

# Failure to regulate koala habitat destruction under national environmental law

## KEY POINTS

- Koala populations in New South Wales, Queensland and the ACT were listed as a nationally threatened species in May 2012 under our national environmental law, the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*.
- Between 2012 – 2017 it is estimated that 160,529 hectares of known and likely koala habitat was destroyed across NSW and Queensland. Projects that are likely to have significant impacts on nationally threatened species are meant to be referred to the Australian Government for assessment and approval under the EPBC Act.
- ACF analysis of five years of EPBC Act referral and assessment data (2012–2017) shows that following national listing only 9% (14,680 ha) of mapped koala habitat destruction was regulated under national law during this period.
- Only 36 projects across Qld and NSW were assessed for impacts on the koala under national law during the analysis period. The bulk of these were residential, transport, mining and energy projects. There were no federal agricultural assessments or approvals for impacts on the koala over the analysis period, despite data highlighting significant destruction of habitat across pastoral lands.
- Approximately 91% (145,849 ha) of koala habitat destruction observed in Qld and NSW from 2012 to 2017 was unregulated by the federal government under the EPBC Act, despite explicit obligations for it to do so.
- These findings underline the failure of the EPBC Act to adequately protect an iconic nationally threatened species and a significant lack of incentives and enforcement under the law.

## Introduction

Koala populations in Queensland, New South Wales and the Australian Capital Territory were listed as a nationally threatened species in 2012. These populations were listed in the *vulnerable* category under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The listing was the result of significant declines in koala numbers across these states, with the combined NSW/Qld populations declining by an estimated 42% over 20 years (1990–2010).

Koalas rely on habitat that contains known koala food trees, or shrubland with emergent food trees.

The koala inhabits forests and woodlands across south-eastern Australia that are mostly dominated by Eucalyptus species. They have also been observed to occur in forests and woodlands dominated by Acacia, Melaleuca or Casuarina species.

The distribution of koala habitat is largely influenced by land elevation, annual temperature and rainfall patterns, soil types and the resultant soil moisture availability.

The main threat to the koala is the ongoing destruction and fragmentation of its habitat. They are also vulnerable to being attacked by domestic or feral dogs and hit by cars as well as being susceptible to diseases such as chlamydia. Climate change and increasing drought are also predicted to significantly impact the availability of suitable habitat for the species and drive changes in the range and distribution of the koala.

The main threat to the koala is the ongoing loss, destruction and fragmentation of its habitat

### Destruction of koala habitat under EPBC Act

Once it was listed as a nationally threatened species in May 2012, any action that would likely have a significant impact on the koala was required to be referred for assessment under the EPBC Act. A 'significant impact' on vulnerable species includes impacts that:

- lead to a long-term decrease in the size of an important population of a species and reduce the area of occupancy of an important population
- modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline
- adversely affect habitat critical to the survival of a species
- interfere substantially with the recovery of the species.<sup>1</sup>

Based on analysis by WWF-Australia of government vegetation loss data, it is estimated that between 2012 and 2017 approximately 160,529 hectares of known and likely koala habitat was destroyed across NSW and Queensland (see Table 1).<sup>2</sup> As WWF-Australia has noted, the rate of habitat destruction for the koala actually increased once the species was nationally listed. Koala habitat was hit particularly hard by state governments weakening land clearing laws in NSW and Queensland.

Analysis of EPBC Act referral and assessment information shows that despite national listing, only 36 projects were referred and assessed for significant impacts on koalas between 2012 and 2017. A total of 14,680 hectares of koala habitat was assessed and approved for clearing under the EPBC Act during this time. This equates to approximately 9% of the total observed habitat loss for the species over the period.

Of significant concern is the fact that approximately 91% of observed known and likely koala habitat destruction was not assessed under national environmental law during the study period.

This analysis does not account for lag times between approval and habitat destruction. As the koala was federally listed in May 2012, it provides a timestamp from which habitat destruction should have been regulated under EPBC Act consistent with the policy requirements.

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<sup>1</sup> Australian Government Department of the Environment, 2013 Policy Statement 1.1 Significant impact guidelines - matters of national environmental significance

<sup>2</sup> WWF-Australia, 2020, Destruction of Koala habitat increased after listing as vulnerable in 2012 [https://www.wwf.org.au/ArticleDocuments/353/Koala habitat clearing in Qld and NSW 2004-2018.pdf.aspx](https://www.wwf.org.au/ArticleDocuments/353/Koala%20habitat%20clearing%20in%20Qld%20and%20NSW%202004-2018.pdf.aspx)

Only 36 assessments (and approvals) under the EPBC Act took place that regulated impacts on the koala. Four of these were assessed through assessment bilateral agreements or accredited processes. No projects during this period were rejected or stopped due to impacts on the koala. The largest impacts assessed under EPBC were for mining, gas or mine infrastructure projects. There were no agriculture projects that impacted on the koala assessed and approved in this period. This absence is conspicuous, as the majority of increased habitat destruction observed via satellite over this period in Queensland was the result of land clearing for agriculture.<sup>3</sup>

There were no finalised strategic assessments under Part 10 of the EPBC that took place over the analysis period and looked at impacts on the koala.

