

A new generation of national environmental laws

**PLACES
YOU
LOVE**



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INTRODUCTION

The Places You Love Alliance stands for protecting the places and wildlife we love. Together, we represent over 1.5 million Australians – people that love our national parks, wildlife, and precious natural beauty. The alliance was formed to safeguard against the wind-back of national environmental protections. Now we have expanded our ambition, looking to galvanise the nature loving Australian community to stand up for nature and fight for stronger, more effective and efficient national environment laws.

THE CASE FOR CHANGE

Australians love our natural world, playing on pristine beaches, exploring colourful reefs, walking through bushland teeming with wildlife and relaxing by rivers flowing with clean water. Despite Australia's natural wealth and our love for nature, the most recent national State of Environment Report released by the Australian Government demonstrates that our natural environment is in serious and rapid decline.

It is a tragic reality that in 2017 our nation still allows the broadscale clearing of hundreds of thousands of hectares of native bushland that destroys koala habitat and dumps millions of tonnes of soils into the Great Barrier Reef. The scale of the problem now means eastern Australia is a global deforestation hotspot. Soil and water quality are in decline and invasive species are impacting across the landscape, degrading our farms and bushland alike. Thousands of native species are listed as threatened with extinction, yet their legal protection has not lead to their recovery and populations continue to plummet. Changing and uncoordinated state regimes continue to allow widespread destruction of old growth forest and woodlands and enable conflicted or corrupted decisions on resource developments. Thousands of Australians suffer the consequences of poor air quality. Climate change impacts will become more pervasive and compound existing threats to our environment as our communities and our ecosystems struggle to adapt to a warming world.

It is clear our national legal framework is failing to address the big environmental challenges our nation faces in the 21st century. Our current national environmental law, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), was developed almost two decades ago. It was written at a time when many of the pervasive threats to our environment were less well understood, including the threat of climate change. It provides too much discretion to make poor decisions and does not deal well with cumulative impacts of development. As a result, the EPBC Act has failed to deliver the protections it promised.

Australia needs a new national system of environmental protection that draws on the strengths of each level of government in our federal system in order to face the environmental challenges of the 21st Century.

PRINCIPLES FOR NATIONAL ENVIRONMENTAL LAW REFORM

A new generation of environment laws must work to protect and restore our natural environment, strengthen our democracy and support community involvement. A new national environmental framework must be built on five key principles:

- National leadership;
- A central role for community;
- Trusted institutions;
- Strong environmental outcomes; and
- Resilience in the face of climate change.

National leadership

There is a clear and essential role for the Australian Government to lead the development of a national framework for environmental protection and restoration. Currently the system in Australia distributes responsibility across the federation, but no one jurisdiction is charged with coordinating or leading efforts to protect our environment.

A lack of nationally consistent monitoring and reporting makes evidence-based decision making difficult for governments and increases costs for businesses attempting compliance with eight different, often-changing regulatory regimes. It is an impenetrable mess which also makes it very difficult for nature loving Australians to effectively participate.

Research has shown that the majority of Australians believe that the Australian Government should play a leadership role in protecting the environment.

A truly national approach to environmental protection would build on Australia's international responsibilities and the Federal Government's capacity to bring authority and resources to environmental governance.

National leadership under a new environmental framework will deliver:

- Accountability for the improvement of environmental indicators.
- Development of national goals, standards and reporting.
- Protection for specific National Environmental Matters.
- Coordination of multiple jurisdictions and regulatory regimes.

A central role for community

Australia's environment impacts all of us and Australia's citizens have a right to be involved in decisions that will affect the use and health of our environment.

Our recent history is littered with tales of closed-door or corrupt planning, vested interests and communities being shut out or ignored by decision makers. Too often this has led to conflict between businesses and communities, and weakened community trust in government processes and institutions. Building and strengthening community engagement in environmental decision making will restore trust in our planning system and help reduce post-decision conflict.

Australian communities must have:

- Every opportunity to be involved in local, regional and national planning. The community needs to be central to how we manage our environment
- Timely access to information to help them participate in decision making.
- Ability to participate in decision making before decisions happen.
- Ability to question and challenge decisions, ensure outcomes are enforced and hold decision makers to account, including through broad standing provisions, merits review and third party enforcement rights.

Independent and trusted institutions

Effective environmental planning and approval decisions rely on robust and independent advice. Political interference in Australia's environment institutions has diminished their effectiveness and increased Ministerial discretion in decision making has politicised decision making, reducing trust in the community.

