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VNPA Submission to EPBC Act Review

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About VNPA and this submission

The Victorian National Parks Association (VNPA) is Victoria's leading community based nature conservation organisation. Established in 1952, VNPA is an independent, non-profit, membership-based group, which exists to protect Victoria's unique natural environment and biodiversity through the establishment and effective management of national parks, conservation reserves and other measures. We achieve our vision by facilitating strategic campaigns and education programs, developing policies, through hands-on conservation work, and by running bushwalking and outdoor activity programs which promote the care and enjoyment of Victoria's natural heritage.

This submission draws in part from advice from partners such as the Places You Love Alliance, a network of 57 environment groups from across the country, formed to fight for a new generation of environmental laws in Australia, the Invasive Species Council and our own detailed experience with the EPBC Act operation in Victoria.

This submission considers 10 issues:

1. The need for a stronger EPBC Act
2. Scope, role and function of Commonwealth environmental powers
3. Matters of National Environmental Significance
4. The use and effectiveness of strategic assessments
5. Strengthening of bioregional planning
6. Strengthening critical habitat determinations
7. Restoration opportunities
8. Community rights to review decisions and enforce the Act under the EPBC Act
9 The role of Offsetting
10. Better recognition of cumulative impacts of individual actions to be covered by the EPBC Act.

1. The need for a Stronger EPBC Act.

EPBC Act is not providing anywhere near adequate protection of Australia's environment, and in particular, is not able to cope with the increased challenges we face with species extinction and climate change. The VNPA agrees with the position that the EPBC Act should be replaced with new federal environmental laws that protect and restore our natural environment, strengthen our democracy and support community involvement.

A new national environmental framework must be built on five key principles:

- National leadership;
- A central role for communities in decision making;

- Trusted and independent institutions;
- Delivering strong environmental outcomes;
- Ensuring resilience in the face of climate change.

For the Commonwealth to hold an effective leadership role in managing Australia's environment it requires a suite of regulatory tools that are fit for purpose. These include both mechanisms to avoid, control and mitigate impacts on the environment, and proactive provisions that enable protection of key environmental values.

There is a clear and essential role for the Australian Government to lead the development of a national framework for environmental protection and restoration. In Australia it is unclear who is ultimately responsible for ensuring our environment is managed well. The current system distributes responsibility across the federation, but no one jurisdiction is charged with coordinating efforts to protect our environment.

A lack of nationally consistent monitoring and reporting makes evidence-based decision making difficult for governments and increases costs for businesses attempting to comply with eight different, often-changing regulatory regimes.

A truly national approach to environmental protection would build on Australia's international responsibilities and the federal government's capacity to bring authority and resources to environmental governance.

The Commonwealth Government should take a greater role in regulating environmental protection, including by setting national standards that all states must comply with, increasing the range of matters that it directly regulates, and strengthening its regulation of the matters already within the EPBC Act.

National leadership under a new environmental framework would deliver:
- Accountability for the improvement of environmental indicators;
- Development of national goals, standards and reporting;
- Protection for specific National Environmental Matters;
- Coordination of multiple jurisdictions and regulatory regimes.

2. Scope, Role and function of Commonwealth Environmental Powers

The current objects of the Act are fairly strong, but they could be stronger. The Act should also include a limited number of secondary objects and principles.

The principles should be used to guide decision-makers, who must act in accordance with when making decisions under the Act. Principles should include:

- **Prevention of harm** - preventative actions against likely harm to the environment;
- **Precautionary Principle** -Taking precautionary actions against harm that would be serious or irreversible, but where scientific uncertainty remains about that harm; and engaging transparently with the risks of potential alternatives;
- **Protecting biodiversity** -Ensuring that biodiversity and ecological integrity are a fundamental consideration in decision-making, including by preventing, avoiding and minimising actions that contribute to the risk of extinction.

