

Committee Secretary  
Senate Standing Committees on Environment and Communications

By email: [REDACTED]

Dear Committee Secretary

**Australia's faunal extinction crisis**

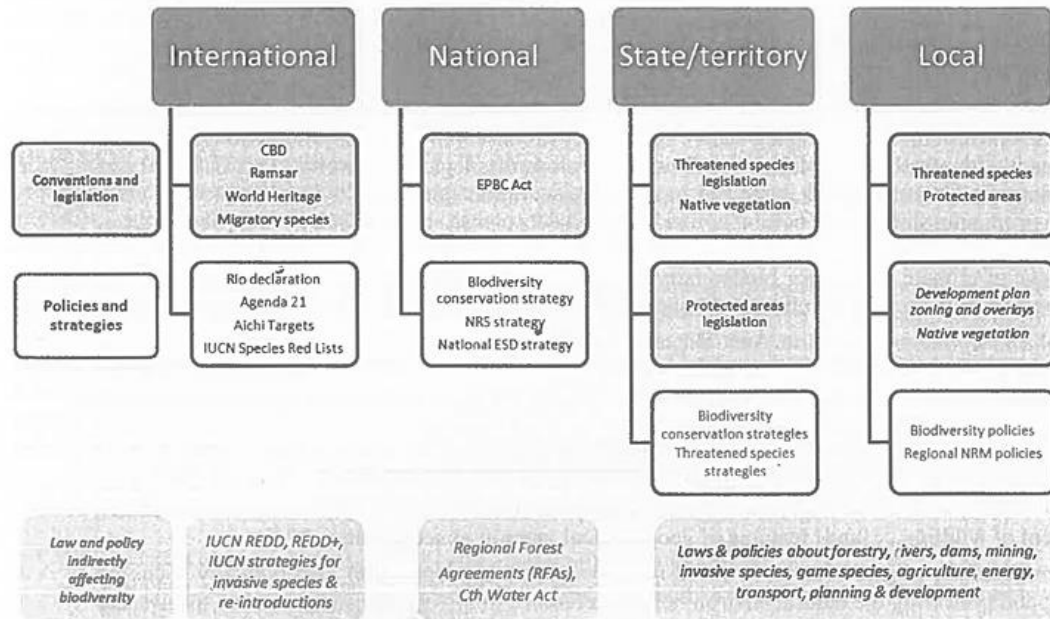
The Law Institute of Victoria (LIV) welcomes the opportunity to provide a submission to the Senate Standing Committees on Environment and Communications inquiry into Australia's faunal extinction crisis (the Inquiry).

The Law Council of Australia, of which the LIV is a constituent body, made a submission to the Inquiry. The LIV supports and endorses that submission, and makes the following supplementary submission in the Victorian context.

In recent years, States including Victoria have been given, and have voluntarily taken, increased responsibility for the processes which have resulted in the faunal extinction crisis. State law and action has addressed policy objectives derived at the Commonwealth level (for example, by the operation of bilateral assessment and approval agreements in respect of *Environment Protection and Biodiversity Conservation Act 1999* (Cth) protections and approvals) and at the State level (for example, State legislation in respect of climate change such as the *Climate Change Act 2017* (Vic)).

The LIV considers the interconnected system of laws and policy should be consistent in order to facilitate consistent outcomes.

**FIGURE 1. International and Australian sources of legal purposes in the legal framework for conservation.**



Source: Phillipa C McCormack 'The Legislative Challenge of Facilitating climate change adaptation for biodiversity' (2018) 92 ALJ 546

Given the trend of decentralisation of responsibility and the complexity of the relevant legal framework, it is critical that the Commonwealth regulatory and policy framework ensures that Commonwealth policy ends are met through State actions. The framework should:

- be sufficiently certain as to enable States to act consistently and in accordance with intra- and international obligations;
- provide for the Commonwealth to take a leading role in the development of baseline data, the monitoring, reporting and evaluation of management and recovery actions on the basis of that data, and transparent access to the data;
- provide clarity in respect of how Australia's international obligations are to be achieved in the implementation of policy and law;<sup>1</sup> and
- empower State and local planning systems, the frontline of threatened species extinction, to act on the basis of the best available science, and preclude them from producing planning results that are inconsistent with Commonwealth protections and Australia's international obligations.

The recognised potential for climate change to impact on biodiversity,<sup>2</sup> and the limits on State powers in respect of relevant activities, should be reflected in the Commonwealth framework. The LIV reiterates

<sup>1</sup> Including, particularly, the achievement of Aichi Targets 10, 11, and 15 (see paragraphs 6 to 11 of the Law Council of Australia submission).

<sup>2</sup> Page 9, Summary for Policy Markers, Global Warming of 1.5°C an IPCC special report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty , 6 October 2018

the concerns raised in its submission to the Senate inquiry into 'Current and Future Impacts of Climate Change on Housing, Buildings and Infrastructure' dated 28 November 2017 (attached).

If you would like to discuss any of the matters raised in this letter, please contact me or Anna Gaskin, LIV Property and Environmental Law Section Policy Officer, at [AGaskin@liv.asn.au](mailto:AGaskin@liv.asn.au) or on (03) 9607 9445.

Yours sincerely



Belinda Wilson  
President  
Law Institute of Victoria