

Environment Protection and Biodiversity Conservation Act

Independent Review

December 16, 2008

Summary

Greenpeace believes that the review of the Environment Protection and Biodiversity Conservation Act is a timely opportunity for the Government to amend the legislation to take account of the significant issue of climate change.

We recommend the inclusion of a climate change “trigger” in the EPBC Act to ensure that developments that have the potential to produce significant greenhouse pollution are assessed under the EPBC Act, so that Australia can ensure full implementation of its obligations under the Kyoto Protocol.

Further, we recommend that the EPBC Act include a prohibition on the construction of new, or expansion of existing coal power stations and coal mines.

We also recommend the inclusion of persistent organic pollutants as a Matter of National Environmental Significance under the Act; including a “POPs trigger” in the EPBC Act, so that Australia can ensure full implementation of its obligations under the Stockholm Convention.

For further information

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A. Climate Change

Background

Climate change poses a significant threat to the global and Australian environment. There is increasing evidence from the natural world that climate change is happening faster than predicted by the 4th Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) which has been regarded as scientific consensus.

Case Study: *In 2007, the Federal Court ruled that the climate impacts of then named Anvil Hill open-cut mine need not be assessed by the NSW Minister for the Environment and Water Resources. Specifically, the Federal court ruled that the emissions from the one project, only constituted 0.04% of global emissions and were therefore not of significance. This ruling highlights serious flaws in the EPBC Act.*

This project was unique, in that it was actually referred to the EPBC. Most greenhouse intensive projects are not referred. The rapid growth of Australia's emissions since Australia first accepted anthropogenic climate change with its ratification of the United Nations Framework Convention on Climate Change in 1992 - primarily from the stationary energy sector - has occurred in a vacuum of effective national greenhouse management.

Failure to cut global greenhouse emissions will result in significant negative impacts on ecosystem health and biodiversity. It is therefore imperative that the EPBC Act be amended to provide effective capacity for the Federal Government to protect the environment and conserve biodiversity.

Role of the Commonwealth in legislating to meet international obligations

Australia has ratified the Kyoto Protocol and it is highly likely that future Governments will commit Australia to further international treaties to limit the emission of greenhouse pollution. In order to meet the emissions reductions targets agreed under these UN instruments, the Commonwealth Government requires the capacity to regulate and to limit developments that may, if implemented, lead to Australia failing to meet its international obligations.

The ALP's commitment to the "greenhouse trigger"

The ALP made an election commitment to include a greenhouse trigger in the Environmental Protection and Biodiversity Conservation Act 1999.

GREENPEACE RECOMMENDS:

1. The inclusion of climate change as a Matter of National Environment Significance (NMES)

The EPBC Act should be extended to consider climate change as a Matter of National Environmental Significance under Division 1. This would require an amendment under the Objects of the Act to include

- the reduction of greenhouse gas emissions from Australia and to assist with global efforts to stabilise and reduce human derived greenhouse gas concentrations in the atmosphere.

2. The inclusion of a ‘greenhouse trigger’

Amendments should also establish provisions that would ensure that projects that have an adverse impact on the climate system are assessed and approved by the Commonwealth.

Greenpeace recommends a “greenhouse trigger” on climate change, whereby projects that would lead to emissions greater than 100,000 tonnes CO₂-e per year must be referred to the Minister. The project should then be assessed to ensure that:

- where alternative development options exist that would have significantly lower greenhouse emissions, these options are investigated;
- all opportunities for greenhouse reductions from a given project are pursued in line with current international best practice;
- projects that are given approval but will still result in significant greenhouse emissions are required to offset emissions through accredited programmes that reduce an equivalent amount of emissions permanently.

3. The banning of actions

The inclusion of climate change under Division 1 would require the addition of provisions. Greenpeace recommends that the provisions on climate change ensure that the following actions are prohibited:

- the construction of new coal fired power stations
- the expansion of existing coal fired power stations
- the construction of new coal mines
- the expansion of existing coal mines
- The development of synthetic fuel projects with a 'well-to-wheel' greenhouse emissions intensity greater than conventional fuels on a barrel for barrel equivalent.

Provisions to ban these activities should be added in Section 140.

Persistent organic pollutants

Background

Tens of thousands of chemicals have been released by humans into the environment with little or no knowledge about their environmental or human health impact. There is an even greater lack of information regarding the effects of the mixing of chemicals once released to the environment. The result is a “cocktail” of chemicals in the environment, affecting the life support systems on which we depend.

The release persistent of harmful substances into the environment cannot continue without expecting significant and irreversible harm. An approach based on the prevention, substitution

and phase out of substances that are toxic must result from this expectation. This includes substances that are persistent and bio-accumulative, and substances that give rise to concerns such as hormone (endocrine) disrupting chemicals.

Hazardous substances are especially dangerous because they are invisible, and although they can cause acute damage, usually cause chronic, slow, incremental destruction such that it is often too late by the time significant or irreversible damage is recognised.

The traditional, outdated policy and legislative approach is based on attempts to control “permissible” release levels of harmful substances under the erroneous assumption that the receiving environment could dilute and disperse them, and thereby render them harmless. This approach has failed. The failure of this outdated and dangerous approach has led to the realisation that a better, more protective paradigm is needed to adequately address the problem.

This realisation gave rise to the adoption of the precautionary principle, which is contained in Principle 16 of the Rio Declaration. The precautionary principle requires the taking of preventive action before waiting for conclusive scientific proof regarding cause and effect between the substance and the damage, at which time it is too late. The burden of proof is also reversed onto the proponent of a release or activity to demonstrate that it is unlikely to cause harm, before they may proceed.

The precautionary principle is a more robust scientific approach because it takes into account the limitations of scientific information. Sound scientific methodology and assessment require consideration of both what we know and what we do not know. The assimilative capacity approach has failed precisely because it failed to acknowledge and accommodate the limitations in scientific information.

Including POPs as a matter of National Environmental Significance – A POPs Trigger under the EPBC Act

The Australian Government ratified the Stockholm Convention on Persistent Organic Pollutants in May 2004, and the convention came into force on the 17th May 2004. The real value of the Stockholm Convention and the protection of the health of the Australian community and environment can only be realised through the full implementation in Australia. Part of ensuring that full implementation would be to include POPs issues as a matter of national environmental significance, and amend the EPBC Act to include a trigger for the Stockholm Convention.

The clearest example of a proposal that triggers the EPBCA would be the construction of a large-scale industrial plant emitting high levels of POPs as a by-product. Under the EPBCA currently, the Commonwealth is unable to intervene. While the development may trigger a Commonwealth EIA for other reasons (eg. critically endangered species), the Commonwealth is still not in a position to examine or restrict the production of POPs. Now that Australia has ratified Stockholm, the Commonwealth has responsibility to fulfil its international obligations under the Convention.

GREENPEACE RECOMMENDS:

1. **The *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* should be amended to include a trigger for the Stockholm Convention.**

This trigger should be applied to:

- Any proposal to construct a facility listed in Part II of Annex C of the Convention. This includes the construction of any waste incinerator, any proposal to fire hazardous waste in a cement kiln, any pulp mill proposal and any proposal involving secondary copper, zinc or aluminium production or the construction of sinter plants in the iron and steel industry.
- Any proposal to destroy any Stockholm Convention chemical or Stockholm Convention chemical contaminated waste or soil.