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A.C.N. 010 922 102

**Comments on the interim report of the
Independent review of the
*Environment Protection and Biodiversity
Conservation Act 1999***

Australian Koala Foundation

By Dr. Douglas Kerlin, Chief Ecologist and Ms. Deborah Tabart OAM

Chief Executive Officer

5th August, 2009



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Introduction

The Australian Koala Foundation (AKF) is the principal non-profit, non-government organisation dedicated to the conservation and effective management of the wild koala and its habitat. It is the Australian Koala Foundation's opinion that koalas are currently not protected adequately across their geographic range; State and local legislation is inadequate, and there is no Federal legislation that provides for the protection of the koala and its habitat. Indeed, no Federal or State legislation in Australia has proved capable of reducing the decline of koala populations in the wild.

The AKF did not make a submission to the initial review, focusing instead on the National Koala Conservation Strategy, in the hope that it would:

- a) list the koala under the EPBC Act
- b) trigger a recovery plan written specifically with the Act's failings in mind
- c) encourage Federal oversight on State legislation which is clearly failing (see

Review document –

<https://www.savethekoala.com/pdfworddocs/conservation/NKCS%20Review%20Comments%20final.pdf>)

With the National Koala Strategy document now on display for public comment, our faith in the above is lagging. Hence we feel it is important to make our views publicly known about our concerns for the efficacy of this legislation.

Because the koala is not currently listed as a threatened species under the EPBC Act, federal protection of the koala is impossible. Since white settlement, successive Federal Governments have refused to intervene in State's rights, even when koalas needed help from the persecution of the fur trade (See <https://www.savethekoala.com/pdfworddocs/vulnerable/nom-Appendix%203.pdf>).

As the States have clearly shown an inability to protect the species, the AKF has attempted to list the koala as a 'vulnerable' species under the Act on two previous occasions, 1995 and 2004. Humane Society International also nominated the koala in the year 2000 (this nomination was also rejected). The AKF has also recently nominated the Koala Coast koala population in Southeast Queensland as a critically



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endangered population, using section 517 of the EPBC Act. It is in this context that our comments are made; we have chosen to focus on flaws in the nomination and listing process.



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Listing of threatened species and ecological communities

- 1) The process for nominating and listing threatened species lacks transparency and scientific rigour. There are limited or no opportunities for appeals. The process is also open to political interference.
- 2) The nomination process is becoming increasingly complex. Previous nominations simply required evidence of declines to assess a species against the appropriate EPBC Act criteria. Changes to the current requisite nomination form now require in-depth (and often irrelevant) knowledge of the biology of the species to complete the form. The AKF considers the current requisite form complex and convoluted, such that an average concerned member of the public would be discouraged from nominating a species for listing under the act.
- 3) The 2006 amendments to the Act removed the obligation on the Commonwealth Environment Minister to ensure the threatened species/ecological community lists are kept up-to-date. This action has led to increasing delays in the nomination process, and subsequent delays for the protection of listed species under the EPBC Act. This amendment should be repealed to increase the timeliness of the nomination process.
- 4) The scientific quality of the rejection decision should be of a comparable standard to the original nomination. The AKF considers that the 2004 nomination to list the koala was rejected following substandard advice from the TSSC. The document written in response to our nomination did not give adequate reasons for not listing the koala. The response also failed to identify what data had been used to counter the arguments made in our nomination; the decision was seemingly made on the opinions of members of the TSSC, rather than the rigorous scientific evidence provided with the nomination. Similarly, in the 1995 rejection, the ludicrous situation occurred where a reputable scientist made the claim that the AKF was in error because it did not address the work of Parry (sic), which had been cited in the literature ad nauseum. This work suggested that koalas were already rare at the time of



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European settlement (which is irrelevant in a modern day listing process in truth). AKF did not include this work because the “body of work” about this issue was in fact a half a page letter from Mr. Harry Parris - possibly to his Mother - which suggested that some aborigines had eaten koalas and therefore their numbers were low (See <https://www.savethekoala.com/pdfworddocs/vulnerable/nom-Appendix%207.pdf>). Mr. Parris was in fact an electrical engineer for the Melbourne & Metropolitan Tramways Board, and it is our opinion that this pawltry document was more a personal musing, rather than any significant scientific contribution. How could this document have influenced the decision of the TSSC, if in fact there was robust evaluation of science? All this leads us to our conclusion that the decisions of the TSSC are not scientifically robust, and the nomination process appears to be a political rather than scientific process.

- 5) The scientific rigour of the nomination process would be drastically improved by requiring the publication of the minutes of meetings of the TSSC, and improving avenues for appeal, to ensure decisions are made with the required standard of scientific excellence, and are not susceptible to undue political interference.
- 6) Section 517 of the EPBC Act allows the Minister to determine that distinct populations are to be considered species for the purposes of the act. The decision is entirely up to the Minister; no scientific evidence is required to allow or reject distinct populations for listing. As such, the Minister may be influenced, by pressure or self-interest, into avoiding listing populations. Criteria and/or guidelines should be publically available, to ensure these decisions are made in an appropriate and transparent manner. Meanwhile populations of koalas decline to extinction. Surely this not the desired outcome of the Act or any Government.
- 7) The IUCN and EPBC Act criterion are not appropriate for every species. The IUCN criterion works for locally restricted species, where each individual can be counted. Koalas, however, occur at low densities across much of the East



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coast of Australia. As such, it is difficult to produce accurate data on koala abundance. The nomination process requires the flexibility to list species that do not necessarily satisfy the criterion particularly when there is robust data which shows declines.

- 8) The precautionary principle should be considered in the nomination process. List now and unlist when you are sure everything is OK might be a good mantra for the Act. The absence of data should not hinder the listing of a species. Ultimately, the collection of data is the responsibility of the Minister for the Environment and the DEWHA, yet in the koalas case, we have seen no commitment by any level of Government to do so. In the latest review, it clearly showed that it was the community that appears to be the prime movers in the protection of the koala. Rather than constantly asking the public for more data, the Minister and the TSSC must recognise that postponing the listing process while awaiting more data is detrimental to the conservation of the species. The Act should allow that anecdotal and/or large bodies of data from NGO's and others should be treated with the respect it deserves. This evidence of declines should be considered in the absence of data. The AKF used data from Government sources that identified some 25,000 dead koalas and this was completely ignored. The TSSC argued that this did not meet IUCN guidelines and could not be extrapolated to other parts of the country. So, nothing happens and populations which the TSSC also seems reluctant to list languish and slide to extinction. How many species could take such a drastic reduction anywhere on the planet? It is shocking.
- 9) The AKF agrees with the suggestion that the EPBC Act should allow for the emergency listing of species and ecological communities which may be threatened.
- 10) The EPBC Act should also consider the benefits of listing a species with a large range like the koala, which live in forests that encompass the entire east coast of Australia. At this time, there are approximately 1,700 listed species on the vulnerable and endangered list waiting for a recovery process - a dreadful indictment on the Act's inability to protect species in Australia. One



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thousand of those species occur in areas of koala habitat. AKF would argue that protecting koala forests under the auspices of koala conservation could also protect species currently waiting for a recovery plans immediately. Assuming 1000 species recovery plans could cost as much as 2 million dollars each, without any management costs included, you could actually save the Government in excess of \$2b by this simple action. A recovery plan for the koala, focused on protecting koala habitat will offer protection for these 1,000 species, yet require a fraction of the financial expense.



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Conclusion

We cannot express enough that the EPBC Act, in its current form, has proven completely incapable of protecting the koala in the past and into the future. The koala has consistently stumbled at the first hurdle – getting listed – despite ample scientific evidence documenting declines.

Even if the koala was listed under the EPBC Act, and became the 1701th species requiring protection, the AKF has no confidence that the Act will offer significant protections to the species. For a start, it could be about 5 years before a recovery plan was put in place. There is no urgency to the process and the decision making process in Canberra operates at a glacial pace.

Many of the provisions of the EPBC Act can only be triggered by the Minister; their implementation is entirely contingent upon his will. This offers the Minister many avenues to evade his/her responsibilities as custodian of the Nation's environmental values. Section 517 of the Act allows the Minister to decide whether populations should be considered for the purposes of the Act; no guidelines are provided and no scientific advice is required. The Minister can avoid the implementation of environmental assessment and approval conditions. Exemptions can also be used or granted and from our experience happen all the time.

As Mr. Stephn Keim SC, Barrister-at-Law said at a recent QELA Conference: “At the end of the day, the public's perception of the EPBC Act will be dependant upon the actions of those who administer it. Those members of the public who expect the environment minister to act only with the purpose of the Act in mind, putting party political considerations to one side, will be, I think, sorely disappointed. No matter what is said in the debates in the Parliament, when the power comes to be exercised, Ministers do not see themselves as required to show the impartiality we normally associated (sic) with judges and honest brokers.

We agree wholeheartedly.



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Habitat destruction is the biggest threat to koalas. To conserve the koala, land clearing needs to be prohibited/monitored,evaluated in areas of significant koala habitat. Why then has land clearing has been included in the Key Threatening Processes list under the EPBC Act since 2001, but the actual removal of trees, does not trigger the Act? It is clear that industry fears this trigger, but a confident and robust Government would not allow this to interfere with the protection of biodiversity, rather seek to educate and inform landholders of their responsibility as custodian of the land and the biodiversity they need to protect.

How can a piece of legislation like the EPBC Act protect anything in Australia if it lacks planning powers, and the next logical step, its ability to enforce or instigate financial incentive mechanisms to properly protect koala habitat It is therefore our view that unless there are significant changes to the Act – and the interim report does not give any indication of whether those changes might occur - we have no confidence in the Act being able to protect the koala.

It is doomed to fail.

Whilst we continue to work with the Australian Government in their endeavours to grapple with the protection of the koala and its habitat, it becomes more and more apparent that existing laws are hopeless.

We are therefore of the opinion, that new environmental legislation is needed that is koala specific given its iconic status and like other charismatic fauna worthy of its own legislation, like The Bald Eagle Act in the United States.

We attach, for those interested, our “primitive” vision document entitled. ‘Analysis of the EPBC Act with regards to the protection of the koala and The Australian Koala Foundation’s vision for a National Koala Act.’

This is the sort of thinking that will grapple with the issues of protecting species and biodiversity on private land which will be essential for a rich and biodiverse Australia.

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October 2007

Written by Julie Guglielmi, Master's degree Law student, University of Nice, France, and
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In Consultation with Deborah Tabart, Chief Executive Officer,
Australian Koala Foundation

Analysis of the EPBC Act with regards to the protection of the koala

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The Australian Koala Foundation's vision for a National Koala Act



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Context

State based legislation is failing to protect the koala and its habitat

The current protection of the koala and its habitat under the existing Federal legislation is insufficient

- 1) The koala is not currently a listed threatened species under the EPBC Act
- 2) The koala is protected only as “native species” under the EPBC Act

Action is needed before the Koala reaches endangerment

Background to the Australian Koala Foundation

1) Changing the EPBC Act

Why is the EPBC Act, in its current form, not suitable to protect the koala and its habitat?

- 1) The protective provisions of the EPBC Act mostly relate to Commonwealth areas and reserves, where koala populations do not occur
- 2) The EPBC Act doesn't have planning powers
- 3) The EPBC Act doesn't provide economic incentives to landowners
- 4) The EPBC Act suffers from a lack of enforcement
- 5) Land clearing doesn't trigger the operation of the EPBC Act, although it is seen as a threatening process
- 6) The implementation of important protective provisions is uncertain
 - a) Existence of exemptions
 - b) Ministerial discretion

Assessment of the different possibilities under the EPBC Act to take action

1) Including the koala in the threatened species list

Which provisions could the koala really benefit from if it was included in the list, and are they efficient to protect the species or its habitat?

- a) Provisions specifically triggered by a “listed threatened species”
- b) Provisions the koala would benefit from simply because it is a “native species”

2) Lobbying the Minister to implement a threat abatement plan to mitigate the effect of land clearing

3) Adding a Matter of National Environmental Significance

How are MNES adopted?

Would public pressure be useful to have a new MNES added?

“Species of national cultural significance” as MNES

“Species of national economic value” as MNES

“Nationally significant vegetation” as MNES

Key inadequacies under the revised 2006 version of the EPBC Act

Conclusion



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II) Creating a new legislation – the National Koala Act

Part 1. Biodiversity

Koala to lead the way
The establishment of a precedent

Part 2. Planning

The National Koala Act would have powers over Planning Codes
Creation of a Koala secretariat
Developers required to prove that their project will be neutral to the environment
Planners bound by the planning guidelines for koala conservation – site level planning

Part 3. Tax

Tax and other incentives to protect and restore koala habitat

East of the Great Dividing Range

Revolving conservation funds
Donation of land for conservation purposes subject to a life interest
Bargain sale of land for conservation purposes
Development incentives whereby a landholder may be allowed to develop part of their property in return for dedicating another part to conservation

West of the Great Dividing Range

Conservation covenant
Voluntary conservation agreement
Landowner Incentive Program
Donation of a conservation easement
Bargain sale of a conservation easement
Accreditation schemes and environmental management systems to promote products from farmers who invest in biodiversity conservation practices
Incentive payments

- Annual rental payments (10-, 15- or 20-year agreements)
- Easement payment (30-year or permanent)

Carbon sequestration
Conservation banking

Preference of the Australian Koala Foundation regarding the different economic incentives

Examples of actions landowners would be encouraged to undertake

Could the Commonwealth legislate to adopt the National Koala Act?

International policies that are currently used to protect biodiversity

Bibliography



Context

Koalas are endemic to Australia, and can be found in four different Australian States: Queensland, New South Wales, Victoria, and South Australia. They occur now as disjunct populations within these States.

They are in serious decline, suffering from the effects of habitat destruction (land clearing being the biggest threat to koalas and wildlife in general in Australia), domestic dog attacks, bushfires and road accidents. The Australian Koala Foundation estimates that there are less than 100 000 koalas left in the wild.

It is the Australian Koala Foundation's opinion that koalas are currently not protected adequately across their geographic range: the distribution of power at State and local government level is inadequate, and the protection for koalas under the current Federal legislation is insufficient: the legislation is weak and not specifically triggered by the koala. Indeed no Federal or State-based legislation in Australia has proved capable of reducing the decline of koala populations in the wild.

State based legislation is failing to protect the koala and its habitat

Under State legislation the koala is listed as follows:

- *Common* in Queensland, under the Nature Conservation Act 1992. In 2003 the species was upgraded to *vulnerable* in South East Queensland
- *Vulnerable* in New South Wales, under the Threatened Species Conservation Act 1995
- *No official listing* in Victoria. The koala is not on the official Threatened Species list
- *Rare* in South Australia, under the National Parks and Wildlife Act 1972

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The Federal government considers the protection of the species and its habitat to be primarily each State's responsibility. The main environmental legislation at Federal level – the *Environment Protection and Biodiversity Conservation Act 1999* (the "EPBC Act") allows the Minister, on behalf of the Commonwealth, to enter into a bilateral agreement with a State or self-governing Territory. A bilateral agreement provides, among other things, for protecting the environment and/or for promoting the conservation and ecologically sustainable use of natural resources.

