

Submission to the 2019 Review of the Environment Protection and Biodiversity Conservation Act 1999

Hunter Bird Observers Club Inc.

Hunter Bird Observers Club Inc. (HBOC) was established in 1976 and currently has a membership over 350 members. Although the Club is based in Newcastle NSW membership includes members from other areas in NSW and from interstate. HBOC is affiliated with BirdLife Australia, the largest and longest-running bird conservation and research group in Australia.

HBOC aims to encourage and further the study and conservation of Australian birds and their habitat and to encourage bird observing as a leisure-time activity.

HBOC promotes systematic field studies which include regular surveys by volunteers from the membership:

HBOC members currently contribute in excess of 2000 hours per annum in volunteer work surveying the migratory shorebirds in the Hunter River estuary. In addition there are many more hours dedicated to locating and identifying bird species frequenting the Hunter Region. All data gathered from field studies are entered into the national database, Birddata, administered by BirdLife Australia. Data are used to underpin conservation issues. These surveys have shown a disturbing trend with the assessments of many species populations classified as “uncertain”, “decreasing” “probably declining”.

HBOC Submission

We thank the panel for the opportunity to provide our submission on the review.

HBOC believes there is an identifiable need to strengthen and broaden Commonwealth environment laws with additional overarching legislation to mould State environment laws into a system that will not only reverse the current declines in national biodiversity but improve it into the future.

We believe that the recommendations of the 2008 statutory review and the 2019 Senate Inquiry into Faunal Extinctions if enacted would provide a platform for a system to not only arrest the slide into extinction of many species but also drive action plans to improve the survivability of all species going forward.

These previous reviews recommended:

2008 Statutory Independent Review

(1) redraft the Act to reflect better the Australian Government's role, streamline its arrangements and rename it the Australian Environment Act;

(2) establish an independent Environment Commission to advise the government on project approvals, strategic assessments, bioregional plans and other statutory decisions;

2019 Senate Inquiry into Faunal Extinctions – Interim Report

Recommendation 1

4.13 The committee recommends that to limit the drivers of faunal extinction, the Commonwealth develop new environmental legislation to replace the Environment Protection and Biodiversity Conservation Act 1999.

Recommendation 2

4.15 The committee recommends that the Commonwealth establish an independent Environment Protection Agency (EPA), with sufficient powers and funding to oversee compliance with Australia's environmental laws.

Therefore HBOC suggests instead of focussing on amending or modernising the EPBC Act 1999 this current review should refocus on how a new Act can be built around the recommendations of the 2008 Review and the 2019 Senate Inquiry.

To achieve this the establishment of an independent agency as recommended in 2008 and 2019 must be the first priority.

The agency must be independent, have adequate power and be given independent funding to oversee compliance, review, and maintain flexibility within the new Act to manage the challenges and changes of the future. To encapsulate this independence the establishment process must be managed by a panel independent of government and made up of environmental experts or university environmental staff.

With assistance from a panel of environmental scientists and environmental lawyers the new agency could then draft a new Act which effectively serves the environment and biodiversity.

EPBC Act 1999 - Current Local Situation

The overall conclusion is that despite its objectives the EPBC Act 1999 has been ineffective in providing protection to bird populations and their habitats which continue to show ongoing decline.

The EPBC Act is not working sufficiently well to protect matters of National Environmental Significance (NES) and has failed to provide Ecologically Sustainable Development (ESD). The Act fails to stand up to state government financial priorities and vested interests. When it comes to mining and major infrastructure projects states are more likely to prioritise short-term profits and political interests over the environment.

The Act as it stands will not be sufficient to deal with future climate change impacts on the natural environment – fire, extreme weather events and sea level rise. A new Act needs to ensure that climate change factors are given high priority.

