

Department of Premier and Cabinet

POLICY DIVISION

Level 7, Executive Building, 15 Murray Street, Hobart TAS
GPO Box 123, Hobart, TAS 7001 Australia
Ph (03) 6233 3283 Fax (03) 6233 2242
Web www.dpac.tas.gov.au



Secretariat to the Independent Review of the EPBC Act
GPO Box 787
CANBERRA ACT 2601

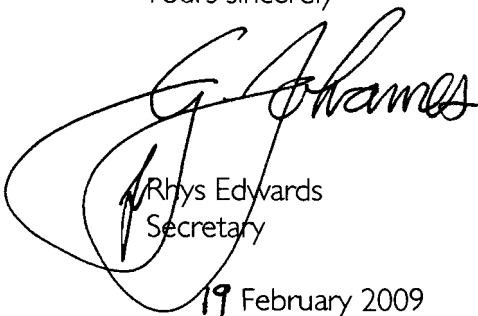
Dear Dr Hawke

Thank you for the opportunity to provide input into the ten year independent review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

Enclosed is a document outlining a number of indicative 'headline issues' for Tasmania in relation to the scope and operation of the Act. It is not intended to be a comprehensive submission and is not necessarily reflective of the Tasmanian Government's full range of issues and comments. Further information can be provided upon request and/or at your bilateral meeting with Tasmanian Government subject experts, which I am advised will occur in March-April 2009.

To request additional information or arrange a bilateral meeting, please contact Ms Louise Wilson, Assistant Director of the Policy Division in the Department of Premier and Cabinet. Ms Wilson can be contacted by phone on 03 6232 7171 or by email louise.wilson@dpac.tas.gov.au

Yours sincerely



Rhys Edwards
Secretary

19 February 2009

**Independent review of the *Environmental Protection and Biodiversity Conservation Act 1999*
Key issues for the Tasmanian Government
February 2009**

1. Introductory comments

The Tasmanian Government welcomes the opportunity to provide input into the independent review of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

This document outlines a number of 'headline issues' for Tasmania in relation to the scope and operation of the EPBC Act, in accordance with the review terms of reference. This is not intended to be a comprehensive Tasmanian Government submission and does not necessarily reflect the Tasmanian Government's full range of issues and comments.

Rather, the information contained in this document is intended to provide a preliminary indication of the nature of issues identified by Government agencies in response to the release of the Review Discussion Paper. Additional issues may be raised and discussed during a bilateral meeting between the Tasmanian Government and the reviewer, which is expected to take place in late March-early April 2009. Where appropriate, the Government will provide further detail in relation to issues it has raised, and in response to any specific requests.

2. The Commonwealth Government working in partnership with the Tasmanian Government

Access to Commonwealth Government funding programs for the management of sensitive reserve environments has been, and continues to be, very important to Tasmania. Tasmania has received significant special purpose funding for two major programs aimed at threatened species and threatening processes.

With the Tasmanian Government's Parks and Wildlife Service managing around 38 per cent of Tasmania's land (a substantial component of Tasmania's reserve system), the involvement and assistance of the Commonwealth Government is vital in providing strategic funding to strengthen reserve management to avoid, minimise and, where possible, reverse the decline in flora and fauna species. While there is a shifting NRM focus to the management of off-reserve land, we need to ensure that there is still a focus on the management of reserve land and funding is directed accordingly.

a) The need for flexibility and prioritisation of effort in relation to threatened species

The funding available for threatened species protection programs is limited, and the EPBC Act does not explicitly provide flexibility for evaluating the likelihood of success and prioritisation of effort in relation to listing threatened species and determining management requirements. In line with the thinking around the draft revised National Biodiversity Strategy, methods such as triage would allow resources to be concentrated on efforts for species that are more likely to show some degree of success.

b) The effectiveness of responses to key threats – fox eradication program

The Commonwealth and Tasmanian Government's have jointly funded a project to eradicate the red fox in Tasmania. This exotic species was recognised as a major threat to the conservation status of a diverse range of Tasmanian fauna. If successful, this approach will prove to be more cost effective than the alternative listing and implementation of recovery plans for many fauna which will be required if foxes are allowed to become established breeders in the State.

c) *Scope of the Act and effectiveness of the Tasmanian Regional Forestry Agreement and the Tasmanian Community Forest Agreement*

i. The Tasmanian Regional Forestry Agreement (TRFA)

Regional Forest Agreements (RFAs) are 20-year plans, for the conservation and sustainable management of Australia's native forests which are jointly developed and signed by the Commonwealth and State Governments. RFAs are based on scientific study and consultation covering a diverse range of interests. They are designed to safeguard biodiversity, old-growth forests, wilderness, and other natural and cultural values by setting aside representative areas of forest in conservation reserves, through the targets outlined in the nationally agreed JANIS criteria for a Comprehensive Adequate and Representative (CAR) reserve system and through sustainable forest management outside of reserves.

Section 38 of the EPBC Act exempts forestry operations undertaken 'in accordance with an RFA' on the basis that the environment and heritage values in these areas have been comprehensively addressed in the RFA process. This exemption reflects the intention to minimise duplication under the EPBC Act.

While some stakeholders have argued for removing RFA exemptions, the most recent (2008) five yearly review of the Tasmanian Regional Forest Agreement (TRFA) confirmed that the intent of the Agreement—to implement effective conservation, forest management and forest industry practices—continues to be met in Tasmania.

