



Committee Secretary
Senate Standing Committees on Environment and Communications
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15 January 2013

Dear Madam or Sir,

Re: Senate Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*

The National Parks Association of NSW welcomes this opportunity to make a submission to the Senate Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012* (hereafter the Inquiry). We would welcome an opportunity to present before this Inquiry if public hearings are held.

1. Introduction

The National Parks Association of NSW (NPA) was formed in 1957 to promote the concept of a network of national parks in NSW under specialist national parks and wildlife legislation and managed by a professional agency. Today NPA continues to build on this work through a network of 18 branches and over 10,000 members and supporters. NPA has a strong commitment to the protection and best-practice management of Australia's unique natural areas and species, in order to promote better conservation outcomes across the NSW and Australian landscape.

NPA strongly believes that the Federal government must retain control of environmental approvals decisions on projects that impact upon matters of national or international significance. The federal government is the only appropriate agency to oversee national environmental issues, deliver on Australia's environmental obligations, and keep in check decision making by the State governments,

which have a poor track record of environmental decision making and often have an inherent conflict of interest in assessing developments. In addition, as described below, we believe that strengthening the environmental powers of the federal government, and broadening the definition of Matters of National Environmental Significance (MNES).

In December 2012, NPA made an extensive submission to the Senate Inquiry into the effectiveness of threatened species and ecological communities' protection in Australia¹. Parts of that submission were relevant to this Inquiry, and have been reproduced in this submission, along with additional information relevant to this Inquiry.

2. The importance of retaining Federal approval powers

There are a number of compelling reasons why the Federal government needs to retain its environmental decision making powers. Many MNES such as threatened species and important landscape features such as rivers cross State and Territory borders. Unlike State and Territory governments, which have extremely poor environmental track records (discussed below), the Federal government has the ability to provide the national leadership required to deal with national and cross-border environmental issues.

Australia's responsibilities under international conventions such as the World Heritage Convention, the Convention on Biological Diversity and various other agreements such as the JAMBA, CAMBA and ROKAMBA agreements on migratory bird species are also best dealt with at a national rather than a state level, given the cross-jurisdictional nature of these conventions. Federal intervention in State government decisions has been necessary on a number of occasions in order to protect significant places and species under these conventions, such as Federal decision making preventing the Queensland state government from oil drilling in the Great Barrier Reef in the 1970s and 1980s. In addition, it would be very difficult to achieve timely reporting if the responsibility for ensuring compliance with international obligations was delegated to State and Territory governments, either fully or partially.

A recent assessment prepared by the Australian Network of Environmental Defender's Offices (ANEDO) of the adequacy of threatened species and planning laws across all Australian jurisdictions noted that the

¹ Available from the Australian Parliamentary Website at <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=dc696c75-e0bd-4c04-8ef2-080d951a3c68>

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) allows the public to have a 'watchdog' role in identifying and reporting breaches of the Act, and challenging decisions. This role is absent under the threatened species and conservation legislation of many states, and this is another key reason why Federal environmental powers must be retained.

Unfortunately, State and Territory governments cannot be relied upon to exercise powers of approval in a way that adequately protects Matters of National Environmental Significance. The recent attempt by the Victorian state government to reintroduce cattle grazing into the national-heritage listed Alpine National Park provides a very clear illustration of the need for the Federal Government to retain its environmental powers in order to protect MNES. Four of the six trial sites into which cattle were introduced by the Victorian government were recorded as containing federally-listed threatened species and ecological communities (the vulnerable Alpine Tree Frog, endangered Spotted Tree Frog, vulnerable Dwarf Sedge, vulnerable Montane Leafy Greenhood Orchid and the endangered Alpine Sphagnum Bogs and Fens ecological community), and many of the sites were also adjacent to EPBC-listed species and ecological communities, without adequate fencing to prevent cattle from straying out of the site.² Intervention by the Federal environment minister, under the *EPBC Act*, was necessary to stop these trials and provide protection for the affected threatened species and communities, as well as for the national heritage values of the site.