National Environmental Significance (NES)

In the Hunter region many of the cases referred for assessment under the Act involve estuaries such as the Hunter River, Manning River and Port Stephens and the few remaining tracts of mature woodland on the valley floor. Aspects of the Hunter region bird populations and habitats which are specifically relevant to the EPBC Act 1999 because of their international and national importance and are recognised as of NES include:

- Migratory species protected by international agreements (e.g. shorebirds)
- Ramsar-listed wetlands
- Threatened species (e.g. Regent Honeyeater *Anthochaera phrygia*, Swift Parrot *Lathamus discolor* and Australian Painted Snipe *Rostratula australis*)*

The language of the Act is weak and should be strengthened in a new act so that development on a matter of NES cannot be proposed in the first place and, further, cannot encroach on or adversely affect these listed areas.

* A list of threatened bird species occurring regularly in the Hunter Region (excluding non-breeding seabirds) is provided in Appendix A.

Offsets

The offsets provisions incorporated into the Act have over time been modified and downgraded to a point whereby offset land:

- does not have to be of similar habitat to that which is threatened,
- does not have to comply with the no net loss of biodiversity provision,
- can be nominated at some later stage,
- may be itself developed at a later stage
- is substituted by the payment of money.

Over 7 million hectares of threatened species habitat has been cleared since the EPBC Act was introduced in 1999 but only 7% was referred for government consideration. The offsets provisions are only considered during the assessment and approval process by government.

The regulation and interpretation of the offsets provisions have been weak.

Ecologically Sustainable Development

HBOC's position is that the conservation of the environment and biodiversity should be a core consideration in planning for the region. Put simply, development projects should be zoned in a manner which minimises their environmental impact; i.e. where possible they should be fitted around existing landscape features of high environmental value, thus preventing the need to compensate for critical habitat degradation and loss. In the case of birds in the Hunter region critical environmental features are estuarine habitats, wetlands and remnant mature woodland on the Hunter Valley floor. Unfortunately, developers and planners see these areas as low value and sometimes unsightly real estate providing a prime opportunity for development.

Woodlands

Habitat for woodland species continues to be cleared, often for coal mining (10 new or extended coal mines for Hunter Valley are proposed) and/or for residential development (Kings Hill development at Raymond Terrace). Land clearance continues despite the fact that 76% of woodland and forest from the Hunter Valley floor has been cleared leaving only 19% of fragmented remnant vegetation. A mere 0.8% of this remnant vegetation is in protected ownership i.e. national parks, which are situated on poorer soils and have lower bird abundance and diversity (Peake p.v). We note that the EPBC Act approval issued for the Hunter Economic Zone (HEZ) in May 2007 was followed (by a matter of months) by the most significant breeding event for the critically endangered Regent Honeyeater in modern times. The HEZ was also the only location across the entire range of the Regent Honeyeater where they were detected breeding in the 2018/19 season. Remarkably this approval also allowed for the removal of up to 90% of all mature trees on the HEZ site and has effect until 30 June 2047. The HEZ approval is a shining example of the flaws of the EPBC Act.

The cumulative impact of land clearing is not taken into account despite its being an integral part of the Act. No two places in the environment are necessarily the same. While it is desirable to streamline the assessment process, case by case assessment of projects is necessary so that each environment is correctly assessed for its significance. The use of habitat surrogacy in the off-setting process does not work for many species of birds.

Ramsar Wetlands

Ramsar-listed wetlands are a matter of NES under the EPBC Act 1999. The Act does not sufficiently protect them from adverse events which compromise their ability to function.

The language of the current Act is weak and a new act should ensure development cannot be proposed for or encroach on and adversely affect these listed areas.

Examples: Toondah Harbour, Queensland – proposed large inappropriate development, Orielton Lagoon, Tasmania – surrounding land use pressures, Hunter Wetlands National Park, NSW. In the case of the latter the Tomago precinct is significant on two counts: it is a site containing two matters of NES protected by the EPBC Act 1999. It is a Ramsar-listed wetland and it is habitat for 6% of the migratory species Sharp-tailed Sandpiper *Calidris acuminata*. It has been the subject of a long rehabilitation project costing taxpayers millions of dollars. Yet the success of the rehabilitation is hindered by a lack of cooperation on the part of adjacent landowners. International environmental responsibilities are not being implemented sufficiently well for this Ramsar-listed wetland to function to its capacity.

