

The Honourable Brian Ellis MLC
Chair
Standing Committee on Environment and Public Affairs
Parliament House
Harvest Terrace
Perth WA 6000
By email: mwarner@parliament.wa.gov.au

23 July 2012

Dear Mr Ellis,

Petition No 164: Protection of Endangered Species – submission

Thank you for your letter dated 2nd July 2012 regarding petition 164 which requests an inquiry into the adequacy of threatened species protection in Western Australia. I am writing to provide the brief evidence you requested on the need for such an inquiry.

Western Australia's principal environmental legislation, the *Wildlife Conservation Act 1950 (WA)*, is now more than 60 years old and does not provide adequate protection for the State's threatened flora and fauna species.

WA has more than 600 listed threatened species. In order to protect these species from threatening processes such as land clearing, logging, mining, inappropriate fire management, oil and gas development and over-fishing and it is necessary to have legislation in place that is current and provides for the protection of species and habitat.

The Office of the Auditor General's 2009 report on the conservation of threatened species found that:

The *Wildlife Conservation Act 1950* does not provide species with adequate protection... Since 1987 DEC and its predecessor agencies have sought to replace the 1950 Wildlife Conservation Act with new legislation that would provide greater support for conserving biodiversity¹.

The report recommended that efforts to replace the Act be continued.

The *Wildlife Conservation Act 1950* was drafted to protect the 'value and interest' of the State's fauna and subsequently flora and has a focus on the 'taking' of species from the environment. Neither the protection of species' habitat nor the protection of biodiversity and ecosystems are properly provided for. There is also concern regarding whether the State is bound by the fauna provisions in the Act. The Act can be overridden by other Acts of Parliament.

Even within the limited scope of the *Wildlife Conservation Act 1950*, the provisions for controlling the 'take' of threatened species are currently ineffective. The maximum penalty for a breach of this Act by the taking of a threatened species is \$10,000. This penalty level is outdated and serves as little deterrent to illegal activity. For example it is illegal to shoot Baudin's or Carnaby's black cockatoos, both listed threatened species, but it is still known to occur especially in orchard growing regions where black cockatoos are a 'pest' in apple and pear crops. The maximum fine that has ever been awarded for illegally shooting black cockatoos is \$3000. The Act's compliance and enforcement provisions are insufficient.

Threatened species that are listed as threatened under both the State and Commonwealth legislation receive a greater level of protection under the Commonwealth legislation and the State is obliged under a COAG agreement to implement biodiversity conservation legislation that complements this legislation. However there are many species and communities considered as threatened in Western Australia that are not currently listed under the *Environment Protection and Biodiversity Conservation Act* that do not receive the protection of this Act.

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There are also problematic interactions between the Commonwealth and State legislation which impact on threatened species. For example, the *Environment Protection and Biodiversity Conservation Act 1999* includes a section exempting from the provisions of the Act all forestry operations in forests covered by a Regional Forest Agreement. As a result, logging in Western Australia and the resulting loss and fragmentation of habitat for threatened species, and even the loss of threatened fauna and flora, are not covered by the provisions of the EPBC Act.

To continue with this example, there have been hundreds of breaches of the current Forest Management Plan (FMP) by logging contractors, many of which have direct implications for threatened species, including the logging of areas set aside for habitat preservation, logging old growth forest and spreading *Phytophthora dieback*. We can provide evidence of the hundreds of breaches filed by the FPC and DEC on request. The FMP gives the relevant agencies discretion on how it is implemented and no agency has the power to enforce compliance or to penalise non-compliance. There is no State or Commonwealth legislation that requires protection of threatened species in logging operations. Since the current FMP came into effect in 2004, 18 species found within the FMP's boundaries have moved to a higher level of threat of extinction.

Habitat loss is recognised as the major threat to Carnaby's Cockatoos whose numbers have declined dramatically in recent years. Despite this, vital feeding, roosting and nesting habitats for Carnaby's Cockatoos are still being cleared for urban development.

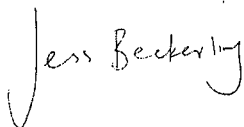
Between 2001 and 2009 some 6,812 hectares of natural bush were cleared within the Perth metropolitan region. In another example of poor legal protection from threatening processes; land clearing for the purposes of urban development is currently a Schedule 6 Exemption under the *Environmental Protection Act 1986* [Clause 9 – *Town Planning and Development 1928* (Clearing under)]. As a result, clearing in accordance with a subdivision approval given by the responsible authority under the *Town Planning and Development Act* does not require a permit from the Department of Environment and Conservation under the *EP Act*. DEC is therefore unable to monitor how much land is cleared for urban development annually and the environmental ramifications, including the impacts on threatened species, do not attract acceptable levels of legal scrutiny.

Western Australia is an ancient landscape, rich in biodiversity found nowhere else in the world. The south-west of WA is internationally renowned as a biodiversity hotspot – a title bestowed on us not only because of the high level of unique biota found here, but also because of the level of threat it faces; approximately 80% of the south-west's natural vegetation has been lost. Our current legislation is not up to the task of protecting the unique flora and fauna found here and it needs updating.

Your petitioners respectfully request that your committee take up this important enquiry in the interests of the protection of our ancient, unique and beautiful West Australian places, plants and animals – both terrestrial and marine.

This information and request has not been brought to the attention of the Ombudsman.

Yours truly,



Jess Beckerling
Principal petitioner
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