



*Critically Endangered: a taxon of species
facing an extremely high risk of extinction
in the wild in the immediate future*

IUCN Red List Criteria

Critically Endangered, Under-Protected:

Options to improve the protection of critically endangered species under national environmental laws

This report was commissioned by the
Bob Brown Foundation and prepared
by EDO Tasmania.

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ABOUT EDO TASMANIA

EDO Tasmania is an independent, non-profit community legal centre providing expert advice on public interest environmental and planning issues. Our aim is to increase public awareness of environmental laws and remedies, to strengthen the protections provided by the law, and to help the community to secure a healthy, sustainable Tasmania.

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Cover image by Dr Eric Woehler, BirdLife Tasmania

Introduction

The Swift Parrot (*Lathamus discolor*) is a small, fast, colourful bird that breeds in the east of Tasmania before migrating north to mainland Australia.¹ The total population of Swift Parrot has been estimated at less than 2,500, with recent studies finding that, without significant conservation efforts to reverse population decline, the species is “on a trajectory to extinction.”²

Key threats to the Swift Parrot include loss of habitat, collision with buildings, and predation by introduced sugar gliders. On the basis of the small population size and the gravity of threats facing the species, in October 2015 the bird was listed on the IUCN Red List as “Critically Endangered.”³

In May 2016, the Swift Parrot was finally listed as Critically Endangered under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. This recognition, in addition to other activities focussed on the Swift Parrot in recent years, is welcomed. However, much more needs to be done. The recovery plan for the bird still does not adequately address new risks to the species, a strategic review under Tasmanian law remains outstanding, and the key threat to the species remains outside the jurisdiction of the Federal Minister.

The Swift Parrot is far from alone in the threats that it faces and the inadequacy of responses to address those threats. More than 25 fauna species are currently listed as Critically Endangered on the IUCN Red List that are yet to be given the same recognition under Australia’s national environmental laws.

The response to the decline in the Swift Parrot population, while more robust than the response to the plight of some other species, highlights the need for stronger laws to protect critically endangered species, and to avoid more species becoming critically endangered.

Purpose of report

Australia’s national environmental law, the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, plays a critical role in the protection of threatened species and ecological communities and is the principal mechanism for compliance with Australia’s international obligations under the Convention on Biological Diversity.

The EPBC Act seeks to protect threatened species and ecological communities as follows:

- Listing of species and communities, including allocation of a threat category (vulnerable, endangered, critically endangered), on advice from the Threatened Species Scientific Committee;
- Development of recovery plans and threat abatement plans for listed threatened species and ecological communities;
- Preventing actions that will have, or are likely to have a significant impact on listed species or communities from being undertaken without the approval of the Commonwealth Minister for the Environment.

Despite the seriousness of the risks faced by critically endangered species and ecological communities, the EPBC Act currently provides no special, additional protection for these species or communities. The decision of the Threatened Species Scientific Committee in 2014 not to reconsider the threat category for the Swift Parrot at that time noted that “*Uplisting would not provide significantly greater protection under the EPBC Act.*”⁴

This report briefly examines some of the weaknesses in the current operation of the EPBC Act and identifies 5 key areas in which the laws should be strengthened to better protect those species and communities at greatest risk of being lost.

Summary of recommendations

Critically endangered species and ecological communities should be afforded strong protection under Australia's national environmental laws. Currently, inclusion of a threatened species or ecological community in the category representing the highest level of endangerment under federal laws does little to increase the protection provided.

There are 5 key areas in which our national environmental law, the *Environment Protection and Biodiversity Conservation Act 1999*, can be strengthened to provide more effective protection to critically endangered species and ecological communities.

The key findings of this report are outlined below:

1. Streamlining assessment decisions

- A species listed on the IUCN Red List in the category of Critically Endangered must be automatically upgraded to that status under the EPBC Act.
- The Minister should have clear emergency listing powers in relation to species and communities considered to be critically endangered.
- The Minister must act on the advice from the Threatened Species Scientific Committee to list a species or community as Critically Endangered.
- Commonwealth, State and Territory threatened species assessment criteria must be synchronised to allow for reciprocal recognition of assessments.

2. Strengthening recovery actions

- Within 6 months of a species or ecological community being listed as critically endangered, a recovery plan must be adopted for the species or community (or revised, if one already exists). Some exceptions may apply where the Threatened Species Scientific Committee advises that a plan is not required.
- Recovery plans for critically endangered species must identify critical habitat for the species. All critical habitat identified in such recovery plans must be entered on the Critical Habitat Register.
- Recovery plans must include clear performance indicators, and the Department of Environment must report against these indicators in its annual report.
- The Commonwealth must be required to "use its best endeavours" to get a State or Territory government to implement recovery plans and threat abatement plans within its territory.
- Commonwealth funding for environmental and scientific research programmes should give priority to proposals that will further the survival of a critically endangered species or ecological community.

3. Avoiding impacts

- The *Significant Impact Guidelines* should provide that any adverse impact on a critically endangered species or ecological community, including any adverse impact on listed critical habitat, will be “significant”.
- The Minister must seek, and act consistently with, the advice of the Threatened Species Scientific Committee in relation to any proposed actions which may adversely impact on a critically endangered species or ecological community.
- The Minister must be able to vary or revoke an approval where a threatened species or ecological community impacted by the approved activity is ‘uplisted’ to Critically Endangered.
- The obligation to avoid damage to registered critical habitat on Commonwealth land should extend to critical habitat on land owned or managed by a State or Territory government.

4. No delegation of responsibility

- Regional Forest Agreement (**RFA**) forestry operations should not be excluded from the requirement to obtain approval from the Commonwealth Minister.
- If the RFA exemption is retained, it should not apply to forestry operations in an area of registered Critical Habitat.
- The Minister must not be able to delegate approval powers to a State or Territory government for actions which will have, or are likely to have, a significant impact on a critically endangered species or ecological community. All actions likely to impact on critically endangered species or ecological communities must be assessed by the Commonwealth Minister.

5. Encouraging strong action by State and Territory governments

- The Commonwealth should exercise powers under the current Tasmanian Regional Forest Agreement to require the Tasmanian government to implement restrictions on broadscale clearing on private land.
- The Commonwealth should promote the implementation of best practice laws for the protection of threatened species by States and Territories, including through planning and building laws.
- The Commonwealth should consider entering into conservation agreements under the EPBC Act with State and Territory Governments to secure protection for critically endangered species and ecological communities.

