



LAND &
ENVIRONMENT
PLANNING

PO Box 261 Singleton
AUSTRALIA 2330
Phone
(02) 6571 1208
Email
lep@calli.com.au

The Secretary
Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
CANBERRA 2600

Dear Sir/Madam

Submission to the Senate Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999*

This submission is from Land & Environment Planning, an environmental planning consultancy with a strong emphasis on strategic and biodiversity planning. We have been innovators in ensuring biodiversity issues are addressed in development and planning, and have been responsible for the preparation of important documents such as the *EPBC Act Guide for Planners* and the *Biodiversity Planning Guide for NSW Local Government*. In 2004 we also undertook a national program of workshops for local government and natural resource management planners on the EPBC Act.

The focus of our comments is on the operation of the EPBC Act in achieving the objects of biodiversity, and on the interaction of the Act with state based planning systems. Several reform proposals are outlined in this submission to improve the effectiveness of consideration of biodiversity in Australia. We appreciate the opportunity to comment, based on our close professional interest in the operation of the Act.

Background

Overall, the EPBC Act provides an excellent legal framework for recognising matters of national environmental significance in development, and for ensuring that the significance of impacts is assessed before they proceed. However, experience demonstrates that in many respects, the promise of the legislation has not met expectations in its administration and application.

Importantly, there is a problem of conflict and duplication with state development and planning systems, which is particularly evident in NSW. The EPBC Act is based upon impact assessment processes in the absence of any overall plan or strategic approach. By contrast, the state land use planning systems which regulate development are based on a planning and regulatory approach which is often lacking in environmental impact assessment rigour. This creates an inherent conflict and inconsistency, and is a prime reason why the EPBC Act is not as effective as it could be.

Environmental Planning and Land Management Consultants

Comments

Specific comments on the operation of the EPBC Act are as follows:

- 1 There would be benefits in more clearly defining what is meant by a significant impact for the purposes of the Act. For example, many small but important precedent setting developments should be subject to referral such as subdivision of land on the edge of world heritage areas, or the erection of dwellings in sensitive areas.
- 2 Development proponents common lack an understanding of the responsibilities under the Act. It appears that in many cases there are actions which would have a significant effect on matters of national environmental significance which are not referred to the Commonwealth, particularly in relation to land development and smaller projects.
- 3 Enforcement of breaches of the Act has been extremely poor. While there have been some significant cases of effective prosecutions, it appears that enforcement is far too delayed and ineffective. Resources for enforcement are too physically distant.
- 4 State based legislation acts contrary to the effective implementation of the EPBC Act, such as land use planning and native vegetation legislation. In practice, state based legislation prevails even though it leads to poor biodiversity outcomes.
- 5 Recovery plans prepared under the plan are problematical because they fail to deal with real drivers of change (eg infrastructure programs and land use development plans).
- 6 Many individual actions which cumulatively combine to have a significant impact are not captured by the EPBC Act i practice. A good example of this is the construction of a road or water supply, which then leads to ongoing development and land clearing.
- 7 There should be additional emphasis on long term biodiversity monitoring programs, and linking this with ongoing management programs.
- 8 The administration of the Act has been hampered by the lack of funding given to important programs such as the preparation of recovery plans.
- 9 Experience shows that the lack of time available for public comment on referrals has hindered effective community engagement in the administrative processes of the EPBC Act. It is suggested that 3 - 4 weeks for comment is more reasonable than the present arrangement.

Important reform proposals

It is essential to more closely link the operation of the EPBC Act with state and local land use planning processes. Three criteria must be at the core of a reformed Australia wide land use regulatory approach which recognises national biodiversity values and includes:

- 1 Implementation of a common national land use planning system under Commonwealth legislation, administered by states. This must be designed to harmonise with the Commonwealth EPBC Act which provides a sound impact assessment framework.
- 2 Integrated land use and natural resource management legislation, overseen by an independent state planning commissions with clear separation from government. This would have similar powers and charter to the former NSW State Planning Authority and use a management approach similar to that used by the Reserve Bank of Australia.
- 3 There must be a clear and unambiguous role for local government in land use planning and biodiversity, specified in legislation, preferably in the Australian constitution.

- 4 There should be direct Commonwealth funding and support provided to local government for implementation of the EPBC Act, including funding provided to ensure that matters of national environmental significance are documented and referred to in local plans, and subject to complementary local regulation and impact assessment.

Conclusion

As indicated above, there are important issues of governance of land use and natural resource management which need to be reformed if national biodiversity conservation is to be improved. This particularly involves ensuring that biodiversity is appropriately considered and resourced in strategic planning undertaken at the state and local government level.

Thank you for the opportunity to provide comments. I would welcome the opportunity to discuss any aspect of this submission in greater detail, and please feel free to contact me if you have any queries in relation to the above matters. The Land & Environment Planning website www.calli.com.au/lep also includes further information.

Yours sincerely

Martin Fallding BTP (hons), BSc, MSc (hons)
Principal, Land & Environment Planning