

The Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 - April 2020

The ESA's members regularly interact with the *Environment Protection and Biodiversity Conservation Act 1999* (the Act) and are specialists with respect to (i) threatened species and communities listing and recovery, (ii) impacts assessment, (iii) public environmental policy, and (iv) the referrals/approval procedure. Below are our five key recommendations in response to the release of *The independent review of the Environment Protection and Biodiversity Conservation Act 1999 – Discussion paper*.

1. Adequately fund all levels of the Act and implementation to improve its efficiency and effectiveness.

The Act is Australia's premier piece of environmental legislation designed to protect and manage environmental assets, known as Matters of National Environmental Significance (MNES), and other protected matters. **The capability to list and protect biodiversity from harm is the cornerstone of the Act.** The Act can improve biodiversity protection with adequate resourcing of responsible Department(s) for MNES listing and recovery, impacts assessments and referrals, and community education¹.

Preventing extinctions of MNES legislatively protected under the Act requires:

- Adequate resourcing to enable improved support services to translate, understand, and implement the legislation of the Act; and
- New legislative requirements for resourcing recovery planning and recovery actions for all MNES, mapping critical habitat², evaluating compliance, and reporting.

2. Explicitly address the role of Traditional Owners and traditional knowledge systems in relation to assessment processes and species recovery.

The objects of the Act should be written to ensure that Indigenous people are involved in decision-making that affects management and use of their country, history, and culture. It should recognise Indigenous Bio-Cultural Knowledge and its inherent link to biodiversity conservation. We recommend that Indigenous people are properly engaged with Act-related processes through "Right-Way" traditional engagement and "free, prior and informed" consent. Specific changes to the Act include:

- Changes to MNES to include the Indigenous Conservation Estate (IPAs and other joint-managed conservation lands), Indigenous Water Rights and Culturally Significant Species;
- Changes to the way Controlled Actions are determined and then subsequently assessed that ensures consultation with Traditional Owners as key stakeholders of land (and biodiversity);
- Increased leadership roles and powers of the Indigenous Advisory Committee (IAC) and Traditional Owners in decision making; and
- Traditional Owner involvement in (joint) management of all Commonwealth reserves which overlap with Traditional Owner land/sea Country.

3. Specify a requirement in the Act for monitoring and evaluating MNES and compliance.

Inadequate monitoring data for MNES, recovery, and compliance actions limits our ability to track progress and interferes with our ability to apply effective policy and management³. About 2600 of Australia's species are "Data Deficient" (or equivalent), excluding them from recovery planning and

actions due to inadequate knowledge of their trends and distributions. To enable efficient monitoring, listing and recovery of MNES, and their recovery plans and environmental impacts, we require:

- Clear, science-based **national environmental standards for monitoring, evaluation and data for assessments and referrals**, that ensure data interoperability, allowing data to be combined in national systems, made accessible and reusable to ensure consistent delivery and assessments; and
- Reliable, comprehensive and publicly available data and environmental information systems to map, monitor, forecast and report on environmental conditions and the state of MNES^{4 5 6}.

4. Mandate scientific oversight of assessments and approvals in the Act, and only incorporate changes that use scientific evidence to improve, not reduce, protection of MNES.

The process of referral, assessment and listing under the Act must remain focused on rigorous scientific assessment, solely based on threat to the species or community. Changes to the Act should only occur if they are based on scientific evidence, and they reflect the evolution of our understanding about biodiversity and the environment, including connectivity, climate change, disaster resilience and ecological communities. Greater scientific oversight of assessments and approvals ensures that:

- Using the Precautionary Principle, there is scientific certainty that environmental damage will not occur as a result of a referred process;
- Decisions about recovery actions, costs, socio-economic impact and resourcing are transparently segregated from the listing process and do not affect the listing of an MNES; and
- Decisions about listing MNES are based on scientific evidence rather than ministerial discretion.

5. Reduce regulatory and administrative burdens, and increase accountability through:

- A national approach to environmental data collection and sharing;
- Adoption of the Common Assessment Method (CAM)⁷ by all Australian jurisdictions for listing species and ecological communities to increase coverage of Australia's ecosystems and biodiversity;
- Science-based bioregional assessments and planning to prioritise areas for enhancing conservation using cumulative biodiversity impacts⁸ while reducing administrative burdens of site-by-site assessments;
- Increased focus on assessment of ecological communities and development of community recovery plans, to fast-track data deficient species into recovery⁹;
- Mandating referrals to an independent assessment committee regardless of possible impacts; and
- A legislative requirement for accountability and traceability with regards to Act-related decisions, including provision that makes it an offense to cause or contribute significantly to extinction.

For further information: Please see the ESA's detailed submission to the review of the Act for responses to individual questions posed in the Discussion paper. We may be contacted by email at policy@ecolsoc.org.au.

¹ May S (2017). Completing Australia's National Reserve System of Protected Areas. Report by the National Parks Australia Council.

² Taylor MF, et al. (2005). The effectiveness of the Endangered Species Act: a quantitative analysis. *BioScience*, 55(4), 360-367.

³ Legge SM, et al. (2018) Monitoring Threatened Species and Ecological Communities. CSIRO Publishing, Melbourne.

⁴ Lindenmayer DB, et al. (2015) Contemplating the future: acting now on long- term monitoring to answer 2050's questions. *Austral Ecology*, 40(3), 213–224.

⁵ Lindenmayer DB, 68 additional authors (2017). Save Australia's ecological research. *Science*, 357(6351), 557-557.

⁶ Sparrow B, et al. (2019). The need for a nationally consistent ecosystem monitoring framework for Australian rangelands. Monitoring in the Australian Rangelands. Forum paper.

⁷ Intergovernmental MOU (2015). Agreement on a Common Assessment Method.

⁸ Whitehead AL, et al. (2017). Dealing with Cumulative Biodiversity Impacts in Strategic Environmental Assessment: A New Frontier for Conservation Planning. *Conservation Letters*, 10, 195-204.

⁹ Braby MF (2018) Threatened species conservation of invertebrates in Australia: an overview. *Austral Entomology*, 57: 173– 181.