

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: ec.sen@aph.gov.au

Dear Committee,

Submission to the Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015

Thank you for the opportunity to make a submission on the *Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015* (**Bill**).

I am writing to you because I am passionate about our country and every citizen's right to speak out about issues that concern all of us; our environment and its conservation is everyone's business. I strongly recommend that the Committee **does not** support the passing of this Bill.

1. The extended standing provision saves court resources and clarifies the law

The extended standing provisions were inserted into the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) as a result of a long evolution through our common law whereby various tests have been established to determine standing in judicial review matters. By providing a section which clearly specifies when standing should be granted, our courts and litigants are saved significant time and costs that were previously accrued through the need to argue standing in every matter. If section 487 was to be repealed as proposed, it is highly likely there would be lengthy delays arguing common law standing under the *Administrative Decisions (Judicial Review) Act 1971* (Cth).

1. Sufficient powers and obstacles exist to prevent frivolous and vexatious claims

The Federal Court has powers to dismiss or refuse lodgement of matters if they are found to be frivolous or vexatious under the *Federal Court Act 1976* (Cth).^[1] In addition to this, the significant resource burden of undertaking litigation, including the risk of an adverse cost order, provides a substantial obstacle to prevent unfounded litigation being commenced.

The restrictive nature of the current standing provisions and other inherent obstacles is demonstrated by a recent [report](#) by the Australia Institute which demonstrates that third party appeal rights have only affected 0.4% of all projects governed by the EPBC Act.^[2] Those which have been brought have frequently been successful; the recent case which apparently instigated the introduction of this Bill, *Mackay Conservation Group Inc v Commonwealth of Australia & Ors*, is an example. In this case all parties, including the Environment Minister, applied to the Court requesting that the Minister's decision be set aside due to the legal error discovered through the case, whereby the Minister had not considered his Department's conservation advice on proposed impacts to two threatened species.

1. Independent review found the extended standing provision provides 'no difficulties and should be maintained'

An independent review was undertaken of the EPBC Act in 2009 - 'The Australian Environment Act: Report of the Independent review of the EPBC Act 1999'. The Report considered the extended standing provided under the Act and determined that the provisions 'have created no difficulties and should be maintained. The question is whether these provisions should be expanded further', to provide standing to all people.

Further, the [Productivity Commission](#) has noted that 'there is a public interest in allowing third parties to bring judicial review applications'.^[3]

All Australians must have the right to protect matters of national environmental significance

Judicial review provides a check and balance to ensure that our decision makers are acting in accordance with the law. Decisions which concern the environment and matters of national environmental significance, which the EPBC Act is intended to protect, are by definition of relevance to all Australians. Concern for the protection of our environment goes far beyond financial interest. It is therefore appropriate that extended standing is provided to those concerned with the protection of our environment to apply for review of the legality of decisions made under the EPBC Act.

As a nation we are known for our strong desire to protect our environment – it is this determination that has ensured that Australia continues to retain relatively pristine areas with some intact ecosystems and a generally clean state. It would be un-Australian and retrograde to take away the right of concerned citizens and environmental organisations to ensure transparency and accountability in decision making on matters that affect our country's environment, **for the benefit of all**.

The extended standing provision in the EPBC Act is appropriate and necessary to ensure efficient use of court resources, and to provide, as concluded by the Senate Committee reviewing the EPBC Bill - '*a fair balance between enabling public involvement in enforcement of the [EPBC Act] and ensuring that decisions under the Bill are not unnecessarily delayed or impeded by vexatious litigation*'.^[4]

[1] See *Federal Court Act 1976* (Cth), ss 20A, 33ZG and Part VAAA. See also *Federal Court Rules 2011* (Cth), rule 2.26

[2] The Australia Institute, 2015, *The 0.4%*, available here: <http://www.tai.org.au/content/04>

[3] Productivity Commission 2013, *Major Project Development Assessment Processes*, Research Report, Canberra

[4] Environment and Communications Senate Committee Report into the *Environment Protection and Biodiversity Conservation Bill 1998 & Environmental Reform (Consequential Provisions) Bill 1998*, available here: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Completed_inquiries/1999-02/bio/report/c11