TECs under the Act, particularly for cumulative impacts at landscapes scales.

Given the objective of the Act, its opportunities to address cumulative impacts lie with the development of guidelines, education and the provision to accredit appropriate State/Territory legislation and development assessment processes through bilaterals, in theory leading to a higher national standard. Few guidelines have been developed and the few in place have been challenged. The scope to develop additional guidelines to account for cumulative impacts in the decision-making process must be encouraged.

Education over and above the operation of the Act and associated with specific nominations has been limited, with the exception of excellent work undertaken by groups such as the Threatened Species (TSN) and Marine and Coastal Community Networks (MCCN). For the most part, the bilaterals negotiated to date have led to a streamlining of processes but it is not clear that they have raised the standards for MNES protection and the accountability of approval processes and subsequent conditions or offsets. South Australia's recent bilateral is a case in point and represents a lost opportunity.

Does the test of significance, in the context of actions having a 'significant' impact on a matter of NES, operate effectively in practice? If you think that there should be another test, what should it be?

In many instances, application of significant impact criteria to the assessment of development impacts on a listed MNES fails to provide protection from further decline. While the Act aims to achieve this, to date it has had limited success in this area. CCSA therefore believes this is an area which requires significant amendment to ensure the Act protects our most significant and vulnerable natural assets. Holistic, adaptable, flexible and yet still scientifically robust guidelines to this significance test are required.

Outstanding issues that require consideration are briefly highlighted below with an example that will pull together the issues and recommendations presented here.

Defining significance

Administrative guidelines do exist for defining significant impact, and these are necessarily generic. Where guidelines have been developed for a specific MNES, results have not always been beneficial (examples in McGrath 2006). Neither of these approaches has had capacity to truly address the issue of determining and therefore avoiding, significant impact. Instead the answer may lie somewhere on the spectrum between highly generic and highly specific guidelines. A particular entity has a unique ensemble of threats and requirements for sustenance and recovery. Where a Recovery Plan exists, or in the very least Conservation Advice, particular recommendations exist as to the management and recovery of the MNES.

Significant impact must be considered and defined in the *specific context* of these recognised threats or recovery requirements of the entity in question. For example, for a dispersal limited species for which connectivity of habitat is recognised as an essential requirement for species recovery, any decrease in local habitat connectivity, regardless of how small, could be considered significant. However the findings would be different for a highly mobile species using the same habitat.

Showing significance

Even with a clear understanding of what constitutes significant impact to a particular MNES, showing this will occur as a result of a given action is hard due to the intrinsic complexity of ecological systems. In theory, it is just as difficult to show that no or sub- significant impact will occur. Unfortunately experience with the referral, public comment and approval process reveals an apparent bias towards assuming minimal impact, with a 'beyond all reasonable doubt' approach to showing otherwise.

The complex nature of our environment is not generally amenable to simple yes and no answers, and makes the application of environmental law particularly problematic (Houck 2006). *The precautionary principle was created to account for this very issue, and recognised in the Act as a component of ecologically sustainable development.*

Significant impact under the Act must account for imperfect knowledge and if questions regarding the impact on vital processes and resources recognised in a Recovery Plan or Conservation Advice (see Defining significance above) cannot be sufficiently answered one way or another; a precautionary approach must be taken.

Future significance

The likelihood of a proposed action to compromise the recovery potential of a MNES must be factored more realistically into the assessment of significant impact. Of course, this consideration at times will be difficult, but is however necessary if we are truly working towards recovery of our MNES.

Where a Recovery Plan exists, the activities required for recovery will have been articulated to some extent (depending on state of knowledge, with acquisition of greater knowledge being a recovery action in itself) and priority sites may have been identified. Considering the proposed action in terms of the potential impact it may have on priority recovery activities, and critical sites, will introduce an element of the necessary strategic decision making required for recovery.

Cumulative significance

The inability to consider cumulative impacts on a MNES under the Act has been recognised as a flaw dating from the enactment of the legislation. So much so, this review has specifically sought feedback here, and we welcome the willingness of the new government to make the long-overdue exploration. The consideration of cumulative impacts intersect with all components of a significance assessment, including how significance is defined, how significance is shown and determining impacts on recovery potential.

