

Secretariat  
Independent Review of EPBC Act 1999  
GPO Box 787  
Canberra  
ACT 2601

To Whom It May Concern,

I wish to make a submission in relation to the review of the EPBC Act 1999. I do not profess to know the ins and outs of this act but as a person who has been severely disadvantaged by what I consider to be the improper application of the act, I feel obliged to respond.

I do believe there needs to be environmental protection legislation but the way in which it is applied needs to be reviewed. There seem to be huge anomalies in its applications and I believe that the EPBC Act has been used as a political tool in some cases, particularly ours.

When individuals are forced to go through this process, it is very daunting. I would imagine large companies or wealthy individuals with major development applications or plans have an extensive resource base to call upon but individual “everyday” applicants caught up in this process are at a real disadvantage. They do not have the financial resources or access to expert advice that is readily available to the government or private companies and when you are living in isolated areas such as Norfolk Island, the problems are even greater. How does one do an accurate environmental impact study when those skills are not available?

In relation to our proposal to build our family home on freehold land in Kingston, Norfolk Island, I have felt that the application of the EPBC Act has been used as a political tool to over ride local planning and development processes and has been applied in a heavy handed way that is not in the true spirit of the act. “Perceived significant impact on Commonwealth land” is not a measurable thing and the act has been loosely interpreted to meet the Commonwealth and conservationists agenda. There is very little logic in denying an application for small, simple development when there are no threatened species of flora or fauna on one’s property nor obvious or unique heritage items.

There needs to be a clearly stated, straight forward avenue of appeal when decisions are made that contravene the rights of land owners – something which we have been denied. Resorting to litigation is not a viable option for the general population as they do not have the financial resources to meet the anticipated costs involved, something I believe the Commonwealth Department of Environment and Heritage uses to its advantage. Where are the rights of the individual upheld, where does discrimination stop? Decisions made under this act seem to be dependent on how much influence you have in political, business or financial circles, how far you can afford to take your case and “the little person” is severely disadvantaged in the scheme of things.

I do not believe that this act meets the policy objective of:

- promoting sustainability of economic development,
- enhancing individual and community well being
- working in partnerships with states and territories
- reducing and simplifying the regulatory burden on people

when it can be applied as it was in our situation. There was no willingness to work in partnership with us, no effort made by the DEH to negotiate a reasonable outcome or compromise.

The decision made:

- over turned the local approval process by the Planning Board
- over rode the decision made by the local Minister for Environment and Planning
- undermined the Norfolk Island legislation
- contravened the intent of the Norfolk Island Act
- ignored the submissions by a number of local people and the support of a public meeting
- contravened the traditions and customary practices of local landowners
- refused any opportunity to work together to meet specific requirements as there have been in many other proposals.

Despite numerous letters to Commonwealth departments, we have not been able to gain any insight into appropriate and accessible avenues of appeal or any willingness to work together to allow our proposal to be acceptable. This is not good enough and is morally reprehensible when the rights of individuals can be so blatantly disregarded.

There needs to be balance in the application and spirit of the EPBC Act and as far as I can see, it is not there. When one looks at the proposals that have been granted, despite the perceived or possible impact and the negotiations that have taken place to reduce that impact of others, can you honestly say that it has been applied fairly and consistently in this instance. Therein lies my objection – from the thousands of applications that were processed in the first few years, ours was only the second denied. Proposals with far greater impact than ours were approved – little logic and even less justice.

The problems I have with the EPBC Act will affect a greater number on this island alone and they need to be addressed to restore balance and integrity to the act. Where does one go next to try to get any semblance of justice – court or the United Nations?

Yours etc,

Helen Pedel  
25 November 2008