

Submission to the effectiveness of threatened species and ecological communities' protection in Australia

Port Campbell Community Group Inc., December 2012

Thank you for the opportunity to comment on the effectiveness of threatened species and ecological communities' protection in Australia.

Introduction

1. This submission is made on behalf the Port Campbell Community Group Inc (**"PCCG"**).
2. PCCG is an independent, non-profit organisation, which exists to protect and conserve the Port Campbell headland, port and the national park including its biodiversity and heritage features.
3. PCCG works to educate, foster appreciation, and improve, protect and conserve the coastline, and activities include wildlife monitoring with remote fauna cameras for the DSE Biodiversity Atlas.
4. The PCCG was recently awarded a \$25,000 Coastcare grant to further this program with educational activities to raise awareness on threatened species.
5. The PCCG also works to increase knowledge and understanding of environmental issues in the area through fostering and disseminating specialist and local knowledge.

6. Terms of Reference

a) management of key threats to listed species and ecological communities;

Through our experience, there appears to be little or no ongoing management to key threats to listed species and ecological communities. This lack of appropriate management has destroyed and displaced local communities of threatened species – as shown in the case study below.

Key threats include:

- Inadequate assessment by the Federal Department of a community of threatened species and the proposed impacts on that community.
- Too high a bar in the Department's consideration of whether it is a matter of national significance continues to destroy communities of threatened species leading toward extinction.

- There is a lack of conditions placed by the Department on development sites to mitigate impacts on threatened species.
- Lack of Department action and implementation of the EPBC Act taken when a threatened species appears to have been purposely destroyed.
- Clearing of nesting sites and diminishing habitat and wildlife corridors.
- Feral animals – foxes and cats.

7. Actions required:

- All threatened species must be protected.
- It is the government's (Federal, State and Local) responsibility to ensure no threatened species is harmed.
- Appropriate penalties and actions must occur when threatened species are destroyed.
- More onground work needs to be done in identifying and monitoring areas of threatened species.
- Protection policy must be objective with accountable assessment criteria.
- Ongoing, onground feral animal control program must be implemented by governments.
- Local government and councillors need greater educating on their responsibility to protect threatened species.
- Compulsory protection of threatened species needs to be written into all planning documents.
- There must be more prescriptive steps in the referral assessment process.
- The Act must have clear assessment criteria which is provided to all parties and upheld.

Any referral process must include:

- A section whereby a third party can make a referral and be a formal part of the assessment and decision making process.
- Relevant steps of the process and assessment must be in writing to all parties.
- All parties should have the opportunity to supply expert reports.
- All parties must have the same opportunities to present their case and to meet on or adjoining the site.
- The Act must ensure there is appropriate correspondence between relevant government departments and stakeholders to ensure all evidence and recommendations are fully considered.

- The Department must ensure that State government biodiversity officers are involved in the assessment process.
- A public comment period must be implemented after the Department's assessment.
- Penalty criteria must be clear and enforced.
- When new information becomes available, or if it can be proven an assessment was inadequate, a former assessment should be able to be reviewed with all parties involved in the discussion. This will also limit cases to the Federal Court.
- The ongoing consequences of any development, or future possible developments, including incremental off-site impacts, must be fully considered.
- When there is a lack of scientific evidence, the Precautionary Principle which is a part of government policy must be followed until further research is undertaken.

(b) development and implementation of recovery plans:

- The PCCG made a submission to the *EPBC Act 1999 Draft Referral Guidelines for Southern Brown Bandicoot (eastern), Isoodon obesulus obesulus* in June 2011, but has no response or reply as to whether a final report was made. It is important that all submissions receive updates on government decisions.
- At the State level, in Victoria, the development and implementation of Action Statements appears to have been extremely protracted. Eg. Fewer than half the species, communities and processes listed have their management set out in an Action Statement. Further, there is a lack of legislative power to compel the directives within Action Statements to be carried out. See EDO Report p 12-13
- Also, there has been limited use of Flora and Fauna Management Plans in Victoria. See EDO Report p 12-13

(c) management of critical habitat across all land tenures:

- Good management is essential to all critical habitat is vital to threatened species survival.
- 'Critical habitat' is defined as any habitat containing any threatened species.
- In Victoria, it is clear that legislative tools under the FFG Act to protect the habitat of threatened species are not being used. To date, there has only been one Critical Habitat Determination made and this was revoked soon after. And, no Interim Conservation Orders (orders which can prohibit or regulate activities/processes on in that habitat) have been issued. See EDO Report pp 14-15 and also the VAG's 2009 Report pp33-35.

(d) regulatory and funding arrangements at all levels of government:

- In Victoria, it is evident that inadequate resources for the implementation of our threatened species protection legislation (FFG Act) is a fundamental problem underlying many of the shortcomings of the Act. See EDO Report pp18-19. The VAG identified a lack of resources as a significant reason for DSE's poor implementation of the FFG Act.
- There must be greater funding at all levels of government to ensure protection of threatened species and implementation of actions.
- Full accountability of all government departments to protecting threatened species.

