

Digging into EIA – Failures in impact assessments

Jeremy Tager

Australia is failing to achieve the objectives of our national environmental law, the *Environment Protection and Biodiversity Conservation Act 1999*, to 'conserve biodiversity' and 'protect the environment'. The latest state of the environment report in 2011 delivered a sobering verdict, with most indicators of environmental health in decline. The verdict has been the same every five years since the first report in 1996.

'When we have a financial crisis we put vast resources into it,' says ecologist Andrew Bennett. 'But we have a biodiversity crisis and nothing happens.' Instead, the current political priority is to increase the pace of development approvals under the EPBC Act by reducing so-called 'green tape'.

Most green critics of the EPBC Act argue that its failings are mechanical, and fixable by amendments, or due to a paucity of political will. I think the failings are more systemic and correctly called 'institutional corruption'. This does not mean that individuals working to administer the EPBC Act are corrupt or that environment ministers take bribes to approve developments. Institutional corruption is the operation of institutional norms and practices that undermine its capacity to achieve its mission. Harvard University researcher Lawrence Lessig likens it to a magnet that pulls a compass needle away from magnetic north.

Let's take a look at the environmental impact assessment (EIA) process under the EPBC Act to consider whether current practices can achieve the Act's objects. It's only one component of the Act, and the EPBC Act is only one of a complex array of state and federal laws, but the federal EIA process is central to environmental protection, intended to ensure that development and other actions don't result in significant harm.

Always say yes

On average, fewer than two projects a year have been refused under the EPBC Act. Over 99% of all developments referred to the federal Environment Minister have been approved or deemed not to be federal matters. In its 13 years of operation, just 12 projects have been rejected following impact assessment and eight as 'clearly unacceptable' at the outset.

An unknown number of projects haven't proceeded because proponents were advised that approval was unlikely. Conservationists have celebrated a few decisions,

such as the refusal to dam the Mary River or extend phosphate mining on Christmas Island, but refusals stand out for their rarity. In effect, assessments under the EPBC Act are rarely to determine whether a project should proceed but rather what conditions to apply.

There has also been an increasing trend to substitute conditions of approval for pre-approval processes. As noted in the 10 year review of the EPBC Act, 'environmental management plans should not be used to gather information that was actually needed before the approval decision was made'. Conditions of approval have included requirements for research and baseline monitoring, which should be part of the EIA. Placing them in the post-approval process removes them from public scrutiny and from the decision process.

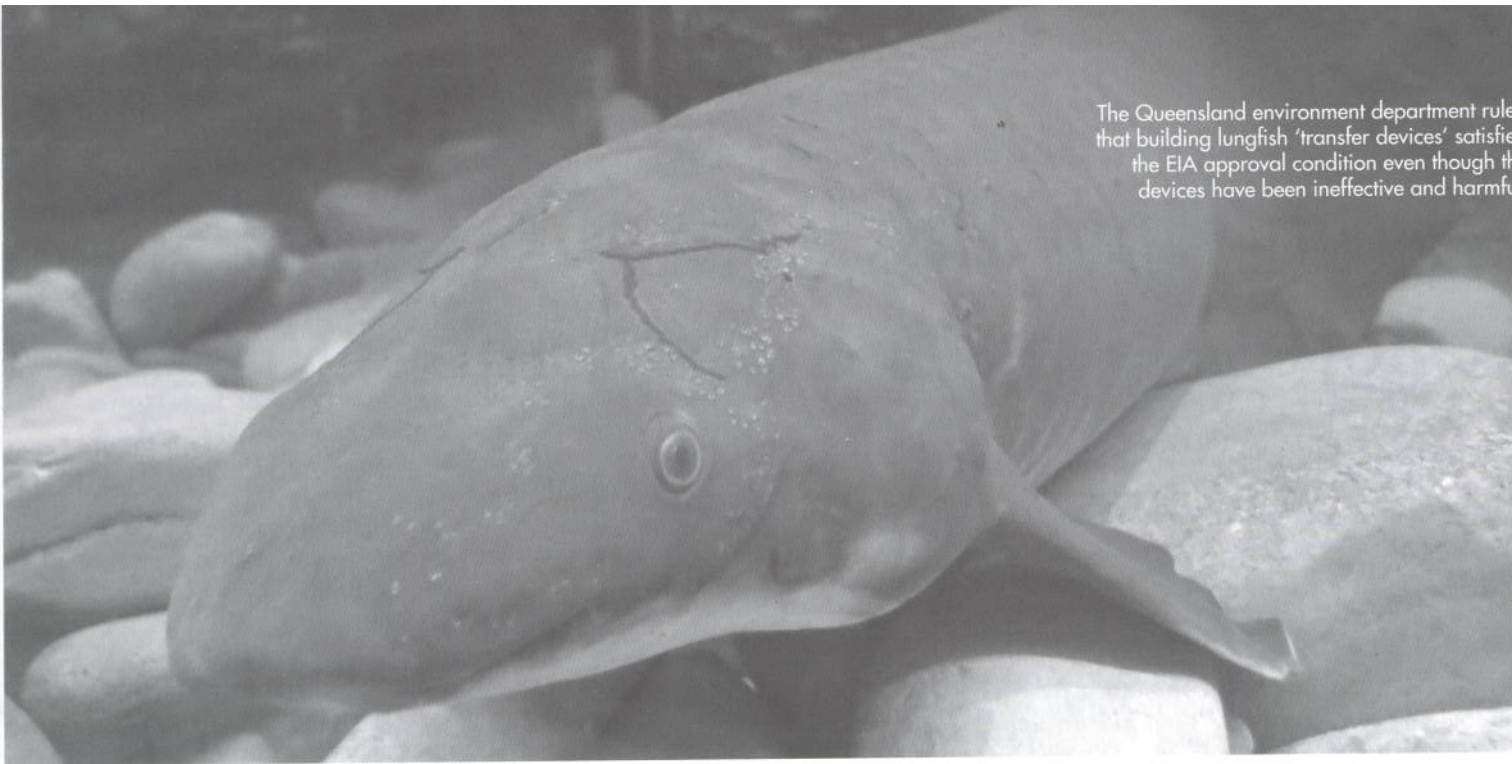
Condition 10 of the recently approved Alpha mine and rail line is typical. It requires a post-approval survey of species and habitat in the Ramsar-listed Caley Valley Wetland, through which a rail line has been approved, and for the proponent to develop ways to avoid or mitigate likely impacts and to rehabilitate.