Despite statutory obligations to protect koalas, it is clear that following its listing as a nationally threatened species in 2012 there has been a patent failure to effectively regulate the destruction of the koala's habitat under national environment law. A vast amount of habitat destruction has occurred with no federal oversight. There has not been a single enforcement action taken by the Department for unapproved impacts on koalas since it was listed.

Where regulation has occurred, there has been systemic failures in the adequate protection of koala habitat, as highlighted by the recent Australian National Audit Office report on implementation of the EPBC Act. The ANAO highlighted that the department accepted inadequate offsets for impacts on the koala, despite knowing such offsets did not meet the government's own policy requirements.<sup>4</sup>

Lack of regulatory oversight has compounded the significant delay in developing recovery documents for the koala. A national recovery plan for the species is five years overdue. A recent NSW upper house inquiry also found the koala faces a significant risk of extinction in the state by 2050 unless governments take urgent action.<sup>5</sup> The koala was on a dire trajectory prior to the catastrophic bushfires that burned across Australia in the spring and summer of 2019–20. It is estimated that more than a billion native animals perished in the fires, including more than 5000 koalas. A recent nomination to update the koala's national listing from 'threatened' to 'endangered' has been provided to the federal Threatened Species Scientific Committee.

## Implications for EPBC review

The failure to protect koalas and their habitat under national environment law is well documented. The review of our central national environmental law provides an important opportunity for meaningful reforms to protect and recover the koala and other threatened species.

ACF believes more effective national environment law should:

- Require the mandatory mapping of critical habitat for threatened species through listing and recovery planning processes.
- Increase the amount of habitat protected through the critical habitat register and reform register so that its penalty provisions apply across different land tenures (penalties currently only apply on Commonwealth land).

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<sup>3</sup> Ibid - WWF-Australia estimates that 80% of the destruction of koala habitat in Queensland was for livestock pasture.

<sup>4</sup> Auditor-General Report No.47 2019–20 Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999 – p66 Case Study 4.

<sup>5</sup> New South Wales. Parliament. Legislative Council. Portfolio Committee No. 7 – Planning and Environment June 2020 Koala populations and habitat in New South Wales.

- Improve institutional oversight of threatened species habitat regulation, through establishing clear and consistent standards for the protection and regulation of activities that impact on koala habitat. This should include clear thresholds that limit the loss of habitat for the species and establishing obligations for active recovery efforts.
- Establish new independent regulatory institutions to oversee and implement national responsibilities for threatened species.
- Remove industry level exemptions from national environmental law, such as those that apply to the native forest logging industry through the *Regional Forest Agreements*.
- Limit the application of biodiversity offsets, especially where they will lead to an overall decline in available habitat for a species or a reduction in populations.
- Ensure recovery planning instruments are fully resourced and mandatorily implemented, and that recovery efforts include financial incentives to landowners and managers for the protection and recovery of threatened species.
- Provide avenues for communities to hold governments to account for their actions, including merits review of decisions and third-party enforcement rights. such as compelling the government to meet its statutory obligation to develop and implement a national koala recovery plan.

Table 1: Loss of Koala habitat in NSW and Qld 2012-2017 <sup>6</sup>

	QUEENSLAND		NEW SOUTH WALES	
	<i>Known habitat (ha)</i>	<i>Likely habitat (ha)</i>	<i>Known habitat (ha)</i>	<i>Likely habitat (ha)</i>
<b>2012/13</b>	6828	7729	6773	1316
<b>2013/14</b>	6425	5556	6868	1051
<b>2014/15</b>	7028	8587	5433	1886
<b>2015/16</b>	10384	13956	20296	6445
<b>2016/17</b>	7214	13348	19320	4086
<b>TOTAL</b>	<b>37879</b>	<b>49176</b>	<b>58690</b>	<b>14784</b>
<b>GRAND TOTAL</b>	<b>160,529</b>			

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<sup>6</sup> WWF-Australia, 2020, Destruction of Koala habitat increased after listing as vulnerable in 2012 [https://www.wwf.org.au/ArticleDocuments/353/Koala habitat clearing in Qld and NSW 2004-2018.pdf.aspx](https://www.wwf.org.au/ArticleDocuments/353/Koala%20habitat%20clearing%20in%20Qld%20and%20NSW%202004-2018.pdf.aspx)

