



ENVIRONMENT
TASMANIA INC

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Submission to Environmental Protection and Biodiversity Conservation Act Review, 2008

Dear Sir/Madam,

Environment Tasmania(ET) welcomes the opportunity to provide input into this important process. Environment Tasmania is Tasmania's peak environment body. Our membership comprises 26 member groups, and represents over 6000 Tasmanians.

Environment Tasmania perceives a significant need to correct some elements of the EPBC Act. Structural flaws, jurisdictional limitations and a failure to integrate emergent and pressing matters of environmental significance have limited the effectiveness of the Act in providing adequate outcomes.

In a time of great environmental challenge and flux, the need to strengthen legislative mechanisms for addressing such issues in a coherent and effective fashion is one of the primary responsibilities of elected representatives. Effective alterations to the EPBC Act will provide one plank of the necessary frame for creating a sustainable and environmentally responsible path for Australia; a failure to achieve this will continue to ensure that destructive activities continue unhindered by legislative control.

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Environment Tasmania views the following as changes that will improve the efficacy of the Act:

- 1) Re-evaluation of the objectives of the Act;
- 2) The establishment of greenhouse gas (GHG) emissions triggers;
- 3) The establishment of triggers for water management;
- 4) The removal of exemptions for particular land uses, specifically regarding areas under Regional Forest Agreements (RFAs); and
- 5) Strengthening of provisions for community engagement and community utility of the Act..

Re-evaluation of the Objectives of the Act.

In order to remove ambiguities(both legal and otherwise) from the Act, it is necessary to re-state its objectives. Specifically, those sections which compel the Environment Minister to 'provide for' , 'promote', and so on, should be altered to compel the Minister to explicitly ensure that sound environmental outcomes are achieved.

This may be viewed as pedantry from some quarters, and it is indeed logical and implicit that the role of both the Act and the Environment Minister is to protect the natural environment. In practice, however, these ambiguities, coupled with specific exemptions and a restricted jurisdiction, impact heavily on the ability of both the Act and the Minister to fulfil their functions.

Climate Triggers.

The most obvious jurisdictional omission from the Act is its inability to address actions which result in significant greenhouse gas (GHG) emissions. Anthropogenic climate change is the most significant environmental issue of current times, and the ignorance of the Act to it severely devalues the Act's intentions in achieving sound environmental outcomes.

Climate change is universal in its implications, and will also impact severely on the maintenance of Australia's natural environment. Additionally to environmental outcomes predicted to occur nationally as a result of current emissions trajectories, such as the collapse of the Great Barrier Reef and the Murray Darling Basin, and the salination of Kakadu, Tasmania faces enormously destructive local outcomes, such as the predicted *complete disappearance* of the state's unique alpine vegetation communities.

Environment Tasmania suggests the creation of a GHG trigger that recognises any action that would result in the emission of over 25,000 tonnes of CO₂ equivalent per year as a matter of national environmental significance. Additionally, the expansion of current developments which would fall below the 25,000 tonne threshold would also trigger legislation.

Given the urgency of the climate change situation, Environment Tasmania suggests that any action which exceeds the threshold must be forced legislatively to reduce emissions without the utilisation of offsets. The increasingly clear and previously unpredicted warning signs of runaway climate change, such as the melting of the Arctic ice sheet and the early stages of Arctic and Siberian permafrost melt dictate that *actual*, rather than *transferred* emissions reductions are achieved in the shortest timeframes

possible.

The abatement of emissions rather than post-emissions amelioration is of prime importance given the need to de-carbonise economies in the next few decades in order to avoid catastrophic and runaway climate change.

For example, an electricity intensive industry such as aluminum production would be forced under the Act to invest in renewable energy sources directly commensurate with its usage, rather than in (for example) revegetation projects which are designed to absorb emissions after they are created.

Environment Tasmania encourages the use of revegetation (and other) offsets in situations where no other alternative is available, and views revegetation projects as necessary and urgent in order to reduce atmospheric concentrations of carbon dioxide; however ET takes the position that the long term uptake of GHGs is wholly inadequate in the current pressing circumstances.