The EPBC Act, or a new Federal environment Act, should provide the Commonwealth with all the powers it needs to fulfill a greater leadership role in the protection of Australia's environment. There are three elements to this:

- The Act should give the Commonwealth power to set binding national standards and objectives that all states must adhere to, in order to bring all states and territories up to a higher and consistent national standard. This includes in new areas of national environmental significance where the Commonwealth would not directly regulate, but wants to ensure a high a consistent level of protection is achieved across Australia;
- The Act should ensure the Commonwealth retains primary regulatory responsibility for an expanded list of matters of national environmental significance;
- In order to avoid duplication of processes, the Act should allow the Commonwealth to delegate environmental impact assessment functions under the Act to the states only in certain circumstances, namely:
- For assessment of environmental impacts of project only (i.e. assessment bilateral agreements), **not** a delegation of its approval powers (approval bilateral agreements). **All approval powers for nationally significant matters should be retained by the Commonwealth**.
- Any accreditation and delegation of assessment powers to the states must done using independent auditors to ensure state laws meet Commonwealth standards.

The VNPA **does not** support Commonwealth powers being handed over to the States in circumstances other than assessment in bilateral agreements.

Effective federal environmental laws should achieve the following 11 outcomes:

- Ensure the Federal Government assumes responsibility and leadership for reversing the decline in Australia's environment;
- End destruction of primary, remnant, old-growth or high-conservation value forests and bushland;
- Prevent the extinction of native fauna and flora;
- Protect and recover key biodiversity areas, threatened ecological communities and threatened species including strict protection for their critical habitats;
- Substantially reduce Australia's greenhouse gas pollution and increase carbon sequestration in biodiverse landscapes;
- Safeguard freshwater ecosystems, including from extractive and industrial processes;
- Reduce, to as close to zero as possible, air pollution, plastic pollution and chemical pollution across Australia;
- Maintain and strengthen the prohibition on domestic nuclear power, enrichment and reprocessing whilst advancing responsible domestic radioactive waste management.
- Safeguard the natural and Indigenous cultural values of Australia's protected areas, heritage places, and other conservation tenures;
- Prevent the introduction of, and reduce the current extent, spread and population size of invasive species that are threatening biodiversity;
- Effectively protect Australia's wildlife from commercial exploitation including illegal wildlife trade and unsustainable fishing.

3. Matters of National Environmental Significance

The discussion paper asks Question 4: *"Should the matters of national environmental significance within the EPBC Act be changed? How?"*

The Australian Government should retain existing matters of national environmental significance (MNES), but include an expanded list of national environmental matters that provides for national protection of critical environmental values. An expanded list of national environmental matters should include:

a. Australia's parks and reserves
b. Critical habitats and climate refugia
c. Impacts from land clearing
d. Greenhouse gas emissions and air pollution
e. Water resources
f. Ecosystems of national importance
g. Protecting against invasive species
i. Vulnerable ecological communities
j. Impacts of significant events, such as wildfire or other natural disaster.

The VNPA are particularly **supportive of adding a MNES trigger for national parks and reserves under existing laws**, where the Commonwealth Government can only intervene to protect national parks and other protected areas reserved, primarily for the conservation of nature, if there is a risk to Matters of National Environmental Significance. This would include nationally-listed threatened species, endangered, and critically endangered ecological communities.

The National Reserve System is a network of more than 10,000 federal, state and territory protected areas that cover over 17 per cent (> 137 million hectares) of the Australian landscape. The Australian Government manages six national parks - the remainder are the responsibility of the relevant state, territory, indigenous or private landholder. This estate is worth many billions of dollars in tourism and ecological services.

The major objective behind Australia's protected area estate is for the conservation of the natural environment and the protection of biodiversity. In line with this, most Australians assume and expect that once an area is declared a national park, or other highly protected area, such as a wilderness area, it is a haven for wildlife, forever. However, this is not the case - protected areas are increasingly subject to significant pressures that threaten to compromise Australia's natural heritage.

As a party to the World Heritage Convention (WHC) and the Convention on Biological Diversity, Australia has committed to designating world heritage sites and establishing a terrestrial and marine protected area network that is comprehensive, adequate and representative, and fulfils the Aichi Targets.

Consequently, when state or territory governments wish to approve plans to introduce potentially destructive activities such as logging, grazing or developments associated with tourism in national parks and other protected areas, there is little that can be done to stop them - Australia's protected area network has not been afforded the level of protection required to prevent actions that may destroy, damage or degrade the natural heritage values that prompted inclusion of these areas within the National Reserve System in the first place.