The poor environmental track records of State and Territory governments are disappointing but hardly surprising, for a number of reasons. State and Territory government have considerably more limited resources than the Federal government, and financial constraints can mean cuts to staff and resources devoted to various aspects of environmental protection. More critically, there will frequently be circumstances in which the short term financial and political rewards of approving a development, allowing resource extraction or making a political deal with particular interest groups will provide a strong incentive for state governments to severely compromise environmental protection. There is often a conflict of interest, with State governments being proponents of projects or directly benefiting from them, as well as having responsibility for approvals and environmental protection. This situation is

² Victorian National Parks Association (2011) Issue Paper: Nationally threatened species at risk from alpine cattle grazing. Accessed online 12.12.12 from <http://vnpa.org.au/admin/library/attachments/PDFs/Issues%20papers/ISSUES%20PAPER%20-%20Alps%20grazing%20risks%20threatened%20species.pdf>

worsened by the fact that environmental protection measures can be overridden by State development and planning laws and by a high degree of ministerial discretion.

These problems are clearly evident in NSW, where the quality of environmental decision making appears to be getting worse over time. The NSW government has recently made a series of extremely damaging environmental decisions in areas such as mining, planning, forestry, and protected area management. A number of examples of these damaging decisions are given below. In addition, the concepts of biobanking and adaptive management are currently being interpreted by the NSW Government in ways that appear to be driven more by the desires of industry and interest groups than by principles of biodiversity protection and good environmental management. This gives conservationists and scientists very little hope that the NSW government can successfully maintain, let alone improve, environmental protection without strong federal oversight and leadership.

2.1 Mining

The NSW government has recently given its approval to a proposal for a massive open cut mine at Maules Creek in northern NSW, despite the fact that this land is mapped as “Tier 1 Biodiversity Land” in the NSW government’s own strategic regional land use plan for the area. This will result in destruction of parts of the Leard State Forest, which is the largest forest remnant on the heavily-cleared Liverpool plains. The forest is habitat for up to 34 threatened species, such as the Koala and the Masked Owl, and contains over 1,500 hectares of the federally-listed critically endangered Box Gum Woodland ecological community, much of which is earmarked for clearing.³ Federal government approval for this project has not been granted at this stage, but if environmental approval powers rested solely with the states, this project would already be proceeding and impacting negatively on threatened species and ecological communities.

2.2 Planning

The current NSW planning system provides significant mechanisms by which environmental and threatened species considerations can be overridden. The current NSW government, as part of an

³ Maules Creek Community Council (2012) *Biodiversity Value and Environmental Impacts* Accessed online 18.12.12 at <http://maulescreek.org/biodiversity-value-and-environmental-impacts/>

election promise, repealed Part 3A of the *Environmental Planning and Assessment Act 1979* (EPA Act). Part 3A allowed the NSW Planning Minister to declare developments as having “State or regional environmental planning significance”. It allowed a great deal of ministerial discretion, overrode environmental approvals processes and reduced the capacity for the community to comment on and appeal decisions. Unfortunately, Part 3A has been replaced by two assessment pathways under Part 4 of the EPA Act, State Significant Development (SSD) and State Significant Infrastructure (SSI), which retain many of the flaws of Part 3A. This includes granting the minister significant discretionary powers to declare SSDs and SSIs for developments such as mining, intensive livestock agriculture and timber milling, continuing to override environmental and heritage approvals, and severely restricting the merits appeal rights for third parties such as environment or community groups.

2.3 Forestry

There is currently a timber supply crisis in northeastern NSW, which is also the result of poor decisions made by the NSW government. In 2004, the NSW government of the time issued Wood Supply Agreements for timber from state forests to timber companies, despite evidence that the resource estimates supplied by Forests NSW were inflated and unreliable. As a result, Forests NSW has been unable to meet the contracted timber volumes, which has led to severe breaches such as logging trees and areas required to be retained for threatened species, as well as over-logging plantations, cutting trees before they mature, increasing logging intensities and logging stream buffers.^{4,5}

2.4 Protected area management

The protected area network forms an important cornerstone of biodiversity and threatened species protection. Recent decisions by the current NSW government have severely threatened the biodiversity conservation values of the protected area system in NSW, and have indicated the government’s disregard for threatened species protection and biodiversity conservation. In May 2012, the NSW government struck a deal with the minority Shooters and Fishers party in the NSW Upper House to allow recreational hunting in NSW National parks, in exchange for support for the government’s bill to privatise electricity infrastructure. Recreational hunting poses a range of safety and animal welfare concerns, and has been

