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Senate Standing Committee on Environment, communications and the Arts
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Inquiry into the operation of the Environment Protection and Biodiversity Conservation Act 1999

Maria I E Riedl

My name is Maria I E Riedl and I am submitting to this inquiry and will be citing information that others of more standing have already stated because I feel that it has all been said before, and it is time that the people I have cited are listened to. Why repeat things over and over again. You know what has to be done, and you just have to make the hard decisions and recommend that what people and organizations have suggested as a way of ensuring that this great piece of legislation does work effectively, is put in place. To do nothing, yet again is not an option because times have caught us out and hopefully it is not too late. Climate change, the worst drought in over 117 years, the step change has all happened, and to allow further degradation of our environment, our biodiversity, our rivers and underground aquifers is no longer acceptable. You no longer (if you ever had) have the luxury of taking your sweet time in making changes to the EPBC Act that ensure that proposals that are referred and have referred all matters that will/might be impacted upon by the action.

No longer must a proposal such as the Victorian government's north-south pipeline (Sugarloaf pipeline proposal) be allowed to separate into components actions that separately might/will be harmful but when taken as whole are devastating. The Victorian government conveniently split an action; building a north-south 70km pipeline from the dry basin north of the Great Divide taking water out of the Heritage listed Goulburn River to flush it down Melbourne's toilets. They have not referred the entire action which is Stage 1 of the Foodbowl Modernisation Project which would upgrade ailing infrastructure only if they can take 1/3 of the so called "new water savings" (75GL) to Melbourne. The fact is that these savings have not been achieved yet and might not be, because of the substantial change in circumstances since the original referral was done, which is the deepening of the drought and the high possibility that it will continue, that there has been a step change, that the over-allocations cannot be addressed in the immediate future because the Murray-Darling system is in terrible trouble.

It is unacceptable that the Commonwealth allowed the referral assessment to be a PIA instead of an EES, and that they accepted only 18 and 18A assessment along the alignment route to be included in the referral. It is a fact that there is no water; it is a fact that there won't be "new saved water" for a fair few years (one can pray for rain but...) as it takes Lake Eildon 7 years of normal to heavy rainfall to recover after a drought.

For Victoria to rush at this project and split it so it gets approval demonstrates quite clearly that the EPBC Act needs a severe tweaking for it to be effective. For a government to propose

a project of this magnitude and of possible irreversible consequences that would put in jeopardy our International obligation under the Ramsar convention and the Migratory species International obligations and say that a PIA with only 18 and 18A and the alignment route being referred is criminal. The Victorian government has an obligation under its own legislations; as well as under Commonwealth legislation and under International obligations to refer “all adverse impacts” and “all significant impacts” and not just decide to see if they can get away with the most cursory studies that are still being done and won’t be finished before the Minister makes his decision!

For the Commonwealth to allow an Advisory-Committee and a PIA to inform it of the impacts is without doubt questionable. There obviously needs to be an independent body that has no political interests that makes these decisions. The rules need to be changed so that the EPBC Act can actually work.

Though the EPBC Act 1999 has made an important contribution to environmental protection and sustainable development in Australia, these positive outcomes are counteracted by a serious failure to implement critical provisions of the Act that would substantively improve biodiversity protection and coherent environmental impact assessment.¹

This Senate Inquiry comes at a crucial time in Australia’s history. The fact is that there have been many documents critical of the effectiveness of the EPBC Act and it is about time that this Act protects the environment and has the force of law to do so. The Act is a major component of the legislative regime to fulfill Australia’s international environmental legal obligations and to achieve the overarching policy objective of ecologically sustainable development. Key concepts such as “action”, “existing lawful use”, “likely to have”, “significant Impact”, and “all adverse impacts” are central to the operation of the Act. The Act imposes a tier of federal decision-making and also requires higher levels of integrity and rigour in environmental impact assessment than were required under previous State, Territory or Commonwealth laws.²

The fact that environmental impact assessment under the EPBC Act requires high levels of integrity and rigour is of great practical significance for development assessment nationally and is directly influencing State assessment processes. An example is *the Australian Conservation Foundation v Minister for Planning [2004] VCAT 2029*, which ‘cited’ the approach taken for assessing “all relevant impacts” under the EPBC Act in support of a finding that a planning scheme amendment to allow an expansion of a coal mine must consider the indirect impacts of greenhouse gas emissions resulting from the burning of coal at a power station.³

Under the EPBC Act the Commonwealth Minister is:

- Directly responsible for deciding whether an action requires assessment, and assessing and approving the action;

1 McGrath, Chris, ‘Review of the EPBC Act’, (Paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra, 2006).

2 McGrath, Chris, ‘Key Concepts of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)’, (2004) 22 EPLJ 20.

3 Ibid 21.

- Can set conditions on approvals and can enforce approvals through criminal and civil means;
- Can unilaterally “declare” sites to be World Heritage or Ramsar sites for the purpose of controlling actions, in spite of the absence of a formal listing as such;
- Can expand matters of NES by regulation. (such as new triggers.)

The EPBC Act, unlike the State system catches any “action” that “has, will have or is likely to have” a “significant impact” on a listed matter of national environmental significance (NES) and at the moment there are six matters of NES.⁴

The Australian network of Environmental Defender’s Offices (ANEDOs) are dedicated to protecting the environment in the public interest. They take an active role in environmental law reform and policy formulation.⁵ The ANEDO network has made two submissions that I will refer to, one 3 December 2007 and another 3 March 2008. The December Submission on the Use of environmental offsets under the EPBC Act 1999-Discussion Paper makes it clear that the ANEDO is of the view that the use of offsets under the EPBC Act needs to be strictly confined. The draft policy needs to be amended to more clearly recognize the many inherent limitations of offsets.⁶ This amendment would mean that focus of addressing environmental problems would no longer be about how we should allow development proceed and would instead be on whether it should be allowed to go ahead. The emphasis on offsetting is inconsistent with the EPBC Act and the idea that impacts on such unique matters of national environmental significance can simply be offset, is deeply concerning.⁷

In the March Submission the ANEDO has set out recommendations for reform of the EPBC Act.

More triggers should be included:

- Water extraction
- Dioxin emissions
- Wilderness
- Land clearing
- Wild rivers
- Greenhouse gases
- cumulative impacts be included.

They want public participation to be looked at:

- Standing
- Costs
- Undertakings for damages
- Merits reviews

They want a comprehensive review:

- Commonwealth role on environmental issues
- Additional amendments⁸

⁴ McGrath, Chris, ‘Review of the EPBC Act’, (Paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra, 2006).

⁵ ANEDO, ‘Use of Environmental Offsets under the EPBC Act 1999’, (Submission on behalf of ANEDO, 3 December 2007).

⁶ Ibid.

⁷ Ibid.

⁸ Ibid

The lessons learnt from the first 10 years in relation to the protection of critical habitats of threatened species and ecological communities, and potential for measures to improve their recovery has not been addressed in any meaningful manner. I note that in 2005 the Australian Institute did a 5 year assessment on the Act and they say that, “the EIA provisions have not been responsible for any notable improvements in environmental outcomes and have failed to prevent the continued decline of Australia’s natural and cultural heritage.”⁹

They too state that there is little scientific evidence to support the conclusion that many of the ‘trade-off’ and mitigation conditions will provide adequate protection for the relevant aspects of the environment.¹⁰

The effective response to key threats must be expanded especially since climate change and long term drought have placed those matters listed under the EPBC Act in a perilous state and since the cumulative impacts of many threatening circumstances and conditions and actions (land-clearing, climate change, invasive species) are not addressed in an effective manner the losses are highly likely to be irreversible. The EPBC Act must be altered to actively ensure that it keeps abreast of changes that are likely to cause significant impacts.