For example, in response to the former Victorian Government's proposal to allow grazing within the Alpine National Park, the then federal environment minister, Tony Burke, committed to using the impact of grazing on nationally threatened species such as the Alpine Tree Frog to intervene. However, in the process it was recognised that there was a gap, because national parks weren't matters of environmental significance, and therefore not a trigger under the EPBC Act. Therefore, it is necessary to provide greater protection for Australia's national parks by including them as a matters of national environmental significance under the EPBC Act.

There is a clear need for greater Commonwealth Government involvement in the protection of the National Reserve System. This can be achieved by introducing an amendment or regulation to the Environment Protection and Biodiversity Conservation Act 1999 that would help secure the National Reserve System by including protected areas as Matters of National Environmental Significance. This would ensure the Commonwealth Government had a role in assessing activities or projects that could damage the integrity of our national parks.

Please see Attachment I – Briefing Paper, National Parks – a Matter of National Environmental Significance, produce by the National Parks Australia Council of which the VNPA is a member. The paper can also be downloaded here: https://npac.org.au/news-publications/

There is also an urgent need for strengthened national environmental protection laws particularly in regards to assessment of impact for matters of national conservation significance or critical habitat determinations after a wildfire or other natural disaster. For this reason, significant events, such as wildfire or other natural disaster should also be considered to be included as a matter of national environmental significance.

4. The use and effectiveness of Strategic Assessments

The discussion paper, under the heading "Reducing Regulatory Complexity", ask in Question 13. *"Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments? Who should lead or participate in strategic assessments?"*

The discussion paper fails to make the case for why strategic assessments are a good option. To date many have not lead to improved ecological outcomes or even reduced regulatory complexity.

The joint Commonwealth-State 'Melbourne Strategic Assessment' (MSA) agreed to deliver on a series of actions to protect some of the most ecologically endangered communities and species in Australia in the face of rapid urban development. Started in 2010, the conservation outcomes of the scheme seem to be the lowest priority, and the program is failing to protect matters of national environmental significance.

In 2010, State & Federal Governments promised to protect critically endangered grasslands:

> *"…increase the extent of protection of Natural Temperate Grassland of the Victorian Volcanic Plain from two per cent to 20 per cent"* [i]
>
> *"The Department of Sustainability and Environment will be the acquiring authority and will acquire all freehold land (excluding quarries) and reserve it by 2020"*[ii]

None of these commitments have been met in the last decade, and there has been seemingly no action from the Commonwealth to either enforce or encourage delivery by successive state governments.

Strategic assessments are complex to create and deliver. While payments by private land holder impacts have been facilitated as a one stop shop, the assessment and approval documentation including technical protocols for conservation, is labyrinth of documents of over 1000 pages. The key approval and conservation strategies alone are over 300 pages long.

Based on the Melbourne experience, strategic assessment improve certainty for developers and economic interests but increase uncertainty for the environment, which seems to have been put at the bottom of the pile.

Grasslands once covered almost a million hectares and spread from Melbourne's west to Portland. But scientists believe that since European settlement, 90-95 per cent of these grasslands have been destroyed, and as little as 1 per cent remains as high-quality habitat – much of it threatened by Melbourne urban sprawl. Decade old Commonwealth and state governments have promise to protect them, such as by creating new large grassland reserves, have so far failed. The Andrews Government is now trying to legislate its way out of the commitment.

Grasslands and associated ecosystems, such as grassy woodlands, are both listed as 'critically endangered' under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, and are home to 25 fauna species and 32 flora species listed as endangered or threatened.

These include the critically endangered golden sun moth, the plains wanderer, growling grass frog and striped legless lizard, plus numerous important native plants such as the critically endangered plains rice-flower and matted flax-lily.

The grasslands in and around Melbourne contain abundant native plants and animals – in many ways they are like an ecological Noah's Ark. They remain in part due to historical land banking by property developers and in part due to the dryer and rocky terrains.

In the south east of Melbourne there are no grasslands, but at least one significant population of southern brown bandicoots exists around the Cranbourne Botanic Gardens.

In 2009, in an attempt to fast track urban development and cut so-called 'green tape' the state and Commonwealth Governments commenced a 'Strategic Assessment' under the national environment laws. A previously little-used provision, this is basically a government-funded assessment of national significant species and communities in the Melbourne Growth Areas, with the aim to speed up urban approvals.