Recognition of cumulative impact will not mean the end of development, but instead the beginning of more inventive, creative, holistic and effective mitigation activities, moving us from the narrow site based mindset, to the desperately needed landscape-scale, resilience building way of achieving truly ecologically sustainable development and environmental recovery.

Cumulative significance is an essential consideration in the context of atmospheric carbon accumulation and climate change and the required greenhouse trigger.

Disjunct significance

State and Federal (EPBC) environmental policies do not wholly align in either objectives or the required criteria of consideration for the assessment of activities that may affect a MNES. The importance of reflective State and Federal legislation, policies and management actions in providing for the successful operation of the Act has been commented on throughout this submission. Ideally, State legislation would reflect that required by the Act, however until that is the case, effort is required for State authorities assessing a proposed action under State law to be aware of, and actively considering EPBC requirements.

Proponents must be aware that State approval may not necessarily mean Federal approval. Additionally, when an action is assessed under the EPBC Act, State approval cannot be assumed as a proxy for Federal approval (due to this disjunct in legislative objectives) and therefore the proposal must be assessed independently of State rulings. Similarly, bilateral agreements must not be entered into unless the State legislation is equal to or better than the EPBC Act in terms of objectives and requirements.

Conditional significance

The application of tri-state condition classing to the protection of TECs under the Act is a stark legislative regression from environmental conservation reform. We maintain that this amendment must be rescinded. However while such condition classing exists, no form of conditional significance rating can be applied to TECs that were listed prior to the amendment when assessing the impact of a proposed action. Until the TEC has been subject to a scientifically robust process for determining appropriate condition classes, any application of that criterion could be of great detriment in terms of current and future status of the TEC, and may well be a contravention of this legislation because the classing cannot be retrospectively applied. Condition is a summation and assessment of a complex suite of TEC attributes (component species requirements, landscape processes, ecosystem services etc.) and requires careful consideration.

Monitoring for significance

Recommendation 8 of the NAO recognises the need for rigorous reporting of monitoring efforts for approved actions. Once approval is given, if monitoring is required both of the impacted entity and of any activities decreed for mitigation, a benchmark 'significant impact' is necessary. Additionally, if significant impact is detected at some future instance, what are the next steps? Is the action halted? Is there another mitigation plan? Where conditions of approval are set, and impacts are to be monitored, some kind of reporting, significance trigger and mitigation planning are required.

Protection of critical habitats of threatened species and ecological communities, and potential for measures to improve their recovery

Reporting requirements for proponents are urgently needed. These requirements must be designed to detect both sub- and super- significant impact. Further, if negative impact to the MNES is detected, an action plan should be required. Monitoring the impact of a development, with no plan of amelioration or at least minimisation of continuing impact is only half of the process.

CCSA notes:

- Few critical habitats have been registered.
- The requirement to map critical habitat has been a barrier to its listing because few programs have the resources to adequately survey and map species existing range.
- By its definition, critical habitat 'excludes' (a greater level of protection is applied where technically no further activity is allowed in the area) and without far greater survey resources, Recovery Teams are understandably hesitant to define exclusion areas where there is so little certainty, particularly with the stakeholders.
- Protection of *potential critical habitat*, important for building resilience and providing for long term recovery, is yet to be implemented and the importance of this still has low resonance in Australia
- The provisions to list and vary protection for TECs across tri-condition classes are perceived to be offering less protection for TECs under the Act, particularly as most high priority TECs are in poor condition. The approach means that postage stamp sized areas are afforded the greatest protection, while the areas where restoration is possible - often found at larger scales - and which are critical to recovery are not. *By not protecting these areas the Act fails to address the fundamental challenges of remnant expansion and fragmentation.*
- The provisions to list and vary protection for TECs across tri-condition classes may discourage some groups from nominating TECs
- Scope to incorporate TECs recognised by States/Territories under EPBC should be investigated fully. The removal of the requirement to review State/Territory TEC lists creates a risk that many eligible communities not identified through public nominations will not be considered for listing.
- Greater investment in development of TEC Recovery Plans is needed to *provide leadership through demonstration*, the technical issues associated with planning for TECs are also a barrier and national technical fora to work through some of these issues would be welcomed.
- While there are issues associated with the protection of critical habitat for listed species, many species are yet to be listed or their status updated since the adoption of the Act. Reinvigorating the species National Action Plans and Conservation Overviews to review against the EPBC listed species would be of benefit, particularly for identifying significant gaps such as marine or invertebrate species. Furthermore, working with State/Territory listing processes and clarifying the link between the advice relating to reviewed status in Recovery Plans and EPBC lists would be useful to address, also as part of the improvement of Federal and State integrated implementation of the Act.
- Local and State government planning, environmental valuation and assessment, and environmental law must be raised to the EPBC Act level, and decisions that are made at a state level affecting a listed entity must be made in the context of EPBC Act objectives and requirements.
- In conjunction with State and Territories, recovery efforts need to be removed from 12 monthly funding schedules to provide greater security to undertake long-term recovery actions
- The email notification system for public notices was recognised as an important mechanism for meaningful public involvement in the operation of the Act