The Regional Forest Agreements are of grave concern as they are used by the forestry company to proceed to log areas such as re growth forests and other threatening logging without the need of referring under the EPBC Act. The RFAs should not be allowed to be used to assess the impacts as they are not rigorous enough to prevent assessments of impacts that would destroy habitat and species that are protected under the EPBC Act. The forest agreements must also be included in referral and assessment under the EPBC Act, they should not be exempt. The agreement has not achieved protection of those matter of National Significance that are to be protected. They can get away with actions that are harmful and this must be addressed. Since forests and habitat and species must all be assessed and protected it must be done by an independent body that does not have vested interests in the outcome. The same applies for other actions (Gunns pulp mill, dams, pipelines etc.)

The cut backs suffered by some of the environmental programs is unacceptable at a time when protection is vital. We need to put more money into organizations that ensure the halt of the decline and extinction of flora and fauna. We need to ensure that knowledge is up to date and the only way this can happen is by funding organization whose sole purpose is to study and inform and propose protection measures that would ensure the halt of this decline and extinction.

The impacts of programme changes and cuts in funding, on the decline and extinction of flora and fauna is measurable. This is a political game, because as a new government comes in they cut what the old government did, especially since the environment cannot protest to these cuts. There are plenty of examples of half finished studies and shelved programs that

⁹ MacIntosh, Andrew and Wilkinson, Debra, ‘Environment Protection and Biodiversity Conservation Act a Five Year Assessment’, (Discussions paper number 81, The Australian Institute, July 2005).

¹⁰ Ibid 13.

have resulted in incomplete areas and gaps in our knowledge of flora and fauna that might actually play a crucial role in their protection.

The following citation is a reflection of what needs to be addressed in ensuring that the EPBC Act has teeth and can address significant impacts. The small number of referrals to water use is primarily due to the fact that the threats to biodiversity and the matters protected under Pt 3 that are posed by inappropriate water use are caused by the cumulative impacts of many separate actions taken by numerous water users.¹¹

The referral, assessment and approval process has not made a notable contribution to the promotion of biodiversity conservation and in some cases this can be attributed to the structural flaws in the EPBC Act.¹² The available evidence suggests that the referral assessment and approval process is failing to perform its major environmental functions, assessment and approval process is failing to perform its major environmental functions.¹³

Andrew McIntosh goes on to say that, “the failure of the referral, assessment and approval process to perform its main functions is the result of noncompliance, administrative failures and structural deficiencies in the Act” and he says that “the primary cause of this failure is the structural flaws in the process.” He says that there are the following elements that are of concern:

- Enforcement
- Splitting actions for the purposes of referrals
- Manner specified process
- Listed threatening species and ecological communities
- Register of critical habitat

He says that the “greatest threats to Australia’s biodiversity and the matters of national environmental significance are caused by the cumulative impacts of many actions. It is relatively rare occurrence that a single action has a catastrophic impact...” “...it is unlikely these cumulative impacts can be adequately addressed due to the piecemeal nature of the assessment and approval process and the fact that it will only look at the “relevant Impacts” of the action.”

In conclusion I would like to attach what I consider as relevant material that must be looked at because the fact is that all of the issues in this inquiry have been looked at by many well renowned people, not just once but many times. I also include an essay I wrote on whether Australia’s environmental objectives are met by the EPBC Act. Some are but as all the attachments state there is enormous room for improvement and this must be addressed, otherwise we will incrementally lose that which we set out to protect.

The other issue that I personally wish to raise it that it is totally unfair of all governments; local, state and federal to expect individuals and environmental groups to stand against inappropriate proposals. The example that springs to mind is the Sugarloaf pipeline. If the

¹¹ McIntosh, Andrew, ‘Why the Environmental Protection and Biodiversity Conservation Act’s Referral, Assessment and Approval Process is Failing to Achieve its Environmental Objectives’, (2004) 21 *EPLJ* 288.

¹² Ibid 300.

¹³ Ibid 301.

EPBC Act and the Minister had both the will and the encompassing legislation in place then we individuals would not be forced to take matters into our own hands. It is no simple thing to question governments and proposals that they are trying to force through on the least amount of investigation, limited amount of community consultation, less than inclusive referrals so on so forth. I ask that this inquiry address these issues and actually deal with them for a change. You cannot keep having inquiries and consultation, always asking the same questions when the answers have already been given over and over again. Listen and enact otherwise the EPBC Act is not worth the paper it is written on.

To go on in a business-as-usual manner is no longer acceptable to the community, we have expectations, and one of them is that the EPBC Act 1999 has the 'teeth' and the Minister has the 'will' divorced from political interplay and point scoring to ensure that it works to protect those matters that need protecting.

Thank you

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ARE AUSTRALIA'S ENVIRONMENTAL AND BIODIVERSITY OBJECTIVES BEING MET BY THE ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT? Topic 6

Maria I E Riedl

INTRODUCTION

The Environment Protection and Biodiversity Conservation Act 1999, was put into place 16 July, 1999. It is the Australian Government's attempt to deliver a more efficient framework for environmental protection. The Act,

by focusing upon fundamental environmental values such as ecologically sustainable development and the precautionary principle, endeavors to fulfill Australia's international environmental obligations.¹⁴

The purpose of the Act is to 'consolidate and clarify the Commonwealth's responsibilities for environmental protection'¹⁵ and ensures that this goes hand in hand with sustainable development. Balancing actions and the protection of the environment has not been an easy task. Though it has achieved some success in environmental protection and ESD, it still has negative aspects, such as gaps in its framework, weaknesses in implementation and a lack of independent decision-making.¹⁶

The Commonwealth Minister for the Environment and Heritage must ensure that the Act's fundamental values are applied when proposed actions are likely to have significant impact on matters of national environmental significance. This is the principal object of the EPBC Act.¹⁷

The Minister is obliged to ensure that:

- (a) the referral provides enough information to enable him to make an informed decision. He has the power to ask for more.
- (b) the project hasn't been broken up into smaller actions. Cumulative impacts of smaller actions may result in significant loss, this must be addressed.
- (c) all relevant matters of national significance listed under the Act are identified. At least 6 new matters need listing urgently.

¹⁴ A Macintosh and L Kennedy, (2004) *EPBC Act: User's Guide* (3rd Edition.), WWF-Australia and the Tasmanian Conservation Trust, Canberra page 5.

¹⁵ *Minister for Environment and Heritage v Queensland Conservation Council Inc* (2004) FCAFC 190.

¹⁶ Chris McGrath, 'Review of the EPBC Act' (Paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra 2006) <<http://deh.gov.au/soe/2006/emerging/epbc-act/index.html>>.

¹⁷ Australian Government Department of the Environment and Water Resources, EPBC Act Environment Assessment Process (2007) <<http://www.environment.gov.au/epbcact>> February 2007.

