

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:** Alan W Stephenson National Conservation Officer,  
Australasian Native Orchid Society (ANOS); Conservation Director, Australian Orchid  
Council (AOC)

**Date:** 26-7-2009

(date of your submission)

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

(e.g. Chapter 11: Heritage) 4,5,6,7,8,9,12,13,19

**Key points of submission Funding, Education, Co-operation**

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

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

**Confidentiality statement:**

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## SUBMISSION TO EPBC INTERIM REPORT

### Environmental Impact Assessment

#### *Discussion of key points*

4.13 - 4.17: Regarding the referrals which result in controlled actions, non controlled actions or non controlled actions not requiring approval; were any of these actions the subject of supervision, oversight or follow-up by the DEWHA? The Review Committee should be aware that not all referrals resulting in a development proceeding are carried out in the correct manner. I am aware of one development which was instigated prior to consent given and another which resulted in clearing of native vegetation beyond the limit of consent granted for that development. Both developments were on a relatively small scale but despite this some oversight is necessary, particularly with either a lack of awareness of the EPBC Act or a lack of willingness to conform to proper environmental conduct.

4.18 - 4.20: Projects often gain approval with the proviso of fixing the environmental difficulties at a later date but frequently this does not occur. A common theme in certain local government areas and among some developers frequently occurs with terrestrial orchids and the stated intention is “don’t worry, we can dig up the orchids and relocate them somewhere else”, regardless if they are endangered species or mycorrhizal dependent.

#### *Assessments – consultants and expert reports*

4.119: Terrestrial orchids have several inherent problems in that the vast majority are deciduous and not noticed until flowering, and are more prone to seasonal fluctuations. They are also the most unrecognised form of flora by those undertaking an EIA and those species which are saprophytic are the most likely to be incorrectly identified. Recognition of this fact by educational institutions currently producing graduates (and those who employ them), undertaking or proposing to undertake EIA work is crucial. Therefore I recommend a more detailed method of instruction in the recognition of terrestrial orchid species generally and listed species in particular, including their habitat requirements. Educational institutions should not be producing environmental science graduates who are unable to identify threatened (or common) species orchids. As an amateur I constantly am asked to identify such plants by persons with tertiary qualifications with the stated reason “orchids and terrestrial orchids in particular are such a specialised area”, however better tertiary training and accreditation can and must redress this recognised shortcoming. Another factor which has bearing on this is the time in which development is required to commence following the EIA. This puts further pressure on immediate species identification and to delay identification

until flowering has occurred should not be encouraged. However, correct and rapid identification can be gained at flowering by means of a digital photo to the Centre for Plant Biodiversity Research and the importance of this cannot be underestimated and is another reason for proper funding support of this department and the environmental portfolio in general. We must not permit economic circumstances to add to the constantly growing list of threatened species.

### *Awareness of the Act*

While it may be true the awareness of the EPBC Act is considered low in some areas, a major failing is the propensity and intention of some developers, whether private or government, to see their developments as being more essential to the community (whether true or not) than the retention of native vegetation and what it contains and therefore more important than any piece of legislation. A case in point is the proposed development of Jandakot Airport in Perth where plans for airport extensions will see the Ken Hurst Park (listed as a “Forever Park”) to be included in the area of development. This park contains native vegetation which provides habitat for native flora and fauna, some of which is rare and endangered, specifically *Arachnorchis huegelii* (syn *Caladenia huegelii*) the Grand Spider Orchid. Jandakot Airport Holdings has continuously rejected any attempts to reconsider their plans and successive state governments have made no moves to enforce state environmental legislation. The EPBC Act must determine whether infrastructure or environment have precedence.

### *Expansion of Public Comment*

This area can be greatly enhanced if notification of proposed developments was relayed to concerned environmental groups. E.g. if orchids were of concern in a proposed development, the Australasian Native Orchid Society (ANOS) and the Australian Orchid Council (AOC) would greatly appreciate being made aware of this via email. Other similar groups could also be made aware of developments pertaining to their particular area of interest and expertise. I am aware of lodgement of developments via various Websites, but this can be after the development has only reached a certain point.

