

# THREATENED SPECIES SCIENTIFIC COMMITTEE

*Established under the Environment Protection and Biodiversity Conservation Act 1999*

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## Ongoing modernisation of conservation planning under the EPBC Act

### Background

All listed threatened entities (species and ecological communities), other than species listed in the Extinct and Conservation Dependent categories, and ecological communities listed in the Vulnerable category, are Matters of National Environmental Significance under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act provides a legal framework to protect and manage Matters of National Environmental Significance.

Statutory conservation plans are an important component of this legal framework. Where required, conservation plans are developed under the EPBC Act to provide guidance on the management and research actions to support the recovery of entities listed as threatened, including advice to those who seek: (1) to actively participate in their conservation and recovery, or (2) approval for their activities. Two types of statutory conservation plans can be developed under the EPBC Act<sup>1</sup>: Conservation Advices, which have been available since 2007, and Recovery Plans, which have been available since the commencement of Commonwealth legislation in 2000 (see Appendix).

Conservation Advices have several advantages over Recovery Plans:

- They are approved under law from the time an entity is listed as threatened.
- They can be prepared quickly, updated easily and responsively as new information on status, threats and management scenarios relevant to the listed entity becomes available.
- They can act as source materials for other, more complex statutory planning documents such as multi-entity or regional recovery plans.

Similar to Recovery Plans, Conservation Advices:

- can be supported by Recovery Teams or other governance to coordinate implementation,
- inform assessment and approval processes<sup>2</sup> under the Act<sup>3</sup>, and
- inform Australian Government investment in threatened entity conservation.<sup>4</sup>

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<sup>1</sup> The minimum content requirements for conservation advices are set out in s266B of the EPBC Act, and for recovery plans in s270 of the EPBC Act.

<sup>2</sup> Environmental assessors are guided by the Significant Impact Guidelines <https://www.environment.gov.au/epbc/publications/significant-impact-guidelines-11-matters-national-environmental-significance>. The application of these guidelines is informed by all relevant conservation planning documents including both Conservation Advices and Recovery Plans.

<sup>3</sup> Including Regional Forest Agreements which consider both Conservation Advices and Recovery Plans

<sup>4</sup> Priorities for investment are informed by a number of factors including the nature of threats and listing status irrespective of whether a species has a Recovery Plan or not.

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### **Threatened Species Scientific Committee's role**

Before approving any statutory conservation plan, the Minister must consult the Threatened Species Scientific Committee (henceforth the Committee).

In the development of Recovery Plans, the Committee provides advice to the Minister on the:

- need to have a Recovery Plan in addition to a Conservation Advice, whether this be initially (at the time of listing) or in a subsequent decision,
- the content of the Recovery Plan, and
- the time frame within which each Recovery Plans should be made<sup>5</sup>.

In giving this advice the Committee must take into account the following matters:

- the degree of threat to the survival in nature of the entity,
- the potential for the entity to recover,
- the genetic distinctiveness of the entity,
- the importance of the entity to the ecosystem,
- the value to humanity of the entity, and
- the efficient and effective use of the resources allocated to the conservation of the entity<sup>6</sup>.

Unlike Conservation Advices which are approved at the time of listing, Recovery Plans typically take several years to make, in part because of the statutory consultation times. If a Recovery Plan requires amendment, a new Plan must be made or the existing Plan varied, both time-consuming processes. In the last 10 years, the Committee has recommended that around 85% of newly-listed entities have a Conservation Advice but not a Recovery Plan and that both instruments be prepared for the remainder.

### **What is being done**

The Committee is working with the department in progressing a strategic project to ensure every listed species and ecological community has a conservation plan in place that is fit-for-purpose and provides an efficient, best-practice method for conveying the recovery needs of that entity to all stakeholders.

The department is undertaking a formal review of all past decisions whether or not to have a Recovery Plan. The Committee is advising the Minister on the results of this review. Preliminary results of this review suggest that the proportion of already-listed entities that require a Recovery Plan will be similar to the proportion of newly-listed species that have been recommended to have a Recovery Plan in the last 10 years.

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<sup>5</sup> The EPBC Act specifies a timeframe of 3 years for a Recovery Plan to be in place from the time of the Minister's decision to have the Recovery Plan and which can be extended by a further 3 years by the Minister. In practice, the time to prepare a plan is typically between 2 and 5 years.

