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15 April 2021

Submission on the *Environment Protection and Biodiversity Conservation Amendment (Save the Koala) Bill 2021*

Dear Secretary,

Thank you for the opportunity to make a submission to the Senate Standing Committee on Environment and Communications (Legislation) inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Save the Koala) Bill 2021*.

WWF-Australia is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to 'stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature'. WWF-Australia has approximately one million financial and non-financial supporters. WWF-Australia as an organisation has a 40-year history of working on wildlife conservation in Australia with scientists, communities, farmers, business and government.

If you require further information, please contact [REDACTED]
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Yours sincerely,

[REDACTED]

Dermot O'Gorman
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The World Wide Fund for Nature-Australia (WWF-Australia) welcomes the opportunity to contribute to the inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Save the Koala) Bill 2021* (the Bill).

WWF-Australia was deeply engaged in the development of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act), and we contributed constructively to both 10-year independent statutory reviews of the Act (Hawke and Samuel Reviews). We engaged with the Samuel Review, both in our own right and as a member of the Places You Love Alliance. We do so in the interests of advancing the restoration and protection of Australia's unique environment, heritage and biodiversity.

We provide this submission in the context of:

1. A 50% decline in the east coast koala population since 2000;
2. Projected extinction of koalas in NSW by 2050;
3. Potential up listing of the east coast koala population from vulnerable to endangered under the Act;
4. Eastern Australia being identified as a global deforestation front;
5. Record-breaking drought and high temperatures driven by climate change that led to the catastrophic 2019-20 bushfires which burnt habitat that supported an estimated 61,000 koalas; and
6. The recommendations of the Final Report of Independent Review of the Act by Professor Samuel.

Professor Samuel recommended significant reforms to the overall architecture of the Act, including:

- a. establishing new legally enforceable National Environmental Standards that would underpin any streamlining measures;
- b. New independent bodies, including a National Environment Commissioner and statutorily independent Commonwealth Office of Compliance and Enforcement.
- c. improved transparency and accountability of decision makers, including establishing limited merits review;
- d. A stronger focus on actively restoring the environment through improved environmental planning and facilitating the scale of investment needed to deliver better outcomes;
- e. a 'quantum shift' in the data and information systems underpinning national environmental law, including establishing a statutory data custodian;
- f. a major rethink of biodiversity offsetting; and
- g. dramatically reshaping and improving Indigenous participation and cultural heritage protection.

Moreover, Professor Samuel offered a sobering warning in his Final Report:

“To shy away from the fundamental reforms recommended by this Review is to accept the continued decline of our iconic places and the extinction of our most threatened plants, animals and ecosystems. This is unacceptable. A firm commitment to change from all stakeholders is needed to enable future generations to enjoy and benefit from Australia’s unique environment and heritage.”

WWF-Australia continues to urge the Government to:

- a. Provide its Response to the Independent Review’s Final Report and that a public consultation process for considering both the Final Report and Government Response be established.
- b. Provide a timeline to address the findings of the Independent Review, including assurances that the process will be rigorous and would include the types of preconditions that would need to be in place for negotiation with States and Territories to commence.
- c. Introduce a comprehensive package of reforms to the Act to be considered by Parliament together, including a full suite of strong legally enforceable National Environmental Standards based on the Standards recommended in the Final Report; an independent regulator modelled on the *Commonwealth Environment Protection Authority Bill 2021* currently before the House of Representatives for compliance and enforcement; and robust accountability and transparency requirements.

We view such comprehensive reforms as critical to the future of Australia’s species and ecosystems, including the koala. Accordingly, WWF-Australia welcomes the Bill as being consistent in intent with these broader reforms and offering a species-specific legislative mechanism to significantly improve protections for koalas and their habitat.

Koalas in decline due mainly to deforestation and forest degradation

WWF-Australia has been deeply engaged in conservation of koalas and their habitat, particularly the vulnerable koala populations in Queensland, New South Wales and the Australian Capital Territory. In 2019, we released a [*Koala Habitat Conservation Plan*](#) prepared by independent koala experts that identified pathways to saving koalas from ongoing decline.¹ The report recommends that, in relation to the Commonwealth’s powers:

- A new Australian Environment Act should be legislated that, inter alia, prohibits the clearing of significant koala habitat.
- The conservation of koalas and their habitat should be elevated to be a national policy priority for the Federal Government.