- (d) controlling provisions have been identified and referred. Administrative guidelines must be adhered to and strictly enforced.
- (e) he has not been provided with false or misleading information. Proponents will use any means to get an approval. The will of the Minister to deliver a positive outcome for the environment must be unquestionable.
- (f) he is satisfied with the assessment approach that he has chosen.¹⁸ The difference between the assessment process chosen, a PIA or EIS (EES) can ‘show the importance of having other checks and balances in place to ensure that State Development is not the key to ensuring the appropriate approvals because their emphasis is ultimately on economic growth rather than ecologically sustainable development.’¹⁹
- (g) he makes sure that no further work is done until the result of the referral is decided. The *Greentree Case* is an example of regulatory failure.²⁰

THE EFFECTIVENESS OF THE REFERRAL, THE ASSESSMENT AND APPROVAL PROCESS

The referral, assessment and approval process has not been as effective in preventing loss of biodiversity, conserving species, protecting communities and other matters listed under the EPBC Act as one might expect after 8 years in operation. A lesser number of approvals have been required. Of these 50% of them were dealt with under preliminary documentation and other assessments, rather than under an accredited assessment approach. The majority of approvals are granted, though they do have some conditions attached to them.²¹ The fact that only a few referrals are refused indicates that there is an urgent need to reassess the Act. Weaknesses must be identified and amended with legislation. The strength of commitment by Ministers to implement critical

¹⁸ *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

¹⁹ Chris McGrath, ‘Review of the EPBC Act’ (Paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra 2006) <<http://deh.gov.au/soe/2006/emerging/epbc-act/index.html>>.

²⁰ Andrew Macintosh and Debra Wilkinson, ‘Environment Protection and Biodiversity Conservation Act a Five Year Assessment’ (Discussion Paper No 81, The Australian Institute, 2005) 15.

²¹ A Macintosh, ‘Why the Environment Protection and Biodiversity Conservation Act’s Referral, Assessment and Approval Process is Failing to Achieve Its Environmental Objectives’ (2004) 21 *EPLJ* 292.

provisions of the Act is continually questioned in courts. Both the Minister and DEH must be ‘...far more proactive and forceful in the implementation of the EPBC [Act]...’ ‘What use the power without the will to wield it?’²²

If assessments were executed by an independent body committed to positive environmental outcomes with adequate community consultation, the outcome for the environment would be positive. This is not happening in a consistent or effective manner. Though the Act places an obligation onto proponents to refer actions, to do so openly, honestly and in their entirety, they are biased towards their developments. Actions are either not referred or are limited in scope.

When there is a weakness in any of the three processes; the referral, the assessment and the approval, the environment suffers the consequences.

THE GREATEST THREATS TO AUSTRALIA’S BIODIVERSITY

There are actions that are proposed and carried out that cause losses to biodiversity and the environment that are avoidable. The awareness of these actions alone cannot guarantee that the Commonwealth, using the EPBC Act is capable of ensuring they do not happen. There must be a will to preserve and protect the environment by all parties, and this would ensure the very best outcomes.

The greatest threats to Australia’s biodiversity are caused by overlooking the following:

- (a) Broad-scale land clearing (excluding clearing for forestry);

²² Andrew Macintosh and Debra Wilkinson, ‘Environment Protection and Biodiversity Conservation Act a Five Year Assessment’ (Discussion Paper No 81, The Australian Institute, 2005) 2.

- (b) Forestry operations (including land clearing, establishment of plantations, fire management practices and harvesting forest products);
- (c) Fishing;
- (d) Invasive species;
- (e) Water development and use (which includes the construction of dams, weirs, and bores, the extraction of surface and ground water, and its use for agriculture, industry and urban areas); and
- (f) Altered fire regimes.
- (g) Climate change caused by the increased concentration of greenhouse gases in the atmosphere is also an issue worthy of attention.²³

Climate change must be considered seriously because even with all the obvious indications such as present climactic upheavals, it is virtually ignored; instead it should be at the top of any list.

EXAMPLES OF POSITIVE OUTCOMES FOR THE ENVIRONMENT UNDER THE EPBC ACT²⁴

These cases provide hope. When the community becomes informed about the EPBC Act and its place in law, they are more likely to succeed in not allowing political and economic benefits to take precedence over environmental protection and human rights, which guarantees clean air, water and a healthy environment.²⁵

- *Mees v Roads Corporation* [2003] 128 FCR 418; [2003] FCA 306

²³ A Macintosh, 'Why the Environment Protection and Biodiversity Conservation Act's Referral, Assessment and Approval Process is Failing to Achieve Its Environmental Objectives' (2004) 21 *EPLJ* 288.

²⁴ C McGrath, 'Swirls in the stream of Australian environmental law: Debate on the EPBC Act.' (2006) 23 *EPLJ* 165.

²⁵ Sharon Beder, *Environmental Principals and Policies an Interdisciplinary Approach* (2006) 147.

The Victorian Government was found to have provided misleading information to gain approval under the EPBC Act.²⁶

By breaking the project into ‘constituent parts’ which by themselves wouldn’t trigger the Act and referring only one section, meant that the approval was not for the whole project. The Minister’s judgment was that the consideration should have been the entire project.²⁷

- In *Pioneer Concrete (Qld) Pty Ltd v Brisbane CC* (1980) 145 CLR 485
Stephen J found that the application was incorrectly made, therefore was invalid. The reason given for this ruling was, the proposal should have been detailed in one application and all the land must be the ‘subject’ of that application.²⁸ They omitted to include the road when applying for the quarry.
- *Australian Conservation Foundation v Minister for Planning* [2004] VCAT 2029, The case cited the approach taken for assessing ‘all relevant impacts’ under the EPBC Act, supporting a finding that a planning scheme amendment to allow an expansion of a coal mine must consider the indirect impacts of greenhouse gas emissions resulting from the burning of coal at a power station.²⁹
- In *Booth v Bosworth* (2001) 114 FCR 39; 117 LGERA 168; [2001] FCA 1453 (*Flying Fox Case*)

²⁶ C McGrath, ‘Key concepts of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)’ (2004) 22 *EPLJ* 20; see generally M Raff, ‘Ten Principles of Quality in Environmental Impact Assessment’ (1997) 14 *EPLJ* 207; M Raff, ‘Environmental impact assessment and transitional provisions of the EPBC Act’ (2001) 18 *EPLJ* 5, and C McGrath, ‘Applying the *Environmental Protection and Biodiversity Conservation Act* 1999 (Cth): A case study of the Naturelink Cableway’ (2001/2002).

²⁷ Gerry Bates, *Environmental Law in Australia* (6th ed, 2006) 82; Section 74A enables the Minister not to accept a referral if satisfied that the action referred is a component of a larger project. This effectively enables the Minister to deal with ‘piecemeal’ applications.

²⁸ *Pioneer Concrete (Qld) Pty Ltd v Brisbane CC* (1980) 145 CLR 485

²⁹ C McGrath, ‘Key Concepts of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)’ (2004) 22 *EPLJ* 20.

Branson J granted an injunction under the EPBC Act restraining two fruit farmers from electrocuting thousands of flying foxes. The flying foxes flew from the Wet Tropics World Heritage Area to feed on the farmer's lychee fruit crop. The purpose of killing them was to protect the fruit crop. The subsequent application by one of the farmers for approval under the Act was refused.³⁰

As a matter of interest this was the 'first judicial consideration of the Environmental Protection and Biodiversity Act 1999 (Cth) (EPBC Act [.]³¹ This case also changed state law and the concept of public litigation.