To discuss these findings and recommendations, contact EDO Tasmania

1. Streamlining assessment decisions

Following a Population Viability Analysis in early 2015 predicting at least an 85% decrease in the Swift Parrot population over the next three generations⁵, scientists from the Australian National University nominated the Swift Parrot to be up-listed to Critically Endangered under the EPBC Act. The scientists also requested that the BirdLife Australia Threatened Species Committee consider recommending that the species be uplisted to Critically Endangered under IUCN Red List.

On the basis of the material presented regarding the contribution of nest predation and habitat loss to species decline, the IUCN accepted the recommendation to uplist the Swift Parrot on 1 October 2015.

The request to uplist under the EPBC Act was investigated by the Threatened Species Scientific Committee (*TSSC*), who recommended on 1 March 2016 that the Swift Parrot be listed in the Critically Endangered category. The Minister accepted the recommendation on 5 May 2016, more than seven months after the IUCN uplisting decision prompted by the same nomination material.

Currently, 27 species listed as Critically Endangered on the IUCN Red List, including the Mountain Pygmy Possum and Hawksbill Turtle, do not have the same status under the EPBC Act. This is despite the same criteria being used to assess species' eligibility for both lists.

The time lag in recognition of the higher category of endangerment in Australia, along with the waste of limited resources in duplicating assessments, is cause for concern.

Current situation

The EPBC Act previously required the Minister to "take all reasonably practical steps" to ensure lists of threatened species and ecological communities were kept up to date and included all eligible native species and communities. In 2006, this requirement was replaced by the current process for establishing strategic assessment priorities.⁶

Each year, the Commonwealth Environment Minister invites any person to submit nominations for threatened species or ecological communities, including nominations to change the threat category for a species or community that is already listed. Valid nominations are referred to the TSSC to prepare a 'proposed priority assessment list', for the Minister to review before making a final priority assessment list. In prioritising species for assessment, the TSSC and the Minister may, but are not required to, take into account the potential listing categories of nominated species.⁷

Following further public comment and a comprehensive assessment, the TSSC makes recommendations to the Minister. The Minister is not bound by the recommendation and retains the ultimate decision-making power regarding whether to include a species or ecological community on the list, and in what threat category.

The TSSC conducts its assessment in accordance with the criteria provided in the *Environmental Protection Biodiversity Conservation Regulations 2000 (EPBC Regulations)*, which generally reflect the criteria developed by the International Union for Conservation of Nature (the *IUCN Red List criteria*).

The nomination and assessment process generally takes 1-2 years⁸, but may take more than 5 years if permitted by the Minister.⁹ The Minister has discretion as to any proposed prioritisation of assessments for nominations.¹⁰

Despite near identical criteria for inclusion in the IUCN Red list and the lists maintained under the EPBC Act, there is no mechanism by which the TSSC can adopt an IUCN assessment and avoid the time and expense involved in undertaking its own assessment.

Similarly, the inclusion of species or ecological communities on lists maintained under State or Territory legislation does not automatically result in the inclusion of the species (or the allocation of the same threat category) on the EPBC Act lists, or remove the need for detailed assessment by the TSSC. Efforts are being made through COAG to improve the consistency of the State and Federal lists, however numerous inconsistencies currently exist.

Options to improve protections

- Adopt a definition of “critically endangered species” in s.528 that includes species listed in the IUCN Red List as critically endangered:

critically endangered species

- (a) a native species included in the IUCN Red List as a Critically Endangered Species; or
- (b) a native species included in the *critically endangered* category of the list of threatened native species in accordance with Subdivision A of Division 1 of Part 13;

The IUCN Red List assessments are rigorous, transparent and based on the same criteria currently used by the TSCC in conducting assessments of species and communities nominated under the EPBC Act. Therefore, adopting the IUCN listing for critically endangered species would provide for consistent recognition and immediate protection, avoiding the cost and delays resulting from a national assessment that simply replicates the IUCN assessment.

This is consistent with the approach adopted in respect of World Heritage and Ramsar wetlands, which are recognised by virtue of their inclusion on an international list, rather than requiring separate assessment or declaration under the EPBC Act.¹¹

- Consistent with recommendations made in the Hawke Review¹², the Commonwealth and State and Territory governments should continue with efforts to streamline threatened species listing processes and adopt nationally consistent criteria. Whilst there is agreement amongst all Environment Ministers that uniform criteria for the assessment of threatened species should be developed, further work is needed to implement the necessary reform.¹³

Once consistent frameworks have been adopted, the EPBC Act and respective State and Territory legislation should be amended to allow for reciprocal recognition of threatened species assessments (where appropriate).¹⁴

- Create an emergency listing power, including emergency changes to the threat category for a listed species or community, where the Minister is satisfied that a species or community is in imminent danger.¹⁵
- Reintroduce a statutory obligation requiring the Minister to keep lists of threatened species and threatened ecological communities up to date.
- Remove the Minister’s discretion for listing decisions in relation to critically endangered species or ecological communities, instead requiring the Minister to act consistently with advice from the TSCC that a species or community should be listed in that category. Adopting a higher threat category where an expert scientific panel has indicated that the species is at risk of extinction is consistent with the precautionary approach advocated in the objectives to the EPBC Act.

189 Minister must consider advice from Scientific Committee

- (1) Subject to subsection (1AA), in deciding whether to make an amendment covered by paragraph 184(1)(aa), (b), (c) or (d), the Minister must, in accordance with the regulations (if any), obtain and consider advice from the Scientific Committee on the proposed amendment.

(1AA) If advice from the Scientific Committee for the purposes of subsection (1) is to the effect that a particular native species, or a particular ecological community, is eligible to be included in the relevant list in the *critically endangered* category, the Minister must act consistently with that advice.

2. Strengthening recovery actions

Given ongoing decline in most biodiversity indicators, it is necessary to assess whether the present tools for the protection and conservation of threatened species and ecological communities under the EPBC Act are effective.

In particular, recovery plans and threat abatement plans are vital tools to provide for detailed, evidence-based actions needed to stop the decline, and support recovery of, threatened species.¹⁶

Recovery plans are time consuming and resource intensive to produce, and are not easily modified.¹⁷ In light of limited conservation budgets, recovery plans must be made shorter, simpler and focus more readily on measurable recovery actions and outcomes. In order to respond to significant uncertainty around climate change impacts it is also critical for recovery plans to implement adaptive management principles, including the flexibility to adapt and amend actions that are not working.

Without effective, practical and rigorous Recovery Plans and Threat Abatement Plans, the utility of listing threatened species as a biodiversity conservation mechanism would be seriously undermined.

Current situation

Recovery Plans

Within 90 days of a threatened species being included on a list under the EPBC Act, the Minister must decide (after consulting the TSSC) whether a recovery plan should be developed for the species.¹⁸ There is currently no trigger to require the Minister to reconsider that decision where the species is subsequently 'uplisted' to a higher threat category.

