



**OFFICE OF THE COMMISSIONER
FOR SUSTAINABILITY AND THE ENVIRONMENT ACT**

ABN: 14 526 086 507

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

Dear Secretariat,

I am writing to provide comments to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999*.

My role as ACT Commissioner for Sustainability and the Environment is to engage and promote the adoption of environmental sustainability practices and to this end I have been undertaking an Investigation into Lowland Native Grassland in the ACT. In doing this, the limitations of the *Environment Protection and Biodiversity Conservation Act 1999* have caused me some concern.

This submission is not designed to be an extensive assessment of the EPBC Act but instead to cover issues that have arisen in relation to the EPBC Act during my Investigation into Lowland Native Grassland in the ACT. I recognise the importance of national legislation that aims to provide for the protection and conservation of the environment, biodiversity and heritage and to promote ecologically sustainable development at a national level. However, the EPBC Act needs to be strengthened, to be more proactive and effectively implemented in order to better achieve its objectives.

Scope of the Act

- There is currently no scope in the Act for the protection of species and ecosystems on the brink of becoming threatened or vulnerable. Time and effort instead is placed on recovery plans once species are listed as threatened or vulnerable rather than implementing preventative measures.
- The Act currently only considers one species at a time and not cumulative affects or communities (unless the community is listed as threatened). The scope should be broadened to address this issue.
- “No action” should be a trigger in the Act as well as actions. For example, my report on the Belconnen Naval Transmission Station Site (as part of the Investigation into ACT Lowlands Grassland) highlighted that grazing pressure

from very high kangaroo numbers impacted on several species listed as vulnerable or critically endangered under the EPBC Act. However as there was no action, it did not trigger an assessment process under the Act.

- Government policy, programs and decisions should be included in the Act's definition of an action. These can have as significant an impact on the environment, biodiversity and heritage as a project, development or activity.

Assessment and Approvals

- When assessing an action, alternatives to the proposal should be considered. The current practise of placing conditions or controls on the proposed option may not provide the best outcome for the environment, biodiversity and heritage or for the proponent.
- While offsets can be a useful condition to place on an action, it is important that a net environment gain should be the basis for determining the offsets. In undertaking offsets, there should be no net loss in quantity and quality of the ecosystem and ecosystems at the site scale are maintained and not offset in the broader landscape. Threatened species and communities listed under both national and relevant state legislation should be given the highest level of protection. Therefore trade-offs should not be encouraged by using for offsets that adversely affect sites with these species and communities.
- As part of the assessment process, key conservation values should be determined and clearly articulated. This allows proponents to understand what needs to be achieved at the beginning of the process.
- The assessment process should be revised to address the effects of cumulative actions on a site rather than addressing different actions on a site separately.
- The assessment and approval process should ensure that environmental, cultural and social considerations are built into proponents proposals and mitigations are clearly articulated.

Compliance and enforcement

- If conditions are placed on a proponents actions, then they need to be implemented to ensure that the appropriate mitigation is not only built into the planned action but that it is actually undertaken. A mechanism to ensure that the implementation of conditions occurs is needed. Further, once conditions are implemented, they should be monitored and be able to be adjusted to ensure that the key conservation values and goals are being met.

As my role is independent from the ACT Government, this submission provides the view of myself and my Office. I look forward to the outcomes of this review and am willing to discuss the issues raised with you if that assists.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Cooper'. The signature is written in a cursive style with a horizontal line underlining the name.

Dr Maxine Cooper
Commissioner
18 December 2008