The Victorian National Parks Association worked with 20 local and regional conservation groups to provide detailed input to both state and federal agencies. We were disappointed at the overall results. Almost a decade on there have been dozens of specific program reports, sub-strategies, and protocols which create an exceedingly a complex labyrinth of documents and approvals.

The resulting 'Melbourne Strategic Assessment' (MSA) agreed to deliver on a series of outputs to protect some of the most ecologically endangered communities and species in Australia in the face of rapid urban development, many of the timelines have not been met and the program is failing to protect the matters of national environmental significance.

Covering about 43,000 hectares of land in total, of which about 24,000 hectares was considered suitable for urban development, it is essentially an offset scheme. It allows the clearing of around 4000–5000 hectares of high-quality grasslands and other habitat within the Urban Growth

Boundary, on condition of the establishment of a series of large conservation reserves to offset the loss, mostly outside the urban area, paid for through levies on urban development.

This was strongly debated and disputed by many conservation groups and ecologists. There was and remains concern that the large conservation reserves outside the urban areas did not contain the same natural values as what was being lost within – that it was not an equal 'replacement' and that it was far better to keep some of the smaller areas of high-quality grassland and other habitat within the urban areas. Most of these concerns were ignored or dismissed, in the rush to cut green tape and make Melbourne boom.

What was promised! In the end, the Commonwealth approved a range of outcomes, which a decade later have a poor delivery record:

- Urban and infrastructure development proceeds in accordance with the Commonwealth approvals – ***unclear.***
- Program cost recovery and expenditure is transparent and efficient ***- far from transparent and less money has been raised than expected.***
- A 15,000 hectare grassland reserve is established and managed between Werribee and Melton, with the bulk promised to be established by 2020 **- less than 10% purchased.**
- A network of conservation areas **(36 areas covering over 4000 hectares)** within the Urban Growth Boundary is protected and managed for matters of national environmental significance species and vegetation communities ***-reduction in area have occurred, management unclear.***
- A 1,200 hectare Grassy Eucalypt Woodland reserve is protected and managed **– modelled, but *yet to be established.***
- 80 per cent of Grassy Eucalypt Woodland is protected within the Urban Growth Boundary – **unclear.**
- 80 per cent of high priority habitat for Golden Sun Moth, Spiny Rice-flower and Matted Flax-lily is protected and managed **– unclear.**
- Important landscape and habitat areas for Southern Brown Bandicoot are protected and managed **– poor implementation, unclear outcomes.**

In 2010, the total cost of the program was estimated to be just under $1 billion dollars ($986,154,518) funded by fees collected over 10–40 year period. [iii]The program promised to "…increase the extent of protection of Natural Temperate Grassland of the Victorian Volcanic Plain from two per cent to 20 per cent". And according to the main approval document "The Department of Sustainability and Environment will be the acquiring authority and will acquire all freehold land (excluding quarries) and reserve it by 2020".

All these promises and commitments have so far failed.

The last publicly available update in 2017 revealed that since commencement, the program has received approximately less than 5% of total budget – $72.6 million in revenue and expended approximately $46.4 million on program implementation activities:

- About $35 million of this has been spent on acquiring grassland reserves (1,244 hectares acquired to date or about 10% of total). This is about 7% of the total expected lifetime costs.

- About $7.5 million or 13% has been on program delivery e.g. government staff, almost double the proportion that which has been spent on purchase of grassland reserves.
- Only $1.4 million has been spent on on-ground management, or less than 1% of costs. [iv]

The project may be working for property developers, with almost 3,000 hectares of land currently approved and undergoing urban development, and according to the government, a saving of almost $500 million in costs for developers.

The Andrews Government is now trying to legislate its way out of the commitment, and has recently introduced into parliament the Melbourne Strategic Assessment (Environment Mitigation Levey) Bill 2019. If the Bill is passed it will hardwire the levy scheme into legislation, allow the government to increase the fees as the land is now more expensive, and provide some improved oversight and scrutiny of program, such as a two year progress report from the Commissioner of Environmental Sustainability tabled in parliament. While it might be good for revenue, the Bill does nothing directly to ensure or speed up the protection of grasslands or deliver the promised conservation outcomes.

That Commonwealth has largely been silent and seemingly absent, once the program to establish the strategic assessment was complete. Perhaps it is time the Commonwealth ensured that what was promised is delivered, and the threatened grasslands are given the investment they deserve.

