

Chapter 5

The status of koalas under the law

5.1 There was considerable support amongst submitters for the koala to be given protection under national legislation. In particular there was overwhelming support for the koala to be listed as a threatened species under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.¹

5.2 The impetus to protect the koala under legislation has arisen from a view that there are insufficient mechanisms and management plans to adequately respond to the decline in koala numbers.

5.3 A number of submitters expressed the view that delaying the listing of koalas under threatened species legislation until their population is in crisis is counterintuitive to their survival. A submitter who requested their name be withheld outlined these concerns:

Attempts to 'save' species facing extinction usually come at a point when it is too late to do anything significant as far as natural populations of the species is concerned; rather it is our final forced gesture of 'stewardship' to save us from the shame of having yet another species added to the "species now extinct" list.²

5.4 It was suggested that the current lack of accurate estimates of koala numbers also reinforced the need to urgently protect koalas under legislation. The Humane Society International argued that:

1 See for example: Mrs Margaret Hardy, *Submission 3*, p. 1; Ms Susan Lyle, *Submission 4*, p. 1; Ms Vivienne Jones, *Submission 12*, p. 1; Friends of Felton, *Submission 13*, p. 7; Koala Action Group Queensland, *Submission 17*, p. 6; Robert Summers, *Submission 19*, p. 3; Ms Diana Tomkins, *Submission 23*, p. 3; Australian Koala Foundation, *Submission 25*, p. 12; Humane Society International, *Submission 26*, p. 1; Mr Ian Pratt, *Submission 30*, p. 4; Name withheld, *Submission 33*, p. 5; Mr Roger Park, *Submission 36*, p. 2; Mr John Callaghan, *Submission 37*, p. 1; Port Stephens Comprehensive Koala Plan of Management Steering Committee, *Submission 38*, p. 8; University of Queensland Koala Ecology Group, *Submission 42*, p.8; Redland City Council, *Submission 46*, p. 4; Friends of the Koala (Phillip Island), *Submission 47*, p. 3; Logan and Albert Conservation Association, *Submission 49*, p. 2; Birkdale Progress Association, *Submission 51*, p. 2; The Coastwatchers Association, *Submission 54*, p. 13; Wildlife Preservation Society of Queensland Logan Branch, *Submission 57*, p. 6; Friends of the Koala, *Submission 58*, p. 9; Dr Vanessa Standing, *Submission 60*, p. 5; Conservation Council ACT Region, *Submission 61*, p. 9; Ms Paulette Oldfield, *Submission 64*, p. 6; Sunshine Coast Environment Council, *Submission 65*, p. 9; Mr Ian Bridge, *Submission 66*, p. 2; Ms Colleen Wood, *Submission 71*, p. 4; Wildlife Queensland, *Submission 76*, p. 6; Name withheld, *Submission 81*, p. 2; Hunter Koala Preservation Society, *Submission 82*, p. 1; and Professor Frank Carrick AM, *Submission 86*, p. 27.

2 Name withheld, *Submission 5*, p. 1.

With a lack of estimates of current total numbers of koalas in Australia, and no direct measurement of past national population sizes, there is a greater need to be precautionary in managing the national populations.³

5.5 Some submitters also raised concerns about the uncertainty about how low the koala population must fall before it becomes unviable.⁴

5.6 The Australian Koala Foundation argued that whilst domestic animals receive protection under the law, koalas are ignored by federal and state legislation and suffer from a lack of a custodian:

If you can imagine 25,000 cats and dogs being starved to death, ripped apart by predators, or run over by cars over a lengthy period, you would imagine that “someone”, the RSPCA, would find someone to prosecute or blame. This is not the case with native wildlife. When a developer cuts down a koala tree and the animal is subsequently killed because it is homeless, nothing happens. It is the view of the AKF that the Australian Federal Government should declare itself the custodian of the koala and ensure its protection. Repeatedly the koala “falls between the stools”. Council’s blame State Governments and State Government’s tell the Federal Government they have it under control.⁵

5.7 This chapter considers the protections afforded to koalas under state law, and then the threatened species assessment process under the national environmental law.

Conservation status of the koala

5.8 The koala has received varying degrees of protection under legislation across its range which extends from the south-east corner of South Australia, through Victoria, New South Wales, the Australian Capital Territory, and up to the north-east of Queensland.

5.9 There have been three attempts to list the koala nationally under Commonwealth legislation however the koala is currently not protected under national environmental law.

5.10 Internationally, the koala has been listed as a species of least concern by the International Union for the Conservation of Nature and conversely as a threatened species by the United States Government.⁶

3 Humane Society International, *Submission 26*, p. 3.

4 For example Port Stephens Comprehensive Koala Plan of Management Steering Committee, *Submission 38*, p. 8

5 Australian Koala Foundation, *Submission 25*, p. 15.

6 Professor Peter Harrison, Member, Threatened Species Scientific Committee, *Committee Hansard*, 1 August 2011, p. 46; and the Australian Koala Foundation, *Submission 25*, p. 5.

5.11 Currently, the Commonwealth, States and Territories each maintain separate lists of threatened species and ecological communities. Table 1 sets out the listing status of the koala across relevant Australian jurisdictions. A brief outline of the listing status in each jurisdiction follows.

Table 1—Listing status of the koala in Australian jurisdictions

Jurisdiction	Legislation	Listing status	Year listed
New South Wales	<i>Threatened Species Conservation Act 1995</i> (NSW)	Vulnerable	1992
	<i>National Parks and Wildlife Act 1975</i> (NSW)	Protected	1975
Victoria	<i>Flora and Fauna Guarantee Act 1988</i> (Vic)	Not listed	N/A
	<i>Wildlife Act 1975</i> (Vic)	Protected wildlife	1975
Queensland	<i>Nature Conservation (Wildlife) Regulation 1994</i> (Qld)	Vulnerable in south-east Queensland; a species of least concern elsewhere	2004
South Australia	<i>National Parks and Wildlife Act 1972</i> (SA)	Protected	1972
Australian Capital Territory	<i>Nature Conservation Act 1980</i> (ACT)	Not listed	N/A
Commonwealth	<i>Environment Protection and Biodiversity and Conservation Act 1999</i>	Not listed	N/A

Source: National Resource Management Ministerial Council, National Koala Conservation and Management Strategy 2009–2014, December 2009, p. 16.