Central to a new national environmental protection

framework is the provision of independent and transparent advice on planning and approval decisions. The Australian community expects robust accountability and oversight when it comes to environmental protection. Governments must ensure accountability through timely collection and disclosure of environmental information, including on trends across important indicators.

Australia must have new national environmental institutions that:

- Have independent governance.
- Provide independent and transparent advice to Ministers.
- Provide clear criteria for how decisions are made.
- Ensure publicly available, timely and robust reporting on decision processes and outcomes.
- Ensure the collection and reporting of accurate environmental data.

Our new system of environmental protection should be based on twenty-first century principles of smart regulation in order to deliver streamlined, strategic and effective outcomes for the environment, for government, business and our communities.

Delivering environmental outcomes

The next generation of national environment laws must build on existing protections, fully reflect our international obligations and drive continuous environmental improvement across the states and territories, ensuring that irreplaceable natural and cultural heritage is not lost. They must provide for intact connected natural landscapes and thriving wildlife, including providing for the recovery of threatened species.

Effective national laws and independent institutions must be backed by adequate resourcing to ensure that there is sufficient capacity and capability to be implemented.

Ensuring resilience under climate change

One of the biggest threats facing Australia's environment is the impact of climate change. Our national laws and frameworks must be strengthened to address the challenge of climate change and ensure we can mitigate, adapt to and be resilient in the face of a warming world.

The Federal Government must lead on providing clear national controls on greenhouse gas emissions and land-clearing. Our national government must ensure protection of existing carbon stocks, reduce land-based greenhouse gas emissions, facilitate the creation of new, biodiverse carbon stocks, and drive landscape adaptation to the impacts of global warming.

REFORMS NEEDED

1. Create **national environment laws that genuinely protect Australia's natural and cultural heritage**. The Federal Government must retain responsibility for current Matters of National Environmental Significance and protect them effectively. National oversight must be expanded to a broader set of matters to ensure more effective and efficient environmental protection across jurisdictional boundaries.
2. Establish an independent **Sustainable Australia Commission** that develops enforceable national, regional, threat abatement and species level conservation plans. The commission would set national environmental standards and work with state and territory agencies to undertake strategic regional planning and report on national environmental performance.
3. Establish an independent **National Environmental Protection Authority** that operates at arm's-length from government to conduct transparent environmental assessments and inquiries as well as undertake monitoring, compliance and enforcement actions.
4. Guarantee **community rights and participation in environmental decision making**, including open standing provisions, open access to information about decision making and environmental trends, review of decisions based on their merits, third-party enforcement provisions and protections for costs in the public interest.



CASE STUDY 1

THREATENED SPECIES LEADBEATER'S POSSUM AND SWIFT PARROT

Statement from the State of Environment Report

“The key pressures of habitat clearing and fragmentation, invasive species and climate change remain high on the list of pressures that threaten listed species and ecological communities, and biodiversity in general.”

Failure of the current system

The Leadbeater's Possum and Swift Parrot are listed as a Critically Endangered under the federal *Environment Protection and Biodiversity Conservation Act*. A critically endangered listing by the Federal Government means these species are at risk of extinction, and should be protected and recovered under national environment law.

The primary threat driving both species toward extinction is the logging of important habitat. This logging is regulated through long term Regional Forest Agreements (RFA) which exempts logging industries from national environmental law. This exemption removes Commonwealth oversight for the protection of threatened species that occur within an RFA region.

The present system for protecting threatened species is fundamentally flawed. Despite a national critically endangered status, the key threat contributing to these species decline is legally exempted from the national environmental protections. An inherent conflict of interest between the states' economic interests and its environmental responsibilities results in the species losing out.

How the new system will help threaten species

The primary threat to Leadbeater's Possum and Swift Parrot is loss of important habitat. Most of this habitat loss is due to ongoing native forest logging operations.

Under the reforms proposed there will be no exemptions for any sectors. Logging of native forests will be treated the same as any other activity which will impact on environmental values for which the Federal Government is responsible.



Further detail

1. *National environment laws that genuinely protect Australia's natural and cultural heritage*

Our national environment laws are almost two decades old and deal with a limited, but important, subset of environmental issues. These include world and national heritage areas, threatened, marine and migratory species, endangered ecological communities, international wetlands, water resources in relation to coal and gas, marine areas, nuclear developments and the Great Barrier Reef.