Although all of the States now protect koalas from being deliberately killed or harmed, and they each have legislation under whose jurisdiction koalas and their habitat fall, there is not always the political will to adequately implement and enforce the legislation or to protect the koala and its habitat. See for example the Queensland Government Environmental Offsets Draft (2007) which advocates restoring vegetation somewhere else to compensate for environmental impacts – this is highly inadequate regarding koala habitat as the death of koalas due to the destruction of their habitat is of course irreversible and therefore no offset is acceptable, or the Nature Conservation (Koala) Conservation Plan 2006 and Management Program 2006-2016 (the Koala Plan) for Queensland, which consists mainly of recommendations: the action taken by the State doesn't trigger an efficient protection because the plan itself is weak.

When State governments are willing to take action the authorities often lack financial resources to achieve their aim. Thus a New South Wales National Parks and Wildlife Service (2003) Draft Recovery Plan for the Koala (State-wide plan) has been written but due to insufficient funds this recovery plan remained a mere draft and was not implemented. It is useless now. Examples such as the New South Wales Recovery Plan for the Hawks Nest



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and Tea Gardens Endangered Koala Population (2003), which was allocated \$60,000 by the State government to ensure the long-term survival of the koala population concerned, are rare. In 2003 a man was also convicted in the Land and Environment Court and fined \$40,000 for damaging the core habitat of the endangered Hawks Nest and Tea Gardens koala population.

There are currently approximately 320 local governments responsible for planning decisions affecting koalas in their area. It is the Australian Koala Foundation's view that the current multiplicity of local authorities is highly inadequate to deal with a koala habitat stretching across multiple administrative districts: we can easily understand that a general view of koala habitat is needed to successfully protect, restore and connect koala habitat(s); however at the moment the different Council jurisdictions on which koalas occur are not coordinated. They manage koala habitat each in a different way and with different rules, making the implementation of a conservation strategy very difficult.

Conserving biodiversity should be the Federal government's responsibility. The decisions must come from Federal level and consider koala habitat beyond local administrative boundaries. It is the only way koala habitat can be managed in a coherent manner and therefore koalas can have a chance to thrive again.

The current protection of the koala and its habitat under the existing Federal legislation is insufficient

Currently, there is no Federal legislation that specifically provides for the protection of the koala or its habitat.

In 2004 the Australian Koala Foundation submitted a nomination to list the Koala as "vulnerable" at national level, under the EPBC Act. The Federal government rejected the nomination in 2006.

1) The koala is not currently a listed threatened species under the EPBC Act

Therefore the koala is not afforded any legal protection as a "threatened species":

It cannot benefit from a **recovery plan**, which "provides for the research and management actions necessary to stop the decline of, and support the recovery of, the *listed threatened species* or listed threatened ecological community concerned so that its chances of long-term survival in nature are maximised" (270(1)).

The Minister doesn't have to ensure that there is approved **conservation advice**, because they are needed only for *listed threatened species* (266B).

The koala is not subject to the **permit system**, which concerns members of *listed threatened species* being killed, taken, moved... So such action is not an offence (except if the action is taken in a Commonwealth *reserve*, because then the koala would be protected as a "native species" and killing, taking... a koala or other native species in a Commonwealth reserve is prohibited under the EPBC Act).

The Minister does not have to identify **critical habitat**, because such habitat should be critical only to "the survival of a *listed threatened species* or listed threatened ecological community". As koala habitat is not listed as critical habitat it is not an offence to damage it.

A **conservation order** controlling activities and requiring specified people to take specified actions cannot be issued, because according to section 464(2) "the Minister may only make



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a conservation order if he or she reasonably believes that it is necessary to make the order to protect a *listed threatened species* or a listed threatened ecological community”.

Currently the koala doesn't fall within one of the seven Matters of National Environmental Significance (“MNES”), which include *listed threatened species*. Therefore even if an action is likely to have a significant impact on the koala **Commonwealth assessment and approval** is not required.

The decision whether to include the koala in the list of threatened species under the EPBC Act will be reviewed in 2008.

2) *The koala is protected only as “native species” under the EPBC Act*

A protection does exist for native species under the EPBC Act. Section 303 provides that “in particular, the regulations may prohibit or regulate actions affecting a member of a *native species* in a Commonwealth area”, and several protective provisions refer to native species. As a species that is “indigenous to Australia” the koala falls into the category “native species” under the Act. The following provisions could in theory be used:

Native species may be protected **while in a Commonwealth reserve**: section 354A(1) provides that a person commits an offence if the person takes an action in a Commonwealth reserve and the action “results in the death, injury, taking, trade, keeping or moving of a member of a *native species* in the reserve”. The offence is punishable on conviction by imprisonment and/or a fine. Strict liability applies.

The Minister may also protect the koala by **adding a threatening process to the list**, if satisfied that it is eligible to be treated as a key threatening process. “A process is a threatening process if it threatens, or may threaten, the survival, abundance or evolutionary development of a *native species* or ecological community”(188(3)). A threatening process is eligible to be treated as a key threatening process if it could (among other things) cause a native species or ecological community to become eligible for inclusion in a threatened species list (188(4)(b)). Land clearing, which is the biggest threat to koala because it destroys their habitat, has been included in the key threatening process list.

The Minister may **make a threat abatement plan** to reduce the effect of a *key threatening process*: section 270A(1) provides that the “Minister may at any time decide whether to have a threat abatement plan for a threatening process in the list of key threatening processes established under section 183”. A threat abatement plan must provide for the research, management and other actions necessary to reduce the key threatening process concerned to an acceptable level in order to maximise the chances of long-term survival in the nature of *native species* and ecological communities affected by the process (271(1)). A threat abatement plan has not been made so far to reduce the effect of land clearing.

A threat abatement plan can only be made for a key threatening process in the list. Having a threatening process added to the list is the first step, it allows a threat abatement plan to be later created to reduce the effect of the process. But this step alone doesn't have the result of triggering an operation of the EPBC Act. The key threatening process is acknowledged but remains a mere expression in a list, nothing more, until a threat abatement plan is introduced and implemented. Only a *threat abatement plan* would reduce the effect of the key threatening process.

It results from the above that land clearing, which is on the list but for which no threat abatement plan has been made, does not currently trigger an operation of the Act. Koala habitat could not currently be protected from land clearing using this provision.



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Beyond the creation and implementation of a threat abatement plan for land clearing, the following provision could be used to protect koala *habitat*:

Under section 28 an action taken by the Commonwealth or a Commonwealth agency that has, will have or is likely to have a significant impact on the environment “inside or outside the Australian jurisdiction”, koala habitat included, may trigger the operation of the EPBC Act, namely the assessment and approval provisions.

Sections 26 and 27 regard the taking of an action that is likely to have a significant impact on the environment of Commonwealth land as an offence. Such action requires approval before it can be undertaken.

This protection is insufficient: the EPBC Act is currently only triggered under the following circumstances: the koala is in a *Commonwealth reserve* and is killed, injured, traded, kept, or moved by a person in the reserve; the *Commonwealth or a Commonwealth agency* takes an action that is likely to have a significant impact on its habitat anywhere in Australia; or the koala is on *Commonwealth land* and a person takes an action that is likely to have a significant impact on the environment (koala habitat) of this land. Given the power of Ministerial discretion, which can provide exemptions (approval is not needed prior to damaging the environment), and especially the fact that almost all of the koala habitat is found outside of Commonwealth areas and Commonwealth reserves, the implementation of these provisions is very unlikely to happen.

In conclusion under the EPBC Act's current form the protection for koalas and their habitat is nearly non-existent.

Action is needed before the Koala reaches endangerment

Due to the increase in human population, the koala's habitat is being cleared to build houses, buildings, roads, for industry purpose and other development, at an overwhelming rate. It is estimated that around 80% of the Eucalyptus forests from the koala's range has been cleared since European settlement. Aside from the direct loss of habitat, urbanisation can also increase other risks facing koalas, vehicle related mortality and dogs attacks among others.

As a result koalas now exist predominantly in severely fragmented and isolated populations within many parts of their original geographic range, and are suffering from a sharp decline in numbers. Fragmentation of koala habitat is having a devastating effect on the koala, its natural habitat and Australian biodiversity in general. It places koalas under increased threat of extinction.

The koala's habitat destruction is still in progress. More illegal clearing is undertaken now and the habitat is lost faster than ever before, due to a diminution of rangers and other staff in charge of keeping watch over the habitat. The koala's limited distribution will reduce further. The situation is critical.

It is imperative that action is taken now while there is still adequate habitat capable of protecting large numbers of koalas. A species should not be afforded legislative protection only when it is threatened with extinction. Once a species reaches endangerment, it might be too late to save it. The conservation of the koala requires thousands (1,000s) of wild koalas in large tracts of land that are capable of sustaining the koala populations indefinitely.

The Australian Koala Foundation decided it is time to take action.



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The Australian Koala Foundation in this draft draws the outline of what such an action could be. The action would consist in either *writing a new piece of unprecedented legislation* – a National Koala Act, or *improving the existing legislation*, the EPBC Act, or both.

The proposed National Koala Act would consist of Federal legislative and policy initiatives designed to protect the koala and its habitat throughout its natural range. It would comprise three sets of powers – biodiversity, planning and tax.

Background to the AKF

The Australian Koala Foundation (“AKF”) is the principal non-governmental organization in Australia focused on saving the koala and its habitat.

To achieve this aim the AKF has raised and funded since its inception in 1986 approximately \$1 million into research on the koala and has committed a further \$6.5 million towards koala conservation projects throughout eastern Australia.

The AKF is committed to forming meaningful partnerships with scientists, individual landholders, conservationists, primary producers, foresters, politicians and developers to create a clear and workable strategy and a concrete means to save the koala. It also broadens public awareness about the koala, provides koala conservation advice and makes educational resources available to students and the general public.

One of the AKF’s greatest achievements is the Koala Habitat Atlas, an on-going project created to identify and map all remaining koala habitat in Australia using the results of extensive field surveys in conjunction with the latest in GIS-computer technology. The Koala Habitat Atlas was awarded a Computerworld Smithsonian Award Medal for Innovative Use of Technology in Washington, DC in April 1998.

The AKF acts as an umbrella organisation for many small groups and individuals that represent the koala, and hosts annual conferences for scientists, planners, land managers, developers and koala care-givers.

For further information please visit the AKF web site at www.savethekoala.com.



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1) Changing the EPBC Act

As we have seen the power to manage koala habitat must come from Federal level. An environmental legislation at Federal level already exists, the EPBC Act. However it is the Australian Koala Foundation's view that whether or not the koala is listed as a threatened species the EPBC Act is unable to efficiently protect the species and its habitat.

Why is the EPBC Act, in its current form, not suitable to protect the koala and its habitat?

1) The protective provisions of the EPBC Act mostly relate to Commonwealth areas and reserves, where koala populations do not occur

Section 303 provides that the regulations under the EPBC Act "make provision for the conservation of biodiversity *in Commonwealth areas*". Many of the important provisions protecting the threatened species or their habitats require that they be in or on a Commonwealth area in order to be protected:

Damaging **critical habitat** is an offence only if the habitat is "in or on a *Commonwealth area*" (207B(1));

Only a contract designed for the sale or lease of *Commonwealth land* containing critical habitat must include a covenant the effect of which is to protect the critical habitat (207C);

A **conservation order** prohibits or restricts specified activities on or in *Commonwealth areas* and may require specified persons to take specified action on or in *Commonwealth areas*;

The EPBC Act created a **permit system** to conserve Australia's Biodiversity on Commonwealth land. It is designed to protect threatened species, by making it an offence to kill, injure, take, trade, keep, or move a member of a listed threatened species in or on *Commonwealth area* except in certain circumstances. The offence is punishable on conviction by imprisonment and/or a fine. Strict liability applies.

Native species may also be protected from being killed, injured, taken etc while in a *Commonwealth reserve* (354A(1)).

Under section 525(1) of the EPBC Act the definition of Commonwealth area is as follows:

"Each of the following, and any part of it, is a *Commonwealth area*:

- (a) land owned by the Commonwealth or a Commonwealth agency (...) and airspace over the land;
- (b) an area of land held under lease by the Commonwealth or a Commonwealth agency (...) and airspace over the land;
- (c) land in an external Territory (...) or the Jervis Bay Territory and airspace over the land;
- (d) the coastal sea of Australia or an external Territory;
- (e) the continental shelf, and the waters and airspace over the continental shelf;
- (f) the waters of the exclusive economic zone, the seabed under those waters and the airspace above those waters;
- (g) any other area of land, sea or seabed that is included in a Commonwealth reserve".



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80% of koala habitat is situated on *privately owned* land and, as for the remaining 20%, koalas are very rarely found in Commonwealth reserves and areas. These provisions of the EPBC Act are not relevant because they let the koala mostly unprotected.

In the same way section (26) provides that a person must not take an action that has, will have, or is likely to have a significant impact on the environment on *Commonwealth land*. Although such action may trigger the operation of the EPBC Act the koala is unlikely to benefit from the provision.

2) *The EPBC Act doesn't have planning powers*

The habitat of a species is vital for the animal. It is where it lives, grows and breeds; it is also used for feeding, as a shelter, and for many daily activities. In order to be viable a koala population requires a minimum amount of suitable habitat and large areas of connected forest, among others because male koalas must disperse to nearby areas to avoid inbreeding. They will travel long distances along tree corridors in search of new territory and mates.

When the planners and developers are free to carry out any development they want, and therefore to clear trees within patches that are koala habitat, they may increase the distance between mature trees. This has a major impact on koalas. In a fragmented landscape koalas may be required to travel across cleared areas between habitat patches, which makes them much more vulnerable to predators. They might also have to cross a road when attempting to reach the closest koala habitat patch and be killed. Moreover koalas are nocturnal animals and, in the event of a koala being unable to reach his destination during the night, it will still be on the ground in the morning and therefore be extremely vulnerable to attacks by roaming or domestic dogs.

It is fundamental that the legislation has powers over Planning Codes to be able to protect koala habitat from threatening development or planning which would require land clearing. Directions need to be given to Councils. Councils should be obliged to take koalas into consideration when designing or assessing rezoning proposals and development applications. The EPBC Act is silent concerning powers over Planning Codes. The current Planning Codes do not take into account the specificities inherent to koalas.

3) *The EPBC Act doesn't provide economic incentives to landowners*

Although koalas are protected by law, their remaining habitat is almost never protected by legislation because as we have seen it occurs mostly on privately owned land. On private land the fate of the koala is contingent upon the owner of the land, who may clear land that is koala habitat. The Australian Koala Foundation believes that most landowners would be willing to protect the koala and its habitat on their land if they were given financial and/or technical assistance. The EPBC Act doesn't offer such incentives.