- In *Minister for Environment and Heritage v Greentree* (No 3) [2004] FCA 1317, (*Greentree Case*) 'Sackville J granted an injunction, rehabilitation order and pecuniary penalties totaling \$450,000 under the EPBC Act against a wheat farmer and his company. The employee of the company, acting on the farmer's instructions, had deliberately cleared and ploughed 100 hectares of a Ramsar wetland on freehold land in northern NSW in preparation for planting of a wheat crop.'³² DEH '...first became aware of alleged clearing of the Windella Ramsar site in September 2002, at which time DEH Officers inspected the site and found 20% of it cleared.'

The case is listed as both a win and a loss because the Minister failed to place an injunction on Mr Greentree immediately. (10 months late) Mr Greentree's previous history of illegal clearing had been well documented. The 100% clearing of the wetland³³ was a preventable disaster due to the inaction of the Minister and DEH, whatever their reasons.

³⁰ See, eg, C McGrath, '*The Flying Fox Case*' (2001) 18 *EPLJ* 540; the notice of the decision at the EPBC Act Public Notice website, n 5, for EPBC Referral No 2002/571; C McGrath, 'Key concepts of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)' (2004) 22 *EPLJ* 20. See also

³¹ C McGrath, 'Casenote: *Booth v Bosworth*' (2001) 18 *EPLJ* 26 ('*Flying Fox Case*').

³² C McGrath, 'Swirls in the stream of Australian environmental law: Debate on the EPBC Act.' (2006) 23 *EPLJ* 165.

³³ C McGrath, 'Key concepts of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)' (2004) 22 *EPLJ* 21.

- In *Queensland Conservation Council Inc v Minister for the Environment and Heritage* [2003] FCA 1463. (*Nathan Dam Case*) The Minister decided that to ‘construct and operate the Nathan Dam on the Dawson River in Queensland (application EPBC No 2002/770) was not a controlled action in respect of any potential impact the proposal might have on the world heritage values of the Great Barrier Reef World Heritage Area as listed World Heritage property, and was not a controlled action in respect of any potential impact the proposal might have on listed migratory species, are set aside.’³⁴ He decided to allow ‘the relevant impacts of the proposal [to be assessed] by way of public environment report’. This was ‘set aside’ by Court Orders.³⁵

‘Significantly, the Minister restricted the relevance of “all adverse impacts” in s 75(2) of the Act to those impacts caused by the proponents of the proposed action and not by any other person. It was this element of the Minister’s decision that Justice Kiefel determined was invalid...’³⁶

The Minister did appeal³⁷ the *Nathan Dam Case* but the court ruled that he had failed to apply the correct test. This case is about to go before the courts yet again.

- In *Leatch v Director General of National Parks and Wildlife Service* (1993) 81 LGERA 270 at 282-283, after considering the definition of the precautionary principle in s 6(2)(a) of the Protection of the Environment Administration Act 1991 (NSW) Stein J concluded that adopting a cautious approach in protecting endangered species was consistent under the Act and in this case, the principal was applied

³⁴ *Queensland Conservation Council Inc v Minister for the Environment and Heritage*, [2003] 1463 FCA 1 (*Nathan Dam Case*).

³⁵ *Ibid* 23.

³⁶ *Queensland Conservation Council Inc v Minister for the Environment and Heritage*, [2003] FCA 1463 at [39].

³⁷ *Minister for Environment and Heritage v Queensland Conservation Council Inc* [2004] FCAFC 190.

to refuse a licence to take or kill an endangered frog in the context of a development proposal for a link road.³⁸

- *Brown v Forestry Tasmania and Others* (No 4) [2006] FCA 1729

The project was considered to have significant impact on threatened species because the proponent had provided false and misleading information by breaking the project into a ‘series of individual actions’.³⁹

At times (and not always successfully) the protection of the environment is partly achieved by mitigating measures that are put into place when a project is approved by the Minister. This view is not shared by critics who document the politicisation, administrative and regulatory failures that have weakened the Act, resulting in further unacceptable losses. I agree with the view that the EPBC Act, with further urgent amendments and resolute administrators, has the power to stop further unacceptable decline. The emphasis needs to be on ecologically sustainable development not on development.⁴⁰

Though the following development proposals are considered by DEH a ‘positive environmental outcome’ under the EPBC Act, these must be balanced by the recognition of what ultimately has been lost.

- The EPBC 2005/2001-Iluka Resources Mineral Sand mine, Western Australia’ referral is considered by DEH a ‘positive environmental outcome’ under the EPBC Act because the ‘comprehensive management plan ... improved understanding of this listed species’ distribution in the area and will enable an analysis over time of the mitigation measures’ effectiveness.

³⁸ Gerry Bates, *Environmental Law in Australia* (6th ed, 2006) 131.

³⁹ Vanessa Bleyer is an Associate solicitor at Coadys Barristers & Solicitors practicing in conservation and commercial law and is President of Lawyers for Forests Inc.

⁴⁰ A McIntosh and D Wilkinson, ‘Environment Protection and Biodiversity Conservation Act: A Five Year Assessment’ (Discussion Paper No. 81, The Australian Institute, Canberra, 2005); ANEDO. *Possible New Matters of National Significance under the EPBC Act* (ANEDO, 2005).

- EPBC 2001/174-Koolyanobbing Iron Ore Expansion Project, Western Australia, particularly the extra protection provided to the critically endangered *Tetratheca* population...
- EPBC 2002/629-expansion of an open cut coal mine, Warkworth Coal Mine, Hunter Valley, NSW, particularly the requirement for retention of 1,092 ha of habitat on adjacent sites for the Regent Honeyeater and Swift Parrot to offset habitat loss due to the mine.
- EPBC 2003/1106-Coral Sea Pearls Ltd aquaculture development, Queensland, particularly the protection of marine species such as humpback whales.⁴¹

THE EPBC ACT NEEDS SOME IMPROVEMENTS

Without any shadow of a doubt the following points if implemented, would ensure that the EPBC Act is able to protect the environment in today's world of climate change. An urgent action is to address cumulative impacts because it has to be recognised that a single action can have rippling effects. Take as an example; the result that logging a catchment will have upon water quality, upon aquatic species, Ramsar wetlands, migratory species and in turn 'on environmental values in the forests...'⁴²

- '...EDONQ commented that, on balance, the outcomes achieved under the EPBC Act are still not outstanding improvements, merely better than what would have resulted under State laws. [The Environmental Defender's Office of Northern Queensland] considered the real problems are that the DEH does not consider cumulative impacts on threatened species or World Heritage values (that is, each development is looked at in isolation) and the DEH does not seek to condition or regulate the

⁴¹ C McGrath C, 'Review of the EPBC Act' (Paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage), Canberra, (2006). <<http://www.deh.gov.au/soe/2006/emerging/epbc-act/index.html>>.

⁴² Lawyers for Forests Inc, 'Logging in State Forests Supplying Water to Melbourne' (submission made to URS Pty Ltd, 29 October 2007) 3-4,7.

footprint of development.’⁴³ The whole picture is often hidden as if you were looking at it through a lens instead of standing back and seeing the entire image.