There is no real evidence to suggest that the strategic assessment has improved ecological outcomes, other than which would have been achieved through a case to case assessment. Some have argued that the use of strategic assessment only work in combination with strict rules. While this may improve the process in the initial assessment stages, based on the experience with the Melbourne Strategic Assessment and the intent of strategic assessment to reduce "regulatory burden" at all costs, they are not supported by the VNPA as a tool which should be used for large scale, long running programs.

5. Bioregional planning should be strengthened.

Bioregional plans give Commonwealth, state and local governments the opportunity to map areas of environmental significance (such as critical habitat) across bioregions and make decisions about the need for protection of those areas. The Commonwealth has the power to make bioregional plans under the EPBC Act, but it has never been used for land/terrestrial assessments (as has been done in the marine space for example in fisheries). A much greater use of bioregional planning to identify upfront nationally significant areas such as critical habitat, Ramsar wetlands, and national heritage, should be developed.

Victoria has had over 60 years' experience with bioregional planning process through the Land Conservation Council (LCC) and it' successors such as the Victorian Environmental Assessment Council**.**

The LCC, established in 1971, and its successors (the ECC and VEAC) were established to carry out studies or investigations of public land throughout Victoria and make recommendations to government on the appropriate use of that land. Since the LCC made its first recommendations to government in 1973 for the use of public land in the South-Western Area District 1, these organisations have systematically and comprehensively examined and made recommendations on the use of most public land in Victoria. Forty-three separate regional studies, reviews and state wide or special investigations have resulted in thousands of individual land use recommendations, the vast majority of which have been accepted by government.[v]

The current incarnation, the Victorian Environmental Assessment Council (VEAC) was established under the *Victorian Environmental Assessment Council Act 2001.*The Council is made up of five members including a Chairperson. The members are collectively required to have a range of experience, skills and knowledge in a number of areas related to management of public land and natural resources.[vi]

The role of the Council is to conduct investigations that are requested by the Victorian Government relating to the protection and ecologically sustainable management of the environment and natural resources of public land. While a bioregion is usually larger than just the public land in it, the approach undertaken by the LCC and VEAC is useful data rich model which could be applied at a bioregional scale.

6. Strengthening Critical Habitat Determinations

Under the current EPBC Act 1999, the Minister may list a habitat as being critical to the survival of a list threatened species or ecological community, on the Register of Critical Habitat, after advice from the Threatened Species Scientific Committee (TSSC). Only 5 areas are listed on the Register of Critical Habitat and none have been listed since 2005. While this mechanism exists, it is currently weak. It is an offence to damage critical habitat, but areas only in or on Commonwealth land, which makes the scope extremely limited. The vast majority of nationally listed species do not occur on commonwealth land.

The United State have used critical habitat designations extensively, with a number of reviews finding that critical habitat listings are more likely to be stable or improving within two years of listing, and those listed for longer than two years were twice as likely to be improving in terms of population size, than those without protections. [vii]

This element of the act need to be broadened and strengthened to allow the application of critical habitat determinations, enforceable across all land tenures. These tools could be particularly useful when dealing with major events such as 2019-2020 catastrophic bushfires.

7. Restoration opportunities under the EPBC Act.

The Discussion paper QUESTION 11 asks *"How can environmental protection and environmental restoration be best achieved together? Should the EPBC Act have a greater focus on restoration? Recovery planning and threat abatement planning need to be strengthen in the act and in delivery.*

Recovery plans for threatened species and ecological communities provide the Commonwealth, state and territory governments the legislative instrument to establish the processes and mechanisms for ecological restoration and species recovery. The EPBC Act details the development of recovery plans but lacks clear frameworks to enforce, implement, fund and review them.

There should be mandatory development of recovery plans for threatened species or ecological communities that:

- Is consistent with the best available science
- Includes the identification of critical habitat
- Including better guidance to decision makers for impacts on threatened species
- Establishes a national recovery fund that invests directly in recovery plan implementation and strategic priority actions
- Includes a framework to assess and monitor the effectiveness of recovery plans that should include mandated annual reporting and auditing of plan implementation and performance.

It is also proposed that there would be obligations for state and territory jurisdictions to actively assist and/or lead on recovery plan implementation.

