

Submission to the independent review of the operation of the Environment Protection and Biodiversity Conservation Act 1999

Submitted by
Derek Fenton
Finniss SA

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Introduction

I am a landholder from Finniss South Australia. The EPBC Act has been in operation for 10 years and I first learned of its existence three weeks ago. Over the period of the life of the Act I have witnessed among others, the following economic and environmental developments

Economic developments

- Increase of general wealth of the population
- Acceleration of development of water resources in my local area
- A significant increase in the range of consumer goods available
- Considerable upgrading of built and landscaped environments (outwardly this appears to be an environmental development)

Environmental developments

- Increased community volunteer involvement in resource management
- Extremely serious deterioration of our Ramsar listed Lakes and Coorong
- Indicators of ecological stress in the form of changed timings of weather, flowerings insects etc

It is very apparent to me that during the Act's period and for the previous 5 years the economy has powered ahead while the environment has headed off in the opposite direction at about the same speed. Community involvement, the main environmental improvement in the Acts life, is largely a response to a perceived lack of government will to act on behalf of the environment.

It follows from this that the Act has not been working in some way, either in the way it has been applied or due to shortcomings in its powers to act. I would like to address these shortcomings in application and powers under the following headings

1. the extent to which the objects of the Act have been achieved;
2. the appropriateness of current matters of National Environmental Significance
3. Cumulative impacts of actions which are not significant until taken together

In addition I have read the ANEDO submission to the Senate enquiry (ANEDO 2008) and would like to endorse everything I have read in that document.

1. The extent to which the objects of the act have been achieved

The objects of the act appear to be admirable, but have not been visibly achieved and I would like to comment on the first two.

The first object: to provide for the protection of the environment, especially those aspects of the environment that are matters of NES, has failed magnificently

The Ramsar listed wetlands in my area have deteriorated to the extent that the DEH has recently submitted a referral under the Act to take action which will lead to a complete change from a fresh to a salt water ecology in a kill or cure bid to prevent what is perceived to be potentially irreversible damage. In their referral they state that 'Reduced freshwater inflows to the Lower Lakes and Coorong are having devastating ecological effects. The Ecological Character Description of the Coorong and Lakes Alexandrina and Albert reports the health of six key ecological parameters; salinity, turbidity, sedimentation, water levels, keystone aquatic plants, habitat availability and flows. Of the six parameters, all recorded levels were outside recommended limits of acceptable change. The report identified a rapid loss of keystone species, change in marine species distribution and simplifying biota within the Coorong and Lower Lakes. These changes have resulted in pristine estuarine environments accounting for less than 25% of the total original area (Phillips and Muller 2006)'

The report identified the following key points:

- A comprehensive shift in ecological character of The Coorong and Lakes Alexandrina and Albert Wetland is in progress that, without significant and urgent intervention, may prove irreversible
- The Lakes and the Coorong are being negatively impacted upon by sediments and increasing salinity and turbidity as well as inappropriate water levels primarily due to reduced River Murray inflows
- The components and processes of the estuarine Coorong ecosystem are now only supported in a 30 km stretch from the Goolwa barrages to Pelican Point; represents less than 25% of the original estuarine ecosystem.

I submit that the environment has not been protected by the Act and that the words 'provide for' in this object allow too much ambiguity and exertion of political will and should be replaced by the word 'ensure' or in some other way changed to remove political will and provide certainty of action

The second object: 'to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources'.

This object is subject to the principles of ESD defined in Section 3A of the act, the first of which states that 'the decision making processes should effectively integrate both long term and short term economic, environmental, social and equitable considerations'. This principle also has failed.

From general observations and the Lower Lakes specifically, integration of these considerations has not occurred in a manner which protects the environment. During the life of the act, as the state of the Lower Lakes has declined, irrigation and water extraction in the Finniss and Currency Creek catchments (which flow into the Murray below Lake Alexandrina) have increased tenfold and from my observations of the Murray between Goolwa and Renmark other areas of the river and Lakes have been developing at the same rate. In the Currency Limestone Aquifer which is between the Finniss River and Currency Creek there has been a 'dramatic reduction in area of groundwater with a salinity below 1500 mg/L since 1990 (Fig. 11), highlights the impact of the salinity increases, and raises doubts about the long term sustainability of the groundwater resource at the current extraction rate'. (Barnett 2007) This aquifer would historically have flowed into the Lower Lakes.

It is not apparent that environmental considerations have been effectively integrated with economic ones in the meaning of the Act. The word effectively is defined by the New Oxford Dictionary of English as 'successful in producing a desired or intended result' and again exposes the act to political will.

I submit that the word 'effectively' allows too much latitude for the desires and intentions of the particular government wielding the act and should be removed, and the words 'in a manner which gives equal weight to economic and environmental matters' added to the end or any other combination of words that has the effect of taking subjectivity out of the equation, and adding certainty that the environment is given equal weight in any consideration.

