

Wide Bay Burnett
ENVIRONMENT COUNCIL



Attn: Christine MacDonald
Secretary
Environment and Communications Legislation Committee
PO Box 6100
Parliament House
Canberra
ACT 2600

September 3rd, 2015

Submission regarding the proposed repeal of **section 487** of the
Environment Protection and Biodiversity Conservation Act 1999

Dear Ms McDonald,

The Wide Bay Burnett Environment Council Inc would like to take this opportunity to respectfully submit on the proposed Bill put forward by the Abbott Government to repeal section 487 of the *Environment Protection and Biodiversity Conservation Act 1999* which currently extends “standing” to seek judicial review of decisions to certain individuals, organisations and associations.

During his House of Representative speech on Thursday 20th August, Minister for the Environment Mr Greg Hunt states the intent of the EPBC Act “was to create certainty based on stringent environmental assessments. Indeed the EPBC Act was created to provide certainty for the environment and **project components.**”

According to the Explanatory Memorandum relating to the Environmental Protection and Biodiversity Bill which was passed under the Howard Government to give rise to the Environmental Protection and Biodiversity Conservation Act, the bill was introduced with the following objectives;

- Provide for the protection of the environment, especially those aspects of the environment that are **matters of environmental significance**
- Promote the conservation of biodiversity
- promote ecologically sustainable development through the conservation and sustainable use of natural resources

- promote a co-operative approach to the protection and management of the environment involving governments, the community, and landholders, and
- assist in the co-operative implementation of Australia's international environmental responsibilities

The Environmental Protection and Biodiversity Bill notes matters of national environmental significance are;

- world heritage properties;
- ramsar wetland of international importance;
- **nationally threatened species and communities;**
- migratory species protected under international agreements;
- nuclear actions;
- the Commonwealth marine environment (generally outside 3 nautical miles from the coast); and
- any additional matter specified by regulation (after consultation with the States).

Nowhere in the main objectives of the EPBC Bill does it mention certainty for “project components”, as Minister Hunt proclaims. Taking the abovementioned details into consideration, Katzman J, ruled that Environment Minister Greg Hunt therefore breached his legal obligations under the EPBC Act 1999 to properly address the conservation advices under the act and consider the fate of two vulnerable species present on the proposed site for the Carmichael Coal Mine.

(<https://www.comcourts.gov.au/file/Federal/P/NSD33/2015/3715277/event/28181487/document/607760>)

Minister Hunt also claims that environmental groups such as Lock The Gate Alliance and the Environmental Defenders Office are exploiting Section 487 of the EPBC Act and that this section provides a “legal loophole” for litigation.

It is important to point out that since the EPBC’s inception in 2000, 96.2% of projects which include mining and ports have been approved, with conditions.

(<http://www.theguardian.com/environment/2015/aug/12/australia-has-denied-environmental-approval-to-just-11-projects-since-2000>)

These figures don’t give much clout to the outlandish statements of the Mining Australia website that views environmental groups as setting out to “Destroy the Coalmining Industry and sabotage the Australian economy.”

(<http://www.miningaustralia.com.au/Features/Greenies-destructive-lawfare-must-be-stopped-opini>)

Environmental Advocacy Groups are created to bring about justice, protection and positive change for the environment. They are morally bound by the very objectives that are the basis of the EPBC Act 1999 and this is reflected in their mission statements. For example;

Wildlife Preservation Society of Queensland- “Protecting Wildlife, Influencing Choices, Engaging Communities” <http://www.wildlife.org.au/>

Lock the Gate Alliance- "...healthy, empowered communities which have fair, **democratic processes available to them** to protect their land and water and deliver sustainable solutions to food and energy needs." <http://www.lockthegate.org.au/>

It therefore became the moral responsibility of environmental groups to exercise their democratic right to challenge developments that affect the environment, as an "interested party". This was not a witch hunt or "political vendetta" as Attorney George Brandis stated.

Environmental Groups did not make the law. They are simply asking that it be enforced.

By repealing the extended definition of "person aggrieved" for the purposes of judicial review, Australia would be regressing its environmental legislation back over four (4) generations to the superseded *Environmental Protection Act 1975* where legislation aimed to disparage judicial review, especially from interested environmental groups.

The clearing of a hillside on Mount Sylvia in Gatton over 20 years ago resulted in the death of Kelp in the Moreton Bay Region, thus affecting the vulnerable to extinction Dugong that feeds on sea kelp. The agricultural run-off from the land owners farming practices and the subsequent clearing allowed silt to travel from Mt Sylvia creek which flowed into Lockyer Creek which flowed into the Brisbane River which flows into Moreton Bay. Using spectro-metric examination, scientists were able to confirm that the muck attached to sea kelp grasses was directly linked to Mt Sylvia almost 200km away. So is it not within reason to assume that the proposal of the largest coal mine in Australia has the very real potential of affecting The Great Barrier Reef, when small scale land clearing from a single gully on a farm damaged precious sea grasses and endangered vulnerable wildlife?

The Great Sandy Strait in South East Queensland is home to a world heritage listed RAMSAR site, an area of high ecological importance and an important feeding site for migrating shorebirds from as far as Russia and Japan. If a development project was to occur with direct impact on this site, this development would have the ability to affect individuals and organisations on a worldwide platform, thousands of kilometres away.

Given the inter-connectivity of Regional Ecosystems, environmental damage is unfortunately never in-situ and is more often far reaching and damaging for many hundreds or thousands of kilometres from the direct impact site. It is not possible to "geo-fence" environmental damage, therefore "interested parties" **cannot** be restricted to localised community groups or individuals.

The "watering down" of judicial review processes in relation to large scale developments and removing the right of organisations not "directly impacted" by the project to exercise their legal rights to oppose spells disaster for our natural resources and the overall health of our planet.

The Wide Bay Burnett Environment Council Inc whole heartedly rebuke the move to repeal section 487 of the *Environment Protection Biodiversity Conservation Act 1999*.

Sincerely,

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