(e) timeliness and risk management within the listings processes:

- The VAG's 2009 Report demonstrates a number of deficiencies in the listing process in Victoria, thus impacting its effectiveness. E.g. Lack of up-to-date reliable scientific data, limited stakeholder participation and dilution of expertise. See EDO Report p10 and VAG's Report p21.
- Currently inadequate as noted in the case study below.

(f) the historical record of state and territory governments on these matters:

- Both the Environment Defender's Office (**EDO**) Report and the Victorian Auditor General's Report 2009 (**VAG**) clearly highlight significant deficiencies in the implementation of Victoria's principal piece of legislation dealing with biodiversity conservation, the FFG Act.
- The Port Campbell case study – below – should be recorded as an example of the government's lack of response and responsibility to threatened species.

(g) any other related matter:

8. Port Campbell Case Study comments on the effectiveness threatened species and ecological communities' protection in Australia

Following extensive correspondence to the Department of Sustainability, Environment, Water, Population & Communities (**Department**) regarding potential development impacts on nests of the highly significant Southern Brown Bandicoot, and the ensuing destruction of at least one of the bandicoot nests, at 1 Hennessy Street Port Campbell Victoria, it is obvious that the Act's current assessment process and the proposed referral guidelines are continuing to let threatened species be destroyed and edge closer toward extinction.

Currently the Act and assessment process do not appear to be fully transparent or accountable, or protect threatened species.

Extensive evidence (many thousands of photos and many videos) was provided to the Department showing that the Southern Brown Bandicoot *Isoodon obesulus* occurred at a high

density (approx 8-10 adults, numerous adolescent and some very young) within a small part of the Port Campbell headland and adjoining undeveloped land at 1 Hennessy Street (**private land**). It was determined that baby bandicoots only appeared on the private land, establishing it as a bandicoot nesting site.

Clear rationale was also provided to the Department explaining why the private land was a bandicoot nesting site, including:

- sandy soil (compared to the greater surrounding area that has clay surface soil),
- high quality vegetation (DSE notes the high quality of habitat in a letter 28 February 2011 to Corangamite Shire Council)ⁱ,
- warm sheltered northern orientation (protected by Crown land trees and a fence),
- quiet cul-de-sac off main traffic route,
- low predator rate recorded,
- and fences on three sides which act as an escape route from predators.

The Department visited the site and met with the owners of the land, but the Department refused to meet with a representative of the Port Campbell Community Group Inc (**PCCG**).

9. Referral Process

Step 1: Submitting a referral

The current system appears flawed as there is no section which allows a third party to make a referral. A referral appears to be dependent upon a person proposing the action (development) which may impact on an endangered species. This is obviously highly problematic as the developer may have a vested interest in possibly not protecting the species, and it appears to cut out third parties who have a real interest in the survival of an endangered species.

The referral process must have a section whereby a third party can make a referral and be a formal part of the assessment and decision making process.

Under the current Act's process Step 3: Public comment period. As part of the total 20 business days taken for the referral process, there is a 10 business day public comment period. This provides an opportunity for relevant Australian, state and territory government ministers and members of the public to comment on the proposed action.

It appears that a Public comment period was not implemented in the Port Campbell case which appears to deny natural justice.

Also it appears that State government recommendations from DSE (Vic) for mitigation conditions (letter to Corangamite Shire Council, 28 February 2011)ⁱⁱ, were not taken into consideration to alleviate the impact on known bandicoot nests.

It also appears there may be a lack of correspondence between relevant government departments which may undermine implementation of the Act and further endanger species. **A check list in any referral process would be helpful to ensure all stakeholders have been appropriately consulted and their recommendations fully considered ensuring the best possible outcome for threatened species.**

Under the current process Step 4: The decision whether an action requires assessment and approval. Within the 20-business day timeframe, the minister will decide whether a proposed

action is likely to have a significant impact on one or more matters protected by the EPBC Act. If a significant impact is likely the action will need to be assessed and approved under the EPBC Act before it can proceed. This is called a 'controlled action'.

The Port Campbell case was assessed (the Department made an onsite visit) therefore we can assume it was decided that the proposed action may be likely to have a significant impact. Yet the decision-making process did not consult all stakeholders and other problems occurred as noted below.

Under the current process Step 5: How will the proposed action be assessed? Proposed actions can be assessed using different methods, depending on a range of considerations, including the complexity of the proposed action. The minister will let you know which method will be used in assessing your proposed action.

The current process also appears problematic in that the PCCG requested information on the process and how the assessment would be made in the Port Campbell case. We were only referred to the Department's internet non-prescriptive guidelines. The data in Figure 1 Decision making and in Section 7, of the Southern Brown Bandicoot Draft Referral Guidelines (DRG) is of far greater detail and value to all parties.

The data also indicates that following the DRG the Port Campbell assessment would result in a different outcome – this will be detailed later.

Expert Reports

We advised the Department that we would get an expert report, but the Department advised it was not necessary at this stage. But the Department wrote a final assessment based on verbal expert opinion. We have also been advised that there is no other means of correcting the assessment other than through the Federal Court.