Threat abatement planning: According to the Invasive Species Council (ISC) [viii] at least 100 Australian species have gone extinct since European colonisation. Most extinct plants have been lost to land clearing and most extinct animals to invasive species (mammals mainly to feral cats, foxes and changed fire regimes, frogs to chytrid fungus, island birds to exotic rodents and hunting, and lizards to the wolf snake). Invasive species have also been the leading cause of extinctions globally. Three extinctions (2 mammals and a lizard), and 2 extinctions in the wild (2 lizards) have occurred since 2009.

Invasive species are currently the most prevalent threat to Australia's native plants and animals – imperiling 94% of nationally threatened vertebrates and 80% of plants (82% of the total). Ecosystem modifications (due mainly to altered fire and hydrological regimes) are the second-most prevalent threat, affecting 74% of listed species, and agricultural activity is the third, affecting 57% of threatened species. These are IUCN categories of threat, which do not include a specific 'habitat loss' category, but a 2011 analysis found that habitat loss threatens 80% of nationally listed species.

We cannot save species and ecological communities without dealing with these major threats – invasive species, habitat loss, altered fire regimes, altered hydrological regimes and livestock grazing. Yet there are no Key Threatening Process (KTP) listings for the last three of these. Land clearing is a listed KTP but has no threat abatement plan. And although 14 KTPs are invasive species, a large number of major invasive threats are not listed as individual KTPs, but are instead included within the 'novel biota' KTP, a moribund listing without any abatement plans. This means the KTP system is not applied for several major threats to biodiversity and only partially for the 2 leading threats (invasive species and habitat loss).

Strengthening the KTP system should be one of the highest priorities for the following reasons:

- Abatement of key threats is the most effective and cost-effective way to protect and recover threatened species and ecological communities.
- Effective threat abatement benefits many other species and ecological communities and improves overall environmental health.
- Effective threat abatement brings many social and economic benefits, including for agriculture.

Greater focus should be made on mandatory threat abatement planning. Public nomination for key threatening processes should be continued with assessment by the TSSC. All valid nominations for listing must be assessed within two years of nomination. The Act should require the Minister to ensure statutory assessment of all listing recommendations from the TSSC and listing periods are met. Listing outcomes and timeframes would be monitored and reported on publicly. All listed Key Threatening Processes (KTPs) should have an instrument of response, including the threat response statement, or threat abatement plan.

Threat abatement plans are the primary threat response instrument and need to be clear and concise. They must be more tightly focused on threat abatement actions and include mandatory implementation obligations and commitments of all parties, a monitoring and reporting regime to track threat status and outcomes for threatened biota and explicit targets for abatement and triggers for review/revision of the TAP and how the TAP will be integrated with relevant recovery plans and other plans.

Similar to recovery plans there would need to be a mandatory annual monitoring system and an obligation for state and territory governments to implement plans.

The VNPA support key reforms proposed by the Invasive Species Council, which include:

- **Systematic KTP listing:** KTPs should be comprehensively identified and listed through a systematic scientific process overseen by the TSSC. In addition, a public nomination process should be retained to ensure that emerging, contentious or poorly known threats are also assessed. The KTP list should be regularly reviewed to keep it up-to-date.
- **Scientific decision-making:** The TSSC (or equivalent independent committee of experts) is the appropriate decision-maker for scientific and technical decisions, including to list KTPs
- **A focus on emerging threats:** An additional threat category – an emerging threatening process (ETP) – should be established to facilitate precautionary or urgent interventions to prevent emerging threats becoming KTPs.
- **Specified composition of the threatened species scientific committee:** The Threatened Species Scientific Committee should include suitably qualified experts from relevant scientific disciplines, with these disciplines specified in the EPBC Act. It should not include sectoral or industry representatives lacking relevant scientific expertise**.**
- **A mandated instrument of response:** All listed KTPs (or KTP subsets in the case of multi-threat KTPs) should have an instrument of response. Initially, a threat response statement should be developed, as part of or as soon as possible after a KTP listing, as an independent science-based statement of what is needed to abate the threat, specifying the urgency, benefits and likely costs of abatement and providing advice about the most appropriate instruments (whether planning, policy or regulatory) to facilitate abatement. Then, a full threat abatement plan should be developed unless the following circumstances apply:
    - ***i.*** Abatement is significantly constrained by deficiencies of data, operational knowledge or other forms of technical feasibility or;
    - ***ii.*** Abatement can only be achieved through other processes such as legislative or policy changes. Both instruments must specify monitoring, reporting and review obligations.
- **Prioritised abatement actions:** To guide prioritisation of threat abatement actions, a 'priority threat management' approach is needed to identify the best returns on investment actions, based on the likely costs, potential benefits and feasibility of the proposed actions.
- **Alignment with recovery plans and actions:** A framework is needed for integrating recovery actions for threatened species and ecological communities into threat abatement plans. This can be facilitated by mapping KTPs and species threatened by each KTP to prioritise focus areas and species for abatement actions and optimise benefits across broad geographical areas.
- **Threat abatement plans structure and essential elements:** Threat abatement plans should include the following elements (among other things):
    - The implementation obligations and commitments of all parties;
    - The costs of implementation;
    - A monitoring and reporting regime to track threat status and outcomes for threatened biota;
    - Explicit targets for abatement and triggers for review/revision of the plan (e.g. based on density-damage relationships or the development of new abatement techniques);
    - Two classes of actions:
        - Prescribed actions – those which are spatially or otherwise explicit (e.g. a critical research program) with assigned responsibilities;
        - Described actions for future or other-party implementation, with the role of the plan being to specify priorities, create a mandate and maximise abatement opportunities

