

Dear committee members

I wish to make a submission to the Inquiry into the Operation of the Environment Protection and Biodiversity Conservation Act 1999.

I wish to comment on the following aspect:

*"The operation of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and other natural resource protection programmes, with particular reference to:  
b. lessons learnt from the first 10 years of operation of the EPBC Act in relation to the protection of critical habitats of threatened species and ecological communities, and potential for measures to improve their recovery; "*

Currently social and economic impacts are not a significant part of the assessment process under the EPBC act 1999. The EPBC act should include Social and Economic analysis to operationalise the precautionary principle. My argument is stated below and I have quoted Stein, Hon. Justice Paul L. (2000) 'Are Decision-makers Too Cautious With The Precautionary Principle?' for justification of the need to link SIA and CBA to the precautionary principle regarding possible loss of species.

My argument is as follows:

It is easy to trigger a burden of proof for a proponent of a project in relation to scientific questions (possible extinction of a species) . However it is more difficult to operationalise the precautionary principle to halt a project because it is a probabilistic analysis of the threat of serious irreversible harm. To formally aid in the assessment of the final approval of the project both social and economic analysis should be combined with the precautionary principle judgement of possible extinction of a species caused by the actions of a project. If there reasonable doubt as to the net social benefit and the net economic benefits of a proposed project (assessing ALL alternatives to the project and the inclusion of previously unassessed externalities - eg carbon cost/climate change) then the indeterminate outcome of the probabilistic analysis of the impact on a species using population biology theory will become more deterministic. That is, precautionary principle can be operationalised as the cost/risk of applying the principle is low.

In common terms: Why risk killing off a species as a result of a project if there is a small cost to society of not proceeding with the project.

I base my arguments on the current approval Traveston Crossing Dam . The QLD Gov found that there was a \$100m difference between the project and the next best alternative. That plus the fact that the CBA was seriously flawed (externalities were poorly and under accounted and alternatives unexamined and also over-costed) then the precautionary principle could be operationalised in such a case without great risk that operationalising was incorrect.

For the an overview of the failure of the precautionary principle to be operationalised with in ESD legislation:-

“According to Farrier, the precautionary principle is ‘triggered by proof of threats falling short of the degree of probability currently recognised by science as constituting proof’. However, the principle fails to offer any clear guidance in respect of what degree of proof is required before the principle becomes operational. In this respect, the application of the concept becomes somewhat problematic”.

“The precautionary principle offers little guidance on precisely what measures ought to be taken when posed with a threat of serious or irreversible environmental damage. An important question confronting decision-makers is what type of measures does the precautionary principle advocate? At what point in time and at what stage of a process should these measures be taken?”

“Once the threshold test has been satisfied (i.e. proof of threats of serious or irreversible environmental damage falling short of scientific certainty) the burden of proof in relation to scientific questions falls on those wishing to engage in the activity. If the suggested threat cannot be disproved by evidence advanced by the proponent, then it is a factor to be taken into account in the cost benefit calculus”.

“The threat of serious or irreversible environmental harm is clearly an important factor to be taken into account but there is no guidance (in the principle) as to the weight to be given to such a factor in reaching a final decision. It was suggested that even where a case for a threat of serious or irreversible environmental damage exists, it remains open to the decision-maker to decide if the activity should be allowed to go ahead because of an economic imperative.

“It is accepted that ESD should be treated as a complete package where no one principle should dominate over any other. This requires that the precautionary principle be applied with consideration of other principles forming part of the ESD.”

“ESD represents a delicate balancing of the often competing interests of development and environmental protection. Application of the precautionary principle is considered appropriate in circumstances where a proposed activity carries with it a risk of potentially serious environmental damage which may threaten the interests of present and future generations. Properly evaluating risks is likely to be aided by the guiding principles and indicators of sustainability.”

“... An astounding number of federal, state and territory statutes have expressly referred to or incorporated ESD principles. However, an analysis of the legislation reveals that much of it adopts ESD in general terms without necessarily assigning a specific role to the principles.”

“It will be readily appreciated that ESD is often included among the objects of an Act without further reference, whereas some legislation requires all decisions or specific decisions to take into consideration core principles or to have regard to principles of ESD. It will be seen that no statute gives any precise guidance as to the weight to be given to the principles, nor their particular role in the balancing of considerations in arriving at a decision.”

Source: [http://www.nrw.qld.gov.au/about/policy/documents/2037/page\\_3\\_2.html](http://www.nrw.qld.gov.au/about/policy/documents/2037/page_3_2.html)

Kind Regards  
Rob

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