New South Wales

5.12 Under the *Threatened Species Conservation Act 1995* (NSW) the koala is listed as a vulnerable species in New South Wales.⁷ Two specific koala populations in the state are also listed as endangered under the Act: one in the Hawks Nest and Tea

7 New South Wales Department of Environment, Climate Change and Water, *Submission 78*, p. 1. In April 2011, most of the functions of the former NSW Department of Environment, Climate Change and Water were transferred to the Office of Environment and Heritage within the NSW Premier's department.

Gardens region (north-east of Newcastle) and the other in the Pittwater area (north of Sydney).

5.13 For a species to be listed under the NSW Act, an independent scientific committee must recommend listing to the minister if, in its opinion, the species is facing: an extremely high risk of extinction, a very high risk of extinction or a high risk of extinction in New South Wales in either the immediate future, near future or medium-term future.⁸

5.14 In listing the koala as vulnerable in New South Wales in 1992, it was considered that the population was between 1001 and 10 000 individuals and 'rapidly declining in specific regions'.⁹

5.15 As with all native animals in New South Wales, the koala is also a protected species under the *National Parks and Wildlife Act 1974* (NSW). This provides that koalas cannot be harmed or held in captivity without proper authorisation from the government.¹⁰

5.16 Koala habitat is also given some limited protection under the *Native Vegetation Act 2003* (NSW). This Act aims to minimise the effect of land clearing and fragmentation of habitat for wildlife, including the koala.¹¹

5.17 The *State Environment Planning Policy 44 – Koala Habitat Protection* (SEPP 44) also aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.¹² The SEPP 44 requires the preparation of plans of management before development consent can be granted in relation to areas of 'core koala habitat'.¹³ It also encourages the creation of Comprehensive Koala Plans of Management (CKPoM) for local government areas, for example the Coffs Harbor City Council plan discussed in Chapter 3.

8 *Threatened Species Conservation Act 1995* (NSW), section 10.

9 Department of Environment and Climate Change NSW, 'Appendix 4: Biological scores used for evaluation of the status of the koala in New South Wales', *Recovery plan for the koala (Phascolarctos cinereus)*, Department of Environment and Climate Change NSW, Sydney, November 2008, p. 95, www.environment.nsw.gov.au/resources/threatenedspecies/08450krp.pdf (accessed 13 July 2011).

10 Section 120, *National Parks and Wildlife Act 1974* (NSW).

11 New South Wales Department of Environment, Climate Change and Water, *Submission 78*, p. 1.

12 Department of Environment and Climate Change NSW, *Recovery plan for the koala (Phascolarctos cinereus)*, Department of Environment and Climate Change NSW, Sydney, November 2008, p. 4, www.environment.nsw.gov.au/resources/threatenedspecies/08450krp.pdf (accessed 13 July 2011).

13 'Core Koala Habitat' is defined under regulation 4 of SEPP 44 as "an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population."

Victoria

5.18 As with most native wildlife in Victoria, the koala is considered to be protected wildlife under the *Wildlife Act 1975* (Vic).¹⁴

5.19 Victoria has a large and thriving koala population which is widespread throughout the state (for details of the Victorian koala population see chapter 3).¹⁵ As a result, the species is not listed under the *Victorian Flora and Fauna Guarantee Act 1988* (Vic) which provides categories of threatened species and has the conservation of Victoria's threatened wildlife as its main objective.

Queensland

5.20 In Queensland the koala is classified under the *Nature Conservation Act 1992* (Qld) as being a species of least concern throughout the state, except for the south-east Queensland bioregion where it has been listed as vulnerable since 2004.¹⁶ The south-east bioregion extends from the New South Wales border in the south, north to Gladstone and west to Toowoomba and Kingaroy.¹⁷

5.21 For a species to be considered vulnerable under the Act, the government-appointed Species Technical Committee must assess whether:

- the population size or distribution of the species has declined, or is likely to decline, to an extent that it may become endangered because of a threatening process; or
- the population size of the species has been seriously depleted and future protection is not secure; or
- the population of the species is low or localised and its habitat is likely to be adversely affected in terms of quantity or quality by a threatening process.¹⁸

5.22 The Species Technical Committee must also follow guidelines for assigning species to classifications which state that:

14 *Wildlife Act 1975* (Vic), section 3.

15 Victorian Department of Sustainability and Environment, *Victoria's koala management strategy*, Victorian Department of Sustainability and Environment, Brunswick, 2004, p. 4, www.dse.vic.gov.au/_data/assets/pdf_file/0004/106852/Koala.pdf (accessed 14 July 2011).

16 The koala is classified according to the criteria set out in the *Nature Conservation Act 1992* (Qld) and listed in the *Nature Conservation (Wildlife) Regulation 2006* (Qld).

17 See Queensland Department of Environment and Resource Management, 'Biodiversity in SEQ bioregion', www.derm.qld.gov.au/parks_and_forests/managing_parks_and_forests/forest_transfer_processes_in_queensland/south_east_queensland_forests_agreement_seqfa/about_seqfa/biodiversity_in_the_seq_bioregion.html (accessed 13 July 2011).

18 *Nature Conservation Act 1975* (Qld), section 78.

- the committee, as much as possible, be consistent with the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* listing for the species;
- the committee consider the Queensland population of the species as a whole; and
- if the species also occurs in other parts of Australia, then the overall national population is taken into consideration.¹⁹

5.23 Whilst there are many regulations and planning policies covering koalas and their habitat in south-east Queensland where they are listed as vulnerable, there is little protection of their habitat outside of this region. Areas outside the south-east Queensland bioregion are protected under legislation such as the Nature Conservation Act however these laws do not specifically protect koala habitat or food trees, except where a tree is being used to rear a koala joey.²⁰

South Australia

5.24 As with all native Australian wildlife, the koala is protected in South Australia under the *National Parks and Wildlife Act 1975* (SA).²¹ This allows for the protection of wildlife and habitat and controls the possession and trade of native fauna through licensing and permits. The koala was previously listed as rare, but was de-listed in 2008.

Australian Capital Territory

5.25 In the Australian Capital Territory the koala is not listed under the *Nature Conservation Act 1980* (ACT). The Act does however impose penalties on people found to have killed or taken native wildlife.²²

5.26 There have been no sightings of koalas in the territory since severe bushfires burnt much of their habitat in 2003.

International

IUCN Red List of Threatened Species

5.27 In 2008 the International Union for the Conservation of Nature (IUCN) listed the koala as a species of least concern on the Red List of Threatened Species.²³

19 Queensland Department of Environment and Resource Management, 'Guidelines for assigning different classes to a recognisable taxon within a species', www.derm.qld.gov.au/wildlife-ecosystems/wildlife/threatened_plants_and_animals/guidelines.html (accessed 14 July 2011).