If the Minister determines that a recovery plan is required, the plan must be developed and in force within 3 years, although this period may be extended to 6 years.¹⁹ As of 1 May 2013, there were approximately 180 outstanding recovery plans, including 25 for critically endangered species.²⁰ Schedule 1 to this report provides a list of critically endangered species and their corresponding recovery plan status – currently, 14 critically endangered species assessed as requiring recovery plans for not have recovery plans in place, while the recovery plans for many other critically endangered species are outdated.

Under the EPBC Act, Commonwealth agencies are prevented from taking any action that contravenes a recovery plan or threat abatement plan, and are obliged to implement the plans in Commonwealth areas.²¹ Similar obligations do not exist for State agencies. Where a recovery plan or threat abatement plan applies on land within the control of a State or Territory, the Commonwealth is only required to "seek the cooperation of the State or Territory with a view to implementing the plan jointly."²²

The Department of Environment must report on the making and adoption of recovery plans in its Annual report.²³ However, there is no explicit requirement to measure or report on the effectiveness of recovery plans.

Recovery plans must be reviewed every 5 years (though, in practice it can be much longer between reviews).²⁴ There is no trigger to require an earlier review of a recovery plan where a species or ecological community is 'uplisted' or where there is other evidence that recovery actions are not effectively halting the species' decline.

Critical habitat

Recovery plans are designed to identify a range of things, including key threats, particularly vulnerable populations, and habitat that is considered critical to the survival of the listed species. "Critical habitat" includes areas necessary:

- for activities such as foraging, breeding, roosting, or dispersal for the long-term maintenance of the species or ecological community (including the maintenance of species essential to the survival of the species or ecological community, such as pollinators);
- to maintain genetic diversity and long term evolutionary development; or
- for the reintroduction of populations or recovery of the species or ecological community.²⁵

The identification of critical habitat at the time that a species is listed assists in prioritisation of resources and helps the TSSC to understand actions to protect habitat that may benefit multiple listed species.²⁶ However, critical habitat and vulnerable populations are only required to be identified "to the extent to which it is practicable to do so."²⁷

While the Minister must maintain a register of Critical Habitat under the EPBC Act²⁸, the Minister has discretion as to whether any critical habitat identified in a recovery plan is included on the register.

Multiple benefits of protecting critical habitat

The current Swift Parrot Recovery Plan identifies 18 threatened ecological communities that provide habitat for Swift Parrots, including key nesting and foraging habitat.²⁹ As outlined in Recommendation 4, forestry operations continue to drive decline in many of these habitat areas.

Threatened vegetation communities support many more species than just the Swift Parrot. Comprehensive regional and / or multi-species recovery plans can identify actions that will deliver conservation outcomes for a range of flora and fauna.

The Hawke Review recommended that resources would be invested most effectively in the development of regional and multi-species recovery plans for ecological communities, recognising the clear link between habitat protection and improved prospects of survival for threatened species.³⁰

Funding priorities

Protecting threatened species requires prioritisation of effort, and efficient and effective government plans and programmes. The Australian Government is working to ensure this by applying its principles for prioritisation, updating threatened species lists with the most current information, and ensuring priority species recovery plans and conservation advices have the best available guidance on actions for their protection and recovery.

- Threatened Species Strategy, 2015

The Commonwealth Government *Threatened Species Strategy* is attempting to align the objectives of numerous environmental programmes (such as the Green Army, 20 Million Trees and National Landcare Programmes) to direct funding to priority recovery efforts. Amongst other criteria, consideration is given to the level of threat for the species likely to benefit from recovery actions.

Options to improve protections

- Amend s.269AA to require a recovery plan to be prepared where a species or community is listed in the critically endangered category (whether initially, or by way of uplisting).

269AA Decision whether to have a recovery plan

- (1) Subject to subsection (1A), the Minister must decide whether to have a recovery plan for a listed threatened species (except one that is extinct or that is a conservation dependent species) or a listed threatened ecological community within 90 days after the species or community becomes listed. The Minister may, at any other time, decide whether to have a recovery plan for the species or community.
- (1A) Where a species or community is listed in the critically endangered category:
 - (a) the Minister must seek the advice of the Threatened Species Scientific Committee within 10 days of the date on which the species or community was listed; and
 - (b) If the Threatened Species Scientific Committee, within 10 days of receiving a request from the Minister under paragraph (a),
 - (i) advises the Minister to have a recovery plan for the species or community; or
 - (ii) fails to provide advice to the Minister,
the Minister is taken to have made a decision under subsection (1) to have a recovery plan for the species or community 10 days after that date; and
 - (c) the Minister cannot make a subsequent recovery plan decision under subsection (5), unless the species or community ceases to be listed in the critically endangered category.

- Amend s.273 to expedite the development of recovery plans for critically endangered species or communities.

Deadline for recovery plan

- (1) Subject to subsection (2), a recovery plan for a listed threatened species or a listed threatened ecological community, other than a species or community listed in the critically endangered category, must be made and in force within 3 years of the decision under section 269AA to have the plan.
- (1A) A recovery plan for a listed threatened species or a listed threatened ecological community in the critically endangered category must be made and in force within 6 months of the date on which the Minister is taken to have made a decision under subsection 269AA(1A) to have the plan.
- (2) Other than for a recovery plan to which subsection (1A) relates, the Minister may, in writing, extend the period within which a recovery plan must be made. Only one extension can be granted for the making of the plan, and the period of the extension must not be more than 3 years.

- Remove discretion about the identification of critical habitat in a recovery plan for a critically endangered species.

270 Content of recovery plans

- (2)(d) identify the habitats that are critical to the survival of the species or community concerned and the actions needed to protect those habitats; and
- (2A) Other than a recovery plan for species or community listed in the critically endangered category, a recovery plan need only address the matters mentioned in paragraphs (2)(d), (e), (f), (g) and (h) to the extent to which it is practicable to do so.

- Require a recovery plan to be reviewed within 6 months of a decision to ‘uplist’ the species or community to Critically Endangered:

279 Variation of plans by the Minister

(1) The Minister may, at any time, review a recovery plan or threat abatement plan that has been made or adopted under this Subdivision and consider whether a variation of it is necessary.

(1A) Where the Minister has decided to list a species or ecological community in the critically endangered category, and there is already a recovery plan for the species or community, the Minister must, within 6 months of the decision, review the recovery plan.