The process where we did not have the opportunity to present an expert report appears to deny natural justice and has potential to significantly impact on a threatened species.

Federal Court action is beyond most persons' reach and should not be necessary if an assessment is clear and considers all evidence appropriately.

The Department must ensure all stakeholders are clearly advised of all steps in the process in writing and ensure each stakeholder has the appropriate opportunity to seek expert comment at the appropriate stage.

Department Correspondence

The Department's correspondence was mainly via telephone.

The Department must ensure all correspondence regarding process is in writing to ensure transparency and accountability.

The Department visited the site to make an assessment, which indicates they took the concerns seriously. The Department met with the developer but would not meet with me or the PCCG.

To ensure fairness and equity the Department must give all stakeholders the same opportunities to present their case and to meet. A different outcome may have resulted.

Compliance with the Act & Penalties

After being advised of their EPBC requirements, it appears significant vegetation habitat and a burrow which the Bandicoots used as a nest were destroyed.

Penalty criteria must be clear and enforced.

Scientific Evidence

The Department appears to have set perceptions on the Bandicoot's preferred habitat, i.e., the Department wrote there was plenty of suitable habitat in the nearby national park, thereby suggesting 1 Hennessy Street was not necessary to this population of Bandicoot.

But photographic evidence shows that the 1 Hennessy Street site is a known nesting site, yet the surrounding national park is not.

There has been no evidence provided to show that the greater national park is a preferred habitat for the Bandicoot. Evidence (conical diggings) also proves that Bandicoots inhabit areas of greatly less than 50% average foliage density in the 0.2-1m height range. More important for Bandicoot nests, in our experience, is the soil type, i.e., sandy soil and the sunny and sheltered aspect.

The Department also failed to consider that significant vegetation was cleared before the Department's assessment and after being advised the Act may be infringed.

Scientific evidence also notes the Bandicoots live in small pockets of suitable habitat (Rees, M. & Paull, D. 2000. Distribution of the southern brown bandicoot (*Isodon obesulus*) in the Portland region of south-west Victoria. CSIRO. Wildlife Research, Vol. 27, pp. 539-545).

The Department should accept this evidence, and also our evidence which supports Rees and Paull's observations, that the Bandicoot inhabits small pockets of habitat. The Department should instigate further expert research and stakeholder consultation if it believes otherwise.

Precautionary Principle

When there is a lack of scientific evidence, the Precautionary Principle which is a part of government policy must be followed until further research is undertaken.

National Environmental Significance

There needs to be clear objective and defined criteria to assess whether a matter is of National Environmental Significance (NES).

Major points in the Draft Referral Guides are relevant to the Port Campbell case and indicate the Bandicoot population meets the "High Risk of Significant Impacts" (Table 3. Page 20):

- **A high risk of a significant impact of suitable habitat known to support southern brown bandicoots.**

SUMMARY

The protection of threatened species and ecological communities' in Australia is ineffective and currently pushing threatened species toward extinction.

Significant information and data provided to the Department regarding the Southern Brown Bandicoot *Isoodon obesulus* at Port Campbell appears to have been misinterpreted which has the potential to impact on a significant colony of threatened species.

The Australian Government Department of Sustainability, Environment, Water, Population and Communities are responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*, and all threatened species must be protected under the Act.

The Department of Sustainability and Environment and Local Government Councils must also have clear responsibility procedures for protecting threatened species.

The current assessment process appears subjective, and not fully transparent or accountable which has the potential to further endanger threatened species.

We look forward to seeing greater protection for threatened species and to seeing a clearer and more accountable protection process implemented in policy.

Yours sincerely,
Dr Marion Manifold
Secretary

On behalf of Port Campbell Community Group Inc. A0051688U
Recipient of Finalist Award - Victorian Coastal Awards for Excellence 2011
Certificate for Nomination to the Regional Achievement and Community Awards 2011

References:

DSE letter to Corangamite Council (February 2011)

EDO's Report on the implementation and enforcement of the FFG Act

Victorian Auditor General's 2009 Report on the administration of the FFG Act

ⁱ DSE wrote to Corangamite Shire Council re 1 Hennessy Street: "The site supports Damp Heath Scrub Ecological Vegetation Class and Coastal Tussock Grassland Ecological Class (both vegetation types have a Bioregional Conservation Status of Vulnerable)" (Letter 28 February 2011).

ⁱⁱ DSE also recommended to Corangamite Shire Council (Letter 28 February 2011):
"4. Before the development starts, a vegetation protection fence must be erected around the extent of the construction zone of high visibility temporary fencing materials. The vegetation protection fence must remain in place until construction is completed".

"5. No vehicular or pedestrian access, trenching or soil excavation, or storage or dumping of

tools, equipment or waste may occur outside the vegetation protection zone”.

“6. Prior to construction, vegetation is to be manually removed (hand tools only) to allow any present Southern brown Bandicoots and other native fauna to vacate the site. No tracked or wheeled machinery is to be used to clear the site of vegetation”.

“7. All vehicles, earth moving equipment and other machinery must be cleaned of soil and plant material before entering and leaving the site to prevent the spread of weeds and pathogens”.