4) *The EPBC Act suffers from a lack of enforcement*

It appears that in practice the EPBC Act is discredited and therefore *rarely used*, because it is considered weak, unable to generate a real outcome. It doesn't provide means of enforcing it. It is seen as written by bureaucrats with no field experience, merely using imposing words to give an appearance of strength. It is also complicated and unclear. As a result the EPBC Act is not properly implemented: it can be changed, it is easy to get around it legally or override it.

On the contrary a shorter, conclusive and precise document is needed, making it easier for a Court to rule and for individuals to know their obligations and what they are not allowed to



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do. Enforcement should also be planned and coordinated (hiring of more rangers for example).

5) *Land clearing doesn't trigger the operation of the EPBC Act, although it is seen as a threatening process*

Habitat destruction is the biggest threat to koalas and land clearing needs to be prohibited in areas of significant koala habitat. Land clearing has been included in the Key Threatening Processes list under the EPBC Act and the inclusion has become effective on the 4th of April 2001. However the EPBC Act fails to manage to halt land clearing, because as we have seen a threat abatement plan has not been made and implemented. The Australian Koala Foundation considers this as ludicrous and a major loophole in the EPBC Act. There is no point of having "land clearing" listed if this does not trigger the operation of the Act.

6) *The implementation of important protective provisions is uncertain*

The Minister is responsible for making decisions concerning the enforcement of the EPBC Act. It appears that many ways are offered to the Minister to evade his national environmental responsibilities: many provisions of the EPBC Act can be avoided via Ministerial discretion. The Minister has the possibility to avoid the implementation of the environmental assessment and approval provisions. Exemptions can also be used or granted.

An amendment to section 206A removing the right to appeal threatened species (among others) permit decisions to the Administrative Appeals Tribunal if the decision was made personally by the Minister also shows that the Minister is "above due process" (A. Macintosh). The power of the Minister over the implementation of the EPBC Act is incontestable.

a) Existence of exemptions

Under the EPBC Act actions that are likely to have a significant impact on a Matter of National Environmental Significance ("MNES"), on the environment of Commonwealth land, and actions taken by the Commonwealth that are likely to have a significant impact on the environment anywhere in the world are subject to Commonwealth assessment and approval before they can lawfully be undertaken.

However the Act provides that *environmental approvals are not needed* for the following actions:

- Actions covered by bilateral agreements between the Commonwealth and the State or Territory in which the action is taken;
- Actions covered by Ministerial declarations and accredited management arrangements or accredited authorization processes;
- Actions covered by Ministerial declarations and bioregional plans;
- Actions covered by conservation agreements;
- In regions covered by Regional Forest Agreements, for certain RFA forestry operations;
- Actions in the Great Barrier Reef Marine Park, provided that the action is taken in accordance with a permission;
- Actions with prior authorisation

(if the action is declared by the agreement or by the Minister not to require approval).



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These actions are not *controlled actions*, so it is not an offence to undertake them without approval. They can be freely carried out, even though they may have a significant impact on a MNES or on the environment.

A person wishing for example to clear land and knowing or suspecting that this would result in the death of protected animals in the wild must have his/her application assessed and be granted approval before this person can proceed with the proposed activity, *except* where an exemption applies. Therefore the assessment and approval provisions are only theoretical.

The exemption concerning forestry operations in regions covered by Regional Forest Agreements (RFAs) is among the most dangerous flaws in the EPBC Act, because RFAs regulate the management of a large portion of Australia's forests, which is also essential habitat for the koala. Others regions with koala habitat are subject to a process of negotiating a Regional Forest Agreement. All forest activities, anywhere in Australia, if they may have a significant impact on a MNES or on the environment should be subject to Commonwealth environmental assessment and approval.

It is the same under the permit system. Ministerial approval may be given, a recovery plan or conservation agreement for example may authorise the action if this action is provided for by, and done in accordance with it. Then the action on the species is not an offence.

The existence of exemptions undermines the spirit and efficiency of the provisions. Even if the koala was protected by a MNES it might be useless in some cases because the protective provisions would not be triggered.

b) Ministerial discretion

Some of the provisions can only be triggered by the Minister, and therefore their implementation is contingent upon his will. For example:

The *Minister* needs to ensure that a recovery plan is in force for a listed threatened species *only if he decides* to have a recovery plan;

The *Minister may* decide whether to have a threat abatement plan and *may* make the plan;

The *Minister may* make conservation orders;

Application to the Federal Court for a remediation order may *only* be made by the *Minister*;

Ministerial discretion may be used to grant exemptions. As stated above the *Minister* is allowed to exempt actions from requiring environmental approval, for example "a person may take an action described in a provision of Part 3 [requirements for environmental approvals] without an approval under Part 9 [approval of actions] if (a) the action is an action, or one of a class of actions, *declared by the Minister* under section 37A not to require approval... (because the taking of the action is in accordance with a particular bioregional plan)". The Minister cannot make exemptions in certain circumstances: he "must not make a declaration [the action does not require approval] if he considers that the action, or an action in the class, if taken, would have unacceptable or unsustainable impacts on a matter [MNES] protected by the provision". But what is an action that has unacceptable or unsustainable impacts? The definition is not clear. And how to prove that the Minister was of bad faith?

This is the same for actions declared under a conservation agreement, the *Minister* can by declaration exempt them from the application of Part 3. But section 306A provides that the Minister must not enter into a conservation agreement that contains a declaration to the effect that actions in a specific class do not need approval, unless the Minister is satisfied



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that the actions to which the declaration relates “are not likely to have a significant impact on the matter protected by the provision of Part 3 proposed to be specified in the declaration”;

The *Minister*, in deciding whether to amend the list of threatened species, must obtain and consider advice from the Threatened Species Scientific Committee on the proposed amendment. Nevertheless he does not have to act in accordance with the TSSC’s advice. The *Minister* makes the final decision; on the contrary in New South Wales under the Threatened Species Conservation Act 1995 an independent *Scientific Committee* decides whether a proposed listing should be accepted (or rejected) and a species or ecological community should be listed, and under which category it should be listed;

There is no positive requirement on the Minister to declare critical habitat. The *Minister may* list habitat identified by him as being critical to the survival of a listed threatened species in a register. Currently there are only five entries on the register of critical habitat;

The *Minister* under section 201 *may* issue a permit authorising a person to take, trade, keep or move – or take an action that result or may result in the death or injury of, a member of a listed threatened species in or on a Commonwealth area. Then certain protective provisions of the EPBC Act (sections 196, 196A, 196B, 196C, 196D and 196E) will not be breached. A permit can also be granted by the Minister authorising a person to take an action that significantly damages or will significantly damage critical habitat for a listed threatened species in or on Commonwealth area. The Minister must, in deciding whether to issue the permit, have regard to any approved conservation advice for the listed threatened species, and must not issue the permit unless satisfied that [four conditions follow]. The Minister needs to be satisfied with only one of the conditions. The conditions are easily fulfilled, and the decision genuinely belongs to the Minister.

In particular the Minister may avoid responsibility for existing Matters of National Environmental Significance: he has the capacity to exempt actions potentially affecting MNES from environmental impact assessment and approval, because the implementation of the provisions is also contingent upon his decision. Despite the fact that these provisions confer one of the most important and potentially efficient power under the EPBC Act.

The *Minister* indeed must decide *whether the action* that is the subject of a proposal referred to him *is a controlled action* (75(1)(a)). That is to say whether the action requires approval. An action that a person proposes to take is a controlled action if the taking of the action by the person without approval would be prohibited by the provision. It is an offence to take a controlled action before it has been approved. The EPBC Act was amended in 2006, and section 78A now allows members of the public to request the Minister to reconsider his decision (the Minister decided that the proposed action was not a controlled action and therefore could be undertaken without approval, and a member of the public disagrees – or the opposite). The Minister must reconsider his decision and give written notice and reasons of the outcome of the reconsideration.

In addition the *Minister* is also responsible for granting or refusing approval: after receiving the assessment documentation relating to a controlled action the *Minister may approve the taking of the action* by a person (133(1)). Section 131A provides that before the Minister decides whether or not to approve, for the purposes of a controlling provision, the taking of an action he *may* publish on the Internet the proposed decision and invite public comment. It is not specified that the Minister has to reconsider the proposed decision by taking public comment into account.

Section 391 provides that the Minister must consider the precautionary principle in making decisions, but it is impossible to prove that he didn’t.



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Conclusion:

A Minister who would not want, for example, to stop a development project for political reasons has therefore two ways out: he can consider that the action is not a controlled action and so can be carried out without his approval, or he can say that the action is a controlled action and then decide to approve it regardless of the significant impact.

The conditions placed on approvals are often not sufficient to mitigate environmental damage. A number of environmentally damaging actions have already been approved, as well as major developments, often with extensive conditions. "There seems to be a reluctance to use the powers under the EPBC Act given to the Minister to refuse development" (Environmental Defenders Office, May 2005).

At last the activities that pose the greatest threat to the Act's MNES are "rarely being referred to the Minister and when they are the Minister is not taking adequate steps to ensure appropriate conservation results" (The Australia Institute July 2005).

It is regrettable that environmental decisions may be influenced by political considerations. The Australian Koala Foundation, together with the Wilderness Society, is of opinion that certain activities should be "listed as prohibited activities", without the Minister or anyone else having the possibility to allow them.

The responsibility of the Federal government should not be restricted to the 7 current MNES and to actions significantly affecting the environment on Commonwealth land and actions of Commonwealth agencies which have a significant impact on the environment anywhere in the world. Other matters should be subject to Commonwealth environmental assessment and approval, automatically in certain circumstances.

The fact that only the Minister can enforce some of the provisions is genuinely a flaw: as a result some major provisions of the EPBC Act, which could efficiently protect the koala if it was listed as a threatened species for example, may fail to be implemented. A single person should not be responsible for making all those decision and have all this power. A proper committee should be instituted. This would make the decisions more objective and less susceptible to be influenced by self-interest or pressure. The issue of biodiversity conservation is too important to be concentrated in the hands of only one individual. It is fundamental that this power is balanced so that no abuse of power – or the opposite, a passive Minister, is possible.

Assessment of the different possibilities under the EPBC Act to take action:

1) Including the koala in the threatened species list

Which provisions could the koala really benefit from if it was included in the list, and are they efficient to protect the species or its habitat?

As we have seen previously many of the provisions intending to protect threatened species would not be meaningful for the koala if it was listed as a threatened species because koalas are very rarely in or on Commonwealth area. Therefore the provisions relating to the permit system, critical habitat and conservation order will not be taken into account here.

In the EPBC Act's current form the following instruments under the Act could be used to protect the species:



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a) Provisions specifically triggered by a “listed threatened species”

Recovery plan: the purpose of a recovery plan is the protection, conservation and management of a *listed threatened species*. It provides for the “research and management actions necessary to stop the decline of, and support the recovery of, the listed threatened species... concerned so that its chances of long-term survival in nature are maximized” (270(1)).

“The *Minister* must decide whether to have a recovery plan for a listed threatened species... within 90 days after the species becomes listed” or at any other time (269AA(1)).

A recovery plan must be made and in force within 3 years of the decision to have the plan. The Minister may extend the period within which a recovery plan must be made, for a maximum of 3 years (273(1) and (2)).

It would clearly be positive to have a recovery plan for the koala, because it must among other things: identify threats to the species, identify the habitats that are critical to the survival of the species and the actions needed to protect those habitats, and identify any populations of the species that are under particular pressure of survival and the actions needed to protect those populations (270(2)).

However the decision whether to have a recovery plan is contingent upon the Minister’s will, so it might never happen. And even if the Minister decided to have one the period of up to 6 years before the end of which the recovery plan must be made and in force is too long.

A recovery plan binds the Commonwealth and Commonwealth agencies, which must not take any action that contravenes it, *but not individuals* (landowners for example).

At last the Minister may decide to revoke a recovery plan, but he must publish his reasons.

Conservation advice: an approved conservation advice is a “document approved in writing by the Minister that contains a statement that sets out the grounds on which the species is eligible to be included in the category in which it is listed, the main factors that are the cause of it being so eligible, and either: information about what could be done to stop the decline of, or support the recovery of, the species..., or a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species...” (266B(2)).

The Minister must ensure that there is approved conservation advice for each listed threatened species at all times while the species continues to be listed (266B(1)).

It seems that this provision is not of particular interest. Only *information* on what could be done to conserve the koala would be required, so this is not efficient if it is not followed by an action. Moreover this provision may be dangerous because it could advise that the koala is no longer eligible to be included in the threatened species list.

Commonwealth assessment and approval: the environmental protection provisions of the EPBC Act are triggered when an action has, will have, or is likely to have a significant impact on a Matter of National Environmental Significance. The action is then subject to a rigorous assessment and approval process. An action includes a project, development, undertaking, activity, or series of activities.

The Act currently identifies seven Matters of National Environmental Significance:

- World Heritage properties
- National Heritage places
- Wetlands of international importance (Ramsar wetlands)
- *Listed Threatened Species* and ecological communities



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- Listed Migratory Species
- Commonwealth Marine areas
- Nuclear actions (including Uranium mining)

Actions that are likely to have a significant impact on the environment of Commonwealth land (even if taken outside Commonwealth land), and actions taken by the Commonwealth that are likely to have a significant impact on the environment anywhere in the world, may also trigger the operation of the EPBC Act.

If the koala was included in the threatened species list it would fall within one of the seven Matters of National Environmental Significance and therefore an action that is likely to have a significant impact on the koala would be subject to Commonwealth assessment and approval.

For example an action, such as land clearing needed for a development, which would “have the result to fragment an existing important population into two or more populations, adversely affect habitat critical to the survival of a species, or modify the availability or quality of habitat to the extent that the species is likely to decline” would fall in the category.

A person who would take such action without an exemption or approval would be guilty of an offence (18A). The offence is punishable on conviction by imprisonment and/or a fine. Strict liability applies.

As we have seen the implementation of the provisions are contingent upon the Minister’s good will to protect the matters of national environmental significance. It means that he has the possibility, if he wants to, to allow a very damaging action to be carried out. The latest statistics on the application of the provisions are stunning: the activity report covering referrals, assessments and approvals during almost 6 years (from the commencement of the EPBC Act – the Act came into force on 16 July 2000, to the 30 June 2006), indicates that a total number of 1932 referrals have been made. 1434 of those referrals (74%) were declared “not controlled action”, that is to say didn’t require approval, 424 (22%) were declared “controlled actions”, 37 (2%) “lapsed or withdrawn before determination” and 37 “in process”. Regarding controlled actions approval: 148 proposals out of 152 (97.5%) were approved (138 with conditions, 10 with no conditions). Only 4 proposals (2.5%) were not granted approval. In addition many exemptions can be used to avoid the provision.

It should also be taken into account that damaging actions are not always referred to the Minister for approval, either because people are not aware of the legislation (although “ignorance of the law is no excuse”), or are dishonest – the probability that the taking of an action is known is very low, and damaging actions often go unnoticed. Therefore the implementation of the provisions mostly relies in fact on the honesty of the person taking the action.