20 Ms Larissa Waters, *Submission 90*, pp 2–3.

21 *National Parks and Wildlife Act 1975* (SA), section 5.

22 *Nature Conservation Act 1980* (ACT), section 44.

United States of America

5.28 In 2000, the koala was listed as threatened under the United States *Endangered Species Act 1973*.²⁴ Under the Act, the United States government is legally bound to consider a species for listing if a petition has been lodged. The Act is not restricted to species native to the United States and whilst acknowledging national boundaries in the nomination of a species, 'makes that consideration secondary to the concern for the survival of species'.²⁵

5.29 For a species to be listed under the Act, a petition must first be lodged.²⁶ If within 90 days significant information is submitted to the government concerning the status of the species, a 12 month review commences proposing to list the species as threatened. A final determination on the listing is then made based on five listing factors: threats to the species habitat, decimation of the population, disease or predation; inadequacy of existing regulatory mechanisms, and other manmade or natural factors threatening its existence.

5.30 In listing the koala as threatened, the United States Fish and Wildlife Service found that the eucalyptus forest and woodland ecosystems on which koalas depend 'have been greatly reduced'.²⁷ They also found that the species is threatened by the fragmentation of habitat, disease, loss of genetic variation and death by dogs and motor vehicles.²⁸

5.31 Amongst other things, the listing of a species under the Act provides protection by:

- requiring United States federal agencies to ensure that any activities they undertake do not jeopardise the continued existence of the species or destroy its critical habitat;

23 ICUN Red List of Threatened Species, 'Phascolarctos cinereus', Version 2011.1, www.iucnredlist.org/apps/redlist/details/16892/0 (accessed 14 July 2011).

24 United States Government, 'Department of the Interior, Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status of the Koala', *Federal Register*, vol. 60, no. 90, 9 May 2000, p. 26762.

25 United States Government, 'Department of the Interior, Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status of the Koala', *Federal Register*, vol. 60, no. 90, 9 May 2000, p. 26762.

26 For further information on the *Endangered Species Act 1973*(United States) see United States Fish and Wildlife Service, 'Endangered Species Act', www.fws.gov/endangered/laws-policies/esa.html (accessed 14 July 2011).

27 United States Government, 'Department of the Interior, Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status of the Koala', *Federal Register*, vol. 60, no. 90, 9 May 2000, p. 26762.

28 United States Government, 'Department of the Interior, Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status of the Koala', *Federal Register*, vol. 60, no. 90, 9 May 2000, p. 26762.

- authorising the Secretary of the Interior to provide limited financial assistance for the protection of the species in foreign countries; and
- prohibiting the import or export of the species without proper licensing.²⁹

5.32 In response to a question on notice, the Department of Sustainability, Environment, Water, Populations and Communities provided some context surrounding the US listing decision:

The criteria for listing threatened species under the United States' Endangered Species Act 1973 are less specific than the guidelines used by the Threatened Species Scientific Committee. For example, the United State's criteria do not specify a quantitative decline in population, nor the timeframe over which a decline must occur. The United State's 2000 listing was based on historical decline in habitat since European settlement, ongoing (at the time of listing) habitat clearance in Queensland and low genetic diversity of Victorian and South Australian populations.³⁰

Listing under the *Environment Protection and Biodiversity Conservation Act*

5.33 The koala is not listed as a threatened species under the Commonwealth's national environmental law – the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The koala has been nominated for protection under Commonwealth legislation three times: in 1996, 2006 and a current assessment commenced in 2010.

5.34 Many submitters called for the koala to be listed as vulnerable under the Act to guarantee its future survival. The Humane Society International summed up the views of many submitters in stating:

An important advantage of a vulnerable listing under the EPBC Act is that it would safeguard populations from increasing threats by triggering intervention from the Federal Environment Minister in the approval of actions that significantly impact on the species.³¹

5.35 The University of Queensland Koala Ecology Group agreed that listing of the species would slow the decrease in the size of the koala population:

...listing the species under the EPBC Act (1999) would provide at least a speed bump in the road to extinction, one that may delay this process for

29 United States Government, 'Department of the Interior, Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status of the Koala', *Federal Register*, vol. 60, no. 90, 9 May 2000, p. 26769.

30 Department of Sustainability, Environment, Water, Populations and Communities, answer to question on notice, 19 May 2011, (received 12 August 2011), p. 11.

31 Humane Society International, *Submission 26*, p. 2.

long enough that, hopefully, in years to come the species will again be common, widespread and not require such a listing.³²

5.36 It was also argued that if the koala was listed as a vulnerable species, additional protection would flow on to other species that share koala habitat.³³ The National Koala Conservation and Management Strategy also recognises the 'significant benefits' to other species:

Protecting, restoring and managing koalas and their habitat will have significant benefits for a wide range of other species and ecological communities which also share the koala's habitat.³⁴

5.37 Some submitters however were less optimistic about the benefits of listing the koala. For example the Wildlife Preservation Society of Queensland stated:

Undoubtedly the listing of the koala and its habitat would draw attention to their status but would it achieve an arrest to the decline of the koala let alone reverse the trend. Wildlife Queensland has reservations unless an appropriate recovery plan was not only developed but fully funded and implemented.³⁵

5.38 The development industry was also wary of the effects that listing would have on duplicating existing regulation:

The listing would create a difficult regulatory load that is particularly of concern given the ailing state of development activities and construction employment in Queensland and particularly is unnecessary at this time as a consequence of recent new controls for SEQ applied by the Queensland government.³⁶

5.39 The Property Council of Australia argued that current listings under the Act fail to have adequate regard to social and economic concerns.³⁷

5.40 Finally on this note, the Threatened Species Scientific Committee reminded the committee of the negative implication of a threatened species listing:

...it is by no means a Holy Grail to be listed as threatened. In fact, it is very much a situation we would like not to be in for most species. It is sort of a house of last resort and we would rather not that.³⁸

32 University of Queensland Koala Ecology Group, *Submission 42*, p. 8.

33 For example Port Stephens Comprehensive Koala Plan of Management Steering Committee, *Submission 38*, p. 12.

34 National Resource Management Ministerial Council, *National Koala Conservation and Management Strategy 2009–2014*, December 2009, p. 2.