(McGrath 2006), and the loss of this system due to funding shortages we believe is a backwards step for proactive community engagement on behalf of the Australian Government.

New Triggers

CCSA considers that the EPBC Act is in clear need of reform. Despite the original potential for the Act to be updated over time, there have been no further triggers added, despite clear necessity for this to occur.

Potential new triggers for climate change and greenhouse gas emissions are essential (and have already been committed to by the present government whilst in Opposition).

Other triggers that could be included relate to:

- water extraction/ interception/ storage
- land clearing
- wilderness protection
- landscape-scale, and/or cross-border planning
- acts of corporations
- invasive species.

Nature of Triggers

The nature of the triggers should be upgraded to authorise the Commonwealth to assume responsibility for all environmental impacts

Ministerial Discretion

Being listed on the National Heritage list currently relies on Ministerial discretion rather than any independent, objective, transparent review of heritage values. (TWS 2008)

Ministerial discretion does involve accounting for some defined criteria, but the most important criteria – the protection of the environment – is not one of them. This is clearly a deficiency in the Act and must be amended to ensure it works to protect the environment.

Onus of proof

The onus of proof should be reversed so that proponents must demonstrate their project will not have significant impacts. The scientific information required to prove that a project will have a significant impact cannot be accounted for within the current investment in Recovery Programs. Additionally, the time and resources spent to assess the impact of developments is not budgeted for and so resources are diverted from other important recovery activities.

Even Recovery Teams that have been working for some time and that have been relatively well supported, such as the MLRSEW and FPS Recovery Team which has been operating for fifteen years and which has fifteen years of data, are unable to provide the definitive proof of significant impact, even in cases where there is little doubt but not absolute proof, such as where a project will increase fragmentation between key populations (see *Case Study: Victor Harbor Road* below).

Where there is doubt about the significance of impact, the precautionary principle should be applied.

How effective has the Act been in relation to Key threats such as land-clearing, climate change and invasive species?

There is limited coordinated implementation of Key Threatening Process (KTP) Threat Abatement Plans (TAPs) at a State or regional NRM scale. However TAPs provide a useful tool for identifying priorities and approaches, and opportunities for greater cooperation must be pursued.

Removing the mandatory requirement to develop TAPs associated with KTP listings has missed an opportunity to catalyse and coordinate many landscape scale threats primarily at the root of species decline.

There are a number of nationally significant threats that have not been listed under EPBC despite their recognition in a suite of national biodiversity policy documents. For instance, all KTPs identified in the Australian Terrestrial Biodiversity Audit of 2002 should be investigated for their suitability for inclusion in the EPBC lists, particularly given likely climate change impacts. Some have been nominated but not listed for reasons permissible under the Act but this is still questionable given the impetus that listing might provide.

Case Study: Overtaking Lane, Victor Harbor Road

Below is an example of how the current Act has not worked to protect vulnerable environmental assets and highlights issues with assessments, referrals, onus of proof, cumulative impact, non-compliance and the intersection of state/federal environmental laws which CCSA urges be addressed in this review.