Only a limited number of persons are allowed to refer the proposal to the Minister, including of course certain authorities, in the rare case that they are aware that a person is intending to undertake a possibly damaging action:

- 1) *the person proposing to take the action,*
- 2) *a person on behalf of this person* for an action taken under a contract, agreement, arrangement or understanding – this is not permitted for actions taken under a “subcontract” or an agreement, arrangement or understanding “entered into for the purposes of a contract or another agreement, agreement or understanding”,
- 3) *a State, self-governing Territory or agency* of a State or self-governing Territory if they “have administrative responsibilities relating to the action”,
- 4) *a Commonwealth agency* – except in case of a proposal by the Commonwealth or a Commonwealth agency to take an action,



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- 5) *the Minister* himself if he believes a person proposes to take an action that he thinks may be or is a controlled action may request referral of proposal from the person or from a State, self-governing Territory or agency... that he believes has administrative responsibilities relating to the action.

Moreover strict conditions are attached to this right (having administrative responsibilities relating to the action). The probability that the provisions are used is rather unlikely. However nothing prevents individuals to write letters to the Minister, to a Commonwealth agency... asking them to take action.

The formulation of the provisions could also be criticised for making the legislation weak. Section 68 "Referral by person proposing to take action" provides that:

- (1) A person proposing to take an action that the person thinks *may be or is a controlled action* **must** refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
- (2) A person proposing to take an action that the person thinks *is not a controlled action* **may** refer the proposal to the Minister for...

It is very convenient for a landowner to use section 68(2) in order to argue that he didn't have an obligation under the EPBC Act to refer the proposal to the Minister, because "he thought it was not a controlled action". It may be difficult to prove that the landowner was of bad faith, unless of course the action had very damaging consequences on a MNES. There is no penalty for breach of the provision.

This lessens the important power of the provisions and it would therefore be wise not to expect too much from them. Nevertheless when implemented the provisions would be very useful for the protection of the koala *and its habitat* (land clearing may not be approved, the great majority of approvals are *with conditions*), and it is noteworthy that they are applicable anywhere, including on private property.

- b) Provisions the koala would benefit from simply because it is a "native species"

The koala, if listed, would still have the possibility to benefit from a threat abatement plan, whose aim is to reduce the effects of a key threatening process. The provisions relate to "listed threatened species" and "native species". The koala of course remains a native species.

Key threatening process and threat abatement plan: a process is a threatening process if it threatens, or may threaten, the survival, abundance or evolutionary development of a native species. The Minister must establish a list of threatening processes that are key threatening processes (183(1)).

A threatening process is eligible to be treated as a key threatening process if it could cause a native species to become eligible for listing in any category other than conservation dependent; or it could cause a listed threatened species to become eligible to be listed in another category representing a higher degree of endangerment; or it adversely affects 2 or more listed threatened species (188(4)).

A threat abatement plan is very similar to a recovery plan, it provides for the "research, management and other actions necessary to *reduce the key threatening process* concerned to an acceptable level in order to maximise the chances of the long-term survival in nature of native species... affected by the process" (271(1)).

A threat abatement plan must among other things state the objectives to be achieved and specify the actions needed to achieve the objectives.



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“The *Minister may* at any time decide whether to have a threat abatement plan for a threatening process in the list of key threatening processes. The Minister must do so within 90 days of the threatening process being included in the list; and within 5 years of the last decision... if that decision was not to have a threat abatement plan for the process”(270A(1)).

Section 273(4) sets a deadline of 3 years from the decision to have the plan for ensuring that a threat abatement plan is made and in force.

Once again the decision whether to have a threat abatement plan is contingent upon the Minister's will, so it might never happen. Even if the decision to have a plan is taken there is also a very long (3 years) period during which making it and having it in force is not mandatory.

Having a key threatening process listed, without the creation and implementation of a threat abatement plan to reduce the effect of the process is pointless.

A threat abatement plan binds the Commonwealth and Commonwealth agencies, but it is not an offence for an *individual* to breach it. However if the koala was listed as a threatened species it would be protected under the MNES-related provisions (a landowner who would want to clear land that is koala habitat on his property would have to refer his intent to the Minister for assessment and approval). Even if no threat abatement plan is made for land clearing, indirectly landowners could in theory be prevented from clearing land or contravening a recovery plan (see above).

The Minister also may decide to revoke a threat abatement plan, but he must publish his reasons.

Conclusion:

It appears that the above provisions in the EPBC Act have many flaws. It would of course be positive if the koala was listed as a threatened species under the Act in 2008 when the Federal government will review its decision, but it would not be enough to save the koala. A different legislation would be needed because the protection afforded under the EPBC Act is weak, inadequate, and can be varied too easily. The implementation of some of the provisions is uncertain and unfair (see Ministerial discretion and exemptions). At the moment the application is too limited to provide a meaningful protection to the koala across its entire habitat range. The permit system and the applicability of many of the EPBC Act provisions (example the provisions relating to critical habitat and conservation orders, which refer only to Commonwealth areas) would need to be extended to the entire Australian jurisdiction, and especially to privately owned lands.

Furthermore the Minister's duty to keep the lists of threatened species and ecological communities up-to-date (section 185) was repealed by the 2006 amendments, and concerning the grounds on which the Minister can list species section 186(2) now provides that “in deciding whether to include a native species in a particular category (...), the only matters the Minister may consider are matters relating to: (a) whether the native species is eligible to be included in that category or (b) *the effect that including the native species in that category could have on the survival of the native species*”. According to A. Macintosh from the Australia Institute the amendment allowing the Minister to “have regard to the effect of listing on the survival of the species... clarifies that the Minister could refuse to list merely on the basis that listing will not do much for the conservation of the species” and this needs to be removed. It provides indeed another excuse for the government to avoid its environmental responsibilities. How to be sure that the inclusion in the threatened species list will not stop the decline and/or increase the population of the species, when this species is considered eligible to be included in a threatened species category? It is impossible. The



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Minister should never deny inclusion on this basis, especially because such inclusion can never hurt.

The “Scientific Committee and the Minister determine the timelines for completing the assessments [of an item to be included, in a threatened species list for example] and there is no limit. The timeline that is set can also be extended, but only for 5 years... [and] after the Minister receives an assessment he has 90 days to make a decision. However the Minister can extend the period indefinitely” (194P(3), 194Q(3)(4)).

Given these loopholes in the EPBC Act the inclusion of the koala in the threatened species list is *not due* to happen or to happen quickly, even if the koala without any doubt fulfilled the conditions under section 179: not to be “critically endangered” or “endangered” (a), and especially (b) to be facing a high risk of extinction in the wild in the medium-term future, and therefore would be eligible to be included in the vulnerable category under the EPBC Act.

2) Lobbying the Minister to implement a threat abatement plan to mitigate the effect of land clearing

Land clearing is the biggest threat to koalas in Australia. Without a minimum amount of suitable habitat and large areas of connected forest a koala population is not viable and koalas in search of a new home range are under threat. If the destruction of koala habitat could be reduced or stopped this would have a salutary effect on the koala. This is the first and necessary step to stop the decline and support the recovery of koalas in the wild.

Land clearance has been included in the key threatening processes list under the EPBC Act and the inclusion has become effective on the 4th of April 2001. Section 270A(2) of the EPBC Act provides that the Minister “must decide to have a threat abatement plan for the [key threatening] process if he or she believes that having and implementing a threat abatement plan is a feasible, effective and efficient way to abate the process. The Minister must not decide to have a threat abatement plan if he or she does not believe that”.

Before making a threat abatement plan the Minister must, among other things, consider the advice of the Threatened Species Scientific Committee. The Scientific Committee asserted that a threat abatement plan was not a “feasible, effective or efficient way to abate the process”. It argued that it would not be an *efficient way* because it believed that the plan “would not contribute any additional threat mitigation over and above current initiatives, would involve setting up further consultative working groups, and would be duplicative of best practice already stated in the National Framework [for the Management and Monitoring of Australia’s Native Vegetation]”. Indeed according to the Committee “in the last three and a half years (since the nomination was prepared), there have been many changes in land clearing policies and regulations in Australia. Examples include: drafting and endorsement of the National Framework for by the Australian and New Zealand Environment and Conservation Council; introduction of the *Native Vegetation Conservation Act 1997* in NSW; and introduction of the *Queensland Vegetation Management Act 1999*”. The Minister followed the Committee advice. There is no threat abatement plan to reduce the effect of land clearing at this date. Without the preparation and implementation of a threat abatement plan, the inclusion of land clearing as a key threatening process remains a paper tiger, there are no benefits obtained.

The Minister may at any time change his mind and decide to have a threat abatement plan for land clearing. In addition the Minister must reconsider the decision within 5 years of the last decision if that decision was not to have a threat abatement plan (270A).



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If a threat abatement plan for the purpose of progressively stopping land clearing was made and implemented it surely would protect many habitats and would increase the chances of long-term survival of many species in the wild. But would it protect *koala habitat* from land clearing? It appears that a threat abatement plan binds only the Commonwealth and Commonwealth agencies (268), but not individuals. Considering that 80% of koala habitat is located on privately owned land the provision alone doesn't seem to be able to benefit the koala. Koala habitat could still be harmed by landowners, who can legally take an action that contravenes a threat abatement plan. Unless the koala is listed as a threatened species or falls within a MNES it will not be protected from certain land clearing. At last, it is very unlikely, politically, to happen. Conclusion: it is not advisable to lobby the Minister to implement a threat abatement plan to mitigate the effect of land clearing.

3) Adding a Matter of National Environmental Significance

Despite the opposability of many exemptions and the fact that the Minister through Ministerial discretion can override the environmental assessment provisions of the EPBC Act and approve a damaging action, it would still be extremely valuable to have the possibility to trigger this provision to protect the koala and its habitat. Actions likely to have a significant impact on the koala may be prohibited.

How are MNES adopted?

There are two options: adding MNES by regulations, made by the Governor General (section 25 and 520), or amending the EPBC Act.

Section 25(4) under subdivision G – Additional matters of national environmental significance, provides that “the regulations may prescribe different things as matter protected by this section [Matter of National Environmental Significance] in relation to different actions prescribed for the purposes of subsection (1)”.

Before the Governor-General makes regulations there is a requirement under section 25(3) for the environment Minister to notify the appropriate Minister of each State and self-governing Territory of the proposed amendment and seek their comments. However the agreement of the States is not needed to add a MNES. Section 25(3A) provides that regulations may be made “even if no agreement is reached on the matters described in paragraph (3)(d)”.

The Constitutional division of powers between the States and the Commonwealth constrains the subject of the MNES that may be added. The Commonwealth Constitution gives the Commonwealth Parliament the power to legislate on a limited list of topics (“enumerated powers”) and only them. The “environment” is not on the list and the Commonwealth has therefore no explicit Constitutional power to legislate in relation to the environment. Fortunately it is possible to rely on the “external affairs power” topic to create or amend an environmental legislation. Article 51 under Part V – Powers of the Parliament, of the Australian Constitution provides that the Parliament shall “have *power to make laws* for the peace, order, and good government of the Commonwealth with respect to: (xxix.) External Affairs”.

An international treaty or convention, and Australia's obligation under it, is considered an external affair. The Governor General may make regulations to the EPBC Act, and the Commonwealth Parliament has the power to legislate, and could amend the EPBC Act to add a MNES, if:

(1) *It would give effect to an international treaty or convention.*



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(2) *There is an obligation on Australia under an international treaty or convention.*

Section 25(5) provides that the following action (among others) may be prescribed for the purposes of an additional MNES: (e) [action] whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries. Therefore the Commonwealth may add matters of national environmental significance where the proposed MNES would implement an obligation under an international agreement or treaty involving Australia.

Section 25(6) provides that the regulations must specify the agreement. Regulations made in relation to an agreement that has not entered into force for Australia are not to come into operation on a day earlier than the day on which the agreement enters into force for Australia (520(4)): the regulation can come into operation only if the agreement has entered into force.

The Australian Koala Foundation recommends using the *Convention on Biological Diversity 1992* to allow the Commonwealth to legislate. This Convention is the most suitable agreement for the purpose of adding a MNES, and is specifically referred to under section 520(3): "regulations may be made for and in relation to giving effect to any of the following agreements: (i) the Biodiversity Convention". There are currently 190 parties to the Convention. The Convention entered into force on 29 December 1993. Australia is a party to it since 1993 by ratification. Its objectives, to be pursued in accordance with its relevant provisions, are (among others) the *conservation of biological diversity* and the sustainable use of its component (article 1). The Convention also provides that the *States* (countries) are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner.

The article 8(k) of the Convention imposes an obligation to each Contracting Party to "as far as possible and as appropriate: develop or maintain *necessary* legislation and/or other regulatory provisions for the protection of threatened species and populations". The koala being on the brink of becoming nationally threatened, amending the EPBC Act to add a new MNES is necessary to grant the species an efficient protection at last.

Would public pressure be useful to have a new MNES added?

Public pressure and especially international pressure would certainly be efficient in order to achieve our aim. The members of the Parliament and the government (the Governor-General) cannot ignore the importance and necessity of protecting the koala when the international community is pleading this cause. Pressure has been successful in the past. See for example the fact that the "originally "inevitable" cull [of eastern grey kangaroos living in the Wacol area] will not take place in the near future. This demonstrate what the community at large can achieve when it clearly express its concerns". "The battle in favor of a ban on duck and quail hunting was won in the same way", on community pressure (calling or writing to the local Councilor, State or Federal member, authorities or organizations involved). Jean-Pierre Jacquet, Wildlife Preservation Society of Queensland, May 2007. Hence the importance of generating and sustaining a national movement, which would mobilise public opinion.

However an "annoying" pressure may also have a perverse effect. A simple media campaign may have a better chance of succeeding. Too many people (including members of the Parliament) are unaware of the fact that koalas are in danger.

Moreover given the tremendously appealing image of the koala, refusing to protect it might give a negative image of the politician. See the culling proposal of the South Australian government in 1996 to reduce the number of koalas on Kangaroo Island. This has met with "fierce opposition both domestically and internationally. The popularity of the koala has made the possibility of a cull politically improbable, with any negative perception likely to



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impact tourism and a government's electability." It should not be difficult to engage international support. Having a politician supporting our ideas would make even more publicity and would be profitable.

Conserving biodiversity is extremely important, the future of the Planet depends upon it, and the koala should be protected with the help of every country. The world needs to protect the koala, not only Australia. This idea is expressed in the Convention on Biological Diversity: "stressing the importance of, and the need to promote, international, regional and global *co-operation* among States and intergovernmental organizations and the non-governmental sector for the *conservation of biological diversity* and the sustainable use of its components". The article 5 of the Convention also provides that each Contracting Party shall, as far as possible and as appropriate, "co-operate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of *mutual interest*, for the conservation and sustainable use of biological diversity".

"Species of national cultural significance" as MNES

The following articles of the Convention on Biological Biodiversity are relevant:

Article 7 – Identification and Monitoring.

"Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

- (a) Identify components of biological diversity important for its conservation and sustainable use *having regard* to the indicative list of categories set down in *Annex I*;
- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above...;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques"

Article 8 – In-situ Conservation.