35 Wildlife Preservation Society of Queensland, *Submission 15*, p. 7.

36 Urban Development Institute of Australia (Queensland), *Submission 52*, p. 2.

37 Property Council of Australia, *Submission 39*, p. 2.

The Environment Protection and Biodiversity Conservation Act 1999

5.41 The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the nation's primary piece of environmental legislation that gives the Commonwealth responsibility for eight matters of national environmental significance including:

- world heritage properties;
- national heritage properties;
- nuclear actions;
- the Commonwealth marine environment; and
- listed nationally threatened species and communities.³⁹

5.42 The EPBC Act replaced the former *Endangered Species Protection Act 1992* as the primary piece of Commonwealth legislation that provides for a threatened species list.

Ministerial responsibilities

5.43 Amongst other things, Part 13 of the EPBC Act provides for the listing of nationally threatened species and ecological communities, migratory species and key threatening processes. The responsible minister⁴⁰ is required to establish a list of native threatened species divided into the following six categories:

- (a) Extinct;
- (b) Extinct in the wild;
- (c) Critically endangered;
- (d) Endangered;
- (e) Vulnerable; or
- (f) Conservation dependent.⁴¹

5.44 The minister is also empowered under the Act to amend the threatened species list. In doing so the minister must only consider matters relating to:

38 Dr John Woinarski, Member, Threatened Species Scientific Committee, *Committee Hansard*, 1 August 2011, p. 54.

39 In 2009 the Senate Standing Committee on Environment, Communications and the Arts conducted an inquiry into the operation of the *Environment Protection and Biodiversity Act 1999*. Information on the inquiry and a copy of the report is available at: www.aph.gov.au/senate/committee/eca_ctte/epbc_act/index.htm (accessed 15 July 2011).

40 Under the Administrative Arrangements Order of 14 October 2010, the Minister for Sustainability, Environment, Water, Population and Communities is responsible for the administration of the EPBC Act.

41 *Environment Protection and Biodiversity Conservation Act 1999*, section 178.

- whether the native species or ecological community is eligible to be included in that category; or
- the effect that including the native species or ecological community in that category could have on the survival of the native species or ecological community.⁴²

5.45 The minister must also obtain and consider advice from the Threatened Species Scientific Committee (TSSC) on the proposed listing.⁴³ The minister may also seek and have regard to information or advice from any other source.⁴⁴

5.46 In all but the most exceptional circumstances, the minister would be expected to act consistently with the expert advice. However the prospect remains that in rare circumstances a minister may depart from expert advice.⁴⁵

The listing process

5.47 In practice the process for listing a threatened species occurs during an annual assessment cycle and involves a number of steps:

- (a) The minister may determine conservation themes (optional).
- (b) The minister invites people to make nominations for inclusion on the lists for threatened species, threatened ecological communities or key threatening processes. Nominations require supporting evidence such as information on the taxonomy, legal status and ecology of the nominated species. These nominations are provided to the TSSC.
- (c) The TSSC prepares and provides to the minister a proposed priority assessment list. The proposed priority assessment list developed by the TSSC must include an assessment completion time for each item.
- (d) The minister finalises the list of items that are to be assessed ('finalised priority assessment list'). In finalising the priority assessment list, the minister may add or omit any item, or make any other change(s) in accordance with the regulations to the Act.
- (e) The TSSC invites people to provide comments about the items in the finalised list.

42 *Environment Protection and Biodiversity Conservation Act 1999*, subsections 186(2) and 187(2).

43 *Environment Protection and Biodiversity Conservation Act 1999*, section 189.

44 *Environment Protection and Biodiversity Conservation Act 1999*, paragraph 194Q(6)(b).

45 According to the Australian National Audit Office the minister has disagreed with TSSC recommendations to list two species: the Southern Bluefin Tuna and the Murray-Darling River Snail. See Australian National Audit Office (ANAO), *The conservation and protection of national threatened species and ecological communities*, Audit Report No. 31 of 2006–2007, p. 52, www.anao.gov.au/uploads/documents/2006-07_Audit_Report_311.pdf (accessed 20 July 2011).

- (f) The TSSC assesses the items in the finalised list and gives the assessments to the minister. If the TSSC's advice recommends that the species is eligible to be included in a threatened species category, then the advice must include the grounds on which the species is eligible to be included in a category, and the main factors that are the cause for it to be listed.
- (g) The TSSC must assess the items in the finalised priority assessment list by the time specified in that list or by that time as extended under section 194P of the Act. In total, the minister may grant extensions of time up to but not beyond five years.
- (h) The minister decides whether an assessed item should be included in the relevant list. The minister must decide whether or not to include an assessed item on a list under the Act within 90 days of receiving the assessment. This period can, however, be extended indefinitely.⁴⁶

Threatened Species Scientific Committee's assessment guidelines

5.48 The TSSC has established *Guidelines for assessing the conservation status of native species* (the guidelines) for it to follow in assessing the conservation status of native species according to the EPBC Act and the *Environment Protection and Biodiversity Conservation Regulations 2000*.⁴⁷

5.49 For the purposes of assessing the listing of the koala given its current population attributes, the first criterion, which relates to a species population decline, is most relevant. There are four other criteria, relating to issues such as 'a precarious geographic distribution' and 'the probability of extinction', which are not currently relevant to the koala's circumstances (see Appendix 4).⁴⁸

5.50 For the purpose of the guidelines, there are three categories of threat level for which a species can be listed under the EPBC Act – vulnerable, endangered and critically endangered. The category will depend on the severity of the risk to a species. The guidelines set out indicative thresholds for each category and each criterion, which the TSSC is informed, but not bound by. When assessing the eligibility of a

46 *Environment Protection and Biodiversity Conservation Act 1999*, subsections 194A and 194Q.

47 See: *Environment Protection and Biodiversity Conservation Act 1999*, section 179; and *Environment Protection and Biodiversity Conservation Regulations 2000*, regulation 7.01; and Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC), *Guidelines for assessing the conservation status of native species*, p. 2, www.environment.gov.au/biodiversity/threatened/pubs/guidelines-species.pdf (accessed 14 July 2011).

48 More detailed information is available in the Department of Sustainability, Environment, Water, Population and Communities, *Guidelines for assessing the conservation status of native species*, pp 2–5.

species against the criteria, the TSSC 'exercises its judgement to give practical meaning to the subjective terms' (terms such as 'very high', 'high' or 'substantial').⁴⁹

5.51 The indicative thresholds have been adapted from the IUCN Red List Categories and Criteria Version 3.1 2001.⁵⁰ According to the guidelines, when considering whether to use the IUCN thresholds, the TSSC must judge whether they are appropriate for the species in question.⁵¹ The TSSC uses the information provided to it via the nomination process and through public and expert consultation to make its decisions.

