



Ringwood Rd  
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**Submission:** Wednesday 17 December 2008

## **Independent review of the *Environment Protection and Biodiversity Conservation Act 1999***

Central West Environment Council (CWEC) is a non government umbrella organisation representing groups and individuals living in the Central West region of New South Wales with an interest in conservation and environmental matters.

We appreciate the opportunity to participate in the independent review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The protection of biodiversity in our region is critical because of the historic level of disturbance which has occurred since European settlement. The Central West was the first area in Australia to be impacted by broadscale land clearing for agricultural development. The region is part of the wheat-sheep belt stretching from Victoria into Queensland. Over 97% of some vegetation communities have disappeared from the landscape due to ongoing and cumulative impacts of farming practices and increasing development.

As part of this submission CWEC would like to draw attention to the ongoing approvals to clear Grassy Box Woodland vegetation protected under the EPBC Act as a critically endangered ecological community. The case study from our region will highlight the urgent need for strengthening the EPBC Act in relation to cumulative impacts of environmental damage.

This submission will also cover issues such as transparency in the assessment and approvals process under the Act and adequacy of the existing bilateral agreement.

Yours sincerely

A handwritten signature in black ink that reads "B. Smiles".

Bev Smiles  
Secretary

## **1. Cumulative impacts of EPBC Act approvals on threatened species and ecological communities**

This submission will use a case study of recent approvals in the Wollar-Ulan-Wellington area in Mid Western Regional Local Government Area in NSW to demonstrate that cumulative impacts of EPBC Act approvals on the listed threatened species and critically endangered ecological community (CEEC) White Box-Yellow Box-Blakely's Red Gum Woodland and Derived Native Grassland (Grassy Box Woodland) are significant.

This region has experienced a major expansion in coal mining and power infrastructure that has required approval to clear Grassy Box Woodland and disturb important populations of threatened species. Each project has been approved separately with no consideration of the cumulative impact in the region.

### **1.1 Grassy Box Woodland clearing approvals**

1. In 2005 the Wilpinjong Coal Project, 40kms north-east of Mudgee, received approval to clear 47ha of mature, good condition Grassy Box Woodland.
2. In 2006 Transgrid received approval to 57ha of mature, good condition Grassy Box Woodland between Wollar, 5 kms to the east of Wilpinjong, and Wellington in Central West NSW.
3. In 2007 Moolarben Coal Project Stage 1, adjacent to Wilpinjong Coal Project received approval to clear 65 ha of mature, good condition Grassy Box Woodland. This approval was granted by a member of the EPBC Unit.

These approvals were given with a condition that a 2:1 offset be purchased on private land to be transferred to the NSW Minister for the Environment and Climate Change. However, the CEEC on private land is already protected under the NSW Native Vegetation Act 2004. Clearing of CEEC under the state legislation would not be approved or with much larger offsets up to 50:1.

These EPBC Act approvals have caused 169ha of high quality CEEC to be destroyed in the region. This is a net loss of irreplaceable ecosystems. Grassy Box Woodland is one of the most endangered ecological communities in Australia.

The community is greatly concerned that the controlled action approval for Moolarben Stage 1 was not signed off by the Federal Minister for the Environment. It was granted by the Assistant Secretary of the Environment Assessment Branch while the Government was in caretaker mode leading up to the Federal Election in November 2007.

The Moolarben Coal Project has just referred a Stage 2 proposal to EPBC Approvals and Wildlife Division for a controlled action to clear a further 167ha of Grassy Box Woodland in the same area. The Stage 1 project has yet to commence.

It is highly unlikely that a fourth property with 334ha of like condition Grassy Box Woodland will be found in the area and a 2:1 offset for clearing this magnitude of CEEC is highly inappropriate. If Moolarben Stage 2 is approved as a controlled action, the cumulative loss of CEEC in this region of NSW will be 336ha.

The Federal Government has just allocated \$50 million to a recovery programme for this CEEC. The best way to recover Grassy Box Woodland is to keep all mature, good condition remnants intact. Further approval to continue clearing this CEEC should cease immediately.

## **1.2 Threatened populations disturbance approvals**

All three projects as listed in 1.1 have also been given approval to disturb populations or habitat of the same species listed as threatened under the EPBC Act.

These species include: Long-eared Pied Bat, Little Pied Bat, Greater long-eared Bat, Regent Honeyeater, Swift Parrot, Brush-tailed Rock Wallaby and Spotted-tailed.

The existing Ulan Mine in the same vicinity has impacted on habitat and disturbance of these same species for the past 20 years. Moolarben Stage 2 is also seeking approval to disturb these threatened populations

Ongoing loss of habitat and impacts of mining disturbance through noise, dust and light pollution and disturbance of breeding cycles has had a detrimental cumulative impact on threatened species listed for protection under the EPBC Act.

These cumulative impacts have not been taken into account when approvals have been granted.

These four major projects have been responsible for clearing many hundreds of hectares of woodland habitat in the region. Species listed as threatened under the NSW Threatened Species Act 1995: Spectacled Warbler, Grey Crown Babbler, Diamond Firetail, Black-chinned Honeyeater, Painted Honeyeater, Hooded Robin and the Squirrel Glider have also suffered cumulative impacts.

