



*The South Australian Ornithological Association Inc.*

Founded 1899

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September 3, 2015

The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001

**Traditional Rights and Freedoms—Encroachments by Commonwealth Laws  
(ALRC Interim Report 127)**

Dear Sir/Madam,

You have invited submissions and comments on the interim report into “Traditional Rights and Freedoms— Encroachments by Commonwealth Laws”.

I write to you on behalf of our 600 members and as President of the South Australian Ornithological Association Incorporated (Birds SA), which was founded in Adelaide in March 1899 and is the oldest birding association in Australasia. It is a not-for-profit organisation dedicated to the conservation and study of Australian birds.

We are concerned that changes that may follow from matters discussed in chapter 7 on property rights, and especially chapter 8 on real property rights, which will adversely affect the operation of conservation laws such as the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act). Widespread clearing of natural vegetation followed the settlement by Europeans in 1778 such that in many areas as much as 95 to 97% of the natural cover was removed. What does remain is nowhere in a pristine state, particularly as a result of the introduction of feral animals and invasive plants. Many extinctions of native animals followed as a consequence. Australia is in the unhappy position of having had more mammal species extinctions than any other country. The EPBC and similar legislation was enacted to prevent further degeneration of the natural estate and the further extinction of native species.

We understand that some contend that conservation laws, especially the EPBC Act, curtail one or more of the property owner's bundle of rights, and so are a prima facie ‘taking’ of some of these rights. Section 51(xxxi) of the Constitution provides that the Commonwealth Parliament may make laws with respect to:

*the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.*

As such the contention is that, under the Constitution, land owners are therefore entitled to compensation on just terms for this loss. The threats to conservation are that, under certain political and economic environments, sufficient funds would not be forthcoming to compensate owners for the loss they might incur if they are not allowed, for example, to clear land of native vegetation. In these circumstances any owner wishing to clear native vegetation, or undertake any form of development currently prohibited by the EPBC or other Commonwealth acts, would then be free to proceed. The Federal Treasurer thus becomes the de facto Minister of Environment and controls what may or may not be done to the environment without any controls or constraint. A widespread loss of remanent habitat by clearing of native vegetation and other actions may be expected if this proposition becomes law.

Monitoring of bird populations show a steady decline in bird numbers over the past twenty years. The most recent results are particularly disturbing in that even such common and familiar species as the Willie Wagtail are showing significant declines. More and more species will have to be added to the EPBC schedules of Endangered and Threatened species if these trends continue. Birds, and other animals, are highly vulnerable during droughts. Climate change is expected to increase the incidence of droughts and worsen their severity. Animals will need refuges to survive and corridors of natural vegetation to reach them. Many of the areas which might provide these facilities are on private land. If these are lost we may confidently expect that an unprecedented wave of species extinctions will follow.

It is ironic that this enquiry is into "Traditional Rights and Freedoms". There is also a tradition, and a much older one, that each generation also has obligations, in particular the obligation to care for the land and hold it in trust for future generations. This is a core belief of the Aborigines, the traditional owners of our country, but is also an implicit belief of many other citizens. We are happy with the proposition that farmers and others receive compensation for caring for the land on behalf of city dwellers but we do not want compliance with conservation laws to be linked with a right to receive compensation. The urgency of current budget problems must not be allowed to be irresponsibly paid for by the permanent destruction of our natural estate.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'David Paton', written in a cursive style.

Assoc. Professor David Paton, AM  
President, Birds SA