5.52 The three attempts to list the koala as a threatened species are discussed below.

Protections received by listed threatened species

5.53 A species that is placed on the threatened species list receives certain protections under the EPBC Act, including:

- Proposals that have, will have or are likely to have a significant impact on a listed threatened species require approval from the Environment Minister (sections 18 and 19)
- A person found guilty of killing or injuring a listed threatened species in a Commonwealth area may be fined and/or imprisoned (subsection 196(1));
- A person convicted of unlawfully taking a listed threatened species may be fined and/or imprisoned (subsection 196B(1));
- The minister must create a register in which critical habitat for the survival of the listed threatened species is identified (section 207A);
- A person that knowingly damages critical habitat in a Commonwealth area may be fined and/or imprisoned (section 207B);
- The sale or lease of Commonwealth land containing critical habitat requires a contract that includes a covenant to protect critical habitat (section 207C);
- The minister must ensure that there is approved conservation advice for each listed threatened species (section 266B);
- The minister may create a recovery plan or threat abatement plan to provide for the protection of a listed threatened species (section 269); and

49 Department of Sustainability, Environment, Water, Population and Communities, *Guidelines for assessing the conservation status of native species*, p. 3.

50 Department of Sustainability, Environment, Water, Population and Communities, *Guidelines for assessing the conservation status of native species*, p. 3. For complete definitions of the indicative thresholds see Department of Sustainability, Environment, Water, Population and Communities, *Guidelines for assessing the conservation status of native species*, pp 3–5.

51 Department of Sustainability, Environment, Water, Population and Communities, *Guidelines for assessing the conservation status of native species*, p. 3.

- The minister may make financial assistance available to state governments and individuals to implement recovery plans and threat abatement plans (section 281).

Previous attempts to list the koala under Commonwealth legislation

5.54 The koala has been considered for listing under the EPBC Act three times in the past 15 years: in 1996, 2006 and the current process in 2010.

1996 listing attempt

5.55 In July 1995 the Australian Koala Foundation and the Humane Society International made a joint application for listing of the koala as vulnerable under the *Endangered Species Protection Act 1992*.⁵² In April 1996 the Commonwealth Environment Minister, Senator the Hon Robert Hill, rejected the application to list the koala. The legislation at the time did not require the minister to publicly release advice on the nomination.

2006 listing attempt

5.56 In 2006 the koala was again nominated for listing as a threatened species, on this occasion under the EPBC Act. In its advice to the minister the TSSC recommended that the koala was not eligible for listing. The TSSC concluded that:

The Koala has a widespread distribution in coastal and inland areas of eastern Australia and the total population size is estimated to be in the order of hundreds of thousands of individuals. Current evidence indicates that the Koala population has declined in numbers in recent years. However, it is not likely that the decline in Koala numbers across the species' national or natural range has been substantial. Therefore, the Koala is not eligible for listing under any of the EPBC Act criteria.⁵³

5.57 At that time the TSSC recognised that the koala population had declined substantially since the early twentieth century however available evidence indicated that the koala had not undergone a substantial reduction in numbers over the past three

52 Australian Koala Foundation, 'The koala: Endangered or not?', Website accessed through the National Library of Australia's internet archive, <http://pandora.nla.gov.au/nph-arch/O1998-Nov-2/http://www.akfkoala.gil.com.au/danger.html> (accessed 15 July 2011).

53 Threatened Species Scientific Committee, 'Advice to the Minister for Environment and Heritage from the Threatened Species Scientific Committee (the Committee) on Amendments to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', 2006, p.15, www.environment.gov.au/biodiversity/threatened/species/pubs/koala.pdf (accessed 15 July 2011).

generations (as required by the Act).⁵⁴ It was also stated that it is unlikely that the rate of population decline would increase in the near future.⁵⁵

5.58 The TSSC acknowledged that, 'notwithstanding the large amount of information available on the koala, there are still information gaps regarding the species' conservation and status'.⁵⁶

5.59 Modelling used by the TSSC during the 2006 nomination process predicted that koala populations in south east Queensland and northern New South Wales may become extinct in the future, however these results could not be 'extrapolated to determine the probability of extinction across the koala's national or natural range of the koala'.⁵⁷

5.60 The TSSC did note that there are some local koala populations subject to severe localised threats which are likely to decline if not properly managed. The TSSC therefore recommended that:

...there are adequate management regimes and conservation initiatives in place at a local and regional level, to ensure the long-term survival of these populations.⁵⁸

2010 listing attempt

5.61 In 2010 the koala was again considered for listing as vulnerable under the EPBC Act.

5.62 The TSSC explained the difficulties associated with its assessment task:

54 Threatened Species Scientific Committee, 'Advice to the Minister for Environment and Heritage from the Threatened Species Scientific Committee (the Committee) on Amendments to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', 2006, p. 13.

55 Threatened Species Scientific Committee, 'Advice to the Minister for Environment and Heritage from the Threatened Species Scientific Committee (the Committee) on Amendments to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', 2006, p. 13.

56 Threatened Species Scientific Committee, 'Advice to the Minister for Environment and Heritage from the Threatened Species Scientific Committee (the Committee) on Amendments to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', 2006, p. 5.

57 Threatened Species Scientific Committee, 'Advice to the Minister for Environment and Heritage from the Threatened Species Scientific Committee (the Committee) on Amendments to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', 2006, p. 14.

58 Threatened Species Scientific Committee, 'Advice to the Minister for Environment and Heritage from the Threatened Species Scientific Committee (the Committee) on Amendments to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', September 2010, p. 14.