- Australian Network of Environmental Defender’s Offices (ANEDO) suggested there is a need for six new matters of national environmental significance to be provided for under the Act; ‘greenhouse, land clearing, dioxins, water extractions, wild rivers and wilderness areas.’ The lack of an effective trigger for projects involving major greenhouse gas emissions is, arguably, the most glaring gap in the EPBC Act’s regulatory system.
- One of the major constraints of this Act is that ‘[t]here seems to be a reluctance to use the powers under the EPBC Act given to the Minister to refuse developments. Instead, all major developments have been approved, mostly with extensive conditions.’⁴⁴
- The EPBC Act is lacking in the following listed operational issues and the ANEDO suggests that the adjustment of these would ensure that by addressing these limitations, the result would be ‘...proper environmental protection [that] is predicated upon a uniform and consistent approach to the environment.’⁴⁵

- (a) Cumulative impacts: as there is currently no assessment of these. While there is an ability to consider development as a whole rather than stages (where approval may often be granted in stages through State laws), there is no assessment of overall impact of a series of unrelated developments and since it is difficult to prove one development can have impact, if considered cumulatively, there may be a clear significant impact.

⁴³ C McGrath, ‘Swirls in the stream of Australian environmental law: Debate on the EPBC Act.’ (2006) 23 *EPLJ* 165

⁴⁴ Ibid; see the case studies of EPBC Act referrals involving major coal mines in C McGrath, “Greenhouse Emissions Case Update” (Spring 2005) *National Environmental Law Review* 19.

⁴⁵ Letter from Australian Network of Environmental Defender’s Offices to Minister Peter Garrett, 5 March, 2008.

- (b) Access to information: there are real issues concerning access to relevant information and often access is restricted due to availability in hard copy, in hours of viewing, in electronic form.
 - (c) Timing for release of reports: limited capacity for the public to lodge submissions due to holiday periods and technical and lengthy reports being required to be looked at in a shortened time frame.
 - (d) Assessment reports: the DEH has a policy of not releasing assessment reports that are provided to the Minister until after the decision has been made on an approval. Therefore parties are not able to comment on whether the Minister had adequate information leading to poor decisions being made.
 - (e) Old approvals and planning issues: an example is the reluctances to utilise the section 134 powers to scale back developments and impose conditions.
 - (f) Public participation-the establishment of a solid platform upon which public involvement can be incorporated into the environment decision making process.
 - (g) Comprehensive review of the role of the Commonwealth in environmental matters.⁴⁶
- A disadvantage of the Act is that the '[a]pplication of the new system is confined to matters of national significance'.⁴⁷ This is emphasized by ANEDO's suggestion to include '6 new matters of national significance'⁴⁸ amongst other issues that they raised that would improve the operation of the EPBC Act.

⁴⁶ ANEDO. *Possible New Matters of National Significance under the EPBC Act* (ANEDO, 2005) 8-9.

⁴⁷ A Macintosh, 'Why the Environment Protection and Biodiversity Conservation Act's Referral, Assessment and Approval Process is Failing to Achieve Its Environmental Objectives' (2004) 21 *EPLJ* 288.

⁴⁸ C McGrath, 'Swirls in the stream of Australian environmental law: Debate on the EPBC Act.' (2006) 23 *EPLJ* 165.

- The extent of the Commonwealth’s failure to appropriately maintain the list of threatened ecological communities is vividly illustrated by the fact that the National Land and Water Resources Audit has identified 2891 threatened ecosystems and other ecological communities across Australia.⁴⁹
- ‘A bio-offset “bank” (BOB) scheme could promote better ecological and economic outcomes and strengthen the Commonwealth government’s accountability in decision made under the EPBC Act, compared with simply refusing developments, the potential negative effects of which could be turned into significant positives using a BOB.’⁵⁰ This would depend upon who ran the BIO bank and whether they were independent.
- The Queensland Conservation Council’s (QCC) ‘view is that the long-term ecological sustainability of the region [Queensland] is not being addressed or protected under the EPBC Act (nor under State process). It is therefore necessary to look to long-term views of areas because as incremental losses accumulate this will ‘inevitably result in extinction’⁵¹ I believe, ‘[b]lame for this could be laid on the general inability of environment impact legislation to deal effectively with cumulative impacts of many small actions, but there is more could be done to grapple with the cumulative impact problem through the EPBC.’⁵²

⁴⁹ A Macintosh, ‘Why the Environment Protection and Biodiversity Conservation Act’s Referral, Assessment and Approval Process is Failing to Achieve Its Environmental Objectives’ (2004) 21 *EPLJ* 304.

⁵⁰ K Kate, J Bishop and R Bayon , ‘Biodiversity Offsets: Views, Experience, and the Business Case’ (IUCN and Insight Investment, 2004) p 6. R Nelson and B Sharman, ‘More than tilting at windmills: A bird’s eye view of a bio-offsets scheme under the EPBC Act’ (2007) 24 *EPLJ* 17.

⁵¹ C McGrath, ‘Review of the EPBC Act’ (Paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra) <<http://www.deh.gov.au/soe/2006/emerging/epbc-act/index.html>>.

⁵² N Benyon, M Kennedy and A Graham, ‘Grumpy Old Greenies – lament waiting lists, wasted opportunities and wayward pork barreling in Australia’s biodiversity programs’ (Humane Society International, Sydney, 2005) available at <<http://www.hsi.org.au>>.

⁵² A McIntosh and D Wilkinson, ‘Environment Protection and Biodiversity Conservation Act: A Five Year Assessment’ (Discussion Paper No. 81, The Australian Institute, Canberra, 2005) viii.

EXAMPLES OF FAILURES OF THE EPBC ACT

- (a) In the *Greentree Case*, DEH knew about illegal clearing of 20ha of a Ramsar wetland. Then in the following 10 month period, while DEH was negotiating a settlement Mr Greentree cleared the remaining 80ha. Compliance enforcement is essential and criminal proceedings must follow.
- (b) The Minister has failed to ensure that the list of threatened species and communities is comprehensive. Under Section 185 of the Act it is his statutory duty to do so.
- (c) There are only four assessment bilateral agreements. There has not been any improvement of environmental assessments or approval processes. No approval bilateral agreements have been made.⁵³
- (d) ‘There have been a large number of actions that have had significant detrimental effects on the condition of the matters supposedly protected under Part 3.’ Land clearing and commercial fishing are two such actions.⁵⁴
- (e) In relation to agricultural referrals, there has been ‘a reluctance to declare clearing proposals to be controlled actions.’⁵⁵
- (f) The number of approvals far exceeds refusals. This highlights a deficiency in the EEA process and the refusal by the Minister to take adequate steps to ensure that the EPBC Act does have appropriate conservation outcomes.⁵⁶
- (g) A number of highly damaging proposals have been approved under the EEA:
- Paradise Dam (EPBC 2001/422)
 - Peregrian Springs Residential Development (EPBC 2001/164 and EPBC 2001/165)
 - Meader Dam (EPBC 2002/565)
 - clearance of red-tailed black cockatoo habitat for centre-pivot irrigation system in western Victoria (EPBC 2002/766)

⁵³ Ibid 19.

⁵⁴ Ibid 8.

⁵⁵ Ibid 9.

⁵⁶ Ibid 21.