- Require all critical habitat identified for a critically endangered species or community to be included in the Register of Critical Habitat maintained under s.207A of the EPBC Act. This will include amending Regulation 7.09 of the EPBC Regulations to provide that any habitat identified in a recovery plan for a species or community listed in the critically endangered category as being habitat critical to the survival of the species or community is taken to be Critical Habitat.
- Amend s.269 of the EPBC Act to require the Commonwealth government to “use its best endeavours” to secure implementation of recovery plans by State and Territory Governments. This is consistent with the approach taken in relation to World Heritage Areas, National Heritage places and Ramsar wetlands.³¹

The “best endeavours” test increases the onus on the government to adequately resource plan development, and to work with State and Territory governments on implementation and enforcement.

269 Implementing recovery and threat abatement plans

(1) Subject to subsection (2), the Commonwealth must implement a recovery plan or threat abatement plan to the extent to which it applies in Commonwealth areas.

(2) The Commonwealth must use its best endeavours to ensure recovery plans and threat abatement plans are implemented in co-operation with the State or Territory.

- The Commonwealth government should adopt a prioritisation methodology for recovery planning that explicitly requires critically endangered species or ecological communities to be given priority. Methodologies such as those adopted in New Zealand or New South Wales should be considered.
- Recovery plans must include clear performance indicators against which the success of the plan can be measured. Section 284 should be amended to explicitly require the Secretary to report on the achievement (or otherwise) of key performance indicators for each recovery plan in the annual report for the Department. At a minimum, this requirement should apply to recovery plans in place for critically endangered species or communities.

3. Avoiding impacts

For critically endangered species, any adverse impact should be considered significant. The EPBC Act needs to be strengthened to ensure that proposed actions are adequately assessed and adverse impacts avoided. Where impacts are later revealed to be greater than initially anticipated, the Minister must be empowered to further regulate activities to remedy damage and avoid future impacts.

Current situation

Significant impacts may be approved

Under the EPBC Act, it is an offence to take an action that has, will have or is likely to have a “significant impact” on a listed threatened species without approval from the Commonwealth Minister for the Environment.

“Significant impact” is an impact which is “important, notable, or of consequence, having regard to its context or intensity”. The Commonwealth Government’s *Significant Impacts Guidelines* state that an action is likely to have a significant impact on a critically endangered or endangered species if there is a real chance or possibility that the action will:

- lead to a long-term decrease in the size of a population
- reduce the area of occupancy of the species
- fragment an existing population into two or more populations
- adversely affect habitat critical to the survival of a species
- disrupt the breeding cycle of a population
- modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline
- result in invasive species that are harmful to a critically endangered or endangered species becoming established in the endangered or critically endangered species’ habitat
- introduce disease that may cause the species to decline, or
- interfere with the recovery of the species.

There is currently no distinction between the significant impact criteria for critically endangered species and those for endangered species, although the consequences of such impacts may be considered more significant in respect of a critically endangered species.

Significantly, the Minister is not explicitly prevented from approving an action that is likely to have a significant impact on a critically endangered species. However, the Minister:

- must not act inconsistently with Australia’s obligations under the Biodiversity Convention or the terms of a recovery plan or threat abatement plan; and
- must have regard to the approved conservation advice for the species.³²

The Federal Court has emphasised the pivotal role of conservation advice, and held that “have regard to” requires genuine consideration to be given to the advice.³³ However, the Minister is not bound to follow the advice.

Cannot vary conditions where a species is 'uplisted'

An approval granted under the EPBC Act may be varied or revoked if the Minister is satisfied that the impact on a threatened species is substantially greater than the impact that was originally anticipated when assessing the action.³⁴

However, the Minister is not able to revoke or vary an approval where the reason for the increased impact is that the species has, after the approval was granted, been listed in a "category representing a higher degree of endangerment"³⁵ (that is, where the activity has not changed, but the relative significance of its impact is increased because the threatened status of the species has changed).

Critical habitat protected only on Commonwealth land

The currently limited use of critical habitat mapping is discussed in Recommendation 2 above. However, even where critical habitat is listed, there are limitations on the protections currently offered.

Section 207B of the EPBC Act provides that a person commits an offence if the person takes an action knowing that the action will significantly damage listed critical habitat. However, the offence will only apply where:

- the person knew that the action would damage critical habitat; and
- the damage to the habitat is "significant"; and
- the damage occurs in a Commonwealth area.

Establishing that a person has the requisite awareness that an area of land was registered critical habitat can be difficult, limiting the use that can be made of this offence provision.

Options to improve protections

- Amend the "Significant Impact Guidelines" to emphasise that any material, adverse impact on a critically endangered species is to be considered "significant" for the purposes of s.18(2) of the EPBC Act.
- Insert a new s.131AC which provides that, before deciding whether to approve the taking of an action that is likely to have an adverse impact on a critically endangered species, the Minister must obtain the advice of the TSSC.³⁶

131AC Minister must obtain advice from Threatened Species Scientific Committee

- (1) This section applies if the Minister believes that the taking of an action:
 - (i) will have, or is having an adverse impact on a listed threatened species included in the critically endangered category; or
 - (ii) may have an adverse impact on a listed threatened species included in the critically endangered category.
 - (2) Before the Minister decides whether or not to approve, for the purposes of the controlling provision, the taking of the action, the Minister must obtain the advice of the Threatened Species Scientific Committee.³⁷
- Amend s.136 to include "any advice received from the Threatened Species Scientific Committee" in the list of matters which the Minister must consider in making a determination.

- Amend s.139 to:
 - ensure decisions are consistent with recovery plans, threat abatement plans and the advice of the TSSC; and
 - prevent the Minister from approving an action that will have an adverse impact on a critically endangered species.

139 Requirements for decisions about threatened species and endangered communities

- (1) In deciding whether or not to approve for the purposes of a subsection of section 18 or section 18A the taking of an action, and what conditions to attach to such an approval, the Minister must not act inconsistently with:
- (a) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (b) a recovery plan or threat abatement plan; or
 - (c) the advice of the Threatened Species Scientific Committee; or
 - (d) any approved conservation advice for the species or community.
- (2) If:
- (a) the Minister is considering whether to approve, for the purposes of a subsection of section 18 or section 18A, the taking of an action; and
 - (b) the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community in the critically endangered category;
- the Minister must not approve the taking of the action.

- Insert new section 146CA requiring the Minister to seek advice from the TSSC where a policy, plan or program is likely to impact on a critically endangered species.

146CA Minister must obtain advice from Threatened Species Scientific Committee

- (1) This section applies if the Minister is considering whether to approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program and the Minister believes that the taking of the action or class of actions:
- (i) will have a significant impact on a listed threatened species included in the critically endangered category; or
 - (ii) may have a significant impact on a listed threatened species included in the critically endangered category.
- (2) Before the Minister decides whether or not to approve the taking of the action or class of actions in accordance with an endorsed policy, plan or program, the Minister must obtain the advice of the Threatened Species Scientific Committee.