Assessment of the koala [as a threatened species] is neither straightforward nor simple. The koala occurs across a very extensive area and a wide range of habitats. It faces a range of threats. Some populations are obviously in severe decline. Other populations are over-abundant and require active management to reduce or constrain their abundance. And historically, koala populations have shown very substantial fluctuations. This set of factors complicates assessment, but they are not of themselves the most formidable obstacle. Instead, we found our assessment to be most complicated by insufficient data on population size and trends across many areas of the range of the koala. The lack of consistent long-term monitoring populations throughout the range of this large, unmistakable diurnal mammal clearly indicates that our nation has a long way to go to adequately monitor and manage its biodiversity.⁵⁹

5.63 Chapter 2 of this report covered in detail the TSSC's assessment of the national koala population. In a letter accompanying its advice to the minister, the TSSC stated the eligibility for listing of the koala is totally dependent on criterion one, relating to the extent of population decline over the past 20 years.⁶⁰ The TSSC concluded that 'the koala population has undergone a marked decline over three koala generations, due to the combination of a range of factors.'⁶¹ However, despite this, the TSSC stated that its ability to assess the koala against this criterion was extremely difficult due 'to a lack of consistent high quality demographic data across the geographic range of the koala'.⁶²

5.64 The TSSC ultimately concluded that 'the koala approached, but did not reach, the threshold required to qualify for listing as vulnerable...'⁶³ Accordingly, the TSSC

59 Professor Peter Harrison, Member, Threatened Species Scientific Committee, *Committee Hansard*, 1 August 2011, p. 45.

60 Threatened Species Scientific Committee (TSSC), 'Letter to the Minister for Sustainability, Environment, Water, Population and Communities regarding the conservation status of the koala', 30 September 2010, p. 1, www.environment.gov.au/biodiversity/threatened/species/pubs/koala-tssc-letter.pdf (accessed 27 June 2011).

61 Threatened Species Scientific Committee, 'Advice to the Minister for Environment and Heritage from the Threatened Species Scientific Committee (the Committee) on Amendments to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', September 2010, p. 29.

62 Threatened Species Scientific Committee, 'Letter to the Minister for Sustainability, Environment, Water, Population and Communities regarding the conservation status of the koala', 30 September 2010, p. 1.

63 Professor Peter Harrison, Member, Threatened Species Scientific Committee, *Committee Hansard*, 1 August 2011, p. 46.

recommended to the Environment Minister that the koala not be listed as a vulnerable species.⁶⁴

Alternatives to vulnerable listing

5.65 The TSSC recommended that if better data were available and an adequate plan in place for the *National Koala Conservation and Management Strategy 2009–2014*, then serious consideration could be given to a listing of Conservation Dependent under the EPBC Act. The TSSC told the committee that:

We looked at [the strategy] as the potential option as a plan of management under the act that might qualify the koala as conservation dependent. We...decided that at its present stage of development it lacked sufficient detail for us to be confident that, even though the local or regional populations that were most threatened have been identified, how it would be implemented to act in a conservation dependent manner would ensure that the decline in those populations would be halted and recovery enabled. We considered it, as we said, a positive first step to provide an overall framework. It recognises the importance of the koala and the importance of the threats that are operating in different ways across its jurisdiction, and we would hope that an implementation strategy could be developed which would allow it to truly effective and focused on those populations in dire need of better management.⁶⁵

5.66 As part of its threatened species listing assessment process the TSSC also considered listing the koala as vulnerable in certain bioregions.⁶⁶ However the TSSC explained that this option was not justifiable based on the evidence presented:

In the case of the koala, the widespread and continuous nature of its habitat prior to anthropogenic disturbance, lack of obvious barriers to koala dispersal throughout its range, and lack of genetic evidence for long-term isolation of sampled populations led us to conclude that no population qualified for separate consideration...

...there is no sound biological or evolutionary grounds for considering separate population/s – in essence, the koala is distributed continuously and varies continuously and only slightly across its vast range.⁶⁷

64 Threatened Species Scientific Committee, 'Advice to the Minister for Environment and Heritage from the Threatened Species Scientific Committee (the Committee) on Amendments to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', September 2010, p. 29.

65 Professor Peter Harrison, Member, Threatened Species Scientific Committee, *Committee Hansard*, 1 August 2011, p. 51.

66 Threatened Species Scientific Committee (TSSC), 'Letter to the Minister for Sustainability, Environment, Water, Population and Communities regarding the conservation status of the koala', 30 September 2010, p. 3.

67 Threatened Species Scientific Committee, answer to question on notice, 1 August 2011 (received 10 August 2011), pp 10–11.

5.67 Nevertheless, several koala experts contested the TSSC's approach. For example, Professor Carrick told the committee that the minister may declare a separate subspecies as the Chief Taxonomist:

As I understand it, the minister is the chief taxonomist and chief ecologist of Australia and a species is, for the purposes of the act, what the minister declares it to be. So it is well within the power of the minister—as I understand it as a cheap constitutional lawyer—to declare that northern and southern koalas are different and that therefore the EPBC Act could be applied to both but in quite different ways.⁶⁸

5.68 Professor Carrick noted that such an approach would overcome the difficulties that listing may pose in parts of Victoria and South Australia where some koala populations are classed as overabundant.⁶⁹

New information since listing advice

5.69 The committee received evidence that there has been new information on the national koala population that has become available since the TSSC finalised its advice to the Environment Minister in September 2010. The committee has already discussed the fact that in its advice to the Minister the TSSC did not include a national estimate, a 'plausible lower bound' nor the necessary figures for historical comparison, despite providing such information to this inquiry (see chapter 2).

5.70 There are other instances of new information. For example, the TSSC expressly indicated in its response to the committee's questions on notice, that it has received 'more recent information made available since our [2010] assessment' regarding an estimated plausible lower bound for the current national koala population (of about 200 000 individuals).⁷⁰

5.71 Similarly, the committee was told that for the purpose of its 2010 assessment, the TSSC received 'early information on [the recent drought-induced decline in koala numbers in the mulga lands of Queensland] which indicated a decline of 50 per cent... The more recent analysis indicates that the decline was more precipitous even than that.'⁷¹

5.72 Another area where this inquiry may have uncovered new information relates to predation by wild dogs, as discussed in chapter 4. In its advice to the minister, the

68 Professor Frank Carrick AM, Private capacity, *Committee Hansard*, 1 August 2011, p. 4.

69 Professor Frank Carrick AM, Private capacity, *Committee Hansard*, 1 August 2011, p. 4.

70 Threatened Species Scientific Committee, answer to question on notice, 1 August 2011 (received 10 August 2011), p. 2.

71 Dr John Woinarski, Member, Threatened Species Scientific Committee, *Committee Hansard*, 1 August 2011, p. 46.

Threatened Species Scientific Committee considered domestic dogs as a threat to koalas, it did not mention predation by wild dogs.⁷²

5.73 Professor Carrick and Drs Melzer, Ellis and Fitzgibbon provided the committee with further areas where new information is available:

Since [the TSSC] advice was provided [in September 2010], the Mulgaland decline has been revised from 50% to 80%; it has become clear that the coastal South East Queensland (SEQ) declines have not been stabilised, let alone reversed; 'Myrtle Rust' has emerged as a significant new threat to Koala habitat; a probably congenital eye disease is emerging in the VIC populations; and an unusually early and severe bushfire season in QLD (as a consequence of vegetation growth following the recent La Niña event – which itself must have directly caused Koala mortality in many areas) is threatening the recovery of severely drought affected populations.⁷³

Committee comment

5.74 The committee notes the three occasions the TSSC has assessed the koala for threatened species listing. In particular, in the instances where the TSSC advice has been publicly released, it shows a consistent pattern of a declining national koala population and deficiencies in population data.