¹ Paull, D., Pugh, D., Sweeney, O., Taylor, M., Woosnam, O. and Hawes, W. 2019. *Koala habitat conservation plan. An action plan for legislative change and the identification of priority koala habitat necessary to protect and enhance koala habitat and populations in New South Wales and Queensland*. Report prepared for WWF-Australia and partner conservation organisations. Published by WWF-Australia, Sydney.

Prior to the catastrophic 2019-20 bushfires, WWF-Australia projected koalas were on track to become extinct in the wild across most or all regions in Queensland and NSW by 2050.² The brief concluded that:

- WWF-Australia projects that koalas will become extinct in the wild in eastern Australia by as early as 2050 – and highly likely by 2100 – if deforestation and other threats continue. This projection is based on four datasets produced by a range of koala experts and which show alarming consistency in terms of koala declines;
- From 2000 to 2016, at least 885,596 hectares of forests and woodlands that are ‘known’ or ‘likely’ to be koala habitat were bulldozed;
- Deforestation in eastern Australia has been driven by a combination of the failure of State and Federal governments to pass strong laws to protect koala habitat ...; and,
- Laws must be strengthened at State and Federal levels to halt rampant deforestation to protect the habitat of koalas, and many other wildlife species, if this iconic species is to survive in the wild this century.

WWF-Australia partnered with the International Fund for Animal Welfare and Humane Society International to nominate the east coast koala population be up listed to endangered under the Act. The nomination was supported by two key reports produced by expert koala consultants Biolink that concluded that, since 2000, koala populations declined by an estimated 28.52% and 65.95% in NSW and by 49.8% in Queensland. Key excerpts from the two reports are provided below.

In relation to koala population in NSW, Lane *et al.* concluded that:

“the NSW koala population has declined by at least **28.52% (lower bound)** to as high as **65.95% (upper bound)** over the three most recent koala generations, inclusive of the impacts of the fire events up until mid-December 2019. Importantly, this conclusion does not take into account fire events since the 10th December 2019, some of which are known to have impacted on additional ARKS not taken into account for this report; hence the lower bound will be greater than what we have been able to estimate.”³

In relation to the koala population in Queensland, Wallis *et al.* concluded that:

“the Queensland koala population has declined by at least **49.80%** over the three most recent koala generations, inclusive of the impacts of the fire events up until December 2019. The factors driving these circumstances for koalas are ongoing, and there remain other factors which have not yet been taken into account but Biolink QLD koala conservation review which will otherwise increase the estimated minimum effect.”⁴

² Blanch, S, and Taylor, M, 2019. *Koalas face extinction in eastern Australia, a deforestation hotspot*, WWF-Australia Briefing, May 2019, available for viewing at <https://www.wwf.org.au/ArticleDocuments/351/Briefing%20-%20koala%20extinction%20risk%20in%20Eastern%20Australia%20WWF-Aus%20Nov%202019.pdf.aspx?OverrideExpiry=Y>

³ Lane, A., Wallis, K., and Phillips, S. 2020. *A review of the conservation status of New South Wales populations of the Koala (Phascolarctos cinereus) leading up to and including part of the 2019/20 fire event*. Report to International Fund for Animal Welfare (IFAW). Biolink Ecological Consultants, Uki NSW. Available for download at <https://www.wwf.org.au/ArticleDocuments/353/Review%20of%20Conservation%20Status%20NSW%20Biolink%20for%20IFAW%20with%20addendum%202%20up%20to%20Feb%2013%20.pdf.aspx>

⁴ Wallis, K., Lane, A. and Phillips, S. 2020. *A review of the conservation status of Queensland populations of the Koala (Phascolarctos cinereus) arising from events leading up to and including the 2019 fire events*. Report commissioned by the

A further study by Biolink following the catastrophic 2019/20 bushfires estimated

“a median reduction in the naive occupancy rate by koalas when considered across all six fire grounds was 71% when standardized against pre-fire occupancy levels.”⁵

Phillips *et al.* go on to say that:

“It follows that outside of these areas, the presence of individual larger (i.e. >300 mm DBH) size-class [primary koala feed trees] species is also likely to be important in facilitating the movement of koalas across a landscape where fire severity driven fragmentation will have resulted in increasingly disjunct population cells. Hence, the retention of these trees across the intervening landscapes should be maximized.”

A May 2020 WWF-Australia briefing overlaid Queensland and NSW Government maps of tree clearing on known or likely habitats for the koala as mapped by the Australian Government.⁶ The analyses concluded that:

“federal regulators and environment ministers have failed to adequately enforce Australia’s nature laws to protect koala habitat since 2012, when koalas were listed as a vulnerable species under the Australian Government’s Environment Protection and Biodiversity Conservation Act (EPBC Act). Since listing, we have seen an increase - not a decrease - in destruction of Koala habitat, thereby undermining the purpose of the listing.”