An effective national environmental regime must effectively protect existing matters of national environmental significance, whilst expanding national oversight to provide more comprehensive protection. The Australian Government must ensure it has the right framework in place to adequately protect and restore our natural environment. This should include providing additional national legislative oversight for:

- Australia's national parks and reserves;
- Critical habitats and climate refugia for threatened species;
- Impacts from land clearing;
- Greenhouse gas emissions;
- Water resources;
- Ecosystems and wetlands of national significance
- National biodiversity hotspots; and
- Vulnerable ecological communities.

These matters must be directly protected by an independent National Environment Protection Authority.

2. *A Sustainable Australia Commission*

Many of the problems relating to the development and administration of national environmental law can be traced to poor planning, collaboration and coordination of policies, regulation, resourcing and management arrangements among different levels of government. Best practice globally is to separate regulatory functions from policy and coordination to ensure the development of appropriate expertise and reduce the chances of regulatory capture, and policy being driven by compliance and enforcement. However, many of our government agencies combine the two, leading to confused organisational purpose and internal siloing.

Moves to hand over federal approval power to the states has made the system more complex, rather than simplifying management and regulation.

There is no national plan or leadership for our environment. As a result the management of issues like biosecurity, sustainable agriculture, urban development and conservation management are ineffective in stopping biodiversity loss.

An independent **Sustainable Australia Commission** is key to addressing this challenge. The Commission's functions would include:

- Developing a national plan for protecting and managing Australia's environment;
- Ensuring coordinated, integrated and strategic planning across the country and its oceans (at the national and bioregional scale, for species and habitat recovery and threat abatement);
- Provide a single front of house for government regulation;
- Providing intervening, escalating and overriding powers to ensure environmental plans are implemented, including the ability to set binding national standards on matters such as air pollution;
- Develop a national set of definitions, standards and methodologies for environmental indicators;
- Accreditation of ecologically sustainable fisheries;
- Report annually on the state of the environment and outcomes of planning and decision making to Parliament; and
- Publish reports on the state of our environment and outcomes of planning and decision making so that community members and business can be informed to fully participate in environmental decision making.

The Commission will need to be adequately resourced to exercise these functions.

3. *An independent National Environment Protection Authority (EPA)*

In our current system of environmental assessment and approval, key checks and balances found in transparent and accountable systems have been removed, meaning:

- Government decisions are often political, changeable and populist, giving no certainty to business and encouraging conflict;
- State governments, whose revenues rely on royalties from extractive industries, are primary decision makers on many environmental matters;
- Community access to decision-making processes and environmental monitoring is limited, reducing accountability, transparency, and public ownership of the decision making process; and
- The Federal Environment Department is tasked with administering national environmental law and also being directly accountable to the Minister of the day, creating the opportunity for manipulation and corruption.



Robust and independent federal administration, in the form of an independent Environment Protection Authority free from political interference, is key to addressing this challenge.

A new **Environment Protection Authority** would operate at arm's-length from government to conduct transparent environmental assessments and inquiries as well as undertake monitoring, compliance and enforcement actions. Its functions would include:

- Conducting environmental impact assessments for matters directly regulated by the Australian Government.
- Responsibility for monitoring, compliance and enforcement of all national environmental laws, with appropriate powers to undertake these functions (including investigations and inspections);
- Reviewing, advising and reporting openly to the Minister on specific development projects (with the Minister remaining as decision-maker).

4. Community rights and participation in environmental decision making

The Australian public expects strong protections and accountable decisions in relation to our environment. Access to justice is a crucial

component of public confidence in environmental decision-making and will remain so under its future replacement. A number of important reforms must be embedded in a new environment protection framework to improve accountability and access to justice for the Australian community.

These must include:

- 'open standing' provisions for any person to seek review of government decisions, or to enforce a breach, or anticipated breach, of environment law through third party enforcement provisions. This is in line with best practice and provides a much needed back-stop for the community to enforce Australia's nationally significant environmental laws.
- extended legal standing to merits review of approval and permitting decisions. This would improve the rigour and transparency of decision-making by government and public officials.
- protections for costs in public interest legal proceedings. This includes limiting upfront cost orders that deter the community exercising legal rights; improving clarity and certainty by allowing preliminary decisions on whether a matter is in the public interest; and use of public interest costs orders (i.e. protective costs orders) in those cases.