Woodland species, particularly those dependent on tree hollows for breeding, are the most threatened species in Australia. The ongoing, cumulative impact of clearing mature, good condition woodland ecosystems must be recognised if the Federal Government is serious about preventing further extinctions of native flora and fauna.

## **2. Bilateral Agreement between the Commonwealth and NSW Governments**

On 20 December 2006 the Federal Minister for the Environment and Water Resources gave notice that the Commonwealth of Australia had entered into a bilateral agreement with New South Wales. This agreement has the effect of delegating the assessment of EPBC Act matters of national environmental significance within the assessment process

specified under Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Part 3A does not have rigorous processes to protect matters of national environmental significance because it has significantly downgraded the role of environmental assessment for major projects.

Accrediting Part 3A under the bilateral agreement has major problems because there is such a wide discretion given to the Director-General as to how environmental impact assessment is done, and even what impacts should be considered. In contrast, with Parts 4 and 5 EP&A Act, there is clear regulatory detail on matters which must be addressed in an EIS (or SEE). Under section 75F of Part 3A, the Director-General has largely unfettered discretion with respect to preparing environmental impacts assessment requirements, and determining the adequacy of environmental assessment undertaken.

Part 3A projects are exempt from the need to obtain many of the authorisations required under other legislation (under section 75U). There is therefore no guarantee of adequate assessment of, for example, threatened species and native vegetation, local heritage, aboriginal cultural heritage, greenhouse gas emissions. It is inappropriate to accredit a process that potentially excludes comprehensive assessment of such matters.

The major projects referred to in 1.1 of this submission were Part 3A projects under the EP&A Act. The poor level of assessment data presented to the NSW Government was not adequately investigated by the EPBC Act Approvals and Wildlife Division because of the bilateral agreement. This has led to a significant loss of CEEC – greater than that identified in the approvals process.

Further proposals in the region such as Moolarben Stage 2 must have the full engagement of the Federal Agency to ensure that adequate investigation of the proposal occurs and an adequate assessment process for the protection of matters of national environmental significance is in place.

### **3. Inadequacy of the public participation process for referrals.**

The opportunity for public participation in the referrals process is very limited and depends on chance that the exhibition on the EPBC website is noticed

#### **3.1 Timing of responses to and notification of referrals to EPBC Act.**

The process of notification of referrals and the 10 day turn around for response is inadequate for public participation in commenting on the impacts of projects submitted for referral. This period needs to be extended to 28 days. The proponent lodging the referral should be required to notify the public on the date that the lodgement was made.

#### **3.2 No clear process of communication and feedback**

Once a submission to referral has been lodged by a member of the public, there is no clear process for response from the EPBC Unit or the proponent of the referred proposal. There is no clear process for the public to receive the final determination or how the determination was arrived at.

The delegation of the assessment process to the NSW Government has caused less transparency in the approvals process.

#### **4. Response to some key questions in Independent Review Discussion Paper**

CWEC would like to make additional comments as sought through issues and questions raised in the Discussion Paper.:

**4.1 Question 1e)** What kind of impacts should be considered under the Act? Does the Act adequately encompass not just direct but also indirect impacts?

The case study provided above shows that the Act does not adequately address cumulative or indirect impacts. There needs to be a process whereby habitat requirements & disturbance of listed species is considered in a broader context than a single specific development proposal.

The long-term impacts of climate change should also be a consideration.

**4.2 Question 9** Does the Act provide an effective regulatory framework for the conservation of Australia's biodiversity? If not, what improvements could be made?

Cumulative impacts on listed CEEC and other threatened species can not be covered by a bioregional plan or strategic assessment as indicated in the discussion paper. The range and extent of listed species, their condition and response to recovery needs to be assessed before ongoing impacts can be approved.

**4.3 Question 15** What factors should be considered in setting priorities for recovery planning?

A cap should be set on further clearing of mature, good condition CEEC so that core habitat remains in the range and extent of the species to allow recovery processes to be advanced. Many threatened plant species do not respond well to revegetation programs. A better understanding of response to disturbance is needed.

Offset programs continue to allow a 50% decrease in remaining populations. This causes an exponential loss of the species and will continue to hinder recovery.

The concept of connectivity across the landscape and species dispersal should be prioritised in recovery planning.

**4.4 Question 19** Does the Act provide an appropriate and responsive legislative framework for addressing climate change and other emerging pressures in the context of environmental

protection and biodiversity conservation? If not, how can such matters be considered when making decisions under the Act?

It is imperative for greenhouse gas emission triggers to be included in the Act to assist with assessment and approval process for appropriate development and the long-term protection of biodiversity. The impacts of climate change on species range and extent and capacity for dispersal also needs to be considered.

Landscape connectivity of vegetation and habitat requirements is a critical consideration for species adaptation to climate change.

**4.5 Question 44** What is an appropriate framework for assessing the performance of the Act? Do you have particular issues that should be considered during the review?

A trends analysis of the species listed for protection under the Act is the best way to assess its performance. This requires a rigorous monitoring and evaluation framework, investment in improved flora and fauna survey and data recording systems that are consistent across the continent.