

**Submission to the Independent Review of
the *Environment Protection and
Biodiversity Conservation Act 1999***

Written on behalf of the Australian Orchid Council

Author: Alan W Stephenson, Conservation Director

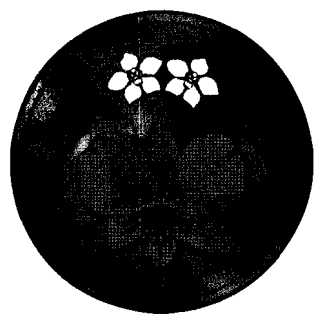
15-12-2008

I do not want this submission to be treated as confidential or anonymous.

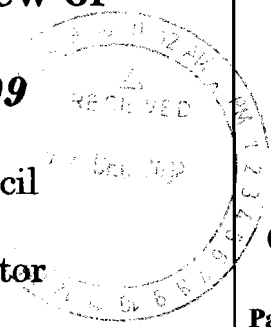
Scope of the Act.

Dot point 4 is the first failing of the EPBC Act. This provision permits the destruction of Threatened Species. A case in point is at this moment being carried out in Tasmania. An EPBC listed terrestrial orchid species, *Speculantha atriola* (syn *Pterostylis atriola*) is known to occur within Logging Coupe BG034A near Railton in Tasmania. The initial survey to locate this species was hastily conducted and as such most of the orchids later uncovered by an associate of the owner of a neighbouring property were overlooked. When a second survey was conducted many orchids were found to be scattered within the logging coupe. In line with the RFA these orchids could be destroyed. Eventually numerous control plots measuring approximately 100 sq mts were established, some known to contain *S. atriola* and some known not to contain *S. atriola*. Logging operations were then to commence in a normal manner to determine how the orchids and their habitat survived the operation. I am at a loss to understand how any EPBC listed species could be permitted to be merely part of such a destructive trial. I feel that despite the requirements of the EPBC Act as currently apply to the RFA, this action is unconscionable and as such **must** be removed if the Act is to retain any validity.

The section "**impact**" as inserted in 2006 (section 527E) and "**significant impact**" are as indicated subject to ministerial discretion. This is fraught with danger for the species involved. I would prefer the minister not consult with his bureaucratic advisors on matters concerning orchids but request advice from the Centre for Plant Biodiversity Research (CPBR) where orchids are concerned, if this is not already the protocol.



**The Australian
Orchid Council Inc.**



Patron:
Mr Gerald McCraith A.M.

President:
Ms Pam Bartlett
16 Ronald Street,
Devonport Tas 7310
Tel 0364243028
Fax 0364232344
Email
phbartlett@eftel.net.au

Vice Presidents:
Mr. Ken Siew
Mrs. Stephanie Clarke

Secretary:
Mrs Jenny Hawley
61 Cardigan Street
Somerset Tas.7322
Tel: 03 64352708
Fax: 03 64352708
Email:randjhawley@southcom.com.au

Treasurer:
Mr Neil Hardstaff,
P.O.Box 1031,
Launceston. Tas. 7250
Tel: 03 63445263
Fax: 03 63430869
Email:
neila.hardstaff@bigpond.com

**Registrar-General of
Judging:**
Mr C B Jennings FAOC

Program Director:
Mr Jim Shaughnessy

Publications Director:
Mr C B Jennings FAOC

Conservation Director:
Mr A W Stephenson

The paragraph following the above referring to actions with prior authorisation should also be withdrawn (over a period of time) due to the continuing rate of species loss throughout Australia.

My Views on the Act.

(a) The objects of the Act are appropriate but their application regarding environmental protection and management are slanted towards development approval, rather than the environmental concerns of the matter under consideration.

(b) ESD is an over used and inappropriate phrase where environmental concerns and development are in conflict.

(c) Existing matters of NES are appropriate but as for (a), their application is lacking.

(d) The definition of an "action" is appropriate.

(e) My understanding of the Act indicates the Act adequately covers direct and indirect impacts.