Table 2: List of projects assessed and approved for impacts on koalas under the EPBC Act 2012-2017

REFERRAL #	PROJECT	STATE	SECTOR	KOALA HABITAT IMPACT (HA)
2015/7463	Development of ATP1188 Anya for the production of natural gas from coal seams, Dalby	Qld	Energy (non-renewable)	1186
2013/6713	Ecological thinning trial in New South Wales River Red Gum Forests	NSW	Land management	Not available
2014/7240	Hail Creek Coal Mine Extension Transition Project	Qld	Mining	3963
2014/7306	Springview Village One, Springview, Ipswich City	Qld	Residential	39.75
2014/7351	Narangba Quarry Expansion, Narangba	Qld	Mining	52
2014/7384	Wolfdene Quarry Extension, Beenleigh	Qld	Mining	112.75
2015/7464	Bruce Highway Upgrade, Caloundra Road to Sunshine Motorway	Qld	Transport - Road	35.3
2015/7485	Canungra Rise Estate Residential Development, Finch Road, Canungra	Qld	Residential	26.49
2015/7552	Residential/tourist development, located at Tuckers Lane, North Rothbury	NSW	Residential	30.8
2015/7588	Guanaba Experience Ecotourism Development, Mt Tambourine	Qld	Tourism	5.7
2015/7190	Nambucca Crescent Residential Development, Pimpama	Qld	Residential	30
2013/6941	Commercial Development 4499-4651 Mount Lindesay Highway, North Maclean	Qld	Commercial	62.77
2013/7057	Spring Mountain Mixed Use Master Planned Community Development	Qld	Residential	269.5
2014/7394	Bruce Highway upgrade and realignment - Cooroy to Curra - Section C, south of Gympie	Qld	Transport - Road	45.9
2015/7435	Goondicum East Access Road Project	Qld	Transport - Road	31.85
2012/6328	Kings Forest Residential Development	NSW	Residential	82.85
2012/6603	Mary's Mount Blue Metal Quarry Expansion, Gunnedah	NSW	Mining	6.8
2013/6751	Gainsborough Greens Residential Subdivision, Pimpama, Qld	Qld	Residential	66.4
2013/6864	Paradise Waters Residential Development, Deebing Heights, QLD	Qld	Residential	92

2013/6866	Woodlink Project - Master Planned Residential Community, Collingwood Park, QLD	Qld	Residential	25.9
2013/6885	North Galilee Rail Project, Abbot Point to Galilee Basin, QLD	Qld	Transport – Rail	2047.6
2013/6926	Moolarben Coal Project, Stage 1 Modification	NSW	Mining	127.3
2013/7047	Development of New Natural Gas Acreage in Surat Basin, QLD	Qld	Energy (non-renewable)	71.7
2013/7064	Bluff Open Cut Coal Mine, 175km to the west of Rockhampton, QLD	Qld	Mining	402
2013/7074	Brentwood Residential Estate, Bellbird Park, Queensland	Qld	Residential	67.14
2013/7101	Pacific Highway Upgrade, Warrell Creek to Nambucca Heads, NSW	NSW	Transport - Road	106.6
2014/7206	Flagstone West Urban Development Project, QLD	Qld	Residential	191
2012/6518	Oxley Highway to Kempsey Pacific Highway Upgrade Project, NSW	NSW	Transport - Road	211
2013/6732	Blackjack Creek, Riparian Corridor and Channel Reconstruction, Gunnedah, NSW	NSW	Water management	6.5
2013/6757	Upgrade Sections of Reid Street, The Boulevard and Tip Gravel Road to Improve Flood and Evacuation Access, Dunbogan, NSW	NSW	Transport - Road	Not available
2013/6963	NH2U Pacific Highway Upgrade	NSW	Transport - Road	171
2012/6423	Upgrade of Smith Street Motorway and Interchange with Labrador-Carrara Road, Parkwood, Gold Coast, Queensland	Qld	Transport - Road	8.59
2013/6865	Red Hill Mining Project, 20kms north of Moranbah, Qld*	Qld	Mining	1,516
2013/7036	Baralaba North Coal Mine Continued Operations, Baralaba, Qld*	Qld	Mining	5
2012/6566	Hillalong coal mine and associated infrastructure project*	Qld	Mining	250
2012/6615	Santos GLNG Gas Field Development Project, QLD*	Qld	Energy (non-renewable)	3303
<b>TOTAL</b>				<b>14,680</b>

\*Denotes assessment completed through bilateral agreement or through accredited approach

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