

Secretariat
Independent review of the EPBC Act 1999
GPO Box 787
Canberra ACT 2601
Australia

19 December 2008

Dear Reviewers,

**RE: Submission to the Independent Review of the
Environment Protection and Biodiversity Conservation (EPBC) Act**

To facilitate cross-referencing, I have followed the suggested questions in the DEWHA Discussion Paper concerning the review and provided my feedback on some of them below:

Q1 What are your views on the following aspects of the Act:

(b) Are the principles of ESD appropriate to the Commonwealth's role in environment protection and management? Does the legislation provide an adequate framework to guide ESD decisions made under the Act?

The principles of ESD are appropriate. They could be further strengthened by considerations of Ecosystem Valuation. All too often, economic assessments of proposed projects focus only on trade, commerce and jobs, with little or no mention at all of the values of ecosystem services which can be severely damaged by the proposed actions. By promoting the Valuation of Ecosystem Services, a more balanced assessment may be forged, reflecting the intrinsic (use or non-use) values of MNES.

(c) Are the existing matters of NES appropriate? Do you think that there should be any additional matters of NES, and if so, how should such matters be framed?

Biosphere Reserves recognized by UNESCO MAB Program should be added to the existing list of matters of NES, as they "*innovate and demonstrate approaches to conservation and sustainable development*" (UNESCO MAB website). Their global recognition surely warrants their listing as MNES which would help reduce the risk of them becoming "hijacked" for pure economic gains through excessive tourism or other development agendas.

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

'Impacts' should indeed include both direct and indirect impacts. They should also encompass immediate and delayed impacts of the actions in the short, medium and long-term, as some of the impacts on ecosystems and species may not be detectable immediately. Impacts that are insignificant in the short term could be substantial in the long-term.

(f) Does the test of significance, in the context of actions having a ‘significant’ impact on a matter of NES, operate effectively in practice? If you think that there should be another test, what should it be?

The definition of ‘significant impact’ lacks objectivity and the test of significance does not operate effectively in practice. For listed threatened species as MNES, population viability analysis (PVA) or population and habitat viability analysis (PHVA) are needed to objectively assess whether the actions are likely to impact on a species’ future population or habitat viability. Based on the precautionary principle, *“the lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.”* In other words, the proposed actions that may pose significant environmental damage must not be approved until objective assessments, e.g. robust PVA or PHVA, provide evidence that the proposed actions are unlikely to cause any significant impact on species or habitat viability.

Q2 Does the public understand its responsibilities under the Act to refer proposed actions to the Minister?

Few in the public understand this, as shown in the recent Traveston Dam proposal whereby initially only a couple of scientists realized this responsibility and helped push for the referral. The current text in the Act reads: *“The onus to refer an action rests on the person proposing to take the action. A referral can also be made by state or territory governments and Australian Government agencies that have administrative responsibilities relating to a proposed action. The Minister may also request that a proposed action be referred...”* The Act needs to be more inclusive so that *“the public including indigenous peoples, represented by a recognized environmental organization or an alliance of such organizations”*, may also refer proposed actions to the Minister.

Q4 Do you think that the Act contains an effective hierarchy of environmental assessment approaches, ranging from assessment on referral information to assessment by public inquiry? Are the methods of assessment providing the required information for informed approval decisions?

To be effective, the hierarchy must spell out a requirement for “independency” in the EIS process; i.e. the EIS must be conducted by a recognized environmental consultant and / or scientific body independent of and NOT directly paid for or hired by the proponent of the action. The latter should reduce conflicts of interest and the likelihood of a biased EIS process.

Q5 Does the Act provide appropriate scope for public participation and transparency in the assessment and approval process under the Act?

No, the Act does not provide appropriate scope for transparency in the assessment and approval process. Take the case of the Traveston Dam: the proponent of action is Queensland Government. The company hired to develop and implement the proposal for action is a business branch of the State Government. The EIS was conducted by a consultancy firm paid by the QLD Government owned company. Such relationships leave little room for objectivity or transparency in the assessment process.