Water Triggers

Jurisdictional issues have been a key impediment to the creation of effective environmental outcomes regarding water management. The difficulties in addressing water management issues through the Commonwealth of Australian Governments forum are demonstrative of the need for more federal legislative powers in this area.

Recent Commonwealth Government actions in the Murray Darling Basin have demonstrated a willingness to provide direction on water issues, and more legislative support for such actions is a necessity. The current drought and projected long term rainfall reductions and variability make it

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imperative that the Commonwealth is given increased powers to address actions which will impact on aquatic and/or groundwater dependent ecosystems.

Tasmania is currently faced with a number of water management issues with significant ecological ramifications, such as the proposed Southern Midlands irrigation scheme, irrigation pipeline projects in the State's North West, and ongoing concern over forestry plantation establishment, particularly in the North East.

The recent triggering of the Act regarding Tasmanian Government approved water release from Lake Sorell, and the subsequent decision by the Federal Environment Minister to block that release in order to protect the Golden Galaxia demonstrates that the Act can achieve positive environmental outcomes when its jurisdiction allows.

The Act in its current form is unlikely, however, to apply to any of the aforementioned issues (and definitely not in relation to plantation forestry issues). This is despite the obvious potential for significant ecosystem effects in relation to this issues, such as salinity potential and altered stream flows.

In recognition of this jurisdictional limitation, ET recommends that a trigger be inserted into the Act which recognises any project which impacts on aquatic or groundwater dependent ecosystems. Any project which removes, displaces, or transfers a certain quantity of water per year would be subject to this trigger.

Forests and Landclearing

Environment Tasmania advocates for the deletion of sections 38 through 41 of the Act – that is, those sections which provide exemptions for those areas subject to a Regional Forest Agreement. These exemptions severely compromise the objects and efficacy of the Act.

The application of legislative structures which effectively undercut the agreed intentions and environmental outcomes of the Act severely damage its effectiveness and credibility. The exemption for RFAs ensures that affected areas can receive environmental protections and outcomes below those agreed at a Commonwealth level, and hence may impact on Australia's ability to fulfil its international obligations.

In Tasmania (among other areas) there is significant concern, as exemplified in the Weilangta legal challenge, that the RFA exemption is having large scale ramifications on threatened species and ecosystems.

The application of this double standard undermines the Act, and appears unjustified from any perspective if the claims of the forestry industry to an adherence to environmentally sustainable development principles are recognised – if the forestry industry is committed to environmental responsible management, it would appear wholly unnecessary for it to be exempt from threatened species legislation.

Environment Tasmania also encourages the creation of landclearing triggers that force assessment of ecosystem impacts on any project where an area of 25 hectares or over is cleared.

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Community Engagement Provisions

Environment Tasmania believes that the current structure of the Act in regards to community consultation is in need of changes in order to ensure its effectiveness.

ET suggests legislating for the ability of any person or group with standing under the Act to seek a review of the *merits* of decisions made under the Act. Additionally, ET advocates for increased public advertising of decisions under consideration, and the extension of public consultation periods to 15 working days.

ET also advocates for the reinstatement of the original s478 provisions preventing the Federal Court from requiring undertakings for damages as a condition for granting interim injunctions, and the creation of a legal fund to assist groups or individuals in challenging decisions made under the Act.

Conclusion

The existing Environmental Protection and Biodiversity Conservation Act is hampered by a lack of jurisdiction over actions which result in negative environmental outcomes, a failure to respond to the most pressing environmental issues of current times - climate change, and the exemption of areas under Regional Forest Agreements.

At a time when the planet is facing an increasingly uncertain future, and when its human and non-human inhabitants are facing an increasing number of environmental challenges and crises, it is essential that government action to protect the environment is effective.

For many environmental issues, there is a limited window to achieve sound outcomes, and a failure to make effective use of these opportunities is to consign species and ecosystems to extinctions. The decade that has passed since the passage of the Act has provided ample time to reflect and assess on its successes and shortcomings – the current review provides an ideal opportunity to make use of this time to refine and alter the Act to ensure it achieves the objectives and ensuring environmental protection and biodiversity conservation.