<sup>6</sup> This section paraphrases the requirements specified in the EPBC Act s274(2)

Because a Conservation Advice is approved at, and is in force under law from the time of listing, it provides targeted and timely guidance to support recovery effort to all threatened species and ecological communities, especially those that are in the most urgent need of assistance. Listed entities with complex planning needs may continue to be best-served by Recovery Plans. Nonetheless, the conservation of most listed entities can be efficiently and effectively guided by a Conservation Advice .

For more details of the history of conservation planning under the EPBC Act and the legislative context, see Appendix A.

### **The goals of this work**

- To ensure conservation plans are in place for all entities listed as threatened to guide recovery and restoration actions. These conservation plans will be a mix of Conservation Advices and Recovery Plans, to ensure the planning approach is efficient, flexible and fit-for-purpose.
- To ensure Recovery Plans and Conservation Advices continue to provide effective guidance for recovery.
- To systematically review all entities listed as threatened that currently have a decision to require or update a Recovery Plan, and apply contemporary decision making to ensure consistency across all Recovery Plan decisions.

### **Committee Principles**

As a streamlined, nimble and cost-effective document for identifying the conservation needs and priority recovery actions, the Committee considers that a Conservation Advice is the most appropriate document for guiding the recovery of entities listed as threatened in many circumstances. Nonetheless, in addition to the statutory requirements listed above, when one or more of the following principles apply, the Committee may advise the Minister that a Recovery Plan for a single or multiple species or ecological community, or a geographic region, is required in *addition* to a Conservation Advice:

1. There are significant complexities in conservation planning that present special challenges for coordination of effort. This complexity can arise from:
  - the entity being subject to multiple, significant threats;
  - the range of the entity occurring across multiple state, territory or Commonwealth borders; across multiple land tenures; and/or across a high proportion of private land; or
  - there being large numbers, and/or diverse views, of stakeholders;
  - the entity being subject to high development pressure or other threats that can be regulated under the EPBC Act; and/or
2. The entity has significant occurrences on Commonwealth land or sea where the Commonwealth must implement a Recovery Plan to the extent that it applies (s269(1)).

Additionally, and in the case of a subsequent Recovery Plan decision, if the Committee considers that a Recovery Plan is no longer needed according to the principles above, a Recovery Plan may still be recommended in the case that:

3. There is an established Recovery Team<sup>7</sup> coordinating the implementation of a Recovery Plan, who are willing to contribute to any reviews and updating of that Recovery Plan; and/or
4. A current advanced draft of a high-quality Recovery Plan is already available that demonstrably incorporates the views, and has the active support of a range of stakeholders.

The relative importance of each of these principles may differ for each entity and the Committee considers this aspect in formulating its advice.

## **Actions**

The following actions are being undertaken by the Committee:

### **Recovery Plan decisions reviewed<sup>8</sup>**

The Committee is working with the department to complete reviews of the Recovery Plan decisions for 811 legacy entities which pre-date contemporary conservation planning decision making (i.e., Recovery Plan decisions made before 2013) by March 2022.<sup>9</sup>

The Committee will advise the Minister on the most appropriate planning document to guide recovery for each reviewed entity.

After considering the advice of the Committee and the comments received during the public consultation period (process described in Appendix), the Minister may make a subsequent decision to no longer require a Recovery Plan for a threatened species or ecological community.

### **New Conservation Advices developed**

The Committee is working with the department to prepare a Conservation Advice<sup>10</sup> for approval by the Minister to guide recovery of legacy entities which do not have an approved Conservation Advice in place and where a decision is made to no longer require a Recovery Plan. The Committee aims to have over 200 Conservation Advices completed for such entities.

In providing Conservation Advices to the Minister, the Committee may include advice as appropriate on whether: (1) a Recovery Team or similar be formed to guide and coordinate implementation; (2) a Conservation Advice should subsequently inform other planning instruments such as a Bioregional Plan or a multi-entity Conservation Plan; and/or (3) a suggested date for the review of a Conservation Advice.

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<sup>7</sup> Recovery teams established under the Australian Government's [Recovery Team Governance - Best Practice Guidelines](#)

<sup>8</sup> Work is well underway on this action

<sup>9</sup> Decisions made after 2013, for 103 entities, will not be reviewed.

<sup>10</sup> In practice, Conservation Advices are drafted by the department for the Committee to review and recommend for approval by the Minister.