### *Senate inquiry into the operation of the EPBC Act*

5.6: Observations by Andrew Macintosh regarding sections 43A and 43B, land clearing. The EPBC Act must ensure that when land is cleared, such land has been the subject of an EIA and failure to comply should incur significant automatic penalties and habitat reparation. Australia has suffered greatly from excessive land clearing and much of this has been in ignorance of what that section of land contains in the way of flora and fauna.

### *Forestry and RFAs*

The application of RFAs in Tasmania in particular is cause for great concern, as they allow for logging in areas of the known occurrence of endangered species. A recent example is the logging of Coupe BGO34A near Railton and is another example of orchids in general being the last consideration of the developer or the person responsible for the EIA. In this instance the developer was the Tasmanian government. The EIA covering over 80 hectares of forest was conducted by a single person during a Friday afternoon and the following Saturday. This reflects poorly on all concerned, as the endangered species being the target of the EIA was not located during this brief period but by an amateur some time later. Following this, some areas of the coupe were sectioned into 10 metre square lots, the coupe was logged and the lots used as a trial to determine how the orchid withstood the logging operation. The ability to destroy endangered species must be removed from the RFA and this particular operation should be viewed as unacceptable practice. My understanding is that this coupe was logged for woodchips and to know that an endangered orchid was destroyed for this purpose is beyond understanding. (Enforcing RFAs 6.85) Federal oversight of RFA operations is non-existent and regular reviews by most states are years overdue.

### *Land Clearance*

This is still a fact and is currently being undertaken in an area of forest (Mt. Rae), declared an EEC by the NSW Scientific Committee. The amalgamation of the Threatened Species department of the NSW National Parks and the Environment Protection Authority (now the DECC) for the first three years has proved to be unsatisfactory, giving contrary information and permission to the same project. This project requires logging an EEC for the purposes of a retail firewood operation. DECC have now offloaded the matter to the local council and the firewood proponent prepares to take the matter to the NSW Land and Environment Court. The proponent and his advisors with the support of the Fenner School of Forestry and the Farm Forestry Network do not recognise the EEC listing. Numerous flora and fauna within the EEC are EPBC listed species but no federal authority has been brought to bear on this situation. One landholder previously operating under a Voluntary Conservation Agreement has now withdrawn from that agreement due to the contradicting advice and lack of enforcement from the NSW government. This matter is a prime example of the lack of co-ordination between state and federal environmental bodies.

### *Climate Change*

Unlike some animals and birds, orchids are in a relatively fixed position and thus unable to readily relocate to a more suitable habitat, when an existing habitat is slowly but significantly altered by the processes of climate change. It is also obvious

they do not have the ability to evolve at a rate sufficient to match that of already noted climate change. Many species are reliant to some degree on existing insect populations for pollination although many of the pollinators do not exist in the same vegetation as do some orchids and some have a very limited ability to travel distances greater than a few hundred metres. The vegetation on which these insects rely for survival during the period prior to flowering time is also subject to climate change and if this changes significantly then some totally insect dependent species will most likely not survive more than a year or two. The mycorrhiza produced by the vegetation is a vital part of the environmental chain and is subject to change from many areas. These include land clearing for farms, roads, sporting facilities, homes and the extreme changes brought about through all types of mining activities. The latter means has a dual effect, from vegetation clearing to the discharge from processing or burning of the mineral product following extraction. E.g. coal mining and the smelting of other minerals.

Orchid pollinators also require habitat connectivity on a more closely knit scale than most other flora and fauna and the integrity of habitat is crucial to the survival of those species which do not reproduce in a vegetative fashion. It must be noted that most terrestrial orchid species listed as endangered or vulnerable, fall into the category of being either heavily or totally reliant on a mycorrhizal association or an insect. It should also be noted that the majority of Australian insects still require proper identification.