Mount Lofty Ranges Southern Emu-wren (MLRSEW) and Fleurieu Peninsula Swamps (FPS)

The Mount Lofty Ranges Southern Emu-wren (MLRSEW; *Stipiturus malachurus intermedius*) is listed as endangered under the Act. The Fleurieu Peninsula Swamps (FPS), one of the MLRSEW main habitats, are listed as a critically endangered TEC.

The MLRSEW has outgoing (1999-2003) and incoming (2006-2011; currently under review with DEWR) Recovery Plans. The FPS do not have a Recovery Plan, but are recognised in the MLRSEW Recovery Plans and have had a number of information and management documents produced detailing FPS status, threats, ecological components and management requirements by the MLRSEW FPS Recovery Team (eg. Duffield and Hill 2002; MLRSEWFPS RT 2006) and South Australian State Government (eg. Harding 2005).

EPBC Ref: 2007/3457

EPBC Referral 2007/3457 by the State Department of Transport, Energy and Infrastructure (DTEI) requested the expansion from a dual lane to a 3 lane road (an additional northbound lane). The development would result in increasing fragmentation and decreasing connectivity between two networks of FPS occupied by the MLRSEW.

The potential impacts to the MLRSEW were a net loss of occupied habitat and of connectivity at a key priority site, key threats to the survival and recovery of the species (MLRSEW FPS RT 1999; in prep.). For the FPS, the result will be a loss of area and an increase in fragmentation, also recognised as key threatening processes and detrimental to long term survival and recovery (Duffield and Hill 2002; MLRSEW FPS 2006).

The relative impact magnitude and issues of scientific uncertainty obscured and influenced the consideration of potential significant impact. For the MLRSEW the directly affected individuals consisted of between 3-5 % of the total remaining population (this does not account for estimates of indirect impacts on further reaching demographic processes).

Based on long term monitoring of the population networks either side of the road and evidence of MLRSEW ability to cross a hard barrier such as a dual lane road, connectivity between the dissected patches was stated as likely and as a contributor for the ongoing viability of the populations. The scientific data could not prove the connectivity was definite though and as it could not be shown one way or the other that connectivity existed, it was assumed absent.

Approval to clear the FPS area was obtained first according to the *South Australian Native Vegetation Act 1991*. The area to clear was described as a very small component of the remaining FPS community and in degraded condition due to a significant blackberry infestation. Environmental offsets including the transference of tenure of some adjacent FPS to the conservation system and revegetation with FPS species along the roadside and affected area. The State process could not consider other vital components of the community such as the peat substrate which takes many hundreds of years to accumulate in FPS (Bickford 2001).

The Recovery Program proposed a compromise new road in the form a passageway under the new road which was supported by the State Departments of Environment and Heritage (DEH)

and Water, Land and Biodiversity Conservation (DWLBC). This compromise would address the impacts of increased fragmentation while also addressing the need to expand the road. The specially designed passageway would provide opportunity for safe MLRSEW dispersal, as well as propagule transference for FPS floristic species, and population flow for other swamp invertebrate and aquatic vertebrate species. The passageway was rejected, based largely on cost.

The northbound overtaking lane was approved by the EPBC on 20th June 2007, though construction is yet to occur.

DTEI Ref: 2008/04220/01

On 14 October 2008, the MLRSEW and FPS Recovery Team were asked for comment by DTEI regarding construction of a southbound overtaking lane immediately north (approximately 70 metres) of the northbound overtaking lane. DTEI had determined through its own internal processes that no referral to the EPBC would be made, as significant impact was unlikely as no FPS community would be cleared. The Recovery Team had serious reservations regarding the impacts of the proposal on both ecological and procedural grounds.

The Recovery Team advised DTEI, the South Australian DEH and the South Australian Native Vegetation Council (NVC) of their concerns. Despite support from the DEH and NVC, DTEI would not consider these issues or refer the project to the EPBC.

On 14 November DTEI advised the Recovery Team that construction on the southbound lane would begin in the week beginning the 17 November 2008. The Recovery team took the decision to notify the EPBC Compliance and Enforcement Section on the same day.