"Each Contracting Party shall, as far as possible and as appropriate:

- (l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities"

Article 14 – Impact Assessment and Minimizing Adverse Impact.

"Each Contracting Party, as far as possible and as appropriate, shall:

- (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects"

Biological diversity is defined in the article 2 of the Convention as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems". The koala clearly can be defined as a *component of biological diversity*. Moreover the species is without doubt *important for the conservation and sustainable use of biological diversity* (article 7(a) and (b)). A reference is made in these articles to the Annex I, which comprises species and communities of "social, scientific or *cultural* importance", which the koala undoubtedly also is. This gives Australia, as a Contracting Party, an obligation to identify and monitor the koala.

There is, indirectly, an obligation under the Convention on Biological Diversity to *identify* and *monitor* species of cultural importance, *when* they are a component of biological diversity important for the conservation and sustainable use of biological diversity. But is this enough



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to argue that there is an *obligation on Australia* to *protect* such species of cultural importance? Yes. The aim of the obligation to identify these species is to *conserve biological diversity*, including the species themselves (“identify components of biological diversity important for its conservation...” (article 7(a)), and while monitoring [the components of biological diversity important for...] “particular attention to those requiring urgent *conservation* measures” must be paid (article 7(b)). The value of certain *species of cultural importance* is acknowledged, and the necessity of their protection (if required because the species is threatened or near being threatened) is implied.

In addition the concept of MNES, requiring Commonwealth assessment and approval before an action that has, will have, or is likely to have a significant impact on one of the seven listed MNES can be undertaken, can be seen as an implementation of the principles of the article 7 (c), 8 (l) and 14 (a) of the Convention on Biological Diversity requiring each Contracting Party to “*identify processes and categories of activities* which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity [the koala, as a component of biological diversity], and monitor their effects...”, “*introduce appropriate procedures* requiring environmental impact *assessment* of [the Party’s] proposed projects that are likely to have significant adverse effects on biological diversity with a view to *avoiding* or minimizing such effects”, and “where a significant adverse effect on biological diversity has been determined pursuant to Article 7, *regulate or manage* the relevant processes and categories of activities”.

But although the EPBC Act defines the word action (section 523 provides that an action includes a project, development, undertaking, activity or series of activities and an alteration of any of these things) and strengthens the conditions by requiring assessment *and approval* which is more severe than just a regulation or management by the Contracting Party, the Act operates on a case by case basis instead of identifying *processes and categories of activities* (although the article 14 of the Convention also refers to “proposed projects”).

Nonetheless the aim is clearly the same, preventing a reduction in, or loss of, *biological diversity* from occurring. See the different categories of MNES including wetlands of international importance, listed threatened species and ecological communities, listed migratory species and Commonwealth marine areas. These MNES are protected, by possibly prohibiting the taking of an action that would have a significant impact on them.

These obligations, combined with the recognition of species of cultural importance under the Annex I, give the possibility to add a new MNES entitled “species of national cultural significance” under the EPBC Act, in order to protect the koala. In accordance with section 25(4) and 25(5)(e) the regulation [adding a new MNES – Species of national cultural significance] would be “appropriate and adapted to give effect to Australia’s obligations under an agreement with one or more other countries [the Convention on Biological Diversity]”.

If it was added it would mean that, if a landowner wishes to clear his land and the land is koala habitat, he would have to obtain Commonwealth approval prior to the action, if the level of clearing is such that it is likely to have a significant impact on the koalas. So the legislation may prohibit broad scale land clearing.

The landowners would not like a regulation of land clearing, but here the words “land clearing” do not appear in the legislation. The change in the legislation is more susceptible to go unnoticed and not stir up controversy.

However this is rather unlikely to happen because compliance with international agreements is essentially voluntary. There is nothing that other Parties, lobby groups, non-government organisations or individuals can do to have an international convention enforced even though the Contracting Party they are from has obligations under it, and they cannot force the Minister to implement it. Only the *Minister* can decide to exercise this power.



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“Species of national economic value” as MNES

Given the reference made in the Annex I under the Convention on Biological Diversity to “species of medicinal, agricultural or other *economic value*” and for the reasons stated above, it is also legally possible to include a new MNES entitled “species of national economic value”. It would be worth lobbying the Governor General and it may have a better chance to succeed. The Governor General cannot deny the fact that koalas are extremely valuable to Australia. In 1997 the AKF commissioned the Australia Institute and the University of Queensland to undertake a study entitled “Koala and Tourism: An Economic Evaluation”. The aim was to define the economic role of the koala and to put a dollar value on the contribution of koalas to the Australian tourism industry.

The study consisted of a survey of 419 departing foreign tourists, constituting a representative sample. Among the most compelling arguments the study stated that:

- 67% of respondents said that nature based activities were quite or very important to their experience in Australia
- 65% of inbound tourists said that they hoped to see a koala when making the decision to come to Australia
- For around 75% of overseas tourists, koalas played a part in their experience in visiting Australia, and possibly in their decision to come to Australia.
- When asked whether they would have changed their decision to come to Australia if there were no unique wildlife 11% said yes
- Koalas were (and still are) the major wildlife attraction. When asked which animals they particularly wanted to see in Australia 72% of respondents nominated koalas. Along with kangaroos (66%), koalas were by far the most popular creature
- 14 700 to 29 500 people were directly supported in employment due to the attraction of wildlife to overseas tourists. Much of this can be attributed to koalas. 9000 jobs were directly accounted for by koalas

Evidence carried out in this study suggests that koalas have an iconic status in attracting foreign tourists. There is a genuine “koala industry”, which comprises a very wide range of services and products which either directly or indirectly rely on koalas: visiting wildlife parks, zoos and sanctuaries to view koalas, photographs taken holding a koala, transport of visitors to places to view koalas. All this generates money. Other elements of expenditure by overseas tourists in Australia that can be attributed to the koala include accommodation and food for visitors who are going to see koalas, using the image or name of the animal to sell products, and purchasing souvenirs featuring a koala.

As a result the study showed that in 1996 revenue of \$1.1 billion was injected into Australia’s economy by foreign tourists who came to see koalas. These numbers have undoubtedly increased over the last decade and are expected to continue to grow, as overseas tourism in Australia is rising continually.

As stated in the study a large and rapidly growing part of the Australian economy has been built on the promotion of images of exotic fauna and outback expanses. As a result, the future of the tourism industry now depends heavily on the protection of Australia’s natural environment. Not protecting the environment would have very damaging consequences for wildlife species and can lead to their extinction; this would ultimately have a cost, loss in tourism revenue among others.

“Nationally significant vegetation” as MNES

The following articles of the Convention on Biological Biodiversity 1992 are relevant:



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Article 7 – Identification and Monitoring.

“Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

(c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques”

Article 8 – In-situ Conservation.

“Each Contracting Party shall, as far as possible and as appropriate:
(c) *Regulate or manage* biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;

(d) *Promote the protection* of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

(l) Where a significant adverse effect on biological diversity has been determined pursuant to Article 7, regulate or manage the relevant processes and categories of activities”

Article 14 – Impact Assessment and Minimizing Adverse Impact.

“Each Contracting Party, as far as possible and as appropriate, shall:

(a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects”

Biological resources (article 8 (c)) are defined in the article 2 of the Convention as including “genetic resources, *organisms* or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity”. Trees and forests threatened by land clearing clearly fall into this category.

Here the basis allowing the Federal government to add a new MNES entitled “nationally significant vegetation”, beyond articles 7 (c), 8 (l) and 14 (a) which are the foundation for allowing a new MNES to be created, are formed by the articles 8 (c) and (d). These articles are clearly aiming at protecting the vegetation *in order to* ensure the survival of wildlife species. Certain vegetations, because they are necessary to certain species, are significant and must be protected. The articles could be used to claim that Australia has an obligation under the Convention on Biological Diversity to protect koala *habitat*.

The Convention also provides that “the fundamental requirement for the conservation of biological diversity is the *in-situ conservation of ecosystems and natural habitats* and the maintenance and recovery of viable populations of species *in their natural surroundings*”. It is fundamental to conserve natural habitat and the transfer of remaining threatened species to zoos for example, for conservation purposes must be avoided.

The EPBC Act would go further and specify which vegetation is “nationally significant”. Besides the fact that the vegetation is *habitat to a listed threatened species*, the *type* of the vegetation would make it nationally significant, or its *old age* for example.

An action such as land clearing would trigger the operation of the provisions if it has a significant impact on a “nationally significant vegetation”. The amount to be cleared would not necessarily be taken into account to assert that the impact is significant. For example even if only one very old tree was likely to be destroyed this would be enough to trigger the operation of the Act, and Commonwealth assessment and approval would be required.

Other arguments in favour of the theory that we could rely on the Convention on Biological Diversity to amend the EPBC Act to indirectly prohibit land clearing include the fact that the Convention is “concerned that biological diversity is being significantly reduced by certain *human activities*” and according to the Convention it is “vital to anticipate, *prevent* and attack



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the causes of significant reduction or loss of biological diversity at source". The fact that environmental assessment and approval is required under the EPBC Act before a damaging action can be undertaken would indeed in theory prevent land clearing, which is undoubtedly the biggest cause of reduction of biodiversity, from being undertaken.

Even though the Commonwealth Parliament and the Governor General have the power to legislate to protect the habitat of species from actions causing significant damages, and it is legally possible to regulate or amend the EPBC Act to include "nationally significant vegetation" as a MNES, it is very unlikely politically to happen, given the strong opposition of the forestry sector and the landowners. See the fact that the Scientific Committee and the Minister have not wished to prepare and implement a threat abatement plan to reduce the effect of land clearing, which is already on the list of key threatening processes under the EPBC Act. Moreover the koala would have to be included in the threatened species list to benefit from the provision.

Key inadequacies under the revised 2006 version of the EPBC Act, with regards to the protection of the koala and its habitat:

- **The power in the hands of the Minister is far too important.** Most of the time he is the only one who decides, or he has the last word. There is no verification. The deadlines can be extended.

- **The criteria for inclusion of a native species in a threatened species category can be criticised.** The Minister can only consider whether the native species is eligible to be included in the category, or *the effect that including the native species in that category could have on the survival of the native species*. The inclusion cannot have a negative effect, and it is impossible to foresee that it will not save the species. Refusing the inclusion on this ground is absurd. However this gives a good excuse to a Minister who would not want to include a particular species.

- **Many provisions of the EPBC Act only protect the species when it is "in or on Commonwealth area"**. This is the case notably regarding the permit system, for listed threatened species. Therefore even if the koala was listed the killing etc of the species without a permit would not be prohibited under the EPBC Act *outside* a Commonwealth area (a landowner's private property for example). The koala however is protected under other State legislations.

- **When the MNES provisions (assessment and approval) are triggered the outcome is almost never an interdiction** to undertake the action. See the statistics: 74% of referrals were declared "not controlled action" – the Minister decides they do not require to be approved; *97.5% of controlled actions were approved* (although the great majority was approved with conditions). Only 4 proposals were not granted approval, out of 152. Also only 1932 referrals have been made in 6 years (around 300 each year), which is few for all of Australia.

- **The EPBC Act doesn't protect koala habitat.** There are only 5 entries on the register of critical habitat under the EPBC Act; and damaging critical habitat is an offence only if the habitat is in or on a Commonwealth area. The provisions are only for listed threatened species. The planners and developers are free to destroy koala habitat (although at State or local government level the legislation may protect koala habitat. Example the Environmental Planning Policy No 44 in NSW).



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- From the 17 key threatening processes currently in the list only 10 triggered the creation and implementation of a threat abatement plan. The other 7 remain a mere expression on a list.

CONCLUSION:

In every instance the Australian Koala Foundation recommends that a National Koala Act be written and the bill passed and enacted by the Parliament.

Among the most important reasons is the fact that economic incentives for landowners are fundamental, and they are not provided under the EPBC Act. 80% of koala habitat is on privately owned land: landowners have to be targeted. Most of them would be very interested in this initiative, either because they love animals but cannot afford to protect them without financial (and material) assistance, or simply because they don't earn enough money and would really appreciate to pay less tax for example.

It would be very positive that the EPBC Act also be amended, in addition to having a National Koala Act. The two Acts would be complementary. The EPBC Act notably has the power to sanction the persons who breach the provisions, whereas under the National Koala Act private landowners would only have incentives to protect the koalas and would not be prosecuted for harming koalas or their habitat on their land.

Considering the likelihood that the proposal is passed (MNES) or accepted by the Minister and implemented, and the extent to which it would benefit the koala, the AKF advises in order of priority:

- 1. Listing the koala as a threatened species, in the vulnerable category**
(the assessment and approval provisions of the EPBC Act *plus* other provisions may be triggered)
- 2. Creating and adding a new MNES, preferably "species of economic value"**
(*only* the assessment and approval provisions may be triggered to protect the koala)

Having the RFA exemption removed would also be a very useful achievement.

Lobbying the Minister to implement a threat abatement plan for land clearing is not advisable.

Considering that the Scientific Committee, and the Minister, form their opinion based on their own assessment of the situation and do not truly take into account the data and evidence gathered by non-governmental organisations no more effort should be made to have the koala listed as a threatened species under the EPBC Act. The Federal government will review its decision in 2008.



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II) Creating a new legislation – the National Koala Act

Given the intrinsic inability of the EPBC Act to effectively protect the koala, and the failure by all governments to adequately research and to save the species the Australian Koala Foundation decided that it is necessary to create new legislation – the National Koala Act. It is anticipated that the outline for such a document will be created in August of 2008.

The National Koala Act needs and would have a three pronged approach: biodiversity, planning powers and taxation incentives for private landowners.

Part 1. Biodiversity

As we have seen the current State laws are not sufficient to achieve the protection of the koala or its habitat, and Federal government regulation is required. The National Koala Act would afford legislative protection at *Federal level* to the koala and other species not protected adequately or sufficiently under the EPBC Act.

The National Koala Act would be specifically designed for the protection of the koala and koala habitat and would also aim at conserving biodiversity. The controversy about whether or not a species is “threatened”, which prevents the koala for example from being protected under the EPBC Act, does not take place.

The koala would be the inaugural species. The National Koala Act would set a precedent and other species would also be protected by the precedent created.

Koala to lead the way

The focus would be on the koala because of its iconic status. It is already adored by the public and would successfully attract attention and sympathy. Because of its high profile and special place in the hearts of Australians and people all over the world, the koala may be the only native Australian species capable of inspiring this legislation.

Koalas have to be protected because they play a major role in the Australian ecology. They are part of our natural ecosystems, and possibly no-one has any idea of how important they are for the health and survival of the Australian bush.

In addition there are also strong economic reasons for ensuring the protection of koalas. They are an extremely important part of Australia’s unique wildlife that tourists come to see. The first part of this document outlined compelling arguments. Nonetheless as stated in the study “Koala and Tourism: An Economic Evaluation” ethical considerations should be sufficient motivation to protect Australia’s biological diversity.