### *Water*

The extraction of ground water must be limited and closely controlled. As rainfall is expected to be significantly altered in the near future (lessened, fragmented & unseasonal), the protection of existing water, above and below ground is essential. Orchids generally and terrestrial orchids in particular are extremely specific as to their water requirements and the time frame in which this water must be applied. Crucial also is any change to the hydrology of any area where orchids exist and terrestrial species are more prone to hydrological changes than epiphytic or lithophytic species. As terrestrial orchids comprise over 82% of native species, this obviously concerns a large number of species and as most of the EPBC listed species are terrestrial, this should highlight the need to retain existing site hydrology across the continent. Any water diverted to or from an orchid site has the potential to be a rapid death warrant for the species *in situ*.

The possible expansion of the population of Australia must be limited to an already recognised figure believed to be 25 million and any savings from the increasing efforts to save water must not be used as an excuse to increase the population to a figure greater than our water providing capacity.

### *Threatened species and ecological communities*

The listing process as currently exists under the EPBC Act is seriously flawed in that the time taken to reach a final determination for any given species is exceedingly long. The TSSC, as a properly constituted body should be provided with the authority to determine all nominations. The minister should be removed from (but advised of) this process and the TSSC should be supplied with the means to complete their task without referral. The TSSC should also be given sufficient financial means to increase staff in order to eliminate the lengthy delays currently experienced with the nomination and listing process. These are the Proposed Priority Assessment List (PPAL) and the Final Priority Assessment List (FPAL). This would ensure a more rapid but means of species assessment, as current periods greater than two years are experienced before a species is recognised and proper legislative protection is assured. Interim protection must also be conferred upon those species which await determination as the current process can lead to destruction of a species which is waiting a (often lengthy) determination without benefit of the precautionary principle. Re-nomination should not be a consideration and the process must be completed as soon as possible. Only proper funding support will redress this anomaly. Currently some species are nominated for listing on a state register only as the complete nomination and determination process for federal listing, although giving greater protection is seen as unnecessarily lengthy.

The list of threatened species and ecological communities should be re-instated, made available via a website and maintained using the latest botanical nomenclature. The Centre for Plant Biodiversity Research is a federally funded body, using great expertise to research and determine all native orchid species previously known under what is considered old nomenclature. All Australian Botanical institutions should use this system as orchids and other plant genera throughout the world have been undergoing this change for several years. This is another area where the federal and all state scientific bodies should meet to establish a common nomination, listing and operational mechanism which would bring conservation into the 21st century. Furthermore, all of these bodies should recognise the benefits of an amalgamation of all state and federal threatened species lists. Categories of species and EEC listing should have consistency across the country but state listings will be listed on the EPBC list and those species which are currently listed only under the EPBC Act, should be listed on a state list, with the higher level of protection being the status which is recognised. E.g. if a species is listed as vulnerable in a state and endangered under the EPBC Act, the federal listing must take precedence. State and federal bodies must consult more readily and interaction between them should be automatic and regular. If these changes were made the overall environment would benefit and Australia would be seen as a unified entity and not as federal, state or territory institutions.

To use the Canadian approach (12.75) and terms such as “data deficient’ and “special concern” seems practicable but should be seen as an admission of neglect and an admittance a species is known but little understood but currently in the “too hard basket”, perhaps because of insufficient funds to rectify the situation. In that vein the ROTAP system should also be seen as having outlived its usefulness as it appears not to carry the environmental impact it once did.

To add some long term certainty to the protection of any area containing threatened species I would like to see the development concerned assessed not as an isolated development but in the context of other developments which are or may be proposed for that immediate area and the region in general. The pressure on any threatened species is greatly increased by piece by piece development, which when individually assessed may be approved but if the wider view is taken, will prove to be death by a thousand cuts.

#### *Biodiversity conservation on private land*

13.19: If a conservation agreement is to be considered it should be the subject of a written agreement and signed by the parties concerned. A voluntary agreement of any type is not binding and usually relies on the continued good graces of the land owner. It should also be passed to any persons or body which may later acquire the property subject to the conservation agreement.

#### *Recovery planning*

As one who is involved in a so far seven year operation to protect and recover an endangered orchid species, I see the main obstacle to be a lack funding to provide the necessary manpower to conduct the operation at the times needed to monitor and maintain the species and its habitat.