- Destruction of habitat of the endangered mountain pygmy possum to make way for a new ski lift in Victoria (EPBC 2001/129)
- at least two projects in New South Wales that will result in the destruction or disturbance of habitat of the endangered swift parrot and regent honey eater (EPBC 2003/997 and EPBC 2000/87)
- the decimation of a population of the endangered plant, *Tetratheca paynterae*, to accommodate a mining proposal (EPBC 2001/174).⁵⁷
- Sonoma Coal Project (EPBC 2005/2080)

RECENT REFERRALS AND PUBLIC PARTICIPATION

Due to access to information via the web, public notices, EDO education seminars... the community can ensure that developments that can have impacts on the environment can be publically scrutinized. Pursuant to this we made written and then oral submissions on the two following proposed actions to a panel and an advisory-committee.

When assessing impacts of development proposals, the EPBC Act does not stand alone. It runs parallel with 'State and Territory laws and local government planning schemes [which] continue to provide the bulk of environmental regulation in the Australian environmental system. The EPBC Act forms [an] important component of an overall system responding to many strong pressures on the environment.'⁵⁸

Nowingi Long-Term Containment Facility

This proposal was referred to DEH on July 20th, 2004 and was considered a controlled action on August 18, 2004 with a controlling provision to include the Mallee Emu Wren. The next step for the proponent (Major Projects Victoria) was to 'provide preliminary information for the Minister to determine what form of assessment is required'.

⁵⁷ Ibid 10-11.

⁵⁸ C McGrath C, 'Review of the EPBC Act' (Paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage), Canberra, (2006). <<http://www.deh.gov.au/soe/2006/emerging/epbc-act/index.html>>.

It was ‘...understood that works couldn’t proceed prior to assessment and approval from the Minister.’⁵⁹ Major Projects Victoria (MPV) was about to commence exploratory drilling on the site and this would have had significant impact during the nesting season of the Mallee Emu-wren a listed species under the EPBC Act. Ms Murdoch informed DEH that the Mallee Emu Wren’s nesting season occurred August to November (Beruldsen 1980).

MPV was advised by DEH on October 25, 2004 to delay drilling until December. MPV decided to continue regardless. Minister Batchelor requested an amendment to the Mildura Planning Scheme from the Minister for Planning, allowing exploratory drilling and was give permission. A community picket was established 25-26th October, 2004 and an agreement was signed to halt the action. The proponent MPV took its time in referring this project to the Commonwealth under the EPBC Act. This should be taken into consideration as part of their history as stated in the EPBC Act Section 136(4); a person’s environmental history must be considered as whether they are a suitable person to be granted an approval, this applies to corporations as well.

The panel’s recommendation that the proposal be rejected on a planning issue was accepted by the Planning Minister on January 2007. The decision was an excellent environmental outcome because:

- though the EES assessed matters under the EPBC Act the time frame was not sufficient
- the greenhouse gas emissions of many trucks carting garbage 1000 kms return for 25 years had not been considered, it was prevented
- ten hectares of high conservation value vegetation was saved
- the community participation was enormous, it was the longest panel hearing, with the most submissions and oral presentations in Victoria’s history

The fact that a planning issue, not the EPBC Act stopped the project was not important, the outcome was.

Sugarloaf Pipeline Project

⁵⁹ Letter from Fiona Murdoch to Tim Kahn, 19 October 2004, (tim.kahn@deh.gov.au).

The referral for the project, which is a 70km pipeline taking 75GL of water per year from the Goulburn River to Sugarloaf Reservoir, Victoria (2008/3960) is a 'decision made under Section 75 and Section 87 of the [EPBC Act].' The action has been deemed a 'controlled action' and 'is likely to have significant impact on' [l]isted threatened species and communities (section 18 & 18A) and the proponent is listed as Melbourne Water and the project is to be assessed by 'accredited assessment.'⁶⁰

This project is flawed. The obvious undue, improper haste with which matters listed for referral have been less than rigorously assessed by the State government with its choice of a PIA is political. By limiting the scope of the referral and what the advisory committee could look at, the state government and proponent are demonstrating bias.

The pipeline project is an example of how a government is able limit the scope of a referral. The Auditor-General himself has stated that 'The announcement of the food bowl project in June 2007 was not informed by a rigorous cost analysis and full validation of the water savings estimates.' He also said, 'regularly make available, to the community information about how well the Department has met its environmental flow objectives.'⁶¹ There is obviously a need for all 3 of these actions to be considered as components of a whole project. Without water savings there is no water in the pipeline. It is unreasonable to borrow environmental flows when it is known there are exceptional circumstances; drought, climate change and over-allocations. To not refer the entire project; Stage 1, Stage 2 and the pipeline, is 'false and misleading' information under EPBC Act s 489 to gain a permit and must be rejected.

The following are issues that have been improperly addressed:

⁶⁰ EPBC Act Referrals Section, Sugarloaf Pipeline Project, Goulburn River to Sugarloaf Reservoir, Victoria (EPBC 2008/3960) <<http://www.environment.gov.au/epbc>>

⁶¹ Victorian Auditor-General DDR Pearson, *Planning for Water Infrastructure in Victoria* (2008) 33, 3. <<http://www.audit.vic.gov.au>>

- The Victorian Minister for Planning decided that an Environmental Effects Statement (EES) reviewed by a panel was not required and a Project Impact Assessment (PIA) reviewed by an advisory committee, if completed to a satisfactory standard would be sufficient to inform both himself and the Commonwealth Minister as to the potential effects of the proposed pipeline route.⁶²
- The terms of reference for the advisory committee excluded the associated issue upon which the pipeline is predicated, which is the water savings to be actualized by the Food Bowl Modernization Project.
- The water savings which are meant to fill this pipe have not been verified and this has been acknowledged by the Victorian Auditor-General,⁶³ this means that there are likely to be significant impacts on Ramsar wetlands listed under the EPBC Act.
- The Goulburn River is listed under the Heritage Rivers Act and one must apply the Act which states; 'New water diversions not to significantly impair attributes of area'.⁶⁴ Extracting 75GL for the pipeline will have a significant effect, both on the Goulburn, as well as downstream, to the mouth of the Murray River in South Australia.
- No investigations have been made of the potential environmental impacts because of the reduction of flows on those matters listed under the EPBC Act such as; Ramsar wetlands and migratory species downstream of the extraction.⁶⁵
- The proponent has chosen not to provide information about the water savings without which this pipeline cannot operate. They have failed in their '[d]uty to provide accurate information' and they have provided both false and 'misleading information to obtain approval or a permit.' It is a fact that this is 'component of a larger action' as the pipeline cannot be operated without water.⁶⁶

⁶² EPBC Act Referrals Section, Sugarloaf Pipeline Project, Goulburn River to Sugarloaf Reservoir, Victoria (EPBC 2008/3960) <<http://www.environment.gov.au/epbc>>

⁶³Victorian Auditor-General DDR Pearson, *Planning for Water Infrastructure in Victoria* (2008) 32-34 <<http://www.audit.vic.gov.au>>

⁶⁴*Heritage Rivers Act 1992* (Vic) sch 3; *Heritage Rivers (Further Protection) Bill* No 68 of 2006

⁶⁵Commonwealth, State and Territory Governments of Australia, *Garnaut Climate Change Review*, (2008) 22-23; *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s16(1), s17B(1), s20(1), s20A(1).

