



Stephen Palethorpe
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

17 October 2024

Dear Mr Palethorpe

Re: Senate inquiry on the Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024

Since 1965, the Australian Marine Conservation Society (AMCS) has worked to protect Australia's oceans for the sake of current and future generations through scientific research, policy reform, community engagement and education. We represent over 300,000 active supporters from all walks of life. AMCS welcomes the opportunity to provide the Senate Standing Committee on Environment and Communications with this submission to the inquiry on the *Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024* (Reconsideration of Decisions Bill). **AMCS does not support the passage of the Bill** due to the impacts it will have on environmental protection and the limitations it proposes to place on public participation.

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) forms the framework of protection for our oceans and coasts - from the establishment of Marine Protected Areas through to the protection of threatened, migratory and marine species, and of World Heritage Sites/Areas such as Shark Bay, the Great Barrier Reef, and the Tasmanian Wilderness (incl. Macquarie Harbour).

The Reconsideration of Decisions Bill proposes to make a change to section 78A, by limiting who may seek a reconsideration of these decisions after a period of 36 months has passed from the decision. The Bill seeks to restrict any reconsideration request to the relevant state or territory Minister, in an effort to provide greater certainty for proponents.

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However, the environment is not static but dynamic, and as time passes and impacts continue to affect the recovery of threatened species or other matters of national environmental significance (MNES), it is essential that there be mechanisms to allow decisions to be reconsidered, should new information come to light about the status of a particular MNES.

As the Explanatory Memorandum notes, the criteria for any reconsideration is already strictly defined and limited to the availability of substantive new information, unforeseen changes in circumstances or the action not being taken in the manner identified. This therefore already places strict boundaries for any reconsideration. This provision is important to ensure that protected matters under the Act remain adequately protected.

The Bill, by restricting any reconsideration to state or territory Ministers after 36 months, effectively seeks to exclude community input and rights. In many cases, vital data on protected matters may be obtained as a result of long-term environmental monitoring or community science projects, both of which can extend beyond 36 months. State and territory Ministers may also have conflicts of interest in seeking to prevent any reconsideration. The AMCS is not aware of any evidence to support the claim that the reconsideration provisions have limited development, nor do we support the view that this current clause and the recent use of them in the case of Macquarie Harbour marine farms case study has led, or is likely to lead to further uncertainties for business.

The independent review of the EPBC Act undertaken by Prof Graeme Samuel¹ published in 2020, noted that the Act is not working for nature, business or the community, as is clearly on the public record. The review also found that the community and industry do not trust the Act and that the lack of opportunity to substantially engage in decision-making further erodes trust. This Bill does nothing to address this criticism, in fact it would likely result in an even further eroding of this trust. It is AMCS's view that reducing opportunities for community participation and input, and restricting requests for reconsideration of decisions would not assist in increasing certainty or strengthening already weak accountability mechanisms, in fact it would likely make them weaker. To address these issues, urgent and comprehensive reform of the EPBC Act is required, not a piecemeal approach to legislative reform as proposed by this Bill.

The marine farming expansion in Macquarie Harbour case study appears to have been the catalyst and driving purpose for this bill, and it should be noted that the Environmental Defenders Office (EDO) submitted this reconsideration request on behalf of AMCS and Humane Society International Australia. It is AMCS' view that this expansion triggers all three requirements for a reconsideration decision to be made, namely that substantial new information on the impact of marine farming on the Maugean skate is available; the expansion has created a substantial change in circumstances that were not foreseen at the time of the original decision; and the action is not being taken in line with management actions that were in place at the time of the original decision. There has been a 47% decline in Maugean skate

¹ <https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>

numbers in Macquarie Harbour between 2014 to 2021. There has been a significant decline in deep water (>10 m) dissolved oxygen conditions in Macquarie Harbour since the expansion of finfish farming; the decline in dissolved oxygen conditions in Macquarie Harbour has been attributed to anthropogenic activities, including finfish farming activities; and there is evidence that dissolved oxygen levels in Macquarie Harbour would improve were it not for finfish farm waste loads and finfish farm oxygen respiration. Further, there have been substantial departures in both regulatory and industry practices from the relevant management actions that were considered in the first decision. We append our submission made in response to the notice for public comment on three requests for a reconsideration made under section 78 of the EPBC Act for the expansion of the Marine Farming Expansion, Macquarie Harbour for information.

It is essential that impacts on MNES can be assessed or reconsidered at any time, should that impact be driving a species towards extinction such as for the Maugean skate. AMCS therefore recommends that the Committee reject this Bill, and instead encourage the ongoing comprehensive reform of the EPBC Act process already underway be progressed urgently to ensure Australia's national nature laws are strengthened, as recommended by Prof. Graeme Samuel.

Yours sincerely

Alexia Wellbelove
Campaigns Manager - Fisheries & Threatened Species
Australian Marine Conservation Society

Enc: EDO letter: Requests for reconsideration of decision on referral numbered EPBC 2012/6406 and investigation into compliance with the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (on behalf of AMCS and HSI Australia)

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