The findings of the review in respect of conservation practices demonstrates that the TRFA protects forest species and forest habitats within its jurisdiction, where the EPBC Act does not apply. All forest communities and old growth forest types are reserved on public land at levels that exceed the internationally recognised JANIS criterion that at least 60 per cent of old growth RFA Forest Vegetation Community be reserved. The TRFA has also created a reserve system on publicly owned land, including Formal and Informal Reserves. It has also enabled forest values on private land to play an important part in contributing to the CAR reserve system, based on the voluntary participation of private landowners.

ii. The Tasmanian Community Forestry Agreement (TCFA)

In 2005 the Commonwealth and Tasmanian Governments signed the Supplementary TRFA, also known as the Tasmanian Community Forest Agreement (TCFA). The TCFA is consistent with, and builds on the TRFA and enhances conservation values while encouraging the development of forest industries. Under this Agreement, the Commonwealth and Tasmanian Governments have committed to the protection of one million hectares of old growth forest through the additional reservation of over 170,000 hectares of forest on public and private land. Together, the TRFA and TCFA have increased Tasmania's existing conservation reserve system by one fifth, bringing Tasmania's total reserve system to approximately 44 per cent of the State's land mass.

The TCFA included recommendations on the development of Listing Statements and Recovery Plans for threatened species. It also provided funding for strategies aimed at other biodiversity and threatened species issues, for example a program to investigate alternatives to the use of the poison 1080 to control damage caused by browsing wildlife, and establishing a major response to understanding and control of the Tasmanian Devil Tumour Disease.

3. Duplication of approval processes and the regulatory burden

Tasmanian level 2 and level 3 assessment processes are accredited by the Commonwealth under the EPBC Act. However, the Commonwealth still issues its own separate approval instrument which results in differing regulatory requirements that need to be met to satisfy the environmental particulars of Commonwealth and State agencies. The Council of Commonwealth Governments (COAG) Competition and Regulation Working Group is currently examining options for progressing bilateral agreements on approvals under the EPBC Act to minimise the duplication in reporting and compliance and the burden this subsequently places on project proponents. Tasmania welcomes the opportunity to negotiate an approvals bilateral with the Commonwealth Government.

4. Interpretation of key terms in the Act

The principles of 'ecologically sustainable development' require decision-makers to integrate long term and short term social, environmental, economic and equitable considerations, as well as the principle of intergenerational equity and also require the conservation of biological diversity and ecological integrity in all development decisions.

There is the potential for conflict in balancing these principles, particularly for example, where the development of renewable energy sources may have impacts on areas of sensitive biological diversity that are covered by the Act. Appropriate weight in the decision making processes under the Act needs to be given to intergenerational equity to ensure that developments that have long term, wide and deep benefits to the environment—such as the deployment of renewable energy supplies to meet energy requirements to reduce reliance on non-renewable energy supplies that impact on climate change—and are not overly restricted or discouraged.

The concepts of 'significant impact' and 'matter of national environmental significance' are not clearly defined by the Act.

With respect to the term 'proposed actions' further clarity is required about when an action should be referred. A more definitive measure would aid in enabling proponents to decide whether to refer an action or not.

5. Heritage Issues

Recent changes to the EPBC Act and associated procedures have made a significant improvement and notable difference to enhance the smooth implementation of the National Heritage System. However, while the EPBC Act has tailored effort to those areas in need, it has also led to focusing assessments on a limited number of places with insufficient attention being given to the proactive management of nationally listed places.

The approach to how listed places are managed is in need of review. Greater attention ought to be given to supporting the development and implementation of management plans. Consideration should be given to the use or adoption of bilateral agreements.

6. Listing processes & Recovery Planning

There is significant potential to develop bilateral agreements to work towards consistent listing processes and lists, where appropriate.

Inconsistencies between listed threatened species under Commonwealth Government and Tasmanian legislation can lead to difficulties, because Commonwealth Government lists are global and do not differentiate between separate and varying habitats. For example, the Commonwealth

Government lists Eastern-barred bandicoots but these have healthy populations in Tasmania. This can result in proponents being triggered under the EPBC Act, while not being required to do any assessment under State legislation in relation to these particular species.

It would be useful to have drafting criteria, templates and guidance for the development of recovery plans to ensure that they are more action based and achieve on-ground conservation outcomes.

7. Compliance and enforcement

With the current assessment bilateral it is not uncommon for the Commonwealth Government to include additional conditions in their permits and approvals without prior agreement of the State. This can make compliance and enforcement difficult for states and territories, particularly as the Commonwealth Government generally does not have the resources to undertake compliance and enforcement on the ground in each jurisdiction and there is an expectation that state and territory governments will undertake this work.

8. Import/export

It would be useful to consider the development of a schedule for prohibited species (for import) rather than current system of assessment for each application. It would also be a better use of public resources to put the onus to provide information onto the proponents of applications for import.

At times, the Commonwealth Government has attempted to impose prescriptive management regimes through the assessments and approvals required for Wildlife Trade Operations and other EPBC Act processes as they relate to fisheries. The Commonwealth Government should focus on the required outcome (sustainable fisheries) rather than the management tool to achieve that outcome.