⁴ North East Forest Alliance (2011) *Timber Supply Crisis to cost taxpayers millions for non-existent timber* Accessed online 18.12.12 at <http://nefa.org.au/category/resources/>

⁵ Hammond-Deakin, N. and Higginson, S. (2011) *If a tree falls: Compliance failures in the public forests of New South Wales*, prepared by the Environmental Defender’s Office (NSW) Ltd for the Nature Conservation Council of NSW, Sydney, Australia.

shown to be ineffective as a means of feral animal control.⁶ This is a clear example of biodiversity protection and protected area management being compromised by the state government for political and financial reasons. Similarly, the NSW government is dramatically expanding horse riding in national parks and introducing it to wilderness areas. In doing so, it is revising its previous interpretation of the *Wilderness Act 1987*, which states that wilderness is appropriate for “...providing opportunities for solitude and appropriate self-reliant recreation.” Previously, the NSW government had interpreted self-reliant recreation as excluding horse riding, but this has now changed to allow this high-impact recreational activity in wilderness areas, demonstrating a flagrant disregard for biodiversity protection concerns.

Similarly, the introduction of ‘scientific trials’ of grazing and logging in national parks, which appear to be at least partially a response to industry pressures, raises serious concerns about the NSW government’s commitment to biodiversity. In addition, the government has put on hold its statutory requirement to appoint environmental representatives to the National Parks Advisory Council. These moves have raised serious concern amongst environmentalists and scientists.

3. Protecting Matters of National Environmental Significance

Protection and best-practice management of matters of national environmental significance (MNES), including threatened species and ecological communities, migratory species, Ramsar-listed wetlands and world and national heritage sites is an extremely important element of protecting the broader landscape of Australia. MNES provide clear and often iconic indicators of the pressures on our ecosystems. By addressing key threats and pressures to protect MNES, within the context of the broader ecosystems, broader biodiversity conservation outcomes can also be achieved.

In addition, under the current regulatory systems, referral of developments or actions under the *EPBC Act* due to potential impacts on MNES can often be the only means of challenging projects with significant potential to cause environmental damage. This situation is not ideal, and NPA strongly believes that the principles of environmental protection (beyond simply protecting MNES) need to be better integrated across all jurisdictions and all relevant legislative instruments (e.g. planning and mining legislation).

⁶ Carol Booth (2009) *Is recreational hunting effective for feral animal control?* Invasive Species Council, Victoria. Available online from http://www.invasives.org.au/documents/file/reports/EssayProject_RecHunting_FeralControl.pdf

As described above, recent decisions by the State Government in NSW threaten to severely compromise the values of our protected area system. Unfortunately, there is little recourse for the public to stop these decisions if they cannot be shown to directly impact MNES, such as a federally-listed threatened species or Ramsar wetland. Nonetheless, a comprehensive, adequate and representative protected area systems, managed primarily for conservation purposes, is vital in achieving environmental and biodiversity protection in NSW and across Australia. A well managed and well designed National Reserve System provides vital “core areas” of relatively intact habitat, which are important in themselves and as the cornerstone of cross-tenure connectivity conservation networks. Similarly, for marine species, marine parks and specifically marine sanctuary zones are a vital element of marine species and ecosystem conservation, as part of a broader, well-managed marine estate. Both marine sanctuary zones and terrestrial reserves are important refuges for biodiversity, as they are (or should be) areas where avoidable pressures such as extractive resource use and high impact recreation are excluded, giving species and ecosystems the best possible chance of coping with less-avoidable pressures such as climate change.

NPA believes that the Federal government should include national parks as a matter of national environmental significance, which would give them greater protection and allow federal intervention when damaging activities are implemented by state governments, even when threatened species or other current MNES aren't present.

4. Conclusion

For the reasons laid out above, NPA believes that it will never be appropriate for the Federal government to hand over Federal environmental approval powers to the States. Accordingly, we recommend that the power to do so is removed from the EPBC Act.

Yours sincerely

Kevin Evans

Chief Executive Officer

National Parks Association of NSW