

Please attach the following **one-page summary** to your submission.

**Comments on the Interim Report for the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)***

**Summary**

**Name of author/organisation:** Sherryl Broderick

**Contact details:** Crookwell, NSW 2583

**Date:** 22 July 2009  
(date of your submission)

**Which chapter(s) of the interim report are you commenting on?**

(e.g. Chapter 11: Heritage) Chapter 2 – Objectives and Commonwealth Role  
Chapter 20 – Review and court access

**Key points of submission**

(please identify up to three main priorities or focal points of your submission):

Use of ESD in the objectives of the Act

Merit Review scope and Judicial Review costs

Process of revision to wording of the Act

Role of the Commonwealth government in both of the above points.

**References** (if possible, include a bibliography of any documents you may wish to make available)

**Confidentiality statement:**

Note that all submissions unless otherwise indicated will be published on this website. You **MUST** indicate on your submission if you wish for your submission not to be published. If you wish for your submission to not be published please mark your submission as 'Confidential'. You should note that even if your submission is not published, the title of your submission and the name of the submitting organisation or individual will be published on the web site. If you wish to not have your details published please contact the Secretariat before making a submission. Contact details from of individuals making submissions will be limited to name, suburb and State/Territory.

**Do you want this submission to be treated as confidential?**

(please state 'yes' or 'no') NO

These comments contain personal information of a third party individuals. The third party individual **consents/does not consent** (*delete or strike out that which is not applicable*) to the publication of their information.

To the Secretariat  
EPBC Review

I write to make comment on the review of the EPBC Act, Interim Report. I will keep my comments to areas where I have practical and academic experience. I have been involved in the area of natural resource management since 1990 at all levels of government and community. My comments relate to two areas which I consider fundamental reasons for the perceived and/or apparent failures of the Act.

Firstly, the objective (b) “to promote ecologically sustainable development” is in conflict with the first objective (a) “to provide for the protection of the environment”. The principles of ESD are in themselves a compromise, an attempt to encompass a broad spectrum of interests, and whilst the link to ESD may still need recognition perhaps it’s timely to take a step beyond this definition. The ESD principles are a compromise in that “short-term economic ... considerations” seldom fit well with ensuring the health, diversity and productivity of the environment for the benefit of future generations. A repeated suggestion in submissions in the interim report was for a more proactive approach. We might consider whether objective (b) is replaced with specific objectives stating the how the Act will deal with the precautionary principle and intergenerational equity and a clear statement that these principals should be weighted equally with economic and social considerations.

It is noted that “the purpose of the Act is not to halt all actions” that are likely to have adverse environmental impacts (2.64). Surely, neither is it the intention of the Act to create litigation as the only means for community or advocacy groups to protect areas with high conservation values. This is usually an unfair fight between parties with very unequal financial resources to continue through a series of appeals. The role of government is to act where markets fail to protect public goods. Where governments fail to protect public goods ethically conscious individuals are compelled to try to do so. If the Act cannot provide a better decision-making framework that reduces litigation then court costs should be waived or an environmental tribunal should hear such cases. I agree with the points made about damages (20.109) and costs (20.117). Public interest litigants have no private financial gain in pursuing litigation. The aim of development applications is to convert public assets, often of global and intergenerational significance into private profit. Also, I mostly agree with point 20.70 regarding the expansion of the scope decisions that can be referred to merit review, however, I confer to others with greater experience as to whether it is sufficient safety net to limit the scope to “approval decisions” or whether the scope should refer to “matters of NES”.

Also, I wish to make a comment about the role of the Commonwealth government in the process to revise the wording of the Act and the decision-making processes. I strongly believe that a lot of the conflict and confusion could be avoided through a paradigm shift from adversarial processes to co-operative processes. I suggest that the Act be revised by a team of independent policy officers, that is, NOT from ‘opposing’ departments. I have

witnessed several instances where the division of natural resource management according to interest group has resulted in inter-departmental competition and outright hostility. It is divisive to have conservation interests isolated from forestry, agriculture and mining interests; the polarisation of interests creates significant cultural differences between government departments. The 'silo' model of managing the environment appears to be a convenient way of diffusing political pressure, rather than government taking a leadership role to resolve conflicts. How different would our environmental outcomes and policies be if the CEOs of international companies had access to the same Minister or high level bureaucrat that had also spoken with the CEO of an international environmental group?

Yours faithfully

A handwritten signature in black ink, reading "Sherryl Broderick". The signature is written in a cursive, flowing style with a large initial 'S'.

Sherryl Broderick  
22<sup>nd</sup> July 2009