

Secretariat to the Independent Review of the EPBC Act  
EPBC Act Review  
Stuart Fitzsimmons  
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Secretariat to the Independent Review of the  
EPBC Act  
GPO Box 787  
Canberra ACT 2601

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Dear Secretariat

Re: Review of EPBC Act

Please find attached a copy of comments relating to the review of the EPBC Act on behalf of the Ipswich City Council. Local Government has an important role in the protection of the environment, biodiversity, cultural heritage and traditional land owners values, and therefore suggests that these comments are duly recognised in the review of the Act.

Yours sincerely

Stuart Fitzsimmons  
Principal Officer (Nature Conservation)

## Comments:

*Assessment and Planning Issues*

- There is disjointed relationship between the application of the EPBCA and the *Integrated Planning Act* (IPA). There is no mechanism under the IPA to trigger the Environmental Protection Agency (EPA) in relation to the EPBCA. For example, if a site is mapped as remnant vegetation subject to the *Vegetation Management Act* 1999 and meets the referral triggers, the Department of Natural Resources and Water (DNR&W) are a referral agency and if the vegetation is also subject to the EPBCA then DNR&W review the federal governments' concerns in accordance with their bi-lateral agreement.
- The only trigger that currently enacts the bi-lateral agreement with the EPA and the Federal Government for the EPBCA would be in the event the vegetation is also listed under the *Nature Conservation Act* 1992 (NCA) and meets the criteria from Schedule 2 of the Integrated Planning Regulation. Much of the land Council currently manages for conservation is retained by Council and not dedicated to the State Government it would not be considered protected areas under the NCA.
- As part of the review it would be beneficial if such a trigger could be enacted under the IPA wherein if a site contains a species listed under the EPBCA then the EPA would be a referral agency and consider the federal governments concerns under their bi-lateral agreement. The issue here may be that the species could invariably be unlisted under the NCA but in the absence of a bio-lateral agreement with Local Government (not that this approach is preferred) would be the best mechanism.

For example, in the last 18 months Council has assessed three applications over land that contained *Melaleuca irbyana* that was not mapped under the VMA and there was no trigger to refer it to the Federal Government. While it is within Council's rights to refer an application we consider to be a controlled action to the Federal Government, we would first need to prove that it was a controlled action. In this example buffers were proposed around the *Melaleuca irbyana* but whether these buffers would be sufficient for the Federal Government, Council can not ascertain. I attempted to have the Applicant involve the Federal Government by requesting they obtain clarification from the federal government that their actions would not constitute a controlled action, however as there was no legislative requirement for the Applicant to do so and they refused. Council issued an advice clause on the approval detailing the Applicant's responsibilities under the EPBCA but a better mechanism should be incorporated such that the two pieces of legislation are not disjoint and in fact are resolved through the single application.

- The EIA process is not linked to the development assessment process (IDAS) under IPA. There are at least seven different State DA processes so the EPBC can require by regulation when matters of National Environmental significance are impacted upon.
- It must be noted that listed species and ecological communities designated under the SEQ Regional Plan as urban footprint are potentially experiencing higher levels of threats due to rapid residential and industrial expansion. Having different acceptable outcomes and

assessment timeframes for different regional plan footprints may be more realistic and encourage nature conservation in urban areas rather than discouraging potential developers from referring to the Federal Government or undertaking more comprehensive ecological surveying ie. Encourage nature conservation through ecologically sustainable development principles within urban footprint.

### *Biodiversity Issues*

- With heritage matters DEWHA has established a National Heritage List its the top of the pops for heritage issues. It doesn't detract or usurp State or Local Government lists. Rather everything on the National Heritage List is on State lists and where appropriate local lists. It would be beneficial if the EPBC provide a pre-eminent list of ecological communities of national significance and for threatened species that automatically triggers a referral and bi-lateral agreement with State agencies.
- There should be stronger collaboration between Federal, State and Local Governments regarding listing, management and recovery plans of threatened species and ecological communities to ensure no duplication of listings and a streamlined effective assessment process.
- There should be a more transparent process of nominating species between all levels of government and public that is easy to understand and not politically motivated.
- Considering Australia continues to have one of the highest rates of biodiversity loss world-wide, then the effectiveness of the Act must be questioned on whether the basic principles behind the Act are suitable or effective. Perhaps focussing more on protecting habitat used by threatened species before a threatening process triggers a referral i.e. extend Acts jurisdiction to secure more habitat.
- Act should consider protecting habitat that provides important ecosystem services – this is not reliant on individual species or ecological communities protection.

### *General Comments*

- There needs to be a more explicate statement of Duty of Care in the EPBC Act such as in the Aboriginal Cultural Heritage Act 2003 Section 28 – Duty of Care Guidelines Gazettal Date: 16 April 2004.
- There need to more communication that the information regarding threatened species and ecological communities is available to Local Governments and public, and that there are regular updates disseminated to relevant departments within Local Governments ie. Planning, development assessment, conservation. There should be no reliance on State Agencies to pass information onto the Local Government where development assessments are processed in case information is not passed on or not done in a timely manner.
- The Act needs to ensure flexibility so that it responds quickly to the impacts of climate change, and that the process for listing and recovery plans are effective. The Act needs to be forward thinking to include species and communities for listing that are “potential” candidates even if not currently listed, based on best scientific evidence. The Act is therefore used as pre-cautionary legislation before a species is threatened with extinction.