- Amend s.146K to require strategic assessment decisions to be consistent with approved conservation advice and any advice received from the TSSC.

146K Approvals relating to listed threatened species and ecological communities

- (1) This section applies if the approval relates to a listed threatened species or a listed threatened ecological community.
- (2) The Minister must not act inconsistently with:
- (a) Australia's obligations under:
 - (i) the Biodiversity Convention; or
 - (ii) the Apia Convention; or
 - (iii) CITES; or
 - (b) a recovery plan for the species or community or a threat abatement plan; or
 - (c) any approved conservation advice for the species or community; or
 - (d) where the approval relates to a listed species or community in the critically endangered category, any advice received from the Threatened Species Scientific Committee.

- Amend s.158B(1) to exclude uplisting to Critically Endangered from the listing decisions that must be disregarded when deciding whether to vary or revoke an approval issued for a controlled action. This can be achieved by the following amendment:

(k) a listed threatened species or a listed threatened ecological community becoming listed in another category representing a higher degree of endangerment, other than where the species or community becomes listed in the critically endangered category;

This amendment will remove the impediment to an approval being varied, suspended or revoked under Division 3, Part 9 where the impact on a critically endangered species is greater than initially anticipated.

- Amend s.207B to make it an offence for any person to take an action that will damage listed critical habitat. Higher penalties may apply for “knowingly” taking action that will damage the habitat, however knowledge of that outcome should not be a prerequisite to establishing the offence.

The offence should also not be limited to damaging listed critical habitat in a Commonwealth area. While the “significance” threshold is retained, any material impact on listed critical habitat should be considered significant.

207B Offence of damaging critical habitat

- (1) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the person knows that the action causes or will cause significant damage to critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community; and
 - (c) the habitat is situated on
 - (i) a Commonwealth area; or
 - (ii) land owned or managed by an agency of a State or Territory government
- (2) An offence under subsection (1) is punishable on conviction by imprisonment for not more than 2 years or a fine not exceeding 1,000 penalty units, or both.
- (3) A person commits an offence if:
 - (a) the person takes an action; and
 - (b) the action causes, or is likely to cause, significant damage to critical habitat for a listed threatened species (except a conservation dependent species) or of a listed threatened ecological community.
 - (c) the habitat is situated on
 - (i) a Commonwealth area; or
 - (ii) land owned or managed by an agency of a State or Territory government.
- (4) An offence under subsection (3) is punishable on conviction by imprisonment for not more than 12 months or a fine not exceeding 500 penalty units, or both.
- (5) If in proceedings for an offence against subsection (1) a Court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subsection (3), the Court may find the defendant guilty of the latter offence.
- (6) A person does not commit an offence under this section if the action is authorised by an approval under Part 9.
- (7) To avoid doubt, this section does not affect the operation of Division 2, 3 or 4.

4. No delegation of responsibility

Given Australia's international obligations under the Convention of Biological Diversity to respond to species decline, and the recognition that protecting threatened species is a matter of national environmental significance, it is important that the Commonwealth Minister retains responsibility for regulating actions that will have an impact on critically endangered species.

Projects that impact on nationally listed, critically endangered threatened species must be subject to rigorous assessment under national environment law. Retaining national responsibility will also improve the consistency of Australia's efforts.

Current situation

Forestry operations

Habitat loss and fragmentation remain the key threats for most critically endangered species. Despite this, one of the key drivers of habitat loss, forestry operations, is largely exempt from the operation of the EPBC Act. Section 38 of the EPBC Act provides that assessment and approval requirements do not apply to "an RFA forestry operation that is undertaken in accordance with an RFA". In Tasmania, this 'RFA exemption' effectively means that any activity for which a Forest Practices Plan is issued under the *Forest Practices Act 1985 (Tas)*³⁸ will not require approval under the EPBC Act.

Numerous reports have identified concerns that reliance on the RFA has compromised the achievement of the objectives of the EPBC Act and contributed to a decline in biodiversity.³⁹

Swift Parrot: At risk from forestry operations

Key threats to the survival of the Swift Parrot include loss and fragmentation of breeding habitat, particularly through logging of mature hollow-bearing trees. The recent Conservation Advice presented to the Minister by the TSSC, recommending that the species be included in the Critically Endangered category, stated:

*"...Ongoing habitat loss, particularly within the primary breeding areas in Tasmania, represents the single biggest threat to the survival of the swift parrot in the wild, particularly as it now appears to enhance nest predation by introduced sugar gliders. The primary conservation action for swift parrots is, therefore, to prevent further habitat destruction from land clearance, grazing and forestry activities in high quality swift parrot summer nesting and breeding habitat."*⁴⁰

Specialist advice from the Tasmanian Government Threatened Species Unit has also raised concerns regarding cumulative loss of such habitat across eastern Tasmania:

"...There has been ongoing loss of breeding habitat over the past 20 years on public and private land within the 'southern forests' area of Tasmania (see PI type, Hanson et al. (2013), mature habitat layers). Cumulatively this loss is significant in terms of both area and the impact on the potential of the species to reproduce and to forage.... Ongoing priority research into population monitoring of the swift parrot (undertaken by DPIPW) indicates that in some years the majority of the population relies on sub-sections of the southern forest region to breed. Monitoring has identified that during these years almost all the remaining habitat in these areas is occupied by the birds..."

*"Ensuring adequate foraging and nesting habitat within foraging range of each other is key to the maintenance of breeding habitat in which birds can successfully breed in the region."*⁴¹

Environment Tasmania's 2015 report, *Pulling a Swiftie*, disclosed that despite internal advice that loss of foraging and breeding habitat and further fragmentation of suitable habitat was "likely to interfere with the recovery objectives" and result in ineffective conservation management for the Swift Parrot, a number of coupes were certified for harvesting. These examples highlight concerns that forestry assessments may not result in the imposition of stringent management prescriptions, or provide equivalent protection to that provided under the EPBC Act.

In November 2015, the Tasmanian government suspended forest operations on Bruny Island in response to considerable public pressure to preserve Swift parrot habitat that was protected from the predation risks experienced in forest coupes on mainland Tasmania. While welcome, the decision was a largely political one, rather than one achieved through the implementation of national or State laws. Had the Tasmanian government not suspended the forestry operations, the Commonwealth Minister would have had little recourse to protect the Swift Parrot habitat from clearing, given the operation of the RFA exemption.