(e.g. to take advantage of on-ground opportunities as they arise and synergies with recovery plans and other abatement plans).

- Information about interactions with other threats and strategies for responding to those interactions and how the abatement plan will be integrated with relevant recovery plans and other abatement plans and the co-benefits of abatement, and actions to optimise social and economic benefits.

- **Accessible data repository:** A publicly accessible repository of data and information should be created to support decision-making about threat abatement actions. If new data is needed, a 'value of information' approach should be used to prioritise the collection of data that will be most beneficial for decision-making.

8. Community rights to review decisions and enforce the EPBC Act

Access to justice is a crucial component of public confidence in environmental decision making. It is also one of the best ways to ensure accountability, transparency, and guard against corruption in decision-making. Reforms must include:

- Open standing for any person to seek review of government decisions or to enforce a breach or anticipated breach through third party enforcement.
- Extending legal standing to merits review of approval and permitting decisions. This has been shown to improve the rigour of decision making.
- A statutory right for citizens to ask the court to require performance of mandatory duties by the Minister or other decision-makers under the Act.
- Protection for costs for public interest legal proceedings, for example limiting upfront cost orders that deter the community from community from excising legal rights.

9. The role of Offsetting

Biodiversity offsets can be hugely problematic, as it is not possible to truly offset the destruction of important vegetation or the removal of threatened species. Offsetting, in our view has not been demonstrated to work effectively, to deliver real measurable gains to the environment, rather it has been used as a tool to facilitate trade-offs. If offset are used it should only be done so as option of absolute last resort, after a process of avoiding, minimizing has been exhausted and strict rule should apply.

The VNPA is opposed to the use of offsets that permit destruction of medium to high quality ecosystems where there is no evidence that the offset can achieve the same or better conservation value.

If an offset is to be used, then:

- The offset should be in place, transparent (e.g. specified on land titles for private land), supported by an effective enforcement program, and be legally protected before any losses of native vegetation are permitted.
- The offset should result in an enduring and measurable net gain in extent and quality of indigenous ecosystems, including species and genetic diversity, ecosystem function, and ecosystem services.
- Existing conservation reserves should not be used as offsets unless restoration (revegetation or understorey re-establishment) or enlargement is involved.
- The offset should be in the same geographical area and include the same ecosystems and species that are being adversely affected by a development.

- The offset must be able to be managed appropriately, such as with fire, to enable ecosystem function, and not be subject to restrictions.
- Restoration offsets must apply the National Standards for Ecological Restoration developed by the Society for Ecological Restoration Australasia. Allowance must be made for an uncertain outcome, such as loss of an offset due to fire, changed hydrology, or land use, by using a multiplier (e.g. every hectare of land to be cleared or every nesting site lost requires compensation of at least X hectares or X nesting sites where X>five).
- Meaningful public consultation should occur for all projects which would result in significant degradation of indigenous ecosystems.
- Clear lines of responsibility should be established for offset delivery, monitoring, evaluation and maintenance over the long term.
- Subsequent auditing must occur to ensure that there is compliance with regulations concerning the management of the offset and funding for such auditing must be paid in advance by the proponent via a bond. Reporting to the public of offset compliance and effectiveness must be timely and transparent.
- The proponent must take full responsibility for paying all the costs associated with locating, establishing, and maintaining and evaluating the effectiveness of the offsets over the long-term.