(f) The test of significance in the context of "significant" impact does not operate effectively in practice. In many developments to which I have forwarded submissions, EPBC species have been involved with the full knowledge of the developer and those who administer the Act, however in many instances I am amazed some of these developments proceed to completion. Examples are the Stockland development at Vincentia, where the developer purchased the land in the full knowledge of associated environmental difficulties. It was only after four years a section of land was "gifted" to DECC following the eventual rejection by the DEWHA of a section referred to as Adaptive Housing. The Jandakot Airport extension is currently under consideration but I ask why, as some of the land required by the developer is listed as a "Forever Park" and contains numerous EPBC species including *Arachnorchis huegelii* (syn *Caladenia huegelii*), the Grand Spider Orchid.

There are many similar instances across Australia but despite this I feel the Act is adequate with sufficient legislation to cover most areas of environmental concern but the contents of the Act must be more rigidly enforced with more consideration given to the retention and improvement of what remains of an environment which has been significantly diminished since white settlement.

Assessment and Approvals.

I believe in the main, appropriate projects are being referred for assessment, however due diligence and some local knowledge of particular areas should be a factor as some small projects which contain EPBC species (orchids) have not been referred. A case in point is a development at Vincentia which the Shoalhaven City Council Threatened Species Officer announced his intention to refer to the DEWHA but was threatened with dismissal if this eventuated. This matter was well known to the general public and particularly those involved with both general and specific areas of conservation. I realise this is a difficult area and the DEWHA is at arms length from this until any development is referred but a concerted approach to consult closely with state counterparts will lessen the chances of a project being overlooked with the possibility of it falling through the cracks.

Biodiversity

(9) The Act could be an effective medium for protection of Australia's biodiversity if the escape clauses were removed. These include ministerial discretion which currently seems to be used allow decisions which do not favour the protection of EPBC listed species.

(10-11) This section of the Act is a particularly frustrating in that it is time consuming (albeit for a reason), however this allows new, unnamed and therefore unprotected species to be placed at risk. E.g. To the west of Nowra a proposal to construct a Gas Fired Power Station has been underway for some time. Currently a power line easement is in place but a greater electrical capacity is required, necessitating an upgrading of this line. Along the designated route is an endemic orchid species, *Specularantha vernalis* (syn *Pterostylis vernalis*). A nomination was forwarded to list this species; however the nomination was initially rejected but later accepted. Unfortunately due to a lack of personnel to review the nomination its acceptance was again delayed and placed on a priority list for a term of at least 12 months. Following this period the nomination was again to be considered with no guarantee of acceptance. If after this time the nomination was accepted, a further 12 months would pass before the results of the nomination would be known. In the meantime the power line would be constructed and a large number of a rare and endemic orchid would have been destroyed. I find this situation to be totally inexplicable and unacceptable. Some form of interim protection must be afforded to species in circumstances such as this and a delay in the initiation or completion of a development should be seen as the DEWHA conducting normal operations.

(12) When deciding to list a threatened species the minister should ask firstly the zoning applicable to the area in which the species or ecological community occurs, secondly if any change to zoning is under consideration and thirdly if any

development is proposed for sites containing the species or ecological community concerned.

(14) Commonwealth, State and Territory duplication will occur but regular contact between relevant departments and the use of a common terminology should overcome most obstacles and permit all parties to reach a common environmental objective.

(16) Rapid action and a genuine commitment are the necessary requirements for effective recovery of threatened species and ecological communities.

(17) See (14)

(19) As most of my environmental involvement concerns native orchids I am acutely aware these species have no capability to counter climate change. They cannot evolve in the same time frame as climate change and are unable to relocate as are some fauna species. The impact of climate change on their insect pollinators is often not considered. Therefore climate change must be an increasing priority in future legislation.

Compliance and Enforcement

It is obvious the Act has sufficient penalties as media reports indicate, however to fully justify the time and difficulties in prosecuting breaches of the Act, a better awareness and monitoring is necessary. I mention the Macquarie Marshes as an example and this situation is an example of the need for an increased Commonwealth/State consultation.

Decision Making Under the Act

(38-40) The Minister currently has too much discretion under the Act and decisions over the life of the Act have not always been in the best interests of the environment. The Minister accepts advice from various bodies when a decision is required; however insufficient attention is paid to the application of the precautionary principle. This section of the Act must be used more frequently when some doubt or uncertainty arises in regard to any development which has the potential to impact on the environment. The Minister should make extensive use of the scientific advice available. The Minister should use the expertise available at the CPBR and other Botanic Gardens and similar authorities throughout Australia.

