

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**

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**Date:** 3 August 2009

(date of your submission)

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

(e.g. Chapter 11: Heritage)

Briefly on chapters 2, 6, 8 and 13

**Key points of submission**

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

Recommendation 1. The final review report should include an objective assessment of the success or otherwise of the EPBC Act in conserving the environment and protecting biodiversity.

Recommendation 2. Section 38 of the EPBC Act should be repealed.

Recommendation 3. The review should recommend the urgent introduction of a comprehensive new approach to land management, with protection and restoration of remaining biodiverse natural ecosystems as its centrepiece; this should be part of a coordinated plan to safeguard the climate and ecosystem functioning, and be accompanied by long-term funding for biodiversity management and transition plans for affected industries and workers.

Recommendation 4. The Review should propose a national process to determine how best to protect Australia's and the Earth's environment in the 21st century, taking into account the interconnected political, economic and social dimensions, and the need to design new governance arrangements.

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

*Australian Terrestrial Biodiversity Assessment 2008*: This has been available to the Commonwealth government since 2008 but the government has refused make it public.

**Confidentiality statement:**

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**Do you want this submission to be treated as confidential?** No

(please state 'yes' or 'no')

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## 1. The context of the Review

The Review is nowhere explicit about its context for evaluating the operation of the EPBC Act or more specifically, 'the extent to which the objects of the EPBC Act have been achieved' and 'the effectiveness of the biodiversity and wildlife conservation arrangements'. It acknowledges that it is important to have 'some indication of the success of the Act in achieving its objects' (para 2.70) and discusses mechanisms for introducing more specific objects, duties or targets for the future. This is welcome.

The review's preliminary view is that the EPBC Act is and will continue to be an important tool for the Commonwealth in fulfilling its particular role in protecting the Australian environment (para 2.144). By inference, the review considers the Act to have been successful – but against what criteria and on what evidence?

Objectively, the evidence is that biodiversity is in a rapidly deepening crisis. A just-published report by Richard Kingsford and others in *Conservation Biology* concludes that, without serious changes to the way we conserve our environments and dependent organisms, the slide to extinction in the Oceania region will continue. Earlier state of the environment reports and the 2002 *Terrestrial Biodiversity Assessment* also highlight the dire state of biodiversity. The Commonwealth government has had available to it since 2008 the *Australian Terrestrial Biodiversity Assessment 2008* but has refused to make it public.

Objectively also, climate change is at crisis point, with a widely held view that global emissions have to peak within the next five to ten years to keep atmospheric greenhouse gas concentrations at a safe level. Irrespective, predictions for sea level rise are now 'not less than one meter' by 2100, with significant implications for protecting shorebirds and coastal environments. There are numerous other examples of environmental failure, e.g. the Murray Darling Basin.

While the EPBC Act alone cannot protect the environment, it is incumbent on the review to be explicit about its evaluation of the legislation's effectiveness in achieving its objects and specifically in conserving biodiversity.

**Recommendation 1. The final review report should include an objective assessment of the success or otherwise of the EPBC Act in conserving the environment and protecting biodiversity.**

## 2. Regional Forest Agreements

The emphasis on a greater role for the Commonwealth in oversight, compliance and enforcement of regional forest agreements is very welcome. However, the mechanisms proposed still revolve around the RFAs themselves – to 'strengthen on-ground adherence to the policy intent of RFAs'. This begs the question as to what is the policy intent of RFAs? The National Forest Policy Statement, the foundation for forest policy, states that governments 'will manage for the conservation of all species of Australia's indigenous forest fauna and flora throughout those species' ranges'. But, the Full Federal Court in the *Wielangta* case concluded that the RFA reflects a compromise between employment and forestry on the one hand and the environment on the other; there was no guarantee that the environment, including endangered species, would not 'suffer' as a result of forestry operations (para 64). How much 'suffering' is intended?

Further, the Commonwealth argued in the *Wielangta* case that, to gain the RFA exemption, the State is required only to put in place systems not actually to achieve protection. The Full Federal Court agreed. Without substantially re-writing the RFAs or the RFA Act to include real enforceable provisions, a stronger compliance and enforcement regime would largely be limited to processes not on-ground outcomes. This would be somewhat better than the present situation but is unlikely to solve the problem.

