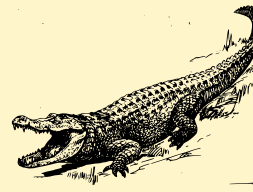
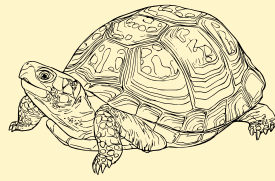


PROTECTING AUSTRALIAN BIODIVERSITY

through reform of the Environment Protection and Biodiversity Conservation Act



SUMMARY

Australia has one of the worst rates of biodiversity loss and species extinction in the world. The Australian government is currently trying to dilute already weak protections for threatened species. Against the recommendations of an independent review, the government is giving state and territory governments decision-making powers without strong and enforceable national standards. This will decrease accountability and allow decision-makers to exacerbate biodiversity loss unchecked.

BACKGROUND

Australia is mega-diverse, home to around 300,000 animal species - many of which are endemic. Many of these species are at risk because the law is not strong enough to protect them. The main law affecting these species, the Environment Protection and Biodiversity Conservation Act (EPBCA), is currently under review. An official report revealed that without urgent changes, most of Australia's threatened species will become extinct. Despite this, the federal government is trying to introduce legislative reforms that will put these species at further risk.

PROBLEM

HIGH RATES OF BIODIVERSITY LOSS

Biodiversity is key to ensure healthy environmental function. When species go extinct, the natural balance of the ecosystem is disrupted. This often leads to significant negative effects on other species, including humans.

Australia is one of seven countries responsible for 60% of global biodiversity loss, and is the second biggest contributor within that group. More than 1,700 species and ecological communities are threatened with extinction in Australia. Key threats include habitat loss, degradation and fragmentation; invasive species; and unsustainable use and management of natural resources.

WEAK RULES

Current rules do not have clear intended outcomes, which means they often enable environmentally harmful decisions. The EPBCA should protect threatened species, but instead populations have been declining even faster since it was introduced in 1999.

The government is currently weakening protections for threatened species by giving decision-making powers to state governments without clear rules or accountability mechanisms. The new rules appear to promote economic development at the cost of species protection, and will allow states to perpetuate species loss unchecked.

EXAMPLE: GREY NURSE SHARK

The eastern Australia population of the Grey Nurse Shark is critically endangered, with only around 300 left in New South Wales. As an apex predator, the shark plays an important role in maintaining ecological balance.

Key threats include commercial fishing and state-run "shark culls". The EPBCA currently enables the active killing of sharks in the name of "national interest". Without strong national standards or enforcement measures, states will be even better equipped to carry out harmful activities such as shark culls without being held to account.

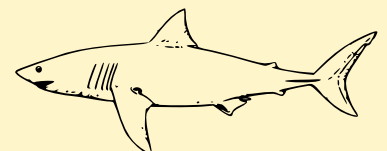
SOLUTION

Australia has an opportunity to make better rules.

Firstly, the current proposed reforms must be halted. In place of these laws, the government must modify the EPBCA to enhance legal protections for threatened species.

This can be done by:

- (1) creating strong, bright-line national standards, and
- (2) giving an independent authority the power to hold decision-makers to account and enforce standards.



What is the EPBCA and how does it relate to threatened species?

The Environmental Protection and Biodiversity Conservation Act 1999 is Australia's key piece of environmental legislation. It is intended to protect the Australian environment, including its biodiversity and culturally significant places. The Act provides for the listing of threatened species and sets out certain rules to protect them. There are numerous exceptions to these rules, that carve out situations in which decisions are allowed to be made despite negative impacts on threatened species.

What does it mean that the EPBCA is "currently under review"?

Under section 522A of the EPBCA, an independent review of the Act must be conducted at least once every 10 years. This review must assess the operation of the Act and the extent to which its objectives are being achieved. Once the review has been completed, the findings are reported to the Minister for the Environment who must share them with the Houses of Parliament. There is no requirement that any action be taken in wake of a review.

What were the findings of the 2020 independent review?

The final report was highly critical of the EPBCA. It noted that Australia's natural environment is an overall state of decline and that current trajectories are unsustainable. The report deemed the EPBCA ineffective and unfit to address current or future environmental challenges. Reasons given for this finding included a lack of identified outcomes the Act is seeking to achieve, legislative complexity, and poor levels of accountability and enforcement.

Key recommendations of the report include:

- Devolve federal government functions to state level and streamline processes;
- Create new national environmental standards that are binding and enforceable, to ensure all decisions clearly track towards environmental improvement; and
- Establish an independent compliance and enforcement regulator.

How has the government responded to the review?

The government response has been confused and unsatisfactory. When an interim report was released mid-2020, the Minister for the Environment said legislation would be introduced to hand approval powers over to states and to develop national standards. However, no such standards were mentioned when the Bill was introduced. By transferring power to states without a strong national framework, the government is cherry-picking from the recommendations in a way that will detrimentally weaken species protections. Government messaging has emphasized "cutting green tape" to reduce environmental bureaucracy, implying that environmental protections are holding up business.

Why is biodiversity important?

Biodiversity is intrinsically important - meaning that every species has value and a right to exist, regardless of whether humans see that value. As well as this inherent value, biodiversity also maintains the healthy functioning ecosystems which provide provisioning services (food, fibre and water production), regulating services (climate and disease control), supporting services (nutrient cycling and pollination) and cultural services (including spiritual and recreational benefits).

When species numbers are reduced, there can be far-reaching impacts on other parts of the ecosystem. For example, when shark numbers decrease the number of smaller predators that prey on herbivorous fish increase. This leads to a decline in herbivore populations and a subsequent increase in algae overgrowing coral reefs. This shift to algae-dominated reefs reduces biodiversity and decreases reef resilience to disturbances such as storms and coral bleaching.

Why does the law permit shark culls?

Section 158 of the EPBCA allows exemptions from the normal rules for activities that are in the "national interest". This section has traditionally used in emergencies such as oil spills, locust plagues and bushfires. Decision-makers have used this section to permit routine shark culls in the name of beach-goer protection, despite evidence that they are not effective in reducing shark attacks. The Minister for the Environment has invoked section 158 to override species protections, on the basis that it would protect the economic value of the tourism industry.

How will the government's proposed reforms affect threatened species?

Devolving approval powers to states without strong national standards or accountability mechanisms will make it easier for economic considerations to trump species protection. States have a vested interest in pursuing short term economic gains, especially as the continuing effects of the COVID-19 pandemic are felt. Unlike the federal government, they are not directly answerable to the obligations of international treaties that require certain protections for threatened species. Under the regime, it will be easier for decision-makers to permit harmful activities such as shark culls as they will be largely unaccountable.

How can Australian law better protect threatened species?

Clear, enforceable rules must be implemented. This means that strong national standards should draw lines that cannot be crossed. For example, endangered species such as the Grey Nurse Shark should not be subjected to culls, no matter the perceived benefit. To ensure decision-makers obey these rules, a non-partisan regulator with authority to monitor and enforce these rules must be employed.