Specifically, the analyses found that

“...contrary to expectation, rates of clearing of Koala habitats actually increased after 2012 when the species was listed, from an average annual loss of 16,199 ha over the period 2004-12 increasing to 17,323 ha for 2012-18 in Queensland, and from 11,153 ha over the period 2004-12, increasing to 14,695 ha in the subsequent 2012-17 period in NSW.”

A November 2020 report by Australia’s leading faunal ecologists to WWF-Australia estimated that the catastrophic 2019-20 bushfires impact an estimated 61,000 koalas, including 8700 (est) of the vulnerable koala population in NSW and Queensland.⁷

World Wide Fund for Nature-Australia (WWF-Australia), in collaboration with Humane Society International (HSI) and International Fund for Animal Welfare (IFAW). Biolink Ecological Consultants, Uki NSW. Available for download at <https://www.wwf.org.au/ArticleDocuments/353/A%20Review%20of%20the%20Conservation%20Status%20of%20QLD%20Koalas.pdf.aspx>

⁵ Phillips, S, Wallis, K, and Lane, A. 2021. Quantifying the impacts of bushfire on populations of wild koalas (*Phascolarctos cinereus*): Insights from the 2019/20 fire season. *Ecological Management & Restoration*, 22, issue 1, January 2021 doi: 10.1111/emr.12458

⁶ Taylor, M, 2020. *Destruction of Koala habitat increased after listing as vulnerable in 2012*. WWF-Australia Briefing, May 2020. Available for viewing at <https://www.wwf.org.au/news/news/2020/destruction-of-koala-habitat-increased-after-vulnerable-listing#gs.y5jku9>

⁷ van Eeden, L., Nimmo, D, Mahony, M, Herman, K, Ehmke, G, Driessen, J, O’Connor, J, Bino, G, Taylor, M, and Dickman, C., 2020. Impacts of the unprecedented 2019-20 bushfires on Australian animals. Report prepared for WWF-Australia, Sydney. Available for download at https://www.wwf.org.au/ArticleDocuments/353/WWF_Impacts-of-the-unprecedented-2019-2020-bushfires-on-Australian-animals.pdf.aspx

Deforestation and forest degradation are a primary driver of declines in koala populations in Australia. In January 2021, WWF-International identified Eastern Australia as a global hotspot for deforestation and forest degradation.⁸ Australia is the only developed, or minority world, nation identified as a deforestation front, which significantly overlaps with the distribution of the vulnerable east coast koala population. The report stated that:

“In **Eastern Australia**, nearly half of the original forested area has been lost. The once vast brigalow and grassy box forests of inland eastern Australia are now endangered or critically endangered. Over 700 native plant and animal species are threatened by forest habitat destruction, including the iconic koala.”

Intent of the Bill

The Bill proposes amendments to the Act that would significantly increase habitat protection for koalas. In particular, the Bill proposes:

1. A statutory test that would establish greater specificity for determining whether an action has or will have or is likely to have a significant impact upon koalas for the purposes of ss18 and 18A of the Act;
2. Provide a statutory definition of *koala habitat* and *koala habitat tree*;
3. Prohibits the Minister from approving an action “consisting of or involving the clearing of koala habitat”; and,
4. Removes the exemption for Regional Forest Agreements from application of the Act pursuant to Part 4, Division 4, Subdivisions A and B in respect of forestry operations that “*have, will have, or are likely to have a significant impact on koalas*”.

1. Statutory test for significant impact on koalas

One of the great failings of the Act has been a reliance upon the significant impact test (s18). The WWF-Australia briefing (May 2020, see above) that found destruction of known or likely koala habitat increased after the east coast population was listed as a vulnerable population amply demonstrates this failing. This is due in large part to the highly qualitative nature of the *Significant Impact Guidelines*⁹ (the Guidelines) developed to guide interpretation of the significant impact test. These guidelines are highly permissive, lack objective clarity, are ambiguous and open to interpretation in favour of project proponents and to the detriment of koalas.

The Bill proposes a mechanism to structure administrative and Ministerial discretion by establishing a koala-specific significant impact test. Such a test would remove the ability of decision makers to read down the likely impacts of a project upon koalas.