10. Better recognition of cumulative impacts of individual actions to be covered by the EPBC Act

The EPBC Act does not cover the possible cumulative impact of multiple individual actions, and instead defers to states and territories to deal with through their own legislation. In a new EPBC Act, this needs to change so that **cumulative impacts of individual actions <u>are</u> covered.**

How the current EPBC Act fails threatened species – The Hooded Plover Case
VNPA and other environmental groups wrote to the Environment Minister on 22 November 2016, to request the action of commercial racehorse training in a coastal reserve in Victoria's south west (The Belfast Coastal Reserve), be called in for assessment under the EPBC Act. This was due to the likely significant impacts on an 'important population' of a nationally-listed threatened species, the Hooded Plover.

Although the impact met most significant impact criteria, our request was denied resulting in no federal assessment or approval, and argued by the Environment Minister that impacts were not significant:

"Under the Act, an individual action can only be considered if it has, will have or is likely to have a significant impact on a matter of national environmental significance. Based on the information available, the horse training activities being undertaken in the reserve as individual actions are unlikely to result in a significant impact to matters of national environmental significance."
And
"The possible cumulative impact of multiple individual actions is not covered by the Act, and is instead addressed through state and territory legislation."

What was overlooked throughout the process by the Department, is that the Hooded Plovers plight is exacerbated, from the cumulative and compounding impact these individual impacts can have on such an important strongholds for this population, which would likely have impacted the entire national population.

The individual horse trainers were argued by the Department to be individual actions, but the sheer number of up to **160 horses a day**, organized by multiple trainers, under the auspices of a program coordinated by a single entity the Warrnambool Racing Club, on one small stretch of beach where an important population of Hooded Plover live and breed.

The scale of the activity warrants cumulative and compounding impacts as likely significant on the national population, and a severe short coming in the either EPBC Act or the application of the Act by the Department to reject what was a clear impact on 44 documented Hooded Plover breeding territories, within the Reserve, which is around 12% of the Victorian population, 2.5% of the national population), and is the most important non-breeding site ever recorded, with flocks as large as 61 individuals during autumn and winter months.

The triggering of the EPBC Act and subsequent assessment due to impacts on Matters of National Environmental Significance, seems to currently be heavily weighed against an action being called in for assessment. Even when circumstances changed, when all commercial racehorse training was going to proceed under the auspices of the Warrnambool Racing Club, with the support of the State government and cumulative significant impacts could be demonstrated more strongly, the action was still not called in for assessment.

Cumulative impacts of individual actions should be covered in the new EPBC Act, requiring stronger oversight by the Federal Department.

Please contact:
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[i] Page 25 of the 2016-17 MSA Progress Report2016 -2017 https://www.msa.vic.gov.au/__data/assets/pdf_file/0026/327059/Melbourne-Strategic-Assessment-Progress-Report-2016-17.pdf

[ii] Page 48, Table 9, (S2.13). Program Report https://www.msa.vic.gov.au/__data/assets/pdf_file/0022/64813/DMNSC-Program-Report-December-2009.pdf

[iii] [iii] https://www.msa.vic.gov.au/__data/assets/pdf_file/0028/64792/Habitat-Compensation-under-the-Biodiversity-Conservation-Strategy-Aug-2013.pdf

[iv] https://www.msa.vic.gov.au/__data/assets/pdf_file/0026/327059/Melbourne-Strategic-Assessment-Progress-Report-2016-17.pdf

[v] http://www.veac.vic.gov.au/documents/SAPL%20Discussion%20Paper_online_o.pdf

[vi] http://www.veac.vic.gov.au/

[vii] Fitzsimons, J.A (2020), Urgent Need to Use and Reform Critical Habitat Listing in Australian Legislation in Response to the Extensive 2019-202 Bushfires, Environmental Law & Planning Journal, Thompson Reuters 37 EPLJ 143.

[viii] https://invasives.org.au/