5.75 The committee also notes the new information that has become available since the TSSC's 2010 assessment. The committee has not cross-checked the information relied on by the TSSC with the information received as part of this inquiry. Therefore there may be other areas where new information has become available since the TSSC's assessment.

5.76 In the committee's view the Environment Minister must have the best available information upon which to make his or her threatened species listing decision. The committee notes that the current Environment Minister, the Hon Tony Burke MP, has made several public statements, acknowledging this inquiry and indicating that he would work through the committee's recommendations before deciding whether or not to list.⁷⁴

5.77 Accordingly, the committee recommends that the Environment Minister consider the evidence presented to the committee when making his final determination on listing the koala. In this regard, the committee notes that the EPBC Act empowers

72 Threatened Species Scientific Committee, 'Advice to the Minister for Environment, Protection, Heritage and the Arts from the Threatened Species Scientific Committee on Amendment to the list of Threatened Species under the *Environment Protection and Biodiversity Conservation Act 1999*', pp 11–13.

73 Professor Frank Carrick, Dr Alistair Melzer, Dr Bill Ellis and Dr Sean Fitzgibbon, *Submission 101*, p. 3.

74 For example, the Hon Tony Burke MP, Minister for Sustainability, Environment, Water, Populations and Communities, *House of Representatives Hansard*, 14 June 2011, p. 6023.

the Environment Minister to have regard to information or advice from any other source.⁷⁵

Recommendation 16

5.78 The committee recommends that the Environment Minister consider the evidence provided to this inquiry when making his final decision on listing the koala as a threatened species.

5.79 The committee has recommended earlier in this report (Recommendation 5) that the TSSC review its advice to the Minister on the listing of the koala in light of the findings of this inquiry. This should include providing the Minister with an updated koala population estimate range (both baseline and current) based on the best available information.

5.80 Furthermore, the committee has concerns that the genetically depauperate populations of Victoria and South Australia may not provide adequate cover against the recent declines in the genetically diverse koala populations of Queensland and New South Wales (this issue is discussed in chapter 2). The TSSC told the committee that 'it would be fairly generally agreed that a population with lower genetic diversity has lower evolutionary potential and lower potential to adapt to new challenges.'⁷⁶

5.81 The committee therefore recommends that the Environment Minister consider the available options to improve the conservation status of the koala populations in New South Wales and Queensland. The committee notes that acting early to halt the decline will be more successful and cost effective than trying to return a much diminished population to sustainable levels at some stage in the future.

Recommendation 17

5.82 The committee recommends the Environment Minister consider options to improve the conservation status of the diverse and rapidly declining koala populations in New South Wales and Queensland to ensure a nationally resilient population is maintained. These options include listing the koala as vulnerable under the EPBC Act in areas where populations have declined significantly or are at risk of doing so.

Deficiencies in the EPBC Act listing process

5.83 It was felt by a number of submitters that the EPBC Act's current threatened species listing process is deficient at providing adequate protection for the koala.⁷⁷

75 *Environment Protection and Biodiversity Conservation Act 1999*, paragraph 194Q(6)(b).

76 Dr Andrea Taylor, Member, Threatened Species Scientific Committee, *Committee Hansard*, 1 August 2011, p. 51.

77 For example see: Dr Alistair Melzer, *Submission 7*, p. 16; Koala Research Network, *Submission 29*, p. 3; and University of Queensland Koala Ecology Group, *Submission 42*, pp 5–6.

5.84 Professor Carrick summed the situation up succinctly stating that 'the [TSSC] is hamstrung by process and precedent...'⁷⁸

5.85 Scientific researchers submitted that reliance on the IUCN guidelines to define indicative thresholds is not well suited to Australian wildlife. For example the University of Queensland Koala Ecology Group stated that:

Criteria developed in overseas jurisdictions may be inappropriate to test the suitability of Australian fauna for listing under our statutes. Widely distributed but ecologically and physiologically distinct species such as koalas present a conundrum for categorization under IUCN guidelines, yet the evidence on the ground is quite compelling.⁷⁹

5.86 The Koala Research Network believed that the lack of adequate data to meet the IUCN definitions is jeopardising future recovery of koala populations:

Currently, there is not adequate national data to address the IUCN criteria in any consideration of the formal status of the koala. Delaying any reclassification until data meets IUCN criteria will inevitably produce a crisis driven response with limited capacity to recover the species.⁸⁰

5.87 Dr Alistair Melzer similarly argued that flexibility is required in assessing listing thresholds:

Both state and federal governments rely on the IUCN guidelines...to trigger decisions on the classification of the koala. Absolute reliance on these guidelines means that a species needs to be measurably in trouble before a classification can be changed and regulations invoked.⁸¹

5.88 Peak industry groups also raised issues of uncertainty with the EPBC Act. The Property Council of Australia submitted that:

The experience of the [property] industry with the EPBC Act has been a demonstrated lack of clear definitions, rules, and tests which has resulted in broad interpretations over the last ten years, giving little consistency or certainty for stakeholders.

This is often due to the overlapping and disconnected nature of the implementation of the EPBC Act as well as a failure to ensure that there is necessary regard for state and local planning rules.⁸²

5.89 The EPBC Act was also criticised for its ad hoc approach to protecting threatened species and ecological communities. The Urban Development Institute of

78 Professor Frank Carrick AM, *Submission 86*, p. 10.

79 University of Queensland Koala Ecology Group, *Submission 42*, pp 5–6.

80 Koala Research Network, *Submission 29*, p. 3.

81 Dr Alistair Melzer, *Submission 7*, p. 16.

82 Property Council of Australia, *Submission 39*, p. 2.

Australia (Queensland) argued that there is no unified approach to habitat and species protection:

The current framework provided by the [EPBC] Act for the conservation of Australia's biodiversity appears to be driven on a project by project basis without sufficient understanding of the broader status of the listed species, which limits its effectiveness. The [EPBC] Act tends to focus on habitat retention at all costs rather than the current and future needs of the species in question.⁸³