⁶⁶*Ibid* s489, s490, s 491; s74A(1).

- The Victorian government has colluded and misleads the Commonwealth by rushing the study of impacts for this pipeline, by using a PIA and by declaring that it is an emergency. This is untruthful, their own document *Our Water Our Future the Next Stage of the Government's Water Plan*, June 2007 states on page 17; 'Melbourne households [will] move off the current restrictions regime to the more secure level of service they have historically received.'
- The information provided to the Minister does not include enough information to make an informed decision and he should request more information.⁶⁷
- The Minister is obliged to consider 'all adverse impacts' and this is a wide interpretation of the Act.⁶⁸
- The Minister must be assured that in allowing an 'accredited process' he is satisfied that Section 87(a) of the EPBC Act is adhered to fully.⁶⁹
- The objects of the EPBC Act especially the principles of ESD⁷⁰ are being regarded in a superficial manner because the Victorian government has decided that this project will proceed no matter what the consequences.
- The Victorian Auditor-General has stated that that the public need to be informed about the cost-benefits of the entire project. This has not been done and in fact because of the rush 'the standard of rigour was less than normally expected when asking the Government to commit to a project.'⁷¹ This is in contrast to the requirement of ESD under the EPBC Act.⁷²
- The advisory committee chair Kathryn Mitchell stated they were 'operating under time constraints' and the various experts for the proponent also stated that they would have liked more time to do additional surveys. The choice of a PIA v EES was made to limit the information available to advisory committee

⁶⁷ Ibid s76.

⁶⁸ Ibid s75(2).

⁶⁹ Ibid s87(4).

⁷⁰ Ibid ch 1(3), (3A).

⁷¹ Victorian Auditor-General DDR Pearson, *Planning for Water Infrastructure in Victoria* (2008) 34-36 <<http://www.audit.vic.gov.au>>

⁷² *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s3A(e)

and the Minister. The result is there is not enough information for any Minister to make an informed decision as they are obliged to.⁷³

- To consider also are Sections 136(4) in the EPBC Act, a person's environmental history and 138 where the Minister is 'not to act inconsistently with Australia's obligations under the Ramsar Convention.'⁷⁴

CONCLUSION

It is evident that without the EPBC Act's implementation and its enforcement, further environmental degradation will occur. There have been positive and negative outcomes under the Act and these are reflected in the number of cases that have come before the courts.

Important to note:

- (a) The judiciary has a major role in interpreting the legislation and ensuring that the law is upheld.
- (b) Public participation is integral to the balance between environmental and developmental goals.
- (c) The Minister has to be committed to environmental protection, not allowing politics and the benefits of economic considerations overtake his decisions.
- (d) DEH must ensure compliance in all instances.
- (e) The EPBC Act must be reassessed ensuring the urgent upgrading of matters of national significance, as the list is incomplete.
- (f) Lists of species and communities which are the responsibility of the Minister with regular updating in a reasonable time frame.
- (g) When choosing an environmental assessment, a broader whole project approach is required. This ensures all adverse impacts of the entire project are assessed, not just components.

⁷³Ibid s 87(4), s132, s136, s139, s140, s74A(1).

⁷⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s136(4), s138.

- (h) The cost-benefits should be examined in detail before the project is approved.
- (i) When choosing an assessment approach, the type and extent of the information that is required should fit the likely impacts of the entire project.
- (j) The Minister should inform himself about the proponent's environmental history.

Though the implementation of the EPBC Act is not perfect, it has made a calculable difference and this is due to the interpretation of the law and its progression through the courts. With some future amendments it can ensure that the environment is considered before actions are taken, resulting in no further avoidable losses and an acceptable balance between environmental protection and development.

References

1. Articles/Books/Report

ANEDO, 'Possible New Matters of National Environmental Significance under the EPBC Act 1999', (Submission on behalf of ANEDO, 2 May 2005).

ANEDO, 'Use of Environmental Offsets under the EPBC Act 1999', (Submission on behalf of ANEDO, 3 December 2007).

ANU College of Law, 'Graduate Program in Law Course Materials Fundamentals of Environmental Law Book 1' (Summer Session, 2008).

ANU College of Law, 'Graduate Program in Law Course Materials Fundamentals of Environmental Law Book 2' (Summer Session, 2008).

ANU College of Law, 'Graduate Program in Law Course Materials Fundamentals of Environmental Law Book 3' (Summer Session, 2008).

Australian Government Department of the Environment and Heritage, 'EPBC Act Policy Statement 1.1 Significant Impact Guidelines' (May 2006).

Bates, Gerry, *Environmental Law in Australia* (6th ed, 2006).

Beder, Sharon, *Environmental Principles and Policies an Interdisciplinary Approach* (2006).

Beeton, Chairman Bob, 'Australia State of the Environment 2006' (Independent report to the Australian Government Minister for the Environment and Heritage 2006).

Beynon, Nicola and Kennedy, Michael and Graham, Alistair, 'Grumpy Old Greenies – lament waiting lists, wasted opportunities and wayward pork barreling in Australia's biodiversity programs', (Humane Society International, Sydney, 2005).

Bignold, Justice NR, 'NSW Land and Environment Court – its Contribution to Australia's Development of Environmental Law' (2001) 18 *EPLJ* 2.

Biscoe, Justice Peter, 'Ecologically Sustainable Development in New South Wales', (Paper delivered at the 5th Worldwide Colloquium of the IUCN Academy of Environmental Law, Paraty, Brazil, 2 June 2007).

Bleyer, Vanessa, 'A Legal Summary of *Brown v Forestry Tasmania* (No 4) [2006] FCA 1729 (19 December 2006).

Bonyhady, Tim and Christoff, Peter, *Climate Law in Australia* (2008).

Book Review, 'Environment and Sustainability Policy: Creation, Implementation, Evaluation' (2006) 23 *EPLJ* 158.

Bullen, Emma, 'Legislative Limits on Environmental Decision-Making: The Application of the Administrative Law Doctrines of Jurisdictional Fact and Ultra Vires', (2006) 23 *EPLJ* 265.

Carson, Rachel, '*Silent Spring*', (1962).

Chisolm, Richard and Nettheim, Garth, *Understanding Law* (2007).

Cole, David, 'Creative Sentencing – Using the Sentencing Provisions of the South Australian Environment Protection Act to Greater Community Benefit', (2008) 25 *EPLJ* 94.

Dawson, Dr Freya, 'Analysing the Goals of Biodiversity Conservation: Scientific, Policy and Legal Perspective', (2004) 21 *EPLJ* 6.

Department of Environment and Heritage, 'Report on the Operation of the Environmental Protection and Biodiversity Conservation Act 1999', (covering the period 16 July to 30 June 2001, December 2001).

Doyle, Timothy and McEachern, Doug, *Environment and Politics* (3rd ed, 2008).

Editorial Commentary, 'End of Broad scale Clearing in Queensland' (2007) 24 *EPLJ* 5.

Editorial Commentary, 'Federal Issues: Appeal Lodged from Greentree (No 3), (2005) 22 *EPLJ* 5.

Ellis, Bill, 'Integration of Natural Resources Management under Queensland Mining Legislation' (2003) 20 *EPLJ* 66.

Farrier, David and Kelly, Andrew and Langdon, Angela, 'Biodiversity Offsets and Native Vegetation Clearance in New South Wales: The Rural/urban Divide in the Pursuit of Ecologically Sustainable Development' (2007) 23 *EPLJ* 427.