CASE STUDY 2

PLASTIC POLLUTION AND MARINE DEBRIS

Statement from the State of Environment Report

“The use of plastics continues to grow globally. As a result, the pressures being placed on the marine environment by dumped, discarded and lost debris continue to increase. This was reflected in a review of the threat abatement plan for the effects of marine debris on vertebrate marine life, which concluded that the objectives of the plan had not been met and the plan needed to be revised. Impacts on the marine environment associated with marine debris are high, with a deteriorating trend.”

Failure of the current system

Rubbish contaminating our oceans represents a significant pollutant and damages our marine wildlife. It comes from our waste, especially plastics which do not biodegrade.

In order to address this problem we would need policies to reduce the creation of waste. This will mean bans on many single use plastic items, better waste management approaches, stormwater management and monitoring and investment in cleaning up waste.

The current approach is for local, state and federal governments to work independently with no individual level of government actually responsible for fixing the problem. The result is that the Threat Abatement Plan for the impacts of marine debris on vertebrate marine life failed with a new one in development.

How the new system will help fix marine pollution

Under the new laws the Federal Government would be responsible to ensure marine pollution is managed well. The Minister would have the power to work with local



and state governments under regional plans to identify the best strategies in each region for fixing this problem.

Instead of hoping each state government or local council or shopping mall will take steps to ban point sources of plastic waste we have one entity able to make this decision and drive responsible waste management.

The actions recommended by the Sustainable Australia Commission to the Federal Government to ensure marine pollution is fixed will be public and the decisions made by the government will also be transparent.

CASE STUDY 3

HABITAT LOSS KOALAS AND THREATENED ECOLOGICAL COMMUNITIES

Almost 300,000 hectares of native bushland is cleared every year in Queensland. Eastern Australia is now one of 11 global deforestation fronts. Many of the ecosystems being cleared are ostensibly protected as threatened ecological community listings under the federal EPBC Act, and are incredibly important habitat for native species and biodiversity conservation.

Habitat loss continues to be the key threatening process to the long-term survival of the koala and is being compounded by numerous other threats that are acting synergistically.

Failure of the current system

The Queensland Government changed its land clearing laws in 2012 and clearing rates have since skyrocketed. Between 2014-2016 the Queensland Government allowed 84,000 hectares of koala habitat to be cleared. This is despite the koala being a protected threatened species under both Queensland and federal law.

Brigalow woodlands were the most cleared threatened ecological community in Queensland with more than 55,000 hectares of non-remnant and 12,000 hectares of remnant vegetation proposed for clearing or already cleared between 2013 and 2015. This is despite Brigalow (*Acacia harpophylla* dominant and co-dominant) being protected as a threatened ecological community under the federal EPBC Act.

Clearing significant tracts of threatened woodlands and koala habitat should trigger intervention from the federal environment minister to assess clearing proposals. The law fails on two fronts. It fails because landholders neglect to refer their clearing proposals and because the Federal Government neglects to enforce the law. Or it fails because the law does not



deal well with cumulative impacts and each individual act of clearing falls under approval thresholds, leaving precious habitats to suffer death by a thousand cuts.

How the new system will help koalas and threatened ecological communities

The intention of our national environmental law is not being realised. Relaxed land clearing controls at the state level are causing serious impacts on threatened species and ecological communities and the Federal Government is not enforcing the law.

New laws will require the Federal Government to adopt a policy to end deforestation in Australia. A priority action for the Federal Government is to stop the clearing of threatened ecological communities and threatened species habitat and ensure these critical areas are protected. There will be much stronger protection for critical habitats for threatened species. All levels of government will be required to cooperate with species and threatened ecological community recovery.

The new National Environment Protection Authority will have the power to identify illegal clearing and undertake investigations and prosecutions, independent from political influence. The Sustainable Australia Commission will report to parliament and the public on clearance rates and on performance to achieve recovery indicators for threatened ecological communities and species.

PHOTO CREDITS

Front page: Regrowth after a bushfire, Dandenong Ranges, Vic. Photo: Doug Gimesy

Page 1: Toolangi State Forest, Vic. Photo: Dale Cochrane

Page 3: The Gap Conservation Area, Vic.
Photo: Bette Devine

Page 4: Leadbeater's possum. Photo: Dan Harley

Page 4: Swift parrot. Photo: Chris Tzaros

Page 6: Errinundra Plateau logging, Vic.
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Page 8: Koala, Vic. Photo: Doug Gimesy



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