Climate change and the biodiversity crisis make urgent action to protect native forests imperative. The simplest, fairest and most effective mechanism remains removal of s38 of the EPBC Act.

**Recommendation 2. Section 38 of the EPBC Act should be repealed.**

It should be noted that RFAs are an example of the kind of landscape scale planning advocated elsewhere in the report. The failure of the RFAs results from: the highly politicised and polarised issue they deal with; the attempt to 'fix' policy for 20 years and remove Commonwealth responsibility; and the inability of third parties to have any effective say within the system. The result has been irreparable environmental damage, ongoing conflict endangering lives, and a complete failure to respond to the critical 'new' issue of climate change. Landscape scale planning modelled on RFAs is doomed to fail.

### 3. Climate change

This section focuses on the links between climate change, biodiversity, forestry and landclearing (leaving aside fossil fuel emissions). The review canvasses four ways of mitigating emissions –

- o a trigger under the EPBC Act
- o emissions trading through the government's proposed Carbon Pollution Reduction Scheme (CPRS)
- o prohibition on specified actions
- o an 'offset' scheme for land clearance

It rejects the option of a greenhouse trigger, instead favouring the CPRS (para 8.59), but is open to the idea of specific prohibitions and considers that applying a price on land clearing would be 'equitable and efficient' -- it appears that this would be part of the CPRS via an 'offset' mechanism.

It is important to have a clear framework for evaluating these options, recognising that:

- o the goal of climate policy is to keep atmospheric concentrations of greenhouse gases at a safe level;
- o anthropogenic emissions are primarily from fossil carbon (coal, oil etc) or biocarbon (carbon stored in the landscape); emissions from both sources have contributed to the historic increase in atmospheric greenhouse gas concentrations; emissions from both sources have to be dramatically reduced;
- o 'offsets' -- meaning swapping an obligation to reduce fossil emissions for a reduction in biocarbon emissions or an increase in storage – may have no net effect on emissions (and are contrary to the need to reduce emissions from all sources and recoup historic emissions);
- o activities such as native forest logging and clearing (Australia's largest sources of biocarbon emissions) have a time dimension that has to be factored in – the quantity of carbon stored in native vegetation that is more than a few decades old generally cannot be replaced by regrowing vegetation in a shorter time, except by planting a (much) larger area in competition with other land uses.

There is no evidence that applying a price on landclearing would be either equitable or efficient. Issues include: the total cost of paying in this way for 'avoiding' deforestation or degradation (logging) and the effect on carbon prices; rewarding those who intend to clear or log instead of those who choose to protect native vegetation; lack of ongoing funding for native vegetation management; intractable measurement difficulties (such as the influence of climate variability on carbon storage); the urgency of the need to reduce emissions from all sources (a market mechanism, if feasible, could not practically be implemented for some years).

If market mechanisms are rejected for biocarbon, the remaining options are a greenhouse trigger and specific prohibition (or some other form of regulation); a specific prohibition would override a trigger. This is where the imperative to reduce greenhouse gas emissions intersects with the widely accepted need for a landscape approach to biodiversity protection, and the need to end broadscale clearing and industrial scale logging of native forests (for multiple environmental and economic reasons). Taking a holistic approach, the review should recommend a prohibition on damaging natural ecosystems, other than in exceptional circumstances, or more positively a policy premised on protecting and restoring Australia's remaining biodiverse natural ecosystems.

**Recommendation 3. The review should recommend the urgent introduction of a comprehensive new approach to land management, with protection and restoration of remaining biodiverse natural ecosystems as its centrepiece; this should be part of a coordinated plan to safeguard the climate and ecosystem functioning, and be accompanied by long-term funding for biodiversity management and transition plans for affected industries and workers.**

### 4. Is the EPBC Act 21<sup>st</sup> century legislation?

The review poses as its primary question: is the current legislative regime capable of adapting and responding to emerging threats and a changing environment (para 2.144). The EPBC Act puts development before the environment – actions are permitted unless they impact 'significantly'; in the case of biodiversity, the threshold is further endangerment not flourishing species and ecosystems. The Act is premised on incremental change at a time when rapidly accelerating extinction rates and the climate crisis demand fundamental change – a paradigm shift.

**Recommendation 4. The Review should propose a national process to determine how best to protect Australia's and the Earth's environment in the 21st century, taking into account the interconnected political, economic and social dimensions, and the need to design new governance arrangements.**