Indeed, the environmental history of the proponent and documented impacts (also effectiveness of past mitigation procedures) from similar projects elsewhere should be taken into account by the Minister as some of the key considerations. E.g. The environmental damage (including injuries of native turtles and failure of the fish ladder) from the Paradise Dam on the Burnett River should have been an important consideration from the start of the assessment process.

Q6 Does the Act operate effectively in conjunction with State and Territory planning and environmental impact legislation? Are existing bilateral agreements achieving the objects of the Act?

Existing bilateral agreements cannot achieve the objects of the Act if there are obvious conflicts of interest. Refer to the Traveston Dam example above (answers to Q5).

Q9 Does the Act provide an effective regulatory framework for the conservation of Australia's biodiversity? If not, what improvements could be made?

The regulatory framework can be strengthened if Population Viability Analysis and/or Population and Habitat Viability Analysis would be made mandatory for listed species. Refer to answer for Q1(f).

Q12 What matters should the Minister consider when deciding whether to list a threatened species or ecological community?

The Minister should seek scientific advice in the application of IUCN Red List criteria on species under consideration.

Cumulative impacts, encompassing impacts from past actions and projected impacts from other threats (not directly related to the proposed action) such as climate change and habitat fragmentation, are just as important as the immediate, direct impact from the proposed action. A longer vision into the medium and long-term impacts and multiple scenarios need to be considered too.

Q16 Does the planning regime support the effective recovery of threatened species and ecological communities?

It is unclear to me whether and how recovery, threat abatement or conservation plans are backed up by budgetary support and other essential resources. Obviously, any plans are only as good as papers in the shelf until they are put into action and implemented effectively with the needed resources.

Q18 Are the provisions of the Act for the protection and recovery of listed threatened species and ecological communities, migratory species, marine species and cetaceans effective? What alternative approaches might be available?

Even if the provisions of the Act appear to be logical, a lot is to be desired in terms of on-ground monitoring and enforcement. E.g. in the case of the Traveston Dam, numerous private properties were bought and buildings were constructed in the proposed area when the project was declared a Controlled Action and the assessment process was far from completion. Such "pre-approval" interventions are destructive to local social and economic stability and to the environment, and severely impact on the fairness and effectiveness of the assessment process.

The Act should spell out clearly that any "pre-approval" interventions by the proponent of action are illegal. Consequences of criminal offences need to be spelled out. The levels of penalty and fines must be sufficient for restoration and rehabilitation or as compensation for the people affected.

Q19 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?

The Act itself is unlikely to provide the needed legislative framework for addressing climate change. Other legal and economic instruments regulating greenhouse gas emissions and redirecting energy production and consumption are the essential tools.

When making decisions under the Act, extra cautions are much needed when assessing impacts on MNAS to ensure that future scenarios taking into account impacts from climate change and other emerging pressures (e.g. food security) are considered thoroughly. Strategies in conservation, bioregional and other landuse planning incorporating habitat and wildlife “corridors”, especially across climatic (and micro-climate) zones, would help build “safety nets” or “refugia” for species and communities vulnerable to climate change. Additional resources (perhaps in part through carbon tax and trading schemes) should be allocated for action research related to building species and ecosystem resilience to climate change.

Q21 Do you think that current assessment and decision-making processes for the listing of specimens suitable for live import could be refined and simplified?

There are issues of transparency and conflicts of interest in the assessment process as in the case of EIS assessment process (Please refer to answer to Q4). This stems from the fact that the Terms of Reference for an environmental assessment of the import of the species as well as the report itself are to be prepared by the applicant for amendment of the live import list. An independent body should be authorized to prepare the TOR and assess the potential impact of the proposed import, not the applicant himself.

Moreover, the amendment process seems to focus mainly on the addition of species to the lists. What about taking species off the lists? The list, with hundreds of species, appears huge to me. Surely many of the species that have had a long history of import are already breeding here in captivity or in the wild. E.g. Do we really need to have more domestic dogs, cats, goats, guinea pigs or rats (all listed in Part A of the list, requiring no permit), all with known environmental impacts?

Thank you for considering my submission.

Best regards,

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