Bilateral agreements

The Commonwealth Government remains committed to delivering its “One-Stop Shop” for environmental approvals, in which actions approved under accredited State or Territory laws no longer require approval under the EPBC Act.

However, a recent assessment by EDOs of Australia confirmed that no State or Territory currently has laws that offer equivalent protection to threatened species to that provided under the EPBC Act.⁴² If responsibility for approval of actions that will impact on threatened species is delegated to States and Territory’s under current arrangements, biodiversity outcomes will be compromised.

Options to improve protections

- Amend s.29(1) to exclude actions that will have an adverse impact on critically endangered species from being subject to a bilateral approval agreement. Mining and coal seam gas projects likely to have an impact on water resources are already similarly excluded.

29 Actions declared by agreement not to need approval

- (1) A person may take an action described in a provision of Part 3, other than sections 18(2), 18(5), 18A where it relates to a listed species or ecological community in the critically endangered category, 24D or 24E, without an approval under Part 9 for the purposes of the provision if...

- Repeal the Division 4, Part 4 (the ‘RFA exemption’ provisions)
- If Division 4, Part 4 is not repealed, amend s.42 to exclude forestry operations that are within critical habitat from the application of the RFA exemption:

42 This Division does not apply to some forestry operations

Subdivisions A and B of this Division, and subsection 6(4) of the Regional Forest Agreements Act 2002, do not apply to RFA forestry operations, or to forestry operations, that are:

- (a) in a property included in the World Heritage List; or
- (b) in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or
- (c) in an area comprising critical habitat for a listed threatened species in the critically endangered category; or
- (d) incidental to another action whose primary purpose does not relate to forestry.

Similar exclusions already operate for forestry operations within World Heritage Areas or Ramsar wetlands, on the basis of the international significance of the values in those areas. Areas which provide critical habitat for critically endangered species are of equivalent significance, consistent with Australia’s obligations under the Convention of Biological Diversity.

5. Improving State actions

Even where the Commonwealth retains authority for approval decisions, many actions taken by State and Territory governments will continue to influence the success of protection and recovery efforts for critically endangered species.

While this report only looks at changes to national laws, there are actions that the Commonwealth government can take to secure more effective protections at a State level. The Commonwealth government must show leadership and require State and Territory governments to adopt laws and take actions which complement national efforts.

Options to improve protections

- Clearing and conversion of native vegetation for agricultural and rural residential uses is a significant contributor to habitat loss and fragmentation for threatened species.⁴³ The Commonwealth Government should exercise its powers under the Regional Forest Agreement to require the Tasmanian Government to meet its obligations to phase out broadscale clearing on private land. Amendments to the *Policy for Maintaining a Permanent Native Forest Estate* to restrict clearing were intended to take effect on 1 January 2015, but remain uncommenced.
- The Commonwealth should use forums such as COAG and the Meetings of Environment Ministers to progress the adoption of best practice laws to protect threatened species. Discussion should ensure that such protections are also adequately reflected in planning instruments and building regulations (for example, design requirements to minimise collision with glass windows), agricultural land management policies and the identification and conservation of climate refugia.
- The Commonwealth Minister should consider implementing Conservation Agreements with State and Territory Governments under s.305 and 307A of the EPBC Act to secure protection of critically endangered species, including actions to remediate damaged habitat and other recovery actions.

Conservation Agreements are currently in place between the Commonwealth and Tasmanian governments for the "protection and conservation of areas of State Forest separating the Tasmanian Wilderness World Heritage Area from adjoining wood production coupes."⁴⁴ This agreement operates despite the RFA exemption, providing additional obligations to those otherwise imposed under the EPBC Act.

Schedule 1: Recovery Plan Status for Critically Endangered Species (May 2016)

Species	Recovery plan
Fish	
<i>Bidyanus bidyanus</i> — Silver Perch, Bidyan	No recovery plan
<i>Brachionichthys hirsutus</i> — Spotted Handfish	Recovery Plan for Three Handfish Species: Spotted handfish <i>Brachionichthys hirsutus</i>, Red handfish <i>Thymichthys politus</i>, and Ziebell's handfish <i>Brachiopsilus ziebelli</i>
<i>Carcharias taurus</i> (east coast population) — Grey Nurse Shark (east coast population)	Recovery Plan for the Grey Nurse Shark (<i>Carcharias taurus</i>)
<i>Galaxias rostratus</i> — Flathead Galaxias, Beaked Minnow, Flat-headed Galaxias, Flat-headed Jollytail, Flat-headed Minnow	No recovery plan – plan not required
<i>Galaxias truttaceus hesperius</i> — Spotted Galaxias (western subspecies), Western Spotted Galaxias, Western Trout Galaxias	No recovery plan
<i>Glyphis glyphis</i> — Speartooth Shark	Sawfish and River Sharks Multispecies Recovery Plan
<i>Stiphodon semoni</i> — Opal Cling Goby	No recovery plan – plan not required
<i>Thymichthys politus</i> — Red Handfish	Recovery Plan for Three Handfish Species: Spotted handfish <i>Brachionichthys hirsutus</i>, Red handfish <i>Thymichthys politus</i>, and Ziebell's handfish <i>Brachiopsilus ziebelli</i>
Frogs	
<i>Litoria lorica</i> — Armoured Mistfrog	Recovery Plan for the stream-dwelling rainforest frogs of the wet tropics biogeographic region of north-east Queensland 2000 - 2004
<i>Litoria nyakalensis</i> — Mountain Mistfrog	
<i>Pseudophryne corroboree</i> — Southern Corroboree Frog	Southern Corroboree Frog <i>Pseudophryne corroboree</i> and Northern Corroboree Frog <i>Pseudophryne pengilleyi</i> National Recovery Plan
<i>Pseudophryne pengilleyi</i> — Northern Corroboree Frog	
<i>Taudactylus pleione</i> — Kroombit Tinker Frog, Pleione's Torrent Frog	Recovery Plan for Stream Frogs of South-east Queensland 2001–2005