#### *Critical habitat*

13.37: Further to the HSI suggestion that the definition of critical habitat be amended to include refugia for threatened species. While this is sound thinking, my personal experiences with orchids indicates the refugia should also include the habitat of the pollinator as previously stated. (See *Climate change* Para. 1) Protection for critical habitat should also include a suitable buffer zone. The size of the buffer zone would be dependent upon the overall size of the critical habitat but should be at a depth of 50 metres surrounding the area of critical habitat.

#### *Governance and decision making*

The apparent lack of confidence in the quality and consistence of EPBC decisions is a direct result of the over generous attention afforded developers. If any given area

has been the subject of an EIA and found to contain threatened species, that area should be excluded from development. However, development approval is regularly granted with the intention of fitting the development around the threatened species with a minimum buffer zone for protection. The Stockland development at Vincentia is a prime example of this, as the EIS failed to note a significant number of endangered orchids and another new to science. A time frame of four years ensued before Stockland realised the development could not proceed without significant damage to the orchid colony. The development of Jandakot Airport, Anvill Hill Coal Mine and the road by-pass of Bulahdelah are yet other examples of developer tunnel vision aided by weak applications of the EPBC Act, (with the aid of Part 3a of the NSW Planning Act), although the Bulahdelah by-pass is being resolved to a greater level of satisfaction than previously considered.

Repeatedly we find an EIA undertaken or extended after a development has commenced and the opportunity for public comment is limited. On numerous occasions an orchid has been discovered after approval has been given or after the EIA has been completed and these finds usually come as a great surprise but are in fact the result of possibly the only in depth assessment of that particular area or because local knowledge was not consulted. It is my experience that local knowledge would be aware of the presence of these species but failed to make their discovery public for a wide range of reasons. Better guidelines for ESD should be established as developers have a tendency to extend the area of development to within metres of threatened orchids and fail to understand the complex nature of their existence. E.g. hydrological changes, the need for workers and machinery to operate outside the boundaries of the development and in the case of a residential development the propensity people have to either dispose of the garden refuse over the fence or mow a weed exclusion strip along their boundary.

### *Public participation*

19.75: Public participation and interest would be greatly enhanced if the EPBC Act allowed for certain community organisations to be recognised bodies to be contacted, to inform them of a development pertaining to their field of interest and expertise. Any information gained from this consultation would be recognised as advice only and not viewed as a guarantee of inclusion in subsequent decision making. These bodies would also appreciate interim information and reviews to maintain contact with the development.

### *Ecological sustainable development*

Social and economic factors should be a secondary consideration as the EPBC Act should primarily be for the protection of those things which once gone from our environment cannot be replaced. In the case of development where threatened species are known or found to occur I would suggest in the vast majority of cases the

development could be placed on another site but in the case of threatened orchids their specificity to a particular site indicates the delicate nature of their existence. In most instances those orchid species on the EPBC list are not colony forming species but occur more on an individual basis across their preferred habitat.

19.114: Developers must be aware of the difficulties they might encounter and be prepared to have significant obstacles put before them to achieve their aims. They must not be able to assume an obstacle can be relocated to another site in order for them to develop what might be seen as just another area of bush land.

#### *Enforcement compliance monitoring audit & administration*

All of the above require adequate financial support, which at the least, should be linked to the Consumer Price Index in order to maintain a system worthy of our threatened species and the staff employed as their legislative protective implement.

#### *Reducing regulatory burden & streamlining processes*

Duplication must be avoided as this is a cost current funding cannot tolerate. Better interaction between the federal body and all states and territories will help to blend the overall environmental institutions into separate but co-operative units. Differences are not only with the terminology used in the orchid sphere but an example is the terminology currently used in NSW and ACT Marine Parks. This is blatantly obvious in Jervis Bay where the JBMP borders the Booderee peninsula and both bodies use different terminology for the same objects or process. Finding a common ground will ensure all parties are able to undertake their separate jobs but speak the same language.

Alan W Stephenson  
National Conservation Officer  
Australasian Native Orchid Society (ANOS)  
Conservation Director  
Australian Orchid Council (AOC)