The establishment of a precedent

It is expected that if the National Koala Act’s initiatives were implemented they would have a positive effect on Biodiversity conservation that would be far greater than the preservation of the koala and its habitat. By means of a precedent the legislation would pave the way for other species to be identified and protected in Australia, and allow them to enjoy the benefits of sharing the koala ‘conservation umbrella’.

The National Koala Act would compensate for what is missing in the EPBC Act (planning powers and tax incentives being the most important) and would be flexible, using different methods likely to satisfy the landowners.



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Part 2. Planning

The National Koala Act would primarily aim at securing koala habitat. Indeed in order to save the koala protecting the existing koala habitat is a first and necessary step to achieve. After the damage is done it is too late, it would take years to recreate a habitat that has been destroyed (for example by planting trees). The second step will be to restore and improve the existing habitat.

In order to protect and effectively manage koala habitat the National Koala Act would have *powers over Planning Codes* (portion of a municipal ordinance that regulates the development and use of land within a jurisdiction), at Federal, State and local government level. It would then be able to prohibit planning and zoning review impacting on areas of koala habitat. At the moment each Council has its own set of rules. The Act would prevail over all the authorities, so that the different set of rules would be unified.

Koalas are very difficult to plan for, because of their specificities. The current planning does not prevent the koalas from being harmed. It fails to protect koalas because their existence and nomadic way of life was clearly not taken into account when designing or approving rezoning proposals or development applications. Developments damaging koala habitat or constituting a threat (road) are not prohibited and developers have been able, legally, to change the zoning by putting pressure on Councils. They undertook developments almost wherever they wanted. This has to stop.

It is time to acknowledge the fact that, due to the destruction of 80% of their original habitat, koalas were forced to live alongside people in urban areas. The Australian Koala Foundation claims that “koalas are not living in our backyards, we have moved into theirs”. Therefore “property owners have a special responsibility to take the particular needs of koalas into consideration in their lifestyle”. This should be the same for planners and developers in their profession. It is fundamental to prohibit urban development which requires land clearing within or adjacent to areas of primary and secondary koala habitat.

The National Koala Act would bind the planners and the developers by new Planning Codes incorporating provisions specifically designed to protect koala habitat.

Creation of a Koala secretariat

The Koala secretariat, based in Canberra (Federal level), would be the only authority with powers to manage koala habitat and regulate its use. It would be responsible for the protection of koala habitat and would:

- identify and map koala habitat including critical habitat that requires protection from threatening processes;
- prioritise habitat areas for protection through either regulatory or incentives measures;
- prioritise areas for habitat restoration;
- identify the location and distribution of known koala populations;
- identify threatening processes;
- specify measures to protect habitat including critical habitat;
- specify necessary actions to address threatening processes;
- outline a range of suitable incentives measures;
- provide for priority research requirements;
- provide for habitat restoration in priority areas;
- provide for ongoing monitoring and review
- implement conservation strategies

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- undertake assessment of possible koala habitat and decide whether a land is koala habitat
- decide whether a proposed action would have a significant impact on the koala or koala habitat
- give approval to certain land clearing and other activities, or suggest plans of management and other activities if the land clearing is likely to have a significant impact on the koala or koala habitat

A landowner who suspects that his land is koala habitat and who wishes to take an action that will have a negative impact on the habitat, for example deforestation, would have to refer his intention to the Koala secretariat for approval.

The Koala secretariat would be in possession of up-to-date maps indicating accurately where koalas occur. It would assess the land through different techniques and decide whether this particular land is koala habitat.

- *If the land is not koala habitat* the landowner would be free to undertake the action, provided that this action is not prohibited under another legislation.
- *If the land is koala habitat* the Koala secretariat would assess the impact of the proposed action and decide whether it would have a significant impact on the koala or koala habitat. If it would have a significant impact the koala secretariat would not approve it. If the impact is minimal the Koala secretariat may approve the action. Conditions may be attached to an approval, and incentives devised for a solution.

If the Koala secretariat disapproves the action it would suggest a management plan for the property, and a wide range of other activities to the landowner, which would compensate for the loss of use of his land and therefore loss of income, and the fact that the land is worth less money if it cannot be developed. For example a different crop, a different cattle or animal to raise, or the creation of a tourist attraction “koala observation”. Ideally a landowner should be able to make more money when he doesn’t harm the land. The Koala secretariat and the landowner would work together to increase the landowner’s income while protecting koala habitat on the property.

The landowner would be free to undertake the action even if the Koala secretariat considered it would be damaging. The Koala secretariat would try to find a compromise with the landowner, and would try to deter him from taking the action. For example it would explain in vivid details what would happen to the koalas if their habitat was cleared.

The Koala secretariat would also keep watch over koala habitat through locally implanted staff and the cooperation of the public: anyone who is aware of a threatening development or land clearing, to anticipate such action in koala habitat areas and try to prevent it – it is expected indeed that landowners may not always refer their intention to the Koala secretariat.

At the moment koala populations surviving along the eastern seaboard are under immense pressure from development and expanding urbanisation. The Koala secretariat would enforce the legislation. It would for example check that approved plans submitted by *developers* do not threaten koala habitat. They may for example want to clear land that is koala habitat, in order to build on it. Criterion would be determined under the provisions of the National Koala Act for assessing development that impacts on the koala and on koala habitat.

A conservation strategy would specify and provide for the research and management requirements to ensure the long-term survival of the species in nature. Provisions relating to the preparation, content, adoption, implementation and review of the strategies would be



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contained within the National Koala Act. Provisions in relation to the strategies would require their preparation and adoption within set short time limits.

It should be noted that in Australia native animals are “the property of the Crown”, and therefore even if they live on a private property they don’t belong to the landowner. No-one in particular owns them or has a right on them, and *landholders cannot make money out of the presence of wildlife unless they are granted full property right*. This is similar to a tour operator requiring a licence to generate money by allowing tourists to feed wild dolphins or watch wild penguins.

Professor Clem Tisdell, School of Economics, University of Queensland, in the article *Economic incentives to conserve wildlife on private lands* states that, depending on the species, “the best way to encourage private landholders to conserve wildlife is for governments to give them private property rights in wildlife, strengthen these rights where they exist, and promote the operation of free markets in the exchange and use of wildlife on private lands”.

As a result indeed wildlife will have a commercial value for landholders, who can appropriate economic benefits from the species and may be able to obtain more income from wildlife, through wildlife-related economic activities (viewing...) on their land than otherwise. Private property rights enable landowners to market wildlife, the species and its habitat become assets to the landowner. Thus the aim of sustainable commercial use of the black cockatoo on private land is stated to be to “promote retention and management of habitats on private lands and establish with landowners the concept that wildlife, wildlife habitats and biodiversity in general can be valuable economic assets worth considering” (Parks and Wildlife Commission of the Northern Territory, 1997).

On the contrary when the business is not based on the economic utilisation of wildlife because private property right has not been given, and no adequate economic returns can be obtained, most landholders will not protect the species. When developing other activities on their land they “can be expected to destroy the habitat of some wildlife species and reduce biodiversity”.

However the granting of private property rights to landholders cannot provide an effective economic incentive for the conservation of all species. Only some wildlife species are likely to be protected by landholders: those possessing “high *economic use value*, low mobility or low cost of confinement to a private property, and not requiring a very large geographical range for their survival”. Non use economic value cannot be marketed and made private property.

The koala may not be the best candidate, although it is highly popular and has a high economic use value, because the species is mobile and requires large areas of connected forest. It would be therefore important that the landholder has private property rights to the species *while it is on his or her land*, and that the land is part of an important koala habitat.

Moreover “even in cases where a private landholder is able to appropriate all, or a substantial part of, the economic value of the wildlife species, the landholder may not find it profitable to conserve the species. An alternative land use incompatible with survival of the species may be more profitable”, and “in some localities husbandry of existing domesticated or cultivated species will continue to be preferred by private landholders to the commercial use of wildlife species”. It is important to convince landholders that, despite what they think, they can obtain important benefits from habitat restoration and preservation, and obtain more income. Cooperation is also fundamental in the success of the project. According to



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the article non-governmental organisations should be involved and contribute some funds, and volunteers provide labour, to reduce the necessary public outlay.

Developers required to prove that their project will be neutral to the environment

At the moment the burden of proof is on those, NGOs, environmentalists, conservation groups etc who want to stop a development project because they think it has a negative impact on the environment. *They* have to collect evidence and must act to have a chance to stop the project. Unless the action has a significant impact on one of the seven MNES under the EPBC Act environmental assessment is not required, and a damaging project may be carried out.

The Australian Koala Foundation is of opinion that this is unacceptable in light of the growing threats of climate change and global warming. Climate change is caused by human activities, among which greenhouses gas emissions. When trees are cleared to allow development not only does this return the stored carbon to the atmosphere, but also the trees will not be there anymore to soak up carbon dioxide. If the National Koala Act was enacted the *developers* would be subject to an obligation to *prove* that their development project is neutral to the environment, or would not be granted the development permit. The importance of global climate is therefore taken into account before making a decision to approve a development project. The burden of proof is reversed.

As a result the developers, if their project is not considered neutral to the environment, would have to offset the greenhouse gas emitted – carbon dioxide for example. Carbon offsetting works by reducing emissions elsewhere. It can be achieved by paying a landowner to plant trees to absorb and store carbon dioxide, or by avoiding deforestation somewhere else. This is the idea of the “biobanking”: “developers will be able to build on environmentally sensitive land... that will allow them to offset the damage by protecting plants and animals elsewhere. It enables developers to buy credits created through land conservation elsewhere - either by the developer or another landowner - to offset a housing project on sensitive land”.

However a development on a land that is or adjoins koala habitat should be prohibited (see below). Nothing could suitably offset the destruction of koala habitat and the death of the koala population concerned. This should be the same regarding the habitat of any other threatened species. The Threatened Species Amendment (Biodiversity Banking) Bill 2006, amending the Threatened Species Conservation Act 1995 (NSW) and passed in November 2006 by the NSW Parliament, raised concern among the environmentalists. The aim was to establish a biodiversity banking and offsets scheme (the *biobanking scheme*), which has the following key elements (among others):

- a) the establishment of biobank sites on land by means of biobanking agreements* entered into between the Minister for the Environment and the owners of the land concerned,
- b) the creation of biodiversity credits in respect of management actions carried out or proposed to be carried out on or in respect of biobank sites that improve biodiversity values,
- c) a system that enables those biodiversity credits, once created and registered, to be traded (including by being purchased by developers) and used as an offset against the impact of proposed development on biodiversity values.

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According to Cate Faehrmann, executive officer of the Nature Conservation Council, “the new law allows developers to clear habitat that could be home to threatened species... we are extremely disappointed the Government has passed this legislation, at a time when our



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precious environment needs protecting more than ever". The Sydney Morning Herald, following the announcement that the bill had been passed, pointed out that "the passage of the bill followed revelations the Government had dropped its investigation of alleged illegal land clearing by Hardie Holdings, a big player in biobanking".

In the first place developers and companies should avoid or seek to reduce their own greenhouse gas emissions, instead of "buying a licence to pollute through tree planting schemes" (Jeff Angel, Total Environment Centre). Nevertheless, when the development does not damage a threatened species habitat and therefore can be suitably compensated, it is an important solution.

Planners bound by planning guidelines for koala conservation – site level planning

Koala conservation requires habitat protection and management. It is fundamental to incorporate koala habitat conservation into the planning process: an appropriate environmental zoning is a necessary and effective instrument to protect koala habitat. Koala habitat would also be taken into account when assessing, planning and implementing development applications.

Local government planners and other authorities would be bound by the criteria specified in the *planning guidelines for koala conservation and recovery* when designing and introducing rezoning proposals or development applications within and around areas that support koalas. Therefore a Council would have to be satisfied that the land is not koala habitat or adjoining koala habitat before it grants consent to, for example, an application for consent to carry out a development in relation to areas of koala habitat.

The compatibility of *rezoning proposals* with koala conservation planning requirements, and the appropriateness of rezoning requests would be assessed. There would be performance standards for rezoning proposals.

Prior to approving any rezoning proposal the local government would have to be satisfied that possible future development or activity in accordance with the requested rezoning will:

- not allow for an intensification of land use or development within areas of primary and secondary (class A) koala habitat or habitat buffers,
- allow for only low impact development within areas of secondary (class B) and secondary (class C) koala habitat or habitat linking areas over existing native vegetation,
- be unlikely to result in the removal of any primary or secondary koala food trees,
- not result in development that would impede or stop koala movement across the site. Potential impediments include medium-high residential and industrial development, roads, and other urban infrastructure which create barriers to koala movement, and
- be consistent with the strategic planning guidelines

Current zonings that contravene the legislation would be phased out.

Planning and development applications would also have to be compatible with koala conservation planning requirements. This compatibility and the planning and development applications would be assessed.

There would be performance standards for planning and development applications. The aims of the performance standards would be to:

- ensure that koala populations are sustainable over the long-term,



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- protect koala habitat areas from any development that would compromise habitat quality or integrity,
- ensure that any development within or adjacent to koala habitat areas occurs in an environmentally sensitive manner,
- ensure that acceptable levels of investigation are undertaken, considered and approved prior to any development within or adjacent to koala habitat,
- encourage koala habitat restoration,
- maintain connectivity between areas of koala habitat and minimize threats to safe koala movement between such areas,
- ensure that development does not further fragment habitat areas either through the removal of habitat or habitat linking areas or through the imposition of significant threats to koalas,
- provide guidelines and standards to minimize impacts on koalas during and after development, in conjunction with any monitoring requirements, and
- provide readily understandable advice for proponents development applications

All planning and development applications would have to demonstrate that they are consistent with the above aims and objectives. The development would be regulated.

The National Koala Act would also aim at *minimizing the impacts of roads on koala populations*. The construction of new roads within and between patches of koala habitat would be prohibited. This would be another planning constraint. Roads increase koala mortality rates; they form barriers to movement thus reducing connectivity between patches and increase habitat fragmentation. Increases in traffic volume on existing roads should also be avoided. Increased traffic volumes would have to be accommodated by upgrading existing roads, or rerouting traffic on existing roads away from koala habitat.

Essential new roads in close proximity to koala habitat or between blocks of habitat would have to be constructed in such a way as to minimise the risk of koala-vehicle collisions. Potential mitigation measures may include low speed limits (e.g., 40-60 kph) and engineering designs to reduce traffic speed (traffic calming devices), warning signage, roadside lighting, clear road verges, and exclusion fencing (for some extreme risk situations). Measures to reduce the risk of koala mortality would be implemented particularly on roads with high traffic volumes, high speed limits, and/or poor roadside visibility.

Rules would be strengthened so that the developers could not change the zoning to fit their needs. Developers should not be legally allowed (by means of pressure) to undertake a development contrary to the zoning regulations. Otherwise the whole concept would be pointless.

It is also fundamental to ensure that no permit to clear land that is koala habitat is granted to landowners by Councils.