Species	Recovery plan
Reptiles	
<i>Aipysurus apraefrontalis</i> — Short-nosed Seasnake	No recovery plan – plan not required
<i>Aipysurus foliosquama</i> — Leaf-scaled Seasnake	
<i>Cryptoblepharus egeriae</i> — Christmas Island Blue-tailed Skink, Blue-tailed Snake-eyed Skink	No recovery plan
<i>Eseya albagula</i> — Southern Snapping Turtle, White-throated Snapping Turtle	No recovery plan
<i>Emoia nativitatis</i> — Christmas Island Forest Skink, Christmas Island Whiptail-skink	No recovery plan
<i>Lepidodactylus listeri</i> — Christmas Island Gecko, Lister's Gecko	National Recovery Plan for Lister's Gecko <i>Lepidodactylus listeri</i> and the Christmas Island Blind Snake <i>Typhlops exocoeti</i>
<i>Nangura spinosa</i> — Nangur Spiny Skink	Recovery plan for the Nangur spiny skink (<i>Nangura spinosa</i>)
<i>Phyllurus gulbaru</i> — Gulbaru Gecko	No recovery plan – plan not required
<i>Pseudemydura umbrina</i> — Western Swamp Tortoise	Western swamp tortoise (<i>Pseudemydura umbrina</i>) recovery plan
Birds	
<i>Acanthornis magna greeniana</i> — Scrubtit (King Island)	King Island Biodiversity Management Plan
<i>Amytornis modestus obscurior</i> — Thick-billed Grasswren (NSW)	No recovery plan – plan not required
<i>Anthochaera phrygia</i> — Regent Honeyeater	Regent Honeyeater Recovery Plan (2016)
<i>Calidris ferruginea</i> — Curlew Sandpiper	No recovery plan – plan not required
<i>Calidris tenuirostris</i> — Great Knot	No recovery plan – plan not required
<i>Cinclosoma punctatum anachoreta</i> — Spotted Quail-thrush	Regional Recovery Plan for Threatened Species and Ecological Communities of Adelaide and the Mount Lofty Ranges
<i>Epthianura crocea macgregori</i> — Yellow Chat (Dawson)	National Recovery Plan for the Yellow chat (<i>Capricorn</i> subspecies) <i>Epthianura crocea macgregori</i>
<i>Lathamus discolor</i> – Swift Parrot	National Recovery Plan for the Swift Parrot <i>Lathamus discolor</i> (2011)
<i>Lichenostomus melanops cassidix</i> — Helmeted Honeyeater, Yellow-tufted Honeyeater (Helmeted)	National Recovery Plan for the Helmeted Honeyeater <i>Lichenostomus melanops cassidix</i>

Species	Recovery plan
<i>Limosa lapponica menzbieri</i> — Bar-tailed Godwit (menzbieri), Northern Siberian Bar-tailed Godwit	No recovery plan – no plan required
<i>Neophema chrysogaster</i> — Orange-bellied Parrot	National Recovery Plan for the Orange-bellied Parrot (Neophema chrysogaster) (2016)
<i>Numenius madagascariensis</i> — Eastern Curlew	No recovery plan
<i>Pedionomus torquatus</i> — Plains-wanderer	No recovery plan (draft recovery plan – comments closed December 2015)
<i>Pezoporus flaviventris</i> — Western Ground Parrot, Kyloring	South Coast Threatened Birds Recovery Plan
<i>Pterodroma arminjoniana</i> s. str. — Round Island Petrel, Trinidad Petrel	No recovery plan
<i>Pterodroma heraldica</i> — Herald Petrel	No recovery plan
Mammals	
<i>Gymnobelideus leadbeateri</i> — Leadbeater's Possum	Leadbeater's Possum Recovery Plan - 1997-2002 (Draft revised recovery plan – comments closed 20 May 2016)
<i>Miniopterus orianae bassanii</i> — Southern Bent-wing Bat	No recovery plan
<i>Pipistrellus murrayi</i> — Christmas Island Pipistrelle	National recovery plan for the Christmas Island Pipistrelle Pipistrellus murrayi
<i>Potorous gilbertii</i> — Gilbert's Potoroo	No recovery plan
<i>Pteropus natalis</i> — Christmas Island Flying-fox	No recovery plan
<i>Saccolaimus saccolaimus nudicluniatus</i> — Bare-rumped Sheath-tail Bat (Qld)	Recovery plan for the Bare-rumped Sheath-tail Bat Saccolaimus saccolaimus nudicluniatus 2007-2011
Other animals	
<i>Adclarkia dawsonensis</i> — Boggomoss Snail, Dawson Valley Snail	Recovery Plan for the boggomoss snail Adclarkia dawsonensis
<i>Advena campbellii</i> — Campbell's Helicarionid Land Snail	No recovery plan – plan not required
<i>Cherax tenuimanus</i> — Hairy Marron, Margaret River Hairy Marron, Margaret River Marron	
<i>Discocharopa vicens</i> — a land snail, a charopid land snail	

Species	Recovery plan	
<i>Dryococelus australis</i> — Lord Howe Island Phasmid, Land Lobster	Lord Howe Island Biodiversity Management Plan	
<i>Engaewa pseudoreducta</i> — Margaret River Burrowing Crayfish	No recovery plan – plan not required	
<i>Engaewa reducta</i> — Dunsborough Burrowing Crayfish		
<i>Gudeoconcha sophiae magnifica</i> — Magnificent Helicarionid Land Snail		
<i>Hoplogonus bornemisszai</i> — Bornemissza's Stag Beetle	No recovery plan	
<i>Hyridella glenelgensis</i> — Glenelg Freshwater Mussel	No recovery plan – plan not required	
<i>Leioproctus douglasiellus</i> — a short-tongued bee		
<i>Marginaster littoralis</i> — Derwent River Seastar		
<i>Mathewsoconcha grayi ms</i> — Gray's Helicarionid Land Snail		
<i>Mathewsoconcha phillipii</i> — Phillip Island Helicarionid Land Snail		
<i>Mathewsoconcha suteri</i> — a helicarionid land snail		
<i>Micropathus kiernani</i> — Francistown Cave Cricket, Southern sandstone cave cricket		
<i>Mystivagor mastersi</i> — Masters' Charopid Land Snail		
<i>Neopasiphae simplicior</i> — A native bee		
<i>Ogyris subterrestris petrina</i> — Arid Bronze Azure		
<i>Ordtrachia septentrionalis</i> — Rosewood Keeled Snail		
<i>Pseudocharopa ledgbirdi</i> — Mount Lidgbird Charopid Land Snail		
<i>Pseudocharopa whiteleggei</i> — Whitelegge's Land Snail		
<i>Quintalia stoddartii</i> — Stoddart's Helicarionid Land Snail		
<i>Synemon plana</i> — Golden Sun Moth		No recovery plan
<i>Thersites mitchellae</i> — Mitchell's Rainforest Snail		Mitchell's Rainforest Snail Thersites mitchellae recovery plan