5.90 The National Association of Forest Industries further argued that the present narrow focus of the EPBC Act on listed threatened species and ecological communities 'is an out-dated and static approach to biodiversity conservation, particularly at a broader ecosystem and landscape scale'.⁸⁴

Reform of the EPBC Act

5.91 It was suggested by a number of industry peak bodies that the listing process for threatened species under the EPBC Act should be simplified. According to the Property Council of Australia future listings under the Act need to be addressed in a pragmatic way that does not 'increase the regulatory burden and in a manner that balances environmental and economic needs'.⁸⁵

5.92 The Koala Research Network recommended to the committee that the listing process should move away from the IUCN criterion-based assessment for particular species.⁸⁶ In particular for the koala, the Koala Research Network recommended that:

A strategic review of the approach to managing the koala and its habitat is required taking account of the distinctly different needs in: (a) the over-abundant, genetically depauperate race of the koala in South Australia and Victoria, (b) the expanding urban and industrial footprint in predominantly coastal eastern Australia, and (c) the rural and regional western and northern habitats affected by climate extremes, fire and drought.⁸⁷

5.93 Professor Carrick also highlighted the need to amend the act in order to address the north-south koala divide:

...if we look at the coastal Queensland population and the coastal New South Wales population, they are being hammered. They are in evident decline. They are also the stronghold of koalas in those two states, so if the bulk of the koalas in the two states are under severe threat and those two states have most of the koalas in Australia, how this is not of national

83 Urban Development Institute of Australia (Queensland), *Submission 52*, p. 2.

84 National Association of Forest Industries, *Submission 56*, p. 18.

85 Property Council of Australia, *Submission 39*, p. 3.

86 Koala Research Network, *Submission 29*, p. 3.

87 Koala Research Network, *Submission 29*, p. 3.

significance, to me, defies the common-sense test. However, if that is a genuine problem with the act then the act needs to be amended so that it is clear that where a significant part of a species is in trouble then that species can enjoy the protection of the act. We were told in Queensland that this was not possible under the Nature Conservation Act, but it turned out that it is—it was possible to define the South-East Queensland bioregion koalas as an entity and to treat them and list them separately from the rest of Queensland.⁸⁸

Committee comment

5.94 The committee notes the concerns expressed about the limitations of the threatened species listing process under the EPBC Act. The committee also acknowledges that the TSSC is constrained in the advice it prepares for the Minister by the provisions of the Act, the EPBC Regulations and the guidelines. The committee believes that this is the correct approach. Without these constraints, the assessment of Australia's unique fauna and flora as a potentially threatened species would become a haphazard and arbitrary affair.

5.95 The committee endorses the comments made the TSSC that 'it is by no means a Holy Grail to be listed as threatened. In fact, it is very much a situation we would like not to be in for most species.'⁸⁹ In this regard, the committee would far prefer to see a healthy and abundant koala population than to have it listed as a threatened species.

5.96 The committee believes that the EPBC Act threatened species listing process is reactive and not well suited to the conservation needs of the koala. There is little doubt that koala numbers are in marked decline⁹⁰ and that significantly more needs to be done to ensure the long-term preservation of this unique Australian species.

5.97 The committee is of the view that unless new conservation measures are implemented, the koala population will continue to decline until it eventually satisfies the EPBC Act threatened species criteria. To have such significant Australian iconic on the threatened species list would be a national shame.

5.98 The committee advocates a more proactive approach to the conservation of the koala. The committee concurs with witnesses such as Mr Al Mucci from Dreamworld, who stated that 'the further we move the koala in the direction of extinction, the more difficult and costly it will be to reverse the trends.'⁹¹

88 Professor Frank Carrick AM, Private capacity, *Committee Hansard*, 1 August 2011, pp 4–5.

89 Dr John Woinarski, Member, Threatened Species Scientific Committee, *Committee Hansard*, 1 August 2011, p. 54.

90 Threatened Species Scientific Committee, letter to Minister for Sustainability, Environment, Water, Population and Communities, September 2010, Department of Sustainability, Environment, Water, Population and Communities, *Submission 73, Attachment C*, p. 1.

91 Mr Al Mucci, Dreamworld, *Submission 8*, p. 3.

5.99 This view is in accordance with the recently released *Australian Government response to the report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (the response). The preamble to the response states: '[w]e need to shift our management approaches to be preventative and proactive'. The preamble goes on to say that 'In the long run, identifying and avoiding likely environmental harm early in the process will be much more cost effective than trying to fix damage after it has occurred.'⁹²

5.100 Two possible mechanisms announced as part of the response could potentially facilitate a more proactive approach to koala conservation. Firstly, there is the possibility of having certain koala habitat listed as an 'ecosystem of national significance'. The response states that:

A key benefit of listing an ecosystem of national significance is that it will provide a significant new tool to conserve healthy ecosystems and the ecosystem services they provide. This is in contrast to the existing provisions to list threatened species and ecological communities, which are focused on protecting and recovering species and communities already in decline. The government considers that a preventative approach is more likely to be a cost-effective conservation measure, addressing cumulative impacts and achieving good environmental outcomes for ecosystems while providing more certainty for business. Therefore, while the threatened status of an ecosystem is of obvious concern, it should not be a criterion for listing as an ecosystem of national significance.⁹³

5.101 A second possibility is the greater emphasis on landscape scale regional environment plans (formerly known as 'bioregional plans') which will focus on identifying ecologically sustainable land uses in a particular geographical area.⁹⁴

5.102 The response explains the regional environment plans process in the following way:

Regional environment planning and the strengthened process for strategic assessments will provide an effective means to integrate both long-term and short-term environmental, economic and social considerations, consistent with the principles of ecologically sustainable development. This integrated planning and assessment will support the maintenance of ecosystem services and achieve conservation outcomes across the landscape and marine environment...

92 Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, p. 4.

93 Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, p. 25.

94 Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, p. 19.

As with current regional environment plans and strategic assessments, the minister will be able to approve classes of actions that are consistent with the regional environment plan or the strategically assessed policy, plan or program, without further assessment under the Act. Neither regional environment plans nor strategic assessments will impose additional obligations on private landholders. Rather, they will avoid the need for proponents to submit an individual referral provided their action is in accordance with an approved class of action. Where that is not the case, then the proponent could use the existing individual referral processes under the Act to seek an environmental approval.⁹⁵

5.103 The committee acknowledges that it may be some time before these new arrangements are legislated. In the interim, there is a need to properly implement and strengthen the National Koala Conservation and Management Strategy which is the topic of the next and final chapter.

95 Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, August 2011, p. 16.