A condition of approval of Queensland's Paradise Dam to limit impacts on the lungfish, a globally-significant species found naturally only in two rivers, was to build fish transfer devices to allow it to move upstream and downstream. Monitoring demonstrated that the devices haven't been effective - they frequently didn't operate, and when they did, many lungfish died. The environment department has ruled out taking action, deeming that building the devices satisfied the condition of approval even if they are ineffective and harmful.

Significant impacts ignored

The EPBC Act requires assessment of actions likely to have a significant impact on designated 'matters of national environmental significance', of which there are nine, including threatened species, ecological communities and world heritage properties. Proponents are required to refer their project to the Commonwealth if they think it is likely to have a significant impact, and the environment minister then determines whether an action needs to be assessed and what level of assessment is required.

Just 50 or so projects a year are deemed significant enough to require federal assessment. This is about one-quarter of the projects referred to the Commonwealth and a fraction of developments and actions impacting the environment.



The Queensland environment department ruled that building lungfish 'transfer devices' satisfied the EIA approval condition even though the devices have been ineffective and harmful.

The matters not referred include some that surely should be. The recent Queensland government decision to allow flooded mines to dump, untreated, their contaminated waters into rivers systems that drain into the Great Barrier Reef Marine Park (GBRMP) wasn't referred and a Freedom of Information request made to the GBRMP Authority uncovered not a single document assessing or discussing the potential impacts.

Many of the actions having the greatest impact on our environment are not considered national matters, including those that contribute to climate change, land clearing, logging, dams and water extraction, invasive species and damage to national parks. In reality, most big dams or mines are referred to the Commonwealth for assessment but usually only for a narrow subset of impacts. The China First coal mine proposal, for instance, is being assessed under the EPBC Act for impacts on a very few threatened species and communities but not for its destruction of a nature refuge property or the climate change consequences of burning the coal produced.

The law of small pieces

Because each 'action' is assessed as a discrete project and a proponent is not generally held responsible for the actions of others, an EIA often occurs in an environmental vacuum, ignoring wider and cumulative consequences of actions. The recent impact assessment of dredging and sea dumping for expansion of the Abbot Point coal terminal didn't consider the impacts of more terminals that will be built to take advantage of the dredged areas. Coal mines are approved separately from port expansions needed to accommodate them.

There are provisions in the EPBC Act for strategic assessments of cumulative impacts, but they are being used to lock in approvals for a suite of developments. The recently announced Strategic Assessment for the Great Barrier Reef recognised that multiple port expansions represent a threat to the health of the Reef, but it will not prevent approvals for mines, rail lines or ports while under way. By the time the assessment is complete, most of the major developments on the books will be under assessment or already approved.

Science for sale

Impact assessments are the basis for decisions, management, implementation, monitoring and enforcement under the EPBC Act. But they are produced by consultants hired by developers, and there is no requirement for peer review, which is standard scientific practice, nor professional standards that consultants must meet.

