

RIVER, LAKES & COORONG ACTION GROUP Inc.

Keep our waters alive!



22 January 2009.

Secretariat to the Independent Review of the EPBC Act
GPO Box 787
CANBERRA ACT 2601,
EPBCReview@environment.gov.au

Here is the submission to the Independent review of the Environment Protection and Biodiversity Conservation Act (1999) by the River, Lakes and Coorong Action Group Inc. Committee.

(Extension for submission until January 22nd 2009 approved on December 18th 2008)

We are particularly keen to comment on the legislation. The EPBC Act is the Australian Government's primary piece of environment and heritage legislation and of central concern to our group. The RLCAG is an independent, community-based organization that was formed to

- improve all aspects of the River Murray, Lakes and Coorong and to prevent any further degradation;
- increase the water flows in the River, Lakes and Coorong by lobbying governments and users of the River system;
- liaise with appropriate bodies over the management of the River Murray, Lakes Alexandrina and Albert and the Coorong, and their immediate surrounds;
- protect, conserve and enhance the biodiversity of the River, Lakes and Coorong.

It has been our experience, particularly since the proposal for a weir below Wellington on the Murray River surfaced in November 2006, that the EPBC Act, in its current form, has significant weaknesses. These include inadequate provisions for community input, consultation and comment at various stages of Referral, Declaration of an Action, and Environmental Impact Statement. Our submission will therefore focus on the ways in which the process might be improved and the ways in which the objects of the EPBC Act do not appear to be observed in practice.

Yours Faithfully

John Yelland
Secretary.

I am writing as part of the River Lakes and Coorong Action Group Inc submission to the Independent Review of the EPBC Act 1999. I am Secretary of the Action Group, an engineer and a fifth generation landowner at Point Sturt SA.

Terms of reference 2.1: Operation of the Act generally.

As a party to several submissions and comments on referrals recently concerning the Lower Lakes in SA, I make the following comments:

- a. Proponents are not encouraged to adequately consider cumulative effects of the proposed actions, or the effect that the action might have on other actions under the EPBC Act. The referrals are made unnecessarily specific by the format of the pro-forma.
- b. The 10 days of public consultation time is grossly inadequate. The referrals are by necessity very technical documents and not easy to understand by the citizen who might not have the background required. To make an informed comment requires considerable work in an unfamiliar area. This takes time. I understand the need for proponents to have a response in a reasonable time but the process should not be rushed without comment.
- c. The time available is also reduced by the process employed to make the referrals public. The 10 days starts when the referral is presented but the citizen doesn't know that until it appears on the DEH web site. This might be several days after the presentation, presuming the web site is available. It is also noticed that the proponents eg the SA Government, do not make the referral public through the media until after the event. When this occurs over the Christmas break, as it did with the seawater into the Lakes referral, the loss of the DEH server and the inability to contact departmental representatives and other technical experts made the submission writing particularly traumatic.
It would not be so hard to set up a web-based notification service for interested parties, and make the time for referral start when the document is available to the public, not when it is presented to the Minister.
- d. It seems that comments on referrals are the only way that the citizen can make an input to the terms of reference of the resulting EIS, if one is required.
- e. It is also the only point where comment can be made on the merit of the action ie if it is a reasonable thing to do to the environment. After the 10 day period, the public has no chance to call the action into question, even if further studies or even other referrals, lead to a change in circumstances. The referred action, if allowed, stands immutable thereafter. The only path is action through the courts, which has significant risks.
- f. The proponents and the public are the poorer for the lack of publication of submissions on referrals. The submissions should be treated like those to the Senate Inquiries - placed on the public record as items of reference for the future.
- g. The listing of new additions to the matters of national environmental significance do not currently effect past referrals. Such additions are as important as those on the

list when a referral is considered. There must be some process of review of previous decisions.

h. There is no direct process under the Act for follow-up monitoring of previous actions. This is left to the State bodies charged with protection of the environment. I see that as unsatisfactory dispersal of responsibility from the legislation charged with protection of the whole of the Australian environment.

Terms of Reference 2.2: the extent to which the objects of the Act have been achieved;

If this Act is supposed to have protected the Ramsar listed wetlands of the Lower Lakes and Coorong, a designated Icon site in Australia, then it has failed dismally, with the drying up of wetlands, loss of habitats, salinity, particularly in the Coorong, severe reduction of river flows and incursion of salt water into the Lakes. The Act is instead used to actively cut up the Environment, allow “development” to destroy habitats by the cumulative and indirect effects of actions. It needs to be pro-active in seeking to enhance the Environment, not simply to attempt to protect designated small bits.

Terms of Reference 3.4 ... the Australian Government’s deregulation agenda to reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards.