Part 3. Tax

The National Koala Act would have *taxation powers*. It would have the ability to encourage landowners, through the introduction of a range of tax incentives, to take pro-active measures to conserve and protect areas of koala habitat on their land. The aim is to make them willing to create, maintain, or restore koala habitat. They could for example enhance the connectivity between different habitats, or create koala corridors to protect koala habitats in adjacent regions, and in return would have to pay less tax, or would receive financial help.

This is particularly important when we know that *80% of remaining koala habitat occurs on privately owned land*. The continued survival of the koala is in the hands of all Australians



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and is not just the responsibility of government regulators. The AKF believes that economic costs currently deter many landholders from protecting koala habitat on their land, although they would be willing to if they were offered technical, and especially financial, assistance. It is also reasonable to assume that landholders would refrain from clearing land if they had economic incentives not to do so.

The Koala secretariat would form relationships with the landowners and would be their correspondent. It would provide free advice to the landowners. It would answer their questions and help them to benefit from the tax and other incentives. It is important to work together with the landowners, and have their assent.

Tax and other incentives to protect and restore koala habitat

Landowners who follow the *planning guidelines for koala conservation and recovery – landscape level planning* could benefit from a wide range of financial measures. They may be granted rate relief, tax deductions, tax reduction benefits, rate rebates or discounts, tax credits, subsidies for the cost of habitat restoration and conservation on private land, or allocated grants, and could be exempted from local and/or State government rates.

They could receive awards and prizes recognizing their “excellence in both farm business management and nature conservation”, or their “environmental achievements” in conserving areas of koala habitat through an environment friendly land use practice or resource conservation.

For example the following measures from the documents *Options for Tax and Financial Incentives for Conservation* and *Economic incentives to conserve wildlife on private lands* could be implemented, and the following benefits granted to landowners:

- *Tax concessions for wildlife conservation activities* on private land, at least as generous as those allowed to agriculture and similar industries, for example *full tax deductability of expenses incurred* in wildlife conservation.
- *50% exclusion of gain on sales of land* (gross income shall not include 50% of any gain from the sale of land) or interests in land to eligible entities for conservation purposes, under certain conditions (bill introduced by Mr Jeffords in the Senate of the United States, April 15, 1999).
- *Habitat conservation and management insurance*. A subsidized insurance program could be created whereby landowners who agree to manage land in furtherance of a conservation plan would be held harmless (using the insurance proceeds) from the potential loss in value of their land from implementation activities under the plan.
- *Tax credits for habitat management expenses* – prescribed burns, exotic species removal, habitat restoration etc. Conservation management expenses would be made more valuable.
- Ownership of conservation land could be made affordable: property taxes paid on land subject to conservation easements would be eligible for treatment as a tax credit.
- The value of conservation gifts could be increased.

Also:

- Conservation transactions could qualify for low cost financing (this would make conservation organisations qualify for tax-exempt financing and can issue tax-exempt installment obligations to a seller when purchasing land).
- Conservation investments by private capital would be encouraged (incentives such as “greater deductions, tax credit, or loan guarantees” would be created for third party financing for certain conservation transactions).



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- Small corporations whose primary asset is land could donate such land without triggering tax.

Landowners would be able to claim costs associated with the management of the land subject to the agreement.

The National Koala Act would make precise provisions concerning the amount of money or tax deduction offered to the landowners. It would determine criterion for assessing this amount, which would be set out within its provisions. The land management practice would have to be consistent with the *planning guidelines for koala conservation and recovery*, and the tax deduction etc would be commensurate to the conservation value of the land, its size, the duration of the agreement, and the kind of agreement (donation, bargain sale, covenant...). Auctioning systems for determining allocations of government funding for biodiversity conservation initiatives could be established.

The National Koala Act would provide diversified economic incentives. The AKF is aware that different strategies are needed for different parts of the country: a landowner living west of the Great Dividing Range has a different lifestyle compared to a landowner living east of the Great Dividing Range. The following ideas concerning taxation and other incentives are therefore divided accordingly.

East of the Great Dividing Range

The great majority of the cities are concentrated east of the Great Dividing Range. The density of human populations is very high compared to the average population density in Australia, and is expanding. As a result this area experiences increased urbanisation and is under pressure from development. Developers are eager to buy properties, and don't hesitate to clear land to build on them. It is important to manage to convince landowners that it would be more interesting for them to benefit from the incentives than to sell their property to a developer. The following incentives are suitable:

Revolving conservation funds

The government purchases land with conservation significance, such as koala habitat, from an existing landowner. The landowner might want to sell his land to the government because he intends to live somewhere else, buy a bigger house for example. He would receive the land's current market value, so at least as much as a developer's offer.

A conservation covenant is placed on the title, with development restrictions attached to the land.

Then the government resells the land to sympathetic purchasers who care for the environment and will protect and enhance koala habitat. The land is therefore kept in private ownership. With the money the government can buy another land at risk and sell it to another private person dedicated to the conservation of koala habitat.

Donation of land for conservation purposes subject to a life interest

Owners of land with koala habitat would be encouraged to donate that land, or part thereof, to the government or to an approved environmental organisation, which could either manage the land itself or sell the land to a purchaser dedicated to conservation management.

The landowner would have the right to continue to live on that land during his lifetime and would be entitled to a tax deduction equivalent to the market value of their land. In addition a capital gains tax exemption should apply with respect to the donation. This would be suitable for a person who doesn't make a living thanks to his/her land, and who doesn't use it.



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Bargain sale of land for conservation purposes

Bargain sales of land of conservation value (koala habitat) to an approved environmental organisation or to the government would be encouraged.

The vendor (the landowner) would be allowed to claim a tax deduction when the land is sold for an amount less than a fair market price. The tax deduction would be commensurate to the difference between the market value on the day of sale and the actual sale price. Further, the portion of land donated should also be exempt from capital gains tax. This would be suitable for the same kind of landowner as described above, who would like to live somewhere else.

Development incentives whereby a landholder may be allowed to develop part of their property in return for dedicating another part to conservation

A landowner who normally would not be allowed to develop his land because the Planning Code and zoning makes it illegal would be granted the right to do so, provided that the land he wishes to clear is not koala habitat, and that he protects and restore another piece of land on his property. He would maintain ownership of the land. This piece of land would have to be of conservation value and of similar size. For example a landowner interested in expanding housing on his property could be interested.

West of the Great Dividing Range

Revolving Conservation Funds – see East of Great Dividing Range.

Conservation covenant

Conservation covenants are land management agreements running with the land in perpetuity. They are entered into voluntarily by private landowners and a third party. They can restrict land uses that are incompatible with maintaining biodiversity and can require arrangements to be put in place to ensure ongoing management. Typically, activities such as vegetation clearing, subdivision, grazing by domestic stock and the introduction of non-indigenous flora and fauna are prohibited.

Mechanisms that would be implemented to encourage the use of conservation covenants (and revolving conservation funds) include:

- Exempting land subject to a conservation covenant from State land taxes;
- Providing landowners with local government rating rebates or discounts for land subject to a conservation covenant

Financial assistance would be provided. A tax deduction would also be offered to the landowner with respect to the loss in value of the land resulting from entry into the conservation covenant. The landowner maintains ownership of the land. This may accommodate a landowner who doesn't want or need to undertake actions that would damage the land for his work activity.

Voluntary conservation agreement

A conservation agreement is similar to a conservation covenant, in that they are both attached to the land. It therefore provides permanent protection for the land, even if the land is sold the subsequent purchasers will also be legally bound by the agreement, and will not be permitted to undertake an action inconsistent with it.

A voluntary conservation agreement is entered into by a landowner and the Minister for the Environment. The land has to be of conservation value.



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The current owner is responsible for the management of the land, and the conservation agreement can require activities that promote the protection and conservation of biodiversity to be undertaken, and can prohibit or restrict activities, for example actions that might adversely affect species or habitat in areas covered by the agreement. In return conservation agreements can oblige the Commonwealth to provide technical and financial assistance to the landowner, who would be also eligible for rate relief and tax deductions. The landowner maintains ownership of the land.

Landowner Incentive Program

Landowner Incentive Programs (LIP) are widely used in the United States. They assist private landowners in protecting and managing rare species that inhabit their land, by providing technical and financial assistance. Financial assistance in the form of cost share up to 90% of total costs incurred by landowner (the applicant should expect to contribute at least 25% of total project cost in materials or in-kind services); expert assistance from wildlife biologists, to help landowners determine which programs and practices are best suited to their land use needs and conservation objectives and how to plan and implement those conservation practices on their land.

The landowner must be able to provide suitable habitat for the species. The land will have to be managed to benefit at risk species and achieve species recovery. The landowner could for example restore or enhance the habitat of the species. He must agree to allow biologists onto his property for a pre-agreement survey and periodic progress checks to assess the success of the project objectives. He maintains ownership of the land.

Donation of a conservation easement

A conservation easement is a legal agreement between a landowner and a land trust or government agency limiting uses of the land, or a piece of the land, to protect its conservation values, and abuses thereof. It is attached to the land, not to a person, which means that the future owners will also be bound.

The holder of the easement (the government) is allowed to use a land that it does not own or possess, for a special purpose. It would ensure for example that an area which is koala habitat remains intact. The possessor of the land (the landowner) may continue to use the easement and may exclude everyone except the easement holder from the land. He maintains ownership of the land.

The National Koala Act would provide tax credits to landowners who place an easement on their property and donate the land, or a particular area of land, to an approved conservation organisation. If the value of the easement is greater than the tax deduction granted the landowner could carry forward the deduction for additional tax years. This would be suitable for a landowner who can afford not to use a piece of his land, or whose activity is not incompatible with the conservation project.

Bargain sale of a conservation easement

The principle would be the same, but the landowner who sell his land or a piece of land for an amount less than a fair market price instead of donating it would benefit from an economic incentive less interesting. In this case ownership would be lost. A landowner in need of cash and other benefits and who can live without the easement may be interested.

The government can also offer to purchase the *development rights* of the land, through the use of a conservation easement. Then the landowner retains the property rights.

Accreditation schemes and environmental management systems to promote products from farmers who invest in biodiversity conservation practices



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Producers (landowners) who meet rigorous sets of criteria for general ecological sustainability and koala conservation “above and beyond a general environmental duty of care” would be awarded a “certified koala friendly” label, such as the one existing in a program currently run by the AKF. The producer would have to comprehensively demonstrate that his products are environmentally friendly. Performance criteria would be based on measurable, on-the-ground outcomes for the environment and koala habitats. Certified koala friendly products would be promoted, having the result of increasing product profit margin.

For example the AKF’s certification program, aimed at protecting koala habitat, endorses koala and environment friendly livestock production practices, affording market recognition to these producers. Small family farms and rural communities who have taken genuine steps to balance conservation with production are supported.

In order to be granted certification the landowners would have to successfully implement a koala management system and “environmental management system”. They can for example restore and link up koala habitats within and around their property and manage risks to koalas (eg. dogs, feral animals).

An environmental management system is an internationally recognised standard for managing environmental risks. It provides credible mechanisms for establishing and maintaining sustainable production systems, and is based on the continuous improvement cycle of “plan, do, check, review”. It is a framework for making decisions, setting objectives and targets, implementing actions, monitoring progress and continuously improving performance. Livestock producers can be assisted in developing and implementing environmental management systems for their properties.

Incentive payments

In return for long-term and permanent easement payment or shorter-term rental agreements landowners would have to protect or restore environmentally sensitive lands on their property to provide and enhance habitat for animal species of significant ecological value, the koala for example. They would maintain ownership of the land.

- Annual rental payments (10-, 15- or 20-year agreements)

Landowners who rent their land or piece of their land to a conservation organisation would be paid. They would be provided with cost share assistance for conservation practices, and technical assistance to establish long-term, resource conserving covers to improve habitat for species. The amount of money would be commensurate to the duration of the rental agreement, the conservation value of the land and its size.

Financial assistance to cover up to ...% of costs for restoration activities.

- Easement payment (30-year or permanent)

Landowners would also be paid for putting a 30-year or a permanent easement on a piece of their land. They would receive technical assistance, and financial assistance (cost share payments) to cover up to ...% of the cost of restoring. The amount of money would be commensurate to the duration of the easement, the conservation value, and the size of the piece of land.

Carbon sequestration

Trees remove carbon dioxide from the atmosphere – this is referred to as carbon sequestration, and release oxygen. Landowners who store more carbon in soil and forests through reforestation for example get carbon credits, money or “an opportunity to get in on the ground floor of the market”. Carbon credit is a “generic term used for the accountable



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document issued to owners of sequestered carbon based on the amount of carbon sequestered. Credits are traded in carbon trading schemes". Companies or individuals who want to offset their greenhouse gases emissions can purchase carbon credits from landowners who have sequestered carbon on their lands.

The CO2 AUSTRALIA™ Carbon Sequestration Program for example is dedicated to establishing commercial scale, long term carbon sinks. It involves establishing plantings of mallee eucalypts for the purpose of generating carbon credits. Landowners who have at least 50 hectares of "Kyoto Consistent land" (land eligible under Article 3.3 of the Kyoto Protocol – it was clear of a forest before 31 December 1989) available for planting, can participate in the program. In return for taking arable land out of production (removing or harvesting the trees is forbidden) for the duration of the agreement – at least 100 years, CO2 Australia will meet all costs and pay the landowner, usually an upfront payment commensurate with the current market value of the land. Farmers retain title and ownership of their land and no capital outlay is required from them. If the property is sold the "Forestry Rights" on the land will be transferred to the new owner.

It is regrettable that this system is not widespread yet, and landowners do not know in details how the system operates and where exactly the money would come from. Environmental offsets policies are relatively new. Yet an initiative on a national emissions trading network has been announced, and the carbon market is growing. Queensland Government Natural Resources and Water recently presented the concept of Green Invest – a proposed environmental offsets exchange facility for Queensland, and stated that other offsets markets, such as *carbon*, water quality... where policy *emerges* will progressively be looked at. Especially if Australia ratifies the Kyoto Protocol the market for carbon trading in Australia will expand rapidly, and the demand for carbon credits will increase significantly.

Conservation banking

In the same way conservation banking, also called mitigation banking, allows landowners who restore and protect habitat for endangered species to *sell conservation credits* to developers or others who need to compensate for the environmental impacts of their projects. Credits are units representing listed and other at risk species or habitat for those species on the conservation bank lands. A credit may be equivalent to (1) an acre of habitat for a particular species; (2) the amount of habitat required to support a breeding pair; (3) a wetland unit along with its supporting uplands; or (4) some other measure of habitat or its value to the listed species. Methods of determining available credits may rely on ranking or weighting of habitats based on habitat condition, size of the parcel, or other factors. (U.S. Fish and Wildlife Service, September 2004). Conservation banks are permanently protected.

It is noteworthy that the Kyoto Protocol currently provides no incentive to reduce or avoid deforestation: forest *conservation* activities or activities *avoiding deforestation*, which would result in emission reduction through the conservation of existing carbon stocks, *are not eligible* at this time. No carbon credits are granted to countries that demonstrate reductions in their rates of deforestation. Therefore standing trees are not protected, and are not provided an economic value.