Researchers across several different fields have found that 'industry-funded studies are several times more likely to produce results favourable to the industry sponsor' (*Nature*, 2005, Vol.435, pp.737-8). In a 2005 survey of US scientists, 15% admitted to altering a study's design, methodology or results in response to pressure from a funding source. There are far fewer constraints on EIAs to limit the influence of funders.

The Ecological Society of Australia says, politely, 'There is much concern over the standard of science during the process of EIA in Australia', and recommends that EIAs be subject to peer review. The peak body for environmental practitioners, the Environment Institute of Australia and New Zealand, criticises the variable quality of EIAs due to the lack of professional standards in the consulting industry and government. No one knows whether predictions of impacts in EIAs are accurate because so little work has been done in assessing their accuracy. Limited compliance audits are undertaken by the environment department but no audits of the predictive accuracy of EIAs.

Information about much of Australia's biodiversity is lacking but EIAs rarely require new scientific studies. The snub fin dolphin was discovered in 2005 but rejected for listing under the EPBC Act because of insufficient data. Although dolphin researchers have said that it may be vulnerable to local extinctions due to habitat modification and increased shipping, no developer is being required to fill knowledge gaps for developments that will destroy its habitat or increase shipping.

Degraded baselines

Fisheries scientist Daniel Pauly coined the term 'shifting baseline' to refer to the tendency of fisheries scientist to accept current stock levels and species composition as the

baseline for sustainability assessments. EIA baselines are almost invariably the current condition of a development site. This masks changes that have occurred over time, reduces the significance of further changes and ignores the potential for recovery. Creeping environmental degradation is accepted as the norm.

When a second attempt at developing Nelly Bay Harbour on Magnetic Island was initiated, the EIA used as a baseline the condition of the site following the previous failed development that had been approved by the same regulators. This included a destroyed headland and a mountain of rock dumped in the Great Barrier Reef Marine Park. In the court case that followed, the regulators argued that the site was already 'degraded'.

This 'degraded site' argument has also been made for massive liquid natural gas developments on World Heritage Curtis Island. Although it has been part of the Marine Park for 40 years, the Great Barrier Reef Marine Park Authority has argued that the southern end of the Island is already degraded, thus justifying additional damage.

Baselines are even being shifted to the future! An approval condition for dredging at Hay Point, a coal port expansion project in North Queensland, is: 'Prior to the commencement of dredging and disposal, *or as soon as possible thereafter*, a baseline survey will be conducted to establish the monitoring sites and collect baseline data' (italics added).

Offsets

Instead of 'unavoidable impacts' being cause for project refusal, offsets for 'unavoidable impacts' are increasingly being used as a condition of approval. This is so even when there is no possibility of a 'like for like' exchange.

Many offsets are simply a sum of money - in effect, biodiversity is for sale. Offsets are promoted as a way of ensuring 'no net loss' of biodiversity, but this is generally not possible, as ecologist Hugh Possingham told ABC Radio: 'Biodiversity is not fungible, it is not possible to trade it from one place to another and hope to retain its value; biodiversity is dependent on where it is in the landscape (place) and when it is (time).'

Possingham explained how biodiversity ultimately loses from offsets: 'I'm going to conserve this 1000 hectares if you let me destroy that 1000 - in the end that just means we destroy half of everything that is left, which isn't at all acceptable. If you were to turn 1000 hectares into bare ground, or urban development, then you should have to

turn bare ground into 1000 hectares of native vegetation. Show me somebody who has done that; show me somebody that reconstructed an ecosystem from scratch. Nobody's done that. Ever!'

Limited public influence

The extent of public influence and public rights under the EPBC Act are limited and diminishing. Conservationists and community groups can challenge only the process of most decision-making rather than the merits of decisions. Some review rights were curtailed and abolished in 2006. The most recent case, which overturned approval for the Shree mine in the Tarkine, was won because the Environment Minister neglected to consider a particular document in his decision. The mine has now been approved because that document has now been 'considered'.

Much goes on in EIA processes that is not subject to public scrutiny. With approvals assumed, the negotiations over what conditions of approval should be imposed excludes affected communities and objectors.

Tinkering is not enough

When a regulatory regime is failing to achieve its objects but government proposes to weaken it, when it green-lights almost all developments referred and covers only a narrow portion of environmental impacts, it suggests the system isn't broken so much as it is fixed - fixed to deliver the interests of corporate Australia. Although, as Janis Birkeland writes, decision-making systems almost invariably 'develop an inherent bias in favour of the powerful', we should not shrug it off as 'the inevitable consequence of democratic processes'. The need for active community resistance never ceases.

The EIA deficiencies canvassed here suggest some obvious reforms - for example, requiring assessment of major impacts such as land clearing and large greenhouse gas emissions and for EIAs to be conducted by independent experts and peer reviewed. But to achieve these and other reforms needed to realise the objects of the EPBC Act will require more fundamental governance reforms to curtail the 'economies of influence' undermining institutional purpose.

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