This is the only legislation protecting our environment. We don’t want it to be simplified and more efficient. We want it to work in a transparent way to protect the world around us.

Yours faithfully

John H. Yelland
Secretary RLCAG

I am writing as part of the River Lakes and Coorong Action Group Inc submission to the Independent Review of the EPBC Act 1999. I am a resident of Point Sturt with 30 years of local knowledge and a member of the committee of the RLCAG.

Terms of reference 2.1: Operation of the Act generally

The operation of the EPBC Act in respect to public consultation is seriously flawed.

1. The 10 days allowed for posting of public comment is way too short. In order for interested parties to do justice to the work and detail required to produce an adequate submission, a month would be more appropriate.
2. This time should be measured from the first day of public release of the referral rather than when the document is given to the Minister. Currently there is often a delay between these two events which reduces the 10 days to an even shorter period.
3. Submissions made during the public consultation period should be available for public perusal as soon as possible (such as in the recent Senate Inquiry into the water management of the Lower Lakes). Currently it appears there is no requirement to make these submissions public.

I believe this demonstrates both a contempt for those submitting and a lack of transparency, thus undermining my faith in the contribution of this process towards a fair and informed decision.

Yours Faithfully

Liz Yelland
Committee member RLCAG

Terms of reference 2.1: the operation of the EPBC Act generally

It has been our experience that the Act is perceived as an impediment rather than as the framework within which actions that impact on the environment should occur. For instance, in its Discussion Paper regarding proposals for weirs in the Goolwa Channel, the SA Government refers to the EPBC Act as a “risk”. These proposals purport to be about creating ecological refuges but the Act is seen as a hindrance. http://www.dwlbc.sa.gov.au/assets/files/proposed_refuge_project.pdf

Terms of reference 2.2: the extent to which the objects of the EPBC Act have been achieved

The objects, as set out in section 3 of the Act, are:

(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance;

We submit that the environment is not being protected by the EPBC Act but rather the Act is being seen as an impediment by developers including the States.

(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;

See below 3.1

(c) to promote the conservation of biodiversity;

See below 3.1.

(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous people;

See below 4.

(e) to assist in the co-operative implementation of Australia’s international environmental responsibilities;

See below 3.3.

(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia’s biodiversity; and

The role of the Indigenous Advisory Committee advising the Minister on EPBC matters should be reviewed. We adopt the submission of the Ngarrindjeri.

(g) to promote the use of indigenous peoples’ knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

We adopt the submission of the Ngarrindjeri.

Terms of reference 2.3. the appropriateness of current matters of National Environmental Significance

In our opinion, the understanding of matters of NES is over-restrictive. For instance, the turtles in the Lower Lakes have been dying in huge numbers because of tube-worm encrustations that flourish in the increasingly saline waters. Despite numerous appeals from the school children of Milang who have been rescuing, cleaning and

providing safe habitats for the stricken turtles, to Minister Garrett to intervene, nothing was done. It took many letters before a reply was received and finally the children were told because turtles were not endangered species, nothing could be done for them. The dying turtles were an indicator of the stressed environment of a region of international significance.

Similarly the closing of the Murray Mouth in 1981, should have alerted managers of the River Basin that the system was over-allocated, but water continued to be allocated. With the passage of the EPBC Act, the crisis caused by over-allocation should have been addressed, but this has been considered a “policial” matter and not the domain of the legislation. Instead drought has been blamed for the current woes.

There is no merit review on decisions that affect matters of NES.

Some species cannot be listed because there is insufficient data to support nomination. The EPBC Act should make a provision for these possibilities and could include a category for species listed as “data deficient”.

EPBC listings are well advanced for terrestrial species, less so for marine species and scarcely for freshwater species. The latter need priority attention, as rivers and lakes come under increasing pressure. The same could be said of listed communities.

At present, communities are defined as regional assemblages of flora and fauna. We do not think this is sufficient. There a danger that listing broad areas may dilute the protection afforded by the Act.

One of the consequences of EPBC listing could be to make priority funds available for research, and for management by local communities.

Terms of reference 2.4: the effectiveness of the biodiversity and wildlife conservation arrangements.

It is our observation that there are a number of plans for segments of the Lower Lakes and Coorong but no integrated credible plan for a fresh water recovery. Current proposals to build a weir at Pomanda Island (below Wellington), other weirs somewhere in the vicinity of Goolwa Channel and plans to bring sea water into the Lower Lakes along with the pumping of water from Lake Alexandrina to Lake Albert and the dredging of the Murray Mouth restrict biodiversity by cutting off segments of a complex interactive living system. For instance, a weir at Pomanda Island will create a stagnant pool of non-potable water subject to algal blooms above the weir and cut that body of water off from the wind-driven tides that move water up river, pick up the salts and nutrients and flush them out through the Murray Mouth. This salt will now accumulate and creep up River. The living system will be rendered less capable of dealing with climate change and reduced inflows.