2. The appropriateness of current matters of National Environmental Significance

When read in the context of the Lower Lakes and Coorong, none of the first four of the defining principles of ESD in the Section 3 of the Act appear to have been the basis of decision making. While it is possible that lack of political will has been a factor in this process (see submissions above to minimize this factor), shortcomings in the scope of the act are also to blame. In addition to overuse of water, climate change is having its effect as weather patterns change in the form of reduced rainfall. Weather Bureau trend maps show a 5-50 mm reduction in rainfall per decade over the past 37 years (Bureau of Meteorology 2007)

I submit that it is of extreme importance that actions contributing to climate change and the overuse of water be brought under the control of the EPBC Act by including Greenhouse Gas production, land clearing and water extraction as matters of NES. I fully support the proposals put forward in the ANEDO submission to the Senate

ANEDO on Greenhouse Gas emissions

ANEDO recommends that the Act be amended to include a greenhouse gas emission trigger that recognises any action that would result in the emission of over 100,000 tonnes of CO₂ equivalent per year as a matter of national environmental significance. This could be supplemented by provision for all projects on a designated development list (including expansion of existing projects and significant land use change, including significant land clearing and motorway projects) to trigger the approval provisions. This would ensure the trigger was more comprehensive in capturing diffuse emissions.

I agree but would insert 'any action or group of actions' for action in line 2 above

ANEDO on Land clearing

The clearing of native vegetation in Australia has a range of well recognized serious environmental consequences. These include: destruction of biodiversity habitat, degradation of soil, degradation of water quality, increased salinity, release of greenhouse gas emissions, and adverse effects on ecosystem services and broader catchment health. The Australian Government's *State of the Environment Report (2001)* identified land clearing the single biggest threat to wildlife in Australia. ANEDO therefore recommends that the Act be amended to include a comprehensive land clearing trigger would require three main alternative elements. First, a trigger for the clearing of native vegetation over 100 ha in any two year period; second, a trigger for the clearing of any area of native vegetation which provides habitat for listed threatened species or ecological communities, or listed critical habitat; and third, a schedule of activities that would trigger the Act regardless of the hectares proposed to be cleared (for example, major coastal resort developments).

I agree particularly in terms of release of stored carbon and destruction of biodiversity habitat. Biodiversity habitat will increase rapidly in value as changes in the climate have their effects on different populations at different seasons creating ecological threats

ANEDO on Water

The Commonwealth has signaled a clear intent to become more involved in water management, especially in the Murray Darling Basin. ANEDO supports an enhanced Commonwealth role for such a vital cross jurisdictional issue. During debate on the 2007 *Water Bill* ANEDO made recommendations on including environmental protections in the Bill. The Government response at the time was that the Water Act was resource use legislation, and environmental considerations (such as environmental flows to wetlands) were already dealt with under the EPBC Act.⁷⁷

It is essential that there are clear links between the Water Act and the EPBC Act to ensure environmental considerations are fully considered and do not disappear down the gap between the two Acts. ANEDO therefore recommends a more comprehensive approach - that a trigger be included in Part 3 for abstraction of surface and ground water resources over 10,000 megalitres which is likely to have a significant impact on aquatic or groundwater dependent ecosystems.

I agree but would put the trigger at closer to 1,000 megalitres, and in addition insert triggers that respond to cumulative actions (see below)

3. Cumulative impacts of actions which are not significant until taken together

Most of the worst damage that I see around me has been caused by cumulative small actions, particularly with regard to water and the effects of reduced water flows. The situation in the Lakes and Coorong has been caused not just by significant actions but by many actions. Cumulatively the damage is the same. Further triggers need to be

- cumulative surface water extractions which together amount to more than 50% of a catchments 20 year average runoff
- Cumulative underground water extraction which together account for 50% of the annual replenishment of the aquifer

These triggers would require enforcement measures to be written into the act such that catchment monitoring and annual submission of the results would be mandatory and a referral under the Act would be required in order to exceed the 50% trigger.

Similar triggers are also indicated in terms of land clearing related to ecological zones.

Summary

- The wording in the objects of the act needs to be rigorous enough to be certain that the act works in the interest of the environment and removes the effect of political will
- New matters of NES need to be inserted to respond to the pressures applied by climate change, in the form of Greenhouse gas emissions, water and land clearing
- The Act needs the ability to control cumulative actions particularly with regard to water use
- I support the ANEDO submission to the enquiry in its response to other matters of the act.

Conclusion

The EPBC act provides a very good framework to support the environment, but needs to be taken out of the hands of politicians and enabled to respond to current environmental trends. Thank you for the opportunity to submit'

References

ANEDO (2008) Submission to the Inquiry into the operation of the Environment Protection and Biodiversity Conservation Act 1999 September 2008

Barnett S. August 2007 Currency limestone groundwater management Area - status report 2007 Department of Water, Land and Biodiversity Conservation

Bureau of Meteorology at

http://www.bom.gov.au/cgi-bin/silo/reg/cli_chq/trendmaps.cgi?variable=rain®ion=aus&season=0112&period=1950

Phillips W and Muller K (2006) Ecological Character of the Coorong, Lakes Alexandrina and Albert Wetland of International Importance. Department for Environment and Heritage, SA.

Referral under the EPBC Act for Proposal titled 'South Australian Department of Environment and Heritage/Natural resources management/Lake Alexandrina and the Coorong/SA/Opening the barrage network separating the lakes.' Reference Number 2008/4618