(41) The period allowed for public consultation is under most circumstance adequate, however the time allowed for this should be extended to cater for holiday periods such as Christmas and other periods where numbers of people are not always in a position to respond within the normal time frame. Some local

government bodies target these times so as to minimise submissions and actions such as this are not in the best interests of the Act or the environment.

(42) Any form of merit review of a development proposal is worthwhile and cost and delay should be considered as part of the process. I feel the environment must always be given the advantage.

(43) A separate decision making body is unnecessary as the government has sufficient professional advice available (CPBR etc), as long as this advice is seriously considered.

(44) Performance assessment is best undertaken by periodically visiting the site of a development to determine the effectiveness of any conditions applicable to the development. Regardless of assurances and penalties for non-compliance, no set of conditions will better serve the environment than the knowledge of an unannounced site visit.

Stakeholder and community engagement

This is an essential part of an environmental assessment as all too often local knowledge is either not consulted and those employed to undertake an EIS or SIS are considered to be the only authority. This is where consultations with state counterparts can be of assistance as in many instances state authorities the DECC (and other parallel state authorities) and NPWS have more contact with local knowledge. To enable full community involvement in the overall process I feel it would be advantageous not only to place notices on the DEWHA Website but seek invitations to comment via notices in the local papers of the communities which may be impacted upon by a development or process involving EPBC listed species of flora, fauna, wetlands or heritage sites. Relevant community and national groups could also be included.

Climate Change

Climate Change is obviously a factor which must be seriously considered if current levels of biodiversity are to be maintained. When assessing a species for listing under the EPBC Act the long term impact of Climate Change on the habitat of any species must be carefully considered. Where orchids are concerned and terrestrial orchids in particular the maintenance of soil moisture, chemical composition and surrounding habitat stability are crucial to the long term survival of terrestrial species. Climate Change is affecting the habitat of terrestrial orchids at a greater rate than the evolutionary process available to these species.

General

I feel the Act could be improved with the addition of several changes which have been obvious to me during the time I have become involved formally involved in orchid conservation.

1. The DEWHA should be more aware of the capabilities of those persons undertaking environmental assessment work as required under the Act. In the main most people complete their tasks in a professional and proper manner; however personal experience gives me serious doubts as to the capabilities of some in regard to their ability to locate and identify orchids whether EPBC listed species or non listed species. General orchid knowledge and particularly identification of EPBC listed species must be given a greater focus by those undertaking this work and a record on a species list following an EIS must not be allowed to state *Prasophyllum* sp. when identification is as easy as a digital photo to the CPBR or a Botanic Garden. In conjunction with this is the need for surveyors to undertake their surveys at a time when the target species is expected to be in flower and the recognition and insistence of this by the DEWHA. Unfortunately the deciduous nature of most native terrestrial orchids frequently sees them overlooked or unrecognised when not in leaf or flower.
2. With regard to the above statement I see the need for some form of interim protection for new or unidentified species located during surveys. An example is the Stockland development at Vincentia (NSW). The site had undergone numerous assessments over a period of years without any EPBC listed species being located. Well prior to the sale of the site to Stockland an EPBC species, *Prasophyllum affine* was located on the site by an amateur person not associated with the undertaking of an EIS or SIS. Following the land sale to Stockland further intensive surveys were conducted to assess all environmental aspects of the site. This survey failed to locate another orchid species later located by the same amateur. Subsequently development approval was given and the orchid was later discovered. This species, *Calochilus pulchellus* is now listed under the NSW TSC Act as Endangered with 30 plants only known to exist across four sites. As the development had been approved prior to this latest orchid discovery, the new species had no status and as such could be destroyed along with all other non listed species. Firstly, no consideration was given to the precautionary principle and an interim protection order was not used to protect this rare species in the two year process of a formal description and a nomination for its listing and protection, albeit under the NSW TSC Act. This Act was used simply because of the very slow priority process of an EPBC nomination.

3. Those members of the public who make submissions to various projects where EPBC listed species are concerned would benefit greatly from increased feedback of information in much the same manner as is proposed for this review. I realise this would increase the workload of the DEWHA but I feel increased contact would be of benefit to the DEWHA and the environment in the long term.

Alan W Stephenson



Conservation Director
Australian Orchid Council (AOC)