### **New or revised Recovery Plans in place**

Recovery Plans will continue to be developed for those entities that the Minister has determined require a new or revised Recovery Plan. The Committee will work with the department to complete new or revised Recovery Plans for priority listed entities in the next 12 months<sup>11</sup>.

### **Reporting framework progressed**

A Recovery Team governance model to monitor conservation plan implementation, track progress and report on plan effectiveness is being progressively developed.

The Committee will work with the department and other stakeholders to further develop appropriate governance systems to track and report on the implementation of priority conservation plans.

Existing reporting mechanisms will be reviewed by December 2021.

### **Response to bushfires incorporated**

In alignment with the Committee's 10-point Bushfire Response Plan, the Committee is working with the department to update Conservation Advices and Recovery Plans for the highest priority fire-affected species and ecological communities to include the impacts of, and management response to, the 2019-20 bushfires.

The Conservation Advices and Recovery Plans to be updated have been identified via a departmental review.

### **Multi-entity conservation plans**

The benefits of multi-entity conservation plans include improved co-ordination, efficient use of scarce resources, and more effective stakeholder engagement, increasing the opportunity for improved and more enduring conservation outcomes.

The Committee will recommend thematic groupings of threatened species and ecological communities for inclusion in multi-entity conservation plans based on common threats and recovery needs.

Where appropriate, the Committee will also recommend combining Recovery Plans for threatened species and Wildlife Conservation Plans for listed migratory or marine species and cetaceans protected under the EPBC Act.

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<sup>11</sup> Including in 2021, Recovery Plans for the Koala, Swift Parrot, Australian Fairy Tern, Mahogany Glider, Australasian Bittern and Greater Bilby.

### **Future planning opportunities identified**

A range of planning instruments is available under the EPBC Act, some of which have considerable potential but are under-utilised, for example Bioregional Plans. The 2019 Independent Review of the Act<sup>12</sup> recommended increased use of Bioregional Plans.

The Committee will identify opportunities for Conservation Advices, as source documents for future planning initiatives such as multi-entity Conservation Advices and Recovery Plans and Bioregional Plans.

### **Revision process developed for Conservation Advices**

When this formal review is complete, the Committee will work with the department to develop a system under which Conservation Advices will be identified and prioritised for updating as required.

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<sup>12</sup> <https://epbcactreview.environment.gov.au/>

## **APPENDIX A: Supplementary information**

### **EPBC Act initial requirements**

At the commencement of the EPBC Act in 2000, all Recovery Plans that were in force under the *Endangered Species Protection Act 1992* were continued as being in force and having effect for the EPBC Act (see the *Environmental Reform (Consequential Provisions) Act 1999*). In addition, on commencement, the EPBC Act required a Recovery Plan to be in place for all entities listed as threatened.

The timeframes for getting a Recovery Plan in place varied and were usually between 2 and 5 years, often depending upon the distribution of the entity listed as threatened (being fully or partially in or outside of a Commonwealth area) or upon the listed category (i.e., Critically Endangered, Endangered or Vulnerable) of the entity.

### **2007 Amendments**

The 2007 amendments to the EPBC Act removed the mandatory requirement for all entities listed as threatened to have a Recovery Plan and incorporated a requirement for all such entities to have an approved Conservation Advice at all times (see section 266B(1)).

The amendments required the Minister to decide whether an entity listed as threatened also required a Recovery Plan, in addition to the Conservation Advice. At the time of the amendments, all entities that either had a plan in force or in preparation were identified as requiring a Recovery Plan (*Environment and Heritage Legislation Amendment Act (No. 1) 2006* - 'Commenced List') without an individual assessment of the need for a Recovery Plan for those entities. Those without a plan in force or in preparation were placed on the 'Not Commenced List' and the Committee was required to give the Minister advice on whether the species or ecological community required a Recovery Plan under section 269AA(1).

Transitional provisions<sup>13</sup> further provided that the requirements under 266B(1), which required all species and ecological communities to have a Conservation Advice, did not apply in relation to a species or community unless and until the Minister decided not to have a Recovery Plan under the amended EPBC Act. The effect of this transitional provision was that those species and communities that already had Recovery Plans in place or were deemed to require Recovery Plans would not also require Conservation Advices at the time the amended EPBC Act commenced.

The Minister, taking into account TSSC advice and public comments, can change the decision to require a Recovery Plan.