Fisher, D E, *Australian Environmental Law* (2003).

Foerster, Anita, 'Managing and Protecting Environmental Water: Lessons from the Gwydir for Ecologically Sustainable Water Management in the Murray Darling Basin' (2008) 25 *EPLJ* 130.

Garnaut, R, 'Garnaut Climate Change Review', (Interim report to the Commonwealth, State and Territory Governments of Australia, February 2008).

Gee, Dianne and Stratford, Dr Elaine, 'Public Participation and Integrated Planning in the Tasmanian Private Timber Reserve Process', (2001) 18 *EPLJ* 1.

Jenkins, Professor Bryan, Annandale, Dr David and Morrison-Sauders, Dr Angus, 'The Evolution of a Sustainability Assessment Strategy for Western Australia' (2003) 20 *EPLJ* 56.

Kirwan, Lucy and Masters, Jeremy (eds), *Australian Guide to Legal Citation* (2nd ed, 2002).

Lawyers for Forests, 'Construction of New "Fired Breaks" in Victoria's Central Highlands: Application for approval under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) by the Victorian Department of Sustainability and Environment', (Public comment on referral: is the proposed action a controlled action, 20 December 2007).

Lawyers for Forests, 'Logging in State Forests Supplying Water to Melbourne stage 1-method for assessment', (Submission made to URS Pty Ltd acting on behalf of the Department of Sustainability and Environment, 29 October 2007).

Letter from ANEDO to Mr Peter Garret MP, 5 March, 2008.

Lyster, Rosemary, '(De)regulating the Rural Environment' (2002) 19 *EPLJ* 1.

Macintosh, Andrew and Kennedy, Lyndall, 'Environment Protection and Biodiversity Conservation Act User's Guide' (2004).

MacIntosh, Andrew and Wilkinson, Debra, 'Environment Protection and Biodiversity Conservation Act a Five Year Assessment', (Discussions paper number 81, The Australian Institute, July 2005).

Major Projects Victoria, 'Long Term Containment Facility EES' (August 2005)

McGrath, Chris, 'Key Concepts of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)', (2004) 22 *EPLJ* 20.

McGrath, Chris, 'Review of the EPBC Act', (Paper prepared for the 2006 Australian State of the Environment Committee, Department of the Environment and Heritage, Canberra, 2006).

Mcintosh, Andrew, 'Why the Environmental Protection and Biodiversity Conservation Act's Referral, Assessment and Approval Process is Failing to Achieve its Environmental Objectives', (2004) 21 *EPLJ* 288.

Minister For Planning, 'Nowingi Long-Term Containment Facility Assessment under Environment Effect Act 1978' (January 2007).

Nelson, Rebecca and Sharman, Bethany, 'More than Tilting at Windmills: A Bird's Eye View of a Bio-offsets Scheme under the EPBC Act' (2007) 24 *EPLJ* 17.

Pearson, Auditor-General DDR, 'Planning for Water Infrastructure in Victoria', (April 2008).

Peel, Jaqueline, *The Precautionary Principle in Practice Environmental Decision-making and Scientific Uncertainty* (2005).

Preston, Justice Brian J, 'Ecologically Sustainable Development in the Courts in Australia and Asia', (Paper presented to a seminar on Environmental Law organized by Buddle Finlay, Lawyers, Wellington, New Zealand, 28 August 2006).

Preston, Justice Brian J, 'Ecologically Sustainable Development in the Context of Contaminated Land' (2008) 25 *EPLJ* 164.

Preston, Justice Brian J, 'The Environment and its Influences on the Law', (Keynote address to Legal Aid New South Wales Civil Law Conference, Sydney, 26 September 2007).

Preston, Justice Brian J, 'The Role of the Judiciary in Promoting Sustainable Development: The Experience of Asia and the Pacific', (Paper presented to the second Kenya National Judicial Colloquium on Environmental Law, Mombasa, Kenya 17-22 April 2006).

Raff, Dr Murray, 'Environmental Impact Assessment and Transitional Provision of the EPBC' (2001) 18 *EPLJ* 1.

Scanlon, John and Dyson, Megan, 'Will Practice Hinder Principle? – Implementing the EPBC Act' (2001) 18 *EPLJ* 1.

Sugarloaf Pipeline Alliance, 'Sugarloaf Pipeline Project Impact Assessment (PIA) Report Documents for Public Comment' (Folder 1 and 2, 19 February 2008).

The State of the Environment Advisory Council, 'Towards Ecological Sustainability Australia: State of the Environment 1996'.

Thomas, Ian and Elliot Mandy, *Environmental Impact Assessment in Australia Theory and Practice* (4th ed, 2005).

Thomas, Ian, *Environmental Management Processes and Practices for Australia* (2005).

Thomas, Ian, *Environmental Policy Australian Practice in the Context of Theory* (2007).

Thomas, Ian, *Environmental Policy Australian Practice in the Context of Theory* (2007).

Victoria, EDO, 'Introduction to Victoria's Key Environment and Planning Law' (4th ed 2004).

Victorian Department of Sustainability and Environment, 'Our Environment Our Future Victoria's Sustainability Framework', (April 2005).

Waite, Maurice and Hollingworth, Lucy and Marshall, Duncan (eds), *Oxford Paperback Thesaurus* (3rd ed, 2006).

2. Case Law

Australian Conservation Foundation v Minister for Planning [2004] VCAT 2029.

Booth v Bosworth (Flying Fox Case) (2001) 114 FCR 39, 117 LGERA 168; [2001] FCA. 1453.

Brown v Forestry Tasmania (No 4) [2006] FCA 1729.

Commonwealth v Tasmania (Tasmanian Dam Case) [1983] 46 ALR 625.

Commonwealth v Tasmania (the Tasmanian Dam Case) [1983] HCA 21; (1983)158 CLR1.

Leatch v Director General of National Parks and Wildlife Service (1993) 81 LGERA 270 at 282.

Mees v Kemp [2005] FCAFC 5.

Mees v Kemp [2006] FCA 366.

Mees v Roads Corporation [2003] FCS 306.

Minister for Environment and Heritage v Greentree (Greentree Case) (No 3) [2004] FCA. 1317.

Queensland Conservation Council Inc v Minist (Nathan Dam Case) [2003] FCA 1463.

Walker v Minister for Planning [2007] NSWLEC 741.

Wilderness Society Inc v The Hon. Malcolm Turnbull [2007] FCS 1178.

3. Legislation

Catchment and Land Protection (Further Amendment) Act 1994 (Vic).

Catchment and Land Protection Act 1994 (Vic).

Charter of Human Rights and Responsibility Act 2006 (Vic).

Environment Protection Act 1970 (Vic).

Environment Protection and Biodiversity Conservation Act 1999 (Reprint 3) (Cth).

Environment Protection and Biodiversity Conservation Amendment Regulations 2007 (No 1) (Cth).

Environmental Effects Act 1978 (Vic).

Flora and Fauna Guarantee Act 1988 (Vic).

Heritage Rivers Act (Further Protection) Act 2006 (Vic).

Heritage Rivers Act 1992 (Vic)

National Parks Act 1975 (Vic).

Planning and Environment Act 1987 (Vic).

Water Act 1989 (Vic).