The section responded promptly, but held that DTEI did not have to refer the project as they determined it would not likely be a significant impact *again largely based on the fact that it could not be proven without doubt that MLRSEW used the vegetation to be cleared as a dispersal corridor despite significant anecdotal evidence. The idea that the two projects should have been assessed as one was not addressed. The fact that the mitigating actions did not address connectivity, which was the most significant impact of the development, was not addressed.*

How the Act failed

The Recovery Team had significant reservations regarding the impacts of the proposal on the following ecological and procedural grounds:

1) The area to be cleared was not FPS, but is vital connecting habitat for the MLRSEW. This was not considered by DTEI.

The Recovery Team believes the EPBC should have intervened to determine the significance of the impact rather than relying on the DTEI assessment, which was not only flawed in the absence of considering MLRSEW connectivity, but also because mitigation activities planned did not address connectivity or community fragmentation.

2) The southbound and northbound overtaking lanes were clearly part of one project, but were submitted to the EPBC and considered by the EPBC as two separate projects. If submitted together it would have allowed for proper assessment of the impacts and then the determination of mitigating activities.

The developments are of the same nature, will occur in immediate proximity to each other, and construction of both will be undertaken within the same 6 month period. The internal planning processes of the DTEI led to the separation of the proposals, however such a distinction cannot be perceived by the ecology of the area.

3) DTEI made the decision not to refer to EPBC without consultation with the relevant State Department (DEH).

In this instance:

- The net habitat loss for an endangered species, which has the dual importance by being a listed critically endangered TEC was not deemed significant despite the potential perpetuation of key threats
- Scientific uncertainty surrounding connectivity led to the assumption of no connectivity rather than an ecologically precautionary response
- A superficial classification of 'degraded' was applied to the swamp community based on only one condition indicator (weed infestation), and condition inappropriately influenced the decision making process
- State processes were not able to account for all aspects of an ecological community and the Federal decision took the lead from the State rather than building on it
- For the northbound lane, a proposed mitigating action which was a compromise aimed at accounting for much of the uncertainty in the impact assessment, was rejected
- Two projects of the same nature, in the same area, occurring at the same time and by the same proponent, affecting the same populations of threatened species were allowed to be addressed (ie. assessed and mitigated against) as separately and was not challenged by the EPBC

Construction of the southbound lane began on the same day that the Federal Environment Minister announced funding for works to increase MLRSEW connectivity and habitat at the sites that were being further fragmented by the road widening. This highlights that as it currently stands, the Act is not relevant or responsive to the critical environmental protection and reconstruction that is required if we are to halt the decline in biodiversity and protect our natural assets.

This example highlights a number of common issues associated with the assessment and accounting for significant impact under the Act that require clear Federal leadership. The failure of the Act protect key environmental assets in such a straightforward case is deeply concerning, however it also provides an opportunity for education and change.

Conclusion

CCSA's submission has highlighted the importance of amendments to the EPBC Act which will allow it to actively and successfully protect, preserve and enhance the Australia's environmental assets.

CCSA firmly believes an amended Act with a fundamental and core aim of protecting the environment that is adequately supported and resourced, will be a powerful tool to address and tackle the environmental issues that confront our nation today, including the global consequences of climate change.

Changes are required to a range of areas including reporting, the burden of proof and determining significant impact. The case study above highlights a number of these issues in a real world example.

CCSA is confident that through this process of review, the EPBC Act will be strengthened and broadened to incorporate up and coming threats not currently recognised in the Act. Cumulative impacts on Matters of National Environmental Significance (MNES), the effects of climate change and a greenhouse trigger are just some of the reforms that we have highlighted.

We look forward to further engagement in this process with the ultimate outcome delivering improved outcomes for environmental protection and biodiversity conservation throughout Australia. Should you require further information or clarification on any point raised in this submission, please contact CCSA on campaigns@ccsa.asn.au or ph 8223 5155.