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<sup>13</sup> (*Environment and Heritage Legislation Amendment Act (No.1) 2006* see para 15(4))

## Legislation Act 2003

Legislative instruments for Recovery Plans sunset 10 years after taking effect. The *Legislation Act 2003* came into force in 2005. At the time instruments were registered to back-capture Recovery Plans that were adopted prior to 2005. As there were Recovery Plans in place at the time of the 2007 amendments to the EPBC Act, the entities concerned were exempt from needing a Conservation Advice. Now that the Recovery Plans instruments are sunsetting, a Conservation Advice is required for each of these entities to ensure that the Minister is not in breach of s266B.

While instruments sunset after 10 years, the decision to have a Recovery Plan remains under the EPBC Act.

## The legacy of pre-2007 requirements

The legacy of pre-2007 requirements under the Act has left a current requirement for 914 listed entities to have Recovery Plans in place. Legislative instruments for Recovery Plans sunset (i.e., are no longer in force) 10 years after taking effect, unless they are remade<sup>14</sup>. The EPBC Act creates an obligation on the Minister to ensure that once a plan is made, it remains in force until a subsequent decision is made not to have a Recovery Plan, that is, Recovery Plans which sunset will need to be remade where there remains a decision of the Minister to have a Recovery Plan. This situation is providing an opportunity to replace Recovery Plans with more nimble and modern planning instruments, in the form of Conservation Advice if appropriate.

## Current relevant statutory requirements

- All entities listed as threatened, other than species in the Extinct and Conservation Dependent categories and listed ecological communities in the Vulnerable category, are Matters of National Environmental Significance and protected under the Act, regardless of requirements for conservation plans.
- Recovery Plans must be reviewed by the Minister at least every 5 years (s279).
- The Commonwealth must implement a Recovery Plan or Threat Abatement Plan to the extent which it applies in Commonwealth areas (s269(1)).
- When making a decision on an action, the Minister must 'have regard to' an approved Conservation Advice for a species or ecological community that is likely to be impacted by the action and must 'not act inconsistently' with a Recovery Plan (s139).<sup>15</sup>

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<sup>14</sup> These time limits do not apply to Conservation Advices which are not legislative instruments

<sup>15</sup> Environmental assessors are guided by the Significant Impact Guidelines <https://www.environment.gov.au/epbc/publications/significant-impact-guidelines-11-matters-national-environmental-significance>. The application of these guidelines is informed by all relevant conservation planning documents.



- All listed entities require a Conservation Advice unless they had a Recovery Plan in place prior to 2007. Entities can therefore require:
  - A Conservation Advice only (for those entities with a decision not to require a Recovery Plan);
  - A Recovery Plan only (for those entities with a Recovery Plan in force since prior to 2007);
  - Both a Conservation Advice and a Recovery Plan (for those entities listed after 2007 with a Ministerial decision to require a Recovery Plan).

### **Process for the review**

For some entities, the review process will result in the recommendation to retain their Recovery Plan status (i.e., they will continue to either require a Plan or keep a current Plan in force).

For those that will have a subsequent decision (to not have a Recovery Plan), the key activities for this process include the following (note: statutory requirements are marked with an asterisk\*):

1. Review each entity to determine which ones should be progressed through the process of a proposed subsequent Recovery Plan decision.
2. Seek input from relevant state/territory jurisdictions/ Commonwealth departments and from relevant internal (departmental) areas on the entities proposed for review.
3. \*Threatened Species Scientific Committee (Committee) provides its initial advice on the Minister's *proposed* subsequent Recovery Plan decision.
4. \*Minister considers the Committee's advice and agreement to publish a notice seeking public comment on the *proposed* subsequent Recovery Plan decision.
5. \*Public comments sought for at least 30 business days. Where known, interested stakeholders will be notified (e.g., Recovery Teams, NGOs and researchers).
6. \*Committee provides its final advice to the Minister on the subsequent Recovery Plan decision, taking into account comments received.
7. \*Minister considers Committee advice and comments received from the consultation process and makes his/her subsequent Recovery Plan decision.
8. \*Minister's decision is published. Relevant stakeholders advised.

Where a subsequent decision is made by the Minister to not have a Recovery Plan for a species or ecological community, the department will ensure that a new or updated Conservation Advice will be approved for that entity within 30 days of the Minister's decision.