The Bill proposes a mechanism to address this deficiency in the Act in respect of koalas by inserting two new provisions within the Act:

⁸ Pacheco, P., Mo, K., Dudley, N., Shapiro, A., Aguilar-Amuchastegui, N., Ling, P.Y., Anderson, C. and Marx, A. 2021. *Deforestation fronts: Drivers and responses in a changing world*. WWF, Gland, Switzerland. Eastern Australia fact sheet available for download at

https://wwfint.awsassets.panda.org/downloads/deforestation_fronts_factsheet_eastern_australia.pdf

⁹ *Matters of National Environmental Significance - Significant impact guidelines 1.1 - Environment Protection and Biodiversity Conservation Act 1999*, available for viewing at

<https://www.environment.gov.au/epbc/publications/significant-impact-guidelines-11-matters-national-environmental-significance>

18B Significant impact in relation to koalas

*For the purposes of a subsection of section 18 or 18A that applies in relation to koalas, **significant impact** has a meaning affected by section 527G.*

527G Significant impact on koalas

(1) This section applies in relation to any listed threatened species that are koalas.

*(2) For the purposes of a subsection of section 18 or 18A that applies in relation to koalas, paragraph 42(ba) and any other provision of this Act that applies in relation to koalas, a **significant impact** on koalas includes any substantial loss of genetic diversity, or any loss of connectivity or available koala habitat, of any population of koalas such that the population is placed at greater risk of extinction.*

When read in conjunction with s527F *Definitions relating to koalas* (see below), this provision would provide a superior legislated mechanism for protecting koalas than the application of ss18 and 18A and the Guidelines on their own. The proposed ss18B and 527G would substantially reduce the ability of decision makers to approve projects that destroy koala habitat.

WWF-Australia supports this amendment.

2. Statutory definition of koala habitat

In relation to proposed s527F *Definitions relating to koalas*, WWF-Australia broadly welcomes the intent to protect koala habitat. This approach significantly improves the capacity of project proponents and decision makers to know if the land proposed for an activity is koala habitat. However, we propose an amendment to the definition as follows:

koala habitat is an area of land that includes land where

- (a) koalas live, or
- (b) koalas are known to have occurred during the past 18 years,¹⁰ or
- (b) koalas are known to traverse, or
- (b) trees species identified by state or local governments as being koala feed tree species for the region in which the land occurs, or
- (b) trees grow which are used by koalas for resting, shelter, movement or safety.

Accordingly, the proposed definition of ***koala habitat tree*** would no longer be required. The proposed amendment to the Bill would acknowledge the expert advice provided by state and local governments and avoid omitting some tree species not listed in the definition of koala habitat tree that form important parts of the diet of koalas in specific regions, such as Forest Oak *Allocasuarina torulosa* on the NSW mid north coast.

WWF-Australia welcomes the Bill's intent to define koala habitat, and as revised by our amended definition, we support this amendment.

¹⁰ A period of 18 years is frequently used for koala conservation assessments as it represents three average life spans of a koala (hence six years times three generations), the definition used by the IUCN in assessing changes in species conservation status.

3. Moratorium on clearing koala habitat

The Bill proposes to prohibit the Minister from approving an activity that would lead to destruction of koala habitat in a paragraph to be inserted at the end of section 139:

(3) Despite subsections (1) and (2), the Minister must not approve an action consisting of or involving the clearing of koala habitat.

This proposed amendment would operate in concert with the two proposed amendments above (*Statutory test for significant impact on koalas*, and *Statutory definition of koala habitat*) to significantly structure Ministerial discretion. This amendment would be a significant improvement upon the current approach under the Act to approve destruction of significant areas of koala habitat.

WWF-Australia supports this amendment.

4. Removal of exemption of Regional Forest Agreements from operation of the Act regarding koala habitat

WWF-Australia does not support the exemption of the operation of the Act in relation to Regional Forest Agreements.

The Bill proposes to insert paragraph 42(ba) to remove the exemption for forestry operations in RFA areas from application of the Act:

(ba) operations that have, will have, or are likely to have a significant impact on koalas;

In lieu of the removal of the exemption for forestry operations in RFA areas from the application of the Act in general, WWF-Australia supports a koala-specific amendment to the Act that would remove the exemption in respect of koala habitat. Forestry operations in RFA areas that an action has or will have or is likely to have a significant impact upon koalas would therefore need to be assessed in accordance with the proposed significant impact on koalas test established under the proposed s18B and s527G.

Recommendation

WWF-Australia submits that the Committee recommend that the Bill proceed.