Indeed the article 2 of the Kyoto protocol provides that "each Party included in Annex 1, in achieving its quantified emission limitation and reduction commitment under Article 3... shall: (a) implement and/or further elaborate policies and measures... such as: (ii) protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol...; promotion of sustainable forest management practice, afforestation and reforestation". Article 3.3 provides that greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use and forestry activities, limited to



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afforestation, reforestation and deforestation shall be used to meet the commitments under this Article of each Party included in Annex 1.

Only afforestation and reforestation are eligible to produce Certified Emission Reductions in the first commitment period of the Kyoto Protocol (2008-2012). This is a major loophole given that “deforestation is the single largest cause of biodiversity loss worldwide and also accounts for approximately 20% of global greenhouse-gas emissions” (Linden Trust for Conservation).

Preference of the Australian Koala Foundation regarding the different economic incentives:

It is the AKF's opinion that *revolving funds* are the best way to protect koala and other species habitat: acquiring land to establish sanctuaries for the conservation of threatened wildlife and ecosystems, like Australian Wildlife Conservancy does, is a fantastic work but it requires an important amount of money, and a financial and human commitment over a long period of time: rates have to be paid, the land has to be looked after, managed, and protected. Feral animal control, weed eradication and fire management among others are necessary for the creation of the sanctuary to achieve its aim. Many organisations do not have sufficient funds or staff. On the contrary when a revolving fund is used the organisation or the government buy a land, attach a conservation covenant to the title, and resell the land immediately to a person interested in conservation. Then the organisation has the money to buy another land... and so on. However when the land is sold and ownership of the land is transferred taxes such as stamp duty, sales tax, and in certain circumstances capital gain tax... have to be paid, and the organisation loses money with every transaction.

It is important also to remember that maintaining ownership is extremely important to landowners, and therefore they are not prone to sell or donate their land or part of it. Even when farming is a hobby it is the lifestyle they chose and like, landowners do not want to give it up and would not want to sell. If it remains their property they may be convinced to keep at least part of the land safe, and not develop on it, in return for other benefits and if they are offered assistance and advices. Therefore the following incentives are less likely to be accepted by the landowners: donation of land for conservation subject to a life interest, bargain sale of land for conservation, bargain sale of a conservation easement. *Incentives to encourage land to be managed for conservation benefit are preferred.* It should also be taken into account that many farmers have mortgage and are still paying it, they don't own their land and could anyway not benefit from certain incentives.

Ideally a *balance between the economic costs and the ecological profit* should be achieved.

Incentives to avoid fragmentation of habitat, for example when the property is divided between the heirs, would be strongly promoted. Landowners who refrain from habitat fragmentation and/or write this condition in their will would be greatly rewarded.

Landowners protecting the riparian system, rivers, and restoring trees around them on their property would also benefit from a very interesting incentive. Koalas are frequently seen in eucalyptus trees near water, due to the fact that their leaves are less dry.

Examples of actions landowners would be encouraged to undertake (planning guidelines for koala conservation and recovery – landscape level planning):

- *maintain and conserve a landscape that contains a sufficient amount of habitat to sustain a viable koala population:*



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maintain at least 40-50% of the landscape as primary and secondary koala habitat (the protection of primary and secondary (class A) habitats should be the top priority). To achieve this aim they should conserve and maintain the ecological integrity of areas of these habitats - priority should also be afforded to areas that are known to contain existing koala populations; and implement revegetation programs, especially where the amount of primary and secondary habitat in the landscape is close to, or below 50%, or is highly fragmented - priority should be given to revegetating areas adjacent to contiguous blocks of existing habitat.

maintain at least 50-60% of the landscape as forest (preferably native forest).

- *maintain and restore koala habitat patches, or clusters of highly connected patches, that are large enough to sustain viable koala populations.*

They can for example implement revegetation programs to enlarge the size of remnant koala habitat patches, improve the connectivity of clusters of koala habitat patches...

- *maintain and restore a landscape that contains patches of koala habitat with shapes that minimize edge effects*

(koala habitat patches should be more circular than linear in shape).

- *maintain the integrity and quality of koala habitat patches and linkages:*

within koala habitat patches, or corridors, maintain sufficient proportions of mature preferred koala food tree species (i.e., greater than 30%). So they should avoid the removal of preferred koala food tree species and other trees known to be used by koalas, and consider planting additional preferred food trees where they are in low proportions within habitat patches or linkages.

avoid the internal fragmentation of koala habitat patches and linkages and any reduction in tree density. So they should avoid construction of roads and barriers, such as walls and fences. Within koala habitat patches or linkages, avoid clearing and thinning trees within koala habitat patches, or linkages that would substantially increase the distance between mature trees. If clearing of trees is unavoidable then this should be done so that the distance between remaining mature trees is at most 20-30 m.

maintain the structural and species diversity of trees within koala habitat patches and linkages.

- *maintain and conserve a landscape in which patches of koala habitat are sufficiently connected to sustain a viable koala population:*

maintain a network of habitat patches and corridors linking blocks of koala habitat. So they should conserve and maintain the ecological integrity of habitat identified as providing important linking functions between larger blocks of habitat, restore habitat corridors or habitat patches.

maintain areas between separate blocks of koala habitat free from barriers to koala movement. So they should avoid the construction of fences... that will impede movement of koalas between habitat patches.



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Could the Commonwealth legislate to adopt the National Koala Act?

As we have seen the Commonwealth has the power to legislate if the aim is to implement an international treaty or convention and Australia's obligations under it. The Convention on Biological Diversity is once again the most relevant convention. Here is why:

The article 8(k) of the Convention provides that each Contracting Party (Australia among others) shall, as far as possible and as appropriate, "**develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations**". As we have seen it is necessary to afford an efficient legal protection to the koala at Federal level before it is too late to save it. The National Koala Act would aim at protecting the koala, through the protection of its habitat. It is noteworthy that under the Convention on Biological Diversity there is no list or definition of "threatened species". It is not excluded that the koala is considered a threatened species.

In addition the article 6 of the Convention – General Measures for Conservation and Sustainable use, provides that "Each Contracting Party shall, in accordance with its particular conditions and capabilities: (a) **develop national strategies, plans or programs for the conservation and sustainable use of biological diversity**... which shall reflect, inter alia, the measures set out in this Convention relevant to the Contracting Party concerned".

The Convention in its introduction reaffirms that "**States [countries] are responsible for conserving their biological diversity** and for using their biological resources in a sustainable manner".

This is what the National Koala Act, which is a *Federal legislation* and whose aim is to protect the koala (a component of biological diversity) and its habitat (a biological resource) would do. The Koala secretariat in particular would "implement conservation strategies". In addition the article 20 – Financial Resources provides that "**each Contracting Party undertakes to provide, in accordance with its capabilities, financial support** and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programs". This gives us an argument to claim that Australia (the Federal government) should provide the money to create and run the Koala Secretariat, at least for implementing conservation strategies. In its introduction the Convention on Biological Diversity also refers to the "general lack of information and knowledge regarding biological diversity and of the urgent **need to develop scientific, technical and institutional capacities** to provide the basic understanding upon which to plan and implement appropriate measures".

As we have seen Australia has an obligation under the Convention to **identify and monitor** (article 7(a) and (b)) the koala.

This is, among other things, what the Koala Secretariat would do ("identify the location and distribution of known koala populations", "provide for ongoing monitoring and review"...). Creating and running the Koala Secretariat would implement this obligation.

The article 11 of the Convention – Incentives Measures, requires each Contracting Party to, as far as possible and as appropriate, "**adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity**": there is an obligation on Australia to create incentives for the conservation of the koala as a component of biological diversity.

If the National Koala Act was passed and enacted by the Parliament its Part 3 providing "**tax incentives to protect and restore koala habitat**" would implement this article of the Convention: it is evident that in order to protect the koala the first priority is the protection, and restoration if necessary, of its habitat. The Convention itself in its articles 8(c),(d) and (f) enjoins to manage, protect, restore and enhance the ecosystems, habitats and biological



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resources (forests for example). The importance of conserving the vegetation that is habitat to species and enhancing this habitat is asserted: “regulate or manage *biological resources important for the conservation of biological diversity*... with a view to ensuring their conservation”, “**promote the protection of ecosystems, natural habitats** and [there is implicitly a link] the maintenance of viable populations of species *in natural surroundings*”, “**rehabilitate and restore degraded ecosystems** and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies”.

The Convention in its introduction also provides that “the fundamental requirement for the conservation of biological diversity is the *in-situ conservation of ecosystems and natural habitats* and the maintenance and recovery of viable populations of species in their *natural surroundings*”.

Therefore it is legally possible for the Commonwealth to make a law creating such incentives, because this law would give effect to some of Australia’s obligations under the Convention.

The **recovery of threatened species** (the koala) advocated in the Convention is a major objective of the National Koala Act as well. In order to achieve this objective among other things the Koala secretariat would “prioritise areas for habitat restoration” and “provide for habitat restoration in priority areas”, “specify necessary actions to address threatening processes” and as we have seen “implement conservation strategies”.

Article 14(a) requires **environmental impact assessment of the projects that are likely to have significant adverse effects on biological diversity, with a view to avoiding or minimizing such effects**. The Koala Secretariat would also have this function (it would “decide whether the proposed action would have a significant impact, and give approval to certain land clearing and other activities, or suggest another activity if the land clearing is likely to have a significant impact on the koala or koala habitat”).

The Convention also provides that **processes and categories of activities which have or are likely to have a significant adverse impact** on (the conservation of) biological diversity **must be identified, regulated and managed** and their effects monitored (article 7(c) and 8(l)). The Koala secretariat would “identify threatening processes” and “specify necessary actions to address threatening processes”. The Koala secretariat would also go further and preventively “identify and map koala habitat including critical habitat that requires protection from threatening processes”.

The National Koala Act and the Convention on Biological Diversity share the same vision: according to the Convention it is “vital to **anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source**”. The National Koala Act’s major aim, indeed, is to manage to avoid land clearing (habitat destruction due to land clearing is the biggest threat to wildlife in Australia) and protect the vegetation, koala habitat in particular.

International policies that are currently used to protect biodiversity:

The following policies are fund raising mechanisms, from the document *Options for Tax and Financial Incentives for Conservation*. The money may be offered to landowners as subsidies or grants in return for their cooperation and the limitation of use of their land, or to fund a conservation program implemented by the Koala secretariat for example.

- Using or increasing *real estate transfer taxes* and dedicating those funds to natural area acquisition. When a land or property is sold, often for development, the transaction should provide revenue for preservation.



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- Using *luxury taxes*. These taxes can provide a substantial revenue source, which may be used for land protection.
- *Using tax on minerals and other natural resources*. Those making money from resource exploitation should pay for protection.
- Using a portion of *hotel and tourism taxes* proceeds for land protection. This would target tourists who visit an area for its natural assets.
- Using the revenue from *hunting and fishing licenses*.
- Using *entrance fees*. The user-pays theory is put into practice when funds raised from park visitors are then used for additional land protection or acquisition.
- Using a percentage of *sales tax* for conservation programs. General sales tax as a funding mechanism is easy and inexpensive to collect. A very small percentage can generate substantial revenues on an annual basis, and therefore sales tax is a good source of funding for conservation related activities.
- Issuing *bonds*. Bonding is an excellent way to create large amounts of funding quickly and is common for land acquisition programs. Governments often issue bonds on the open market to cover capital expenditure. Since these public offerings are tax-exempt buyers are willing to purchase bonds at a lower interest rate.
- Allowing fillers to donate a portion of their *tax refund* to specific programs and agencies. There are a variety of agencies and projects funded through check-offs. However this source yields a relatively small and declining amount of money and is not advised for acquisition funding.
- Increasing *partnerships* between states conservation bodies, private landholders and non-government bodies with all contributing some funds and resources to wildlife conservation efforts.

The writing of the National Koala Act would require the skills of a team of lawyers, specialised in environmental law, tax law, planning, environmental law including international law, criminal law and constitutional law. It is expected that the bill would be an extensive document of 300-600 pages.

The Australian Koala Foundation recommends the following way to proceed in order to have the National Koala Act brought before the Parliament:

Using the way of a *private members' bill*: an *Independent Member of Parliament* (in the Senate or in the House of Representatives) introduces the proposed law (bill), as opposed to the bill being introduced by the government (the great majority of bills are introduced by ministers). Then the bill will be debated and voted, and if it is passed by both Houses will be enacted and become law.

It is therefore necessary to approach this person, carefully selected.



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BIBLIOGRAPHY

Environment Protection and Biodiversity Conservation Act 1999, reprinted on 1 March 2007 (with amendments up to Act No. 165, 2006), reprint 3

Convention on Biological Diversity 1992, document last generated by SiSu July 13 2007

D. Tabart (2004) Draft *Protecting the Koala: A Species of National Significance – A Consultation paper proposing Commonwealth legislative and policy initiatives that will protect the Koala and its habitat throughout Australia*

C. McAlpine, J. Rhodes, A. Peterson, H. Possingham, J. Callaghan, D. Mitchell, D. Lunney (2006) *Planning guidelines for koala conservation and recovery – A guide to best planning practice*

The Wilderness Society (2006) *Submission to the Senate Inquiry into the provisions of the Environment and Heritage Legislation Amendment Bill (No1) 2006*

T. Hundloe, C. Hamilton, L. Wilks (1997) *Koalas and Tourism: An Economic Evaluation*, the Australia Institute, Discussion Paper 13

National Environmental Defender's Office Network, The Ian Potter Foundation (2000) *Disappearing Acts – A Guide to Australia's Threatened Species Law*

Queensland Environmental Defender's Office (2003) *Listing the Koala as Vulnerable or creating a Species of National Cultural Significance under the EPBC Act*

A. Macintosh (2006) The Australia Institute *Draft Review of the Environment and Heritage Legislation Amendment Bill (No.1) 2006*

State Environmental Planning Policy No 44 – Koala Habitat Protection, as at 26 April 2000

J-P. Jacquet (2007) *Wildlife Preservation Society of Queensland Newsletter May 2007*

C. Tisdell (2007) *Economic incentives to conserve wildlife on private lands* In Australian Wildlife, Journal of the Wildlife Preservation Society of Australia Inc.

Article about the *Wombat Protection Society* In Australian Wildlife, Journal of the Wildlife Preservation Society of Australia Inc. Winter 3/2007

M.D Young, N. Gunningham, J. Elix, J. Lambert, B. Howard, P. Grabosky, E. McCrone (1996) *Reimbursing the future – An evaluation of motivational, voluntary, price-based, property-right, and regulatory incentives for the conservation of biodiversity* Part 1, a report prepared by CSIRO Division of Wildlife and Ecology, the Australian Center for Environmental Law, and Community Solutions; Biodiversity Series, Paper No.9, Biodiversity Unit

Environment Protection and Biodiversity Conservation Act 1999, Activity Report – 30 June 2006

Options for Tax and Financial Incentives for Conservation, undated, unsigned