

19 December 2008

Dr Allan Hawke
Secretariat to the Independent Review of the EPBC Act
GPO Box 787
Canberra ACT 2601



Dear Mr Hawke

Submission to the Independent review of the EPBC Act

We refer to the notice of assessment and invitation to comment on the operation of the *Environmental Protection and Biodiversity Conservation Act 1999* (the Act). In particular we wish to provide brief comments five of the areas outlined in the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* Discussion Paper:

- Scope of the Act
- Assessment and Approach
- Biodiversity
- Protected Areas, and
- Compliance and enforcement

We understand the independent review of the Act will at various stages be open to the public for comment. With that in mind, we have provided below a brief summary against each of the areas for examination, with the hope that further consultation opportunities may allow us to provide more detailed comment.

Scope of the Act

Q1 What are your views on the following aspects of the act?

(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 there should be another test, what should it be?

The Peel-Harvey Catchment Council is highly cognisant of the cumulative impacts of the developments that continue to occur around the Ramsar-listed Peel-Yalgorup System; the centrepiece of the Peel-Harvey Catchment. While there are various policy and legislative mechanisms in place at both the State and Federal levels, the EPBC Act currently offers one of the more robust mechanisms of protection to the values of this internationally important

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wetland system. Yet, urban development – one of the greatest threats to the wetlands in the System – continues to impact upon the natural values of the System.

Whilst an action may not individually be expected to cause a significant impact on a matter of national environmental significance (NES), the collective impact of similar actions may be quite likely to have a significant negative impact. In fact, the Ecological Character Description for the Peel-Yalgorup Ramsar Site lists urban development as a key threat to the Peel-Yalgorup System. Thus a test which takes into consideration the cumulative impact of an action should be applied.

Assessment and approach

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

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?

Q8 Does the use of strategic approaches, such as strategic assessments and bioregional plans, provide opportunities for streamlining Commonwealth involvement in environmental issues? Do such approaches provide an appropriate means for dealing with cumulative impacts?

With regard to the operation of the Act we are heartened by the way in which the Act provides for community consultation. Our experiences with officers of the Approvals and Wildlife Division have also been positive and indicate active steps taken by the Australian Government towards engaging with the local community.

However, the ability for community to effectively engage in the environmental assessment process is limited by two factors:

- level of awareness amongst the broader community about the provisions of the Act and the most appropriate ways for individuals to participate
- the capacity of individuals, community groups and non-government organisations to provide comment in a process where other key actors (namely government and proponents) are far better resourced.

This is particularly true in the Peel-Harvey region, one of the fastest growing regions in Australia. Due to the number of proposals and the drain on community's limited and often voluntary resources, we would welcome a situation where more support is given to community to streamline the process of community consultation and to ensure that participants are contributing in the most effective way possible.

We would like to see the Australian Government work with NGOs to undertake more through community education/awareness raising activities in order to ensure information is extended to the broader community. We commend the efforts of the EPBC Unit joint project, formerly managed by WWF and would welcome its reinstatement.

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We would welcome the opportunity to participate in the preparation of a strategic guideline for matters of national environmental significance in the Peel-Harvey coastal catchment.

We applaud the initiatives of the Australian Government to streamline the environmental approvals process via recent amendments to the Act and we realise the ten-day public comment period is aimed at ensuring an efficient approvals process. However, the ten-day restriction often provides a barrier to public participation. Thus, we would suggest that community be able to request extensions beyond the current ten-day comment period.

With reference to streamlining environmental approvals processes, the role and function of the bilateral agreement between the Australian Government and Western Australian Governments in development assessments seems an appropriate framework for communication between the State and Australian Governments. Although, having separate approvals provides for a more robust environmental impact assessment process and ensures that the necessary 'checks and balances' are in place.

Biodiversity

Q10 What are your views on the process for nomination threatened species, ecological communities and key threatening processes?

Q17 Are there opportunities to improve the coordination between the Commonwealth and State and Territory recover regimes, If so, what might these be?

Our organisation was recently involved in nominating the threatened Lake Clifton thrombolite community for assessment as a listed TEC under the Act. We found this process to be straightforward. And, although the assessment process is lengthy, we recognise the need for thorough investigation of potential new species and communities.

Communication between State and Commonwealth Governments may help to streamline this process. We are aware that the Western Australian Government holds significant data in support of its own list of threatened species and communities. The importance of protecting South Western Australia's globally important biodiversity cannot be overstated, as is the need for sound legislative protection for threatened species and communities. Greater alignment between State and Commonwealth processes may help to streamline the nomination process and may help to provide threatened species and communities with higher level protection with expedience.

Protected areas

Q29 What are your views on the effectiveness of the operation of the provisions for Ramsar wetlands and the utility of management plans for those wetlands?

The provisions of the Act and accompanying EPBC Regulations have provided a framework for the preparation of a management plan for the Peel-Yalgorup System by the Peel-Harvey Catchment Council in partnership with community and government stakeholders. Whilst

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management planning for protected areas is typically a function of the State Government, the preparation of such a plan for the Peel-Yalgorup System falls outside the scope of the Western Australian Department of the Environment and Conservation, because of the tenure of land included with the Ramsar-listed estate.

The Act, and its provisions for stakeholder and community collaboration in Ramsar-site management planning, has provided an essential tool for coordinated management of the Peel-Yalgorup System

Compliance and enforcement

Q35 Does the Act provide for the appropriate follow-up of environmental assessment and approval decisions, including the monitoring, evaluation and auditing of actions? If not, what other actions should be taken?

We note that the Discussion Paper identifies 231 'approval decisions with conditions', only 11 'approvals without conditions' and just 7 'refusals' at June 30, 2008. These figures emphasise the role of conditions of approval in making proposed actions environmentally acceptable.

We are encouraged by the use of stringent conditions and we have found in most cases that conditions of approval are specific and measurable.

However, approval conditions are often set in such a way that the associated 'cost' is easily transferred to a third party, or indeed the wider community. We are extremely concerned about some of the conditions that have previously been set in granting development approval. In particular, these concerns relate to:

1. - the use of offsets,
2. - inequitable conditions set for development approvals for actions of a similar nature impacting on the same matter of NES

In a recent example dealing with the EPBC Act listed threatened species Carnaby's Cockatoo (referral 2006/3155) Condition 3 of the Ministers approval document, set out the need for the proponent to acquire, as an offset, and area of Carnaby's Cockatoo habitat in the Shire of Victoria Plains, approximately 250kms away from the development site (proposed action). Moreover, condition 2c of that same approval applied to land not under the control of the proponent.

In approving the New Perth Bunbury Highway development proposal in December 2006 (ref 2005-2193) the Commonwealth Minister for the Environment set out a series of conditions including provisions to protect matters of national environmental significance. Condition 3(c) stated that construction-fill could not be sourced from within 500m of a wetland of the Peel-Yalgorup System. This is of note for the fact that the DEWHA is currently considering a number of proposed actions which propose to extract limestone fill from an area less than 500m from a wetland of the Peel-Yalgorup System. This presents a difficult situation to the Minister in setting equitable conditions across actions.

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We congratulate this initiative to review the application of the EPBC Act and look forward to actively participating in the review process over the coming months. Please do not hesitate to contact Amanda Willmott, Wetlands and Waterways Officer of the Peel-Harvey Catchment Council, should you wish to discuss the comments or review process in more detail.

Yours sincerely,



Jan Star AM

Chairman

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