We believe the system is in its current crisis through mismanagement and we see the current plans as short terms band-aid solutions that will pre-empt the possibilities of long-term recovery. The projects listed above are being addressed under the EPBC Act as separate actions and thus cumulative impacts and unintended consequences are masked.

Terms of reference 3. The review will be guided by key Australian Government policy objectives:

3.1. to promote the sustainability of Australia's economic development to enhance individual and community well-being while protecting biological diversity and maintaining essential ecological processes and systems;

The River, as a living system, must be given priority. If the River is not healthy, the communities and economies that depend on it will not be healthy either. There must be a guaranteed flow allocated to the River as a Living River and only then should shares be allocated to users of the river. It is our position that the EPBC Act should privilege ecological processes and systems in the interests of sustainability.

In terms of what we have seen with respect to the approach of the SA Government to plans for actions in the Lower Lakes, economic development is being given undue weight.

See above 2.4.

3.2. to work in partnership with the states and territories within an effective federal arrangement;

In our view the state is not holding itself to a sufficiently high standard. There has been inadequate “consultation” with respect to actions proposed for the Lower Lakes. The bilateral agreements contain processes that are not on a par with the EPBC Act.

Greater progress needs to be made in terms of aligning conservation assessments between states and the Commonwealth.

3.3. to facilitate delivery of Australia's international obligations;

The Australian Government has failed its Ramsar commitments to the wetlands of the Lower Lakes and Coorong. The ecological character of the wetlands has deteriorated and government policies regarding allocation of water have directly contributed to this situation.

3.4. the Australian Government's deregulation agenda to reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards; and

We urge that the EPBC Act be strengthened, not weakened. Appropriate and efficient standards are urgently needed not further deregulation. The EPBC Act is the only “voice” the environment has.

3.5. to ensure activities under the Act represent the most appropriate, efficient and effective ways of achieving the Government's outcomes and objectives in accordance with the Expenditure Review Principles.

The health of the River is not to be judged by narrow economic criteria.

Terms of reference 4. The review will seek input from state and territory governments, members of the community and industry.

We are pleased this is being sought and urge that input from community members be sought at all levels of the EPBC Referral process through the EIS and be sought in an open, transparent and respectful manner.

- The information contained in the Referral is often inadequate, at times inaccurate and often at such a level of generality that it is not a sound basis for action.
- Referrals should bear titles that reflect their content.
- The Lower Lakes and Coorong Management Plan is meant to be administered in accordance with the Australian Ramsar management principles set out in schedule 6 of the EPBC Regulations. 1.02 of Schedule 6 provides that “*wetland management should provide for public consultation on decisions and actions that may have a significant impact on the wetland*”. The word “should” needs to read “must”. Even so, the government is meant to be a “model manager” who is looking after the interests of the community and that includes the environment. This has not been our experience with recent referrals.
- There should be pre-Referral consultation with the local community. This was promised with respect to proposals for weirs in the Goolwa Channel but has not happened. Consultation requires engagement not the Government providing information on seven complex options via their website 3 days before a Public Meeting; making power point presentations in a crowded hall; cutting off questions and disallowing others; conducting “workshops” with facilitators who were not able to hear, wrote notes of butcher’s paper balance on their knees or sprawled on the floor and took a “vote” on the options when they had explicitly said they would not from an unrepresentative group.
- The period for public consultation – 10 working days – is far too short and should be at least 20 days.
- Interested parties and the general public should be informed when a Referral is about to be posted and not have to constantly check the website. The posting of the Referral on the Causeway to Pomanda Island on December 23 and the subsequent need for the community to work on their comments over the Christmas- New Year break is unreasonable.
- There is no requirement to summarise public comments and it appears that not all comments are published on the EPBC website. All should appear. The process should be open and transparent. Currently processes are not and are open to manipulation. For example the referral decision and referral re opening barrages but no evidence of public comments is at: <http://www.environment.gov.au/epbc/notices/assessments/2008/4618/information.html>. With respect to the Pomanda causeway the only details that appear concern the referral alone: http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=4674
- Public interest litigants should be protected against adverse cost orders and applications for security for costs.
- Public interest litigants can’t apply for an upfront costs order prior to commencing the litigation process.

- There is no requirement to consult with local community members who frequently have critical local knowledge of how systems operate and who see the day to day changes that aren't visible to those undertaking desk-top studies.

Terms of reference 5: The review will be commenced as soon as possible and completed by 31 October 2009.

We look forward to a stronger, more transparent and holistic approach in the revised legislation.

Yours sincerely,

Diane Bell
Committee member and spokesperson for RLCAG