The New Act to Include

In view of predicted climate change factors such as long term drought, the new Act should include designated freshwater wetlands, not just Ramsar-listed wetlands. For example very few freshwater wetlands remain in the Hunter Region. Freshwater wetlands in Hunter Region had been dry for many months due to ongoing drought thus affecting, for example, the migratory shorebird, Latham's Snipe *Gallinago hardwickii*, which depends on freshwater wetlands.

All migratory shorebird species migrating to Australia should be listed as threatened as all are or will be in long-term danger of extinction owing to past and present loss of habitat and climate change factors such as sea level rise. Much of their habitat is surrounded by infrastructure which will not allow the migration of habitat such as mudflats and saltmarsh being essential foraging areas.

The recent catastrophic bushfire events have highlighted the need for legislated protection of large areas of forests and woodlands so that sufficient habitat is available for all species to move to or to serve as a recruitment area. Forests should be brought under the protection of the new Act and regional forestry agreements should not be exempt.

A requirement for recovery action plans for threatened species must be included with appropriate triggers, reporting requirements and adequate funding.

Aquifers should also be included under the new Act.

Terms of Reference

We are disappointed that guiding principles

a) reducing unnecessary regulatory burdens for Australians, businesses and governments

and

b) supporting investment and creating new jobs

have been added to the Terms of Reference. These additions are inappropriate for a review of an Environment Protection and Biodiversity Conservation Act.

That the Minister has chosen to add them gives significant support for the establishment of an independent agency and the replacement of this current act with one independent of politics.

Conclusion

The recent devastating bushfires across the country have brought with them immense challenges for environmental managers. The individual size and breadth of the fires has created a situation where localised extinctions will result, species extinctions are probable and recolonisation of burnt National Parks is problematic due to fragmentation with loss of genetic diversity, a future concern. It may well be too late already for some species whether this act is revitalised or a new act legislated. Urgent attention, funding and action plans are needed now.

The need for an independent environment protection agency and the enactment of a new act has never been greater. We ask that the panel gives this urgent and very real consideration. The survival of many of Australia's unique species is at the moment in the balance.

A Lindsey and T Kendall

for the Conservation Sub-Committee of

Hunter Bird Observers Club Inc.

14 March 2020

Reference

Peake, T.C. 2006. The Vegetation of The central Hunter Valley NSW. A Report on the findings of the Hunter Remnant Vegetation Project. Hunter – Central Rivers CMA.

Appendix A: Threatened Bird Species Listed Under the EPBC Act that occur regularly in the Hunter Region (excludes threatened seabirds that do not breed in the region)

Critically Endangered

- **Curlew Sandpiper** *Calidris ferruginea*
- **Eastern Curlew** *Numenius madagascariensis*
- **Great Knot** *Calidris tenuirostris*
- **Swift Parrot** *Lathamus discolor*
- **Regent Honeyeater** *Anthochaera phrygia*

Endangered

- **Gould's Petrel** *Pterodroma leucoptera*
- **Red Knot** *Calidris canutus*
- **Lesser Sand Plover** *Charadrius mongolus*
- **Australian Painted Snipe** *Rostratula australis*
- **Australasian Bittern** *Botaurus poiciloptilus*
- **Rufous Scrub-bird** *Atrichornis rufescens*

Vulnerable

- **Bar-tailed Godwit** *Limosa lapponica baueri*
- **Greater Sand Plover** *Charadrius leschenaultii*
- **White-throated Needletail** *Hirundapus caudacutus*
- **Painted Honeyeater** *Grantiella picta*