END NOTES

- ¹ International Union for Conservation of Nature and Natural Resources, *Lathamus discolor*, The IUCN Red List of Threatened Species 2015.4 list.
- ² Heinsohn R, Webb M, Lacy R, Terauds A, Alderman R, Stojanovic D. 2015. "A severe predator-induced population decline predicted for endangered, migratory swift parrots (*Lathamus discolor*)" 186 *Biological Conservation* 75-82
- ³ Above n 1.
- ⁴ 'Species nominations not prioritised for assessment' on Department of Environment website www.environment.gov.au/biodiversity/threatened/nominations/species-not-prioritised-assessment (accessed 9 May 2016).
- ⁵ Heinsohn R et al. Above, n2.
- ⁶ Section 185 of the *Environment Protection and Biodiversity Conservation Act 1999* was repealed by the *Environment and Heritage Legislation Amendment Act (No 1) 2006*. That amending act introduced ss 194A – 194T, setting out the new nomination and listing process.
- ⁷ Although the TSSC is allowed to take this into account - Section 194G(2), EPBC Act
- ⁸ 'Assessment timeframes' on Department of Environment website www.environment.gov.au/biodiversity/threatened/assessments/process-and-timeframes (accessed 20 April 2016)
- ⁹ The TSSC may request that the Minister extend the assessment period for a species up to 5 years (s194P(2), EPBC Act), however this period does not account for the nomination, consultation and decision-making timeframes which could up to 250 days.
- ¹⁰ Though it is noted that the Minister 'may have regard to any matters that the Minister considers appropriate' in exercising the power to make changes to the proposed priority assessment list provided by the TSSC (section 194K(3), EPBC Act).
- ¹¹ Section 13(1), EPBC Act, although it is notably different in that the Australian Government is the only party which able to nominate a property for World Heritage listing, whereas the IUCN process is open to any person to make a nomination.
- ¹² Commonwealth of Australia (October 2009) *The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (Hawke Review)* at [2.90] and recommendation 5. The then-Australian Government agreed with this recommendation (see Commonwealth of Australia 2011 *Australian Government response to the report of the independent review of the EPBC Act* at p13), however no reforms were implemented.
- ¹³ *Review of Environmental Regulation Interim Report* dated March 2015 at p2 and Appendix A. To date, it would appear only Western Australia has committed to a memorandum of understanding with the Commonwealth to develop a common listing framework - www.environment.gov.au/about-us/mem/environmental-regulation-review (accessed 20 April 2016).
- ¹⁴ Justification may exist for different listing categories being allocated in different jurisdictions (such as the relative abundance of koalas in South Australia compared with East Coast states. Amendments should provide a default position that uplisting will be reciprocated in other comparable jurisdictions, but allow for a State or Territory to apply to the TSSC for an exemption on the basis that the species is at lower risk (or exists in greater abundance) in that State or Territory
- ¹⁵ Hawke Review at [5.46] and recommendation 16. Again, the then-Australian Government agreed with the recommendation, but failed to reform the legislation (*Australian Government response* at p35).
- ¹⁶ Section 270(1) EPBC Act.
- ¹⁷ Proposed variations to Recovery Plans must undergo the same consultation and publication processes as for the original plan – Sections 279 and 280 EPBC Act.
- ¹⁸ Section 269AA EPBC Act.
- ¹⁹ Sections 273(1) and (2) EPBC Act.
- ²⁰ 'Recovery plans required to be prepared as at 1 May 2013' on Department of Environment website at www.environment.gov.au/biodiversity/threatened/recovery-plans/required (accessed 21 April 2016).

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- ²¹ Sections 268 and 269(1), EPBC Act
- ²² Section 269(2), EPBC Act
- ²³ Section 284 EPBC Act.
- ²⁴ Section 279, EPBC Act
- ²⁵ Commonwealth Government. *Significant Impact Guidelines*
- ²⁶ This was also suggested in the Hawke Review at [5.20] and recommendations 12 and 13.
- ²⁷ Section 270(2A), EPBC Act
- ²⁸ Section 207A EPBC Act
- ²⁹ Saunders, D.L. and Tzaros, C.L. 2011. *National Recovery Plan for the Swift Parrot Lathamus discolor*, Birds Australia, Melbourne at p14 and Table 4.
- ³⁰ Hawke Review at [5.20].
- ³¹ Sections 321 (World Heritage); 324X (National Heritage places) and s.333 (Ramsar wetlands)
- ³² Section 139, EPBC Act
- ³³ See *Tarkine National Coalition Inc v Minister for Sustainability, Environment, Water, Population and Communities and Another* [2013] FCA 694 per Marshall J at [49] and [59]
- ³⁴ Section 143, EPBC Act
- ³⁵ Section 158A(3) and (4), EPBC Act.
- ³⁶ This is consistent with the approach taken in respect of large mining or coal seam gas proposals likely to impact on water resources, where the Minister is required to obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development: s.131AB
- ³⁷ Amendments should also be made to s.130 to ensure that the timeframes for making a decision do not run while waiting on advice from the TSSC, consistent with the current s.130(4A).
- ³⁸ Or, forestry activities for which a Forest Practices Plan is not required, in accordance with r.4 of the *Forest Practices Regulations 2007*
- ³⁹ See, for example, EDO Tasmania. 2015. *State forests, national interests*. Available at www.edotas.org.au; Feehely, J., Hammond-Deakin, N. and Millner, F. 2013. *One Stop Chop: How Regional Forest Agreements streamline environmental destruction*. Lawyers for Forests. Available at www.edotas.org.au; See also recommendations in the Hawke Review for stricter monitoring and review of RFA outcomes (section 10.11, p 197).
- ⁴⁰ Threatened Species Scientific Committee. 2016. "*Lathamus discolor* (swift parrot) Conservation Advice" on Department of Environment website: www.environment.gov.au/biodiversity/threatened/species/pubs/744-conservation-advice-05052016.pdf (accessed on 9 May 2016)
- ⁴¹ Pullinger, P. 2015. *Pulling a Swiftie: Systemic Tasmanian Government approval of logging known to damage Swift Parrot habitat*. Report prepared for Environment Tasmania, March 2015. Available at www.et.org.au/swiftie
- ⁴² EDOs of Australia. 2014. *Assessment of the adequacy of threatened species & planning laws*. Available at www.edo.org.au. For an assessment of Tasmania's laws, see EDO Tasmania. 2015. *Lifting the Standards*. Available at www.edotas.org.au.
- ⁴³ See, for example, Bush Heritage. *Land Clearing and Its Impacts*. www.bushheritage.org.au
- ⁴⁴ Commonwealth Government and Government of Tasmania. 2013. *Conservation Agreement for the protection and conservation of areas of State Forest separating the Tasmanian Wilderness World Heritage Area from adjoining wood production coupes*. Available at www.environment.gov.au/protection/environment-assessments/conservation-agreements