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Appendix 1:

CCSA Response to ANAO Audit 38 Recommendations as presented to Senate Inquiry 2008

a. the findings of the National Audit Office Audit 38 Referrals, Assessments and Approvals under the *Environment Protection and Biodiversity Conservation Act 1999*;

The findings made eight key recommendations. For brevity, these recommendations will not be repeated (see original document), but will be commented on where necessary.

Recommendation 1: Agree

Conservation, management, recovery and resilience building of our marine environments are key national challenges. Listing of both marine species and threatened ecological communities (TECs) under the Act, if accompanied by (preferably) Recovery Plans would be of benefit in protecting our globally significant marine life. At present, listing of these entities is severely restricted due to the large knowledge gaps in marine science. However, listing of marine species and TECs could catalyse research to address the significant knowledge gaps that exist about marine ecological functioning by stimulating funding opportunities and researcher interest. Non-commercial marine species, in particular, are poorly represented by contemporary research and a mechanism to enable this essential knowledge gathering could be provided by listing. Such information will have significant implications for marine park networks and also for the necessary move towards ecosystem based fisheries management.

Recommendation 2: Agree

Although, the review and update of existing listings to be inline with State/Territory lists must not be made priority over new listings. Instead, the two processes must occur with equal imperative.

Recommendation 3: Agree

Notwithstanding potential difficulties in defining ecological communities, they can be a more meaningful unit of protection, and often encompass a range of threatened species.

Recommendation 4: Agree

(b) However, restriction of recovery plans to 'priority' species and ecological communities is questionable. Listed species and communities have already displayed conservation priority, to become listed in the first instance.

(c) Obviously where recovery teams or experienced individuals with appropriate capability exist for a species or TEC, pursuing and resourcing the development of Recovery Plans through these established networks/collectives/intellectual wealth is preferable to outside contractors.

Recommendation 5: Agree

A reporting and management system which captures not just on ground outputs, but attempts to track more intangible outcomes such as attitudinal changes, as well as documenting the barriers to recovery could be fashioned to fit and feed the state of environment reporting, and be periodically analysed to improve recovery activity.

Reporting can be an unnecessary administrative burden which can detract resources from recovery actions. A system which is able to be integrated with existing reporting structures, for example where recovery efforts are undertaken with Natural Resource Management (NRM) funding, or other state/national grants schemes, would be most efficient. The information obtained could be of pivotal relevance to other national processes, such as carbon accounting (if carbon emissions were required to be considered under the Act).

The potential here is great, a pilot project scoping the need, utility and structure would be a worthwhile activity. In the least, a scoping project could produce recommendations for States/Territories to streamline and standardise internal reporting requirements.

Recommendation 6: Agree

Recommendation 7: Agree

(a) & (b) Promoting compliance alone is highly unlikely to resolve all non-compliance issues and must be paired with a willingness to undertake enforcement actions when necessary (Macintosh and Wilkinson 2005).

The Act provides a great opportunity to raise the standard of internal State/Territory environmental conservation, management and recovery. An important component of compliance with the Act is for State/Territory legislative process to be reflective of the objectives and regulations of the EPBC Act, such that proponent and stakeholder responsibilities are clear at each step of assessment and management hierarchies. Bilateral agreements must not be allowed to work in the opposite direction where the objectives and requirements of the EPBC Act are insidiously undermined by incompatible State processes resulting in a form of sanctioned non-compliance. Integration between Federal and State process will promote compliance at the local level.

Carrying through to the local level, and establishing direct relationships with key local governments would be of great value. It is important, that where Recovery Teams and community groups exist, they are also integral components of this relationship, and indeed many Recovery Teams will themselves have sought and established a connection with local government previously.

(c) State Environment Departments have mapping units and any mapping exercise to be supported must be a joint exercise between the local government and the relevant State Department, to ensure the manner in which the information is collected, adheres to State standards. Again, scoping for the involvement of local Recovery Teams and community groups in this exercise is essential.

Recommendation 8: Agree

(b) Reporting requirements for proponents are desperately needed. These requirements must be designed to detect both sub- and super- significant impact. Further, a requirement for an action plan if negative impact to the MNES is detected is necessary. Monitoring the impact of a development, with no plan of amelioration or at least minimisation of continuing impact is only half of the process.