

The Ecological Society of Australia Ltd (ESA, www.ecolsec.org.au) is the peak group of ecologists in Australia, with over 1,200 members from all states and territories. Our members work in universities and other research institutions, government departments, NGOs, private industry and consultancies. We are a national not-for-profit organisation formed in 1959.

Summary of ESA member survey on the *Environment Protection and Biodiversity Conservation Act 1999*

October 2019

Owing to their regular interaction with the *Environment Protection and Biodiversity Conservation Act 1999* (the Act), many of the ESA's members are specialists with respect to chapters of the Act that deal with: (i) conservation of biodiversity and heritage through the regulation of threatened species and communities, (ii) environmental impacts assessment, and (iii) the referrals/approval process. Consequently, the ESA surveyed its members (August 2019) to understand how the current legislation is being interpreted and used, with key findings from this survey summarised below.

1. The Act is Australia's premier piece of environmental legislation. It is designed to protect and manage national environmental assets, known as matters of national environmental significance, and other protected matters. This includes nationally and internationally important flora, fauna, migratory species, ecological communities and heritage places. Its central tenet – to conserve species and ecosystems – is outstanding policy. **The primary object of the Act, to protect Australia's biodiversity and the broader environment, must be upheld and strengthened. Any changes made to the Act as a result of its review, must be intended to enhance the Act's ability to protect the environment.**
2. The Act currently provides a mechanism to list threatened species, ecological communities, migratory and marine species based on scientific advice. It also empowers federal leadership and action on Matters of National Environmental Significance. **These functions of the Act are vital, and should not be undermined or weakened.**
3. **Despite its admirable intentions, the Act is failing to achieve its objects.** Biodiversity in Australia is still declining, as are other elements of our environments. Feedback received indicates that implementation of the Act has been ineffective, and this is thought to be a result of:
 - a. inadequate resourcing of the responsible Department(s),
 - b. poor implementation of legislation with respect to development proposals (less than 100 proposals rejected of 6000 referrals since the Act came into being),
 - c. insufficient or inadequate compliance monitoring and evaluation or enforcement of permitted activities,
 - d. a lack of clear information about the Act for on-ground users,
 - e. generous discretionary powers granted under the Act.

One action that could help to address these concerns is to **increase resourcing to support effective implementation of the Act.** E.g. resourcing the Environment Department to enable improved support services to translate, understand, and apply the legislation; resourcing the implementation of threatened species recovery plans; and resourcing for meaningful compliance and enforcement actions.

4. Listing categories vary between States and Commonwealth, as does the degree of protection; more effective use of resources could be made with consistent legislation. **Continued harmonisation of processes between State and Commonwealth environment legislation can help to reduce regulatory burden, however reducing regulatory burden should not be prioritised at the expense of robust environmental protection.**
5. Application of the Act needs to be more rigorous, transparent and reflective of the current state of Australia's ecosystems and flora/fauna. To achieve this, **decisions under the Act should provide better rights of appeal, and decisions made by Government in relation to the Act and its functions should be transparently audited and reported upon.**