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

We have been professionally involved in land management, ecology and conservation issues for more than 25 years, acting in the roles of scientist, educator, public servant, landholder, primary producer and community activist at different times throughout that period. We have written a number of submissions on EPBC matters both privately and on behalf of our employers and community groups. We would like to comment briefly on each of the matters raised in the terms of reference for this inquiry using specific examples from our personal experience. We would also like to add some comments on the use of bilateral agreements under the Act

Specific comments on the Terms of Reference

Auditing of Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999;

The EPBC approval with conditions that we wish to comment on is the approval of the Paradise Dam on the Burnett River in Queensland. This is a case where a number of State imposed conditions were placed on the approval of the project, along with several additional Commonwealth approval conditions. When it was abundantly clear to the community that these approval conditions had not been met, a federal audit was conducted of this project which demonstrated clear non-compliance with a number of Federal conditions, and the mysterious creation of a new determination of 'partial compliance', which is not referred to in the Act.

The audit did not extend to any of the State conditions applied to the approval of the project, yet it is apparent that the federal conditions were imposed on the assumption that the State conditions would also be in force and implemented. In fact, several of the State conditions have also not been effectively implemented – but these were not considered at all in the Federal compliance audit.

In spite of the penalties applicable under the act for such deliberate and blatant non-compliance, no punitive action has been taken under the act against this proponent. This sends a clear message to the same proponent and others involved in similar projects in the future that the EPBC act is simply an administrative hindrance, and has no real teeth or consequences when it comes to enforcement.

Lessons learned 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;

Our overall impression is that the EPBC Act is seen by project proponents merely as a time-consuming and expensive nuisance that unnecessarily hinders their desired business activity. They generally expect to be able to negotiate, deal, promise, mitigate and buy their way through to an eventual approval, irrespective of the level of impact of the project.

This also seems to be the culture within government, with assessment staff faced with an exploding workload, often working in a highly politicized and stressful environment (eg Gunn's pulp mill in Tasmania, Traveston Crossing Dam in Queensland). It seems that at the governmental level the aim is to negotiate an outcome where the project will be able to proceed, nominally in an ecologically sustainable manner, with the minimum of fuss. Not approving a project generally creates a fuss, which makes everybody's working life more difficult and stressful. The statistics bear this out, showing that only a miniscule percentage of proposed actions have ever been refused under the act.

Wealthy and powerful proponents, (such as State Government owned or supported corporations) have considerable power in this process, and can gain approval for projects which are clearly not ecologically sustainable, on the basis of negotiations, deals, unproven mitigation promises, well-crafted spin and pork-barreling of potential opponents. Projects that a smaller individual business would not be able to gain approval for are assumed to be capable of eventual approval if proposed by one of these larger, more influential proponents.

A relevant illustration is where recreational fishers were refused permission to stock 20 saratoga per year in Lake MacDonald (Cooroy, Queensland) because of the risks posed to the Mary River Cod (an endangered EPBC listed species), in a decision that was upheld after appeal in the Qld fisheries tribunal. Yet, a few short years later the powerful State proponent for the proposed Traveston Crossing dam is behaving as if the EPBC approval of that project is a *fait accompli*, in spite of it directly destroying 12 of the 18 known cod holes in the main trunk of the Mary River. One would have to ask which of these actions poses the greatest risk to the survival of this endangered species supposedly 'protected' by the EPBC act.

The cumulative impacts of EPBC Act approvals on threatened species and ecological communities, for example on Cumberland Plain Woodland, Cassowary habitat, Grassy White Box Woodlands and the Paradise Dam;

Often it is difficult to assess the overall impact on an ecosystem of a number of actions by a number of proponents. Even when it is clear that an ecosystem is under threat from a number of past actions and current processes, proponents understandably focus on the marginal impacts of their particular project, often pointing out that the marginal impacts of their proposed action are small compared to the existing stresses being placed on the ecosystem.

However, the “straw that breaks the camel's back” analogy applies here. A proponent adding their “straw” to a particular environmental “load” may not be able to accurately assess the load already being carried by that camel, and may justifiably point out that their straw is not much of a marginal load for the camel to carry.

We believe that in ecosystems where there is already a level of stress recognized by listings under the EPBC act, the crucial deciding factor should simply be the directional change in the sustainability of the threatened populations, communities and ecosystems influenced by the proposed action. Any action for which the proponent cannot clearly demonstrate an improved outlook for the listed MNES being impacted should not be approved under the Act. This would considerably simplify the largely unsuccessful attempts at quantifying the cumulative impacts of a variety of actions on this matters. The assessment test would simply be – 'will this proposed action result in an improved state for the MNES being considered in the assessment'.

To labour the camel analogy, if a particular ecological 'camel' is already recognized as being threatened, then approval should only be given to projects that don't place *any* more straws on it's back.

At the moment, proponents of large inter-related actions know the inherent difficulties in assessing cumulative impacts across a number of different actions and proponents. They actively partition large interrelated proposals (which are conceived and planned for by the proponent as part of an overall integrated strategy) into a series of smaller actions, all assessed separately under the EPBC act.

An example of this is the suite of new water infrastructure proposals for the Mary River in Queensland, specifically planned for as one integrated proposal under the SEQ water strategy, yet deliberately broken into a number of separate actions for the purposes of assessment under the EPBC Act. These actions are :

- the Northern Pipeline Interconnector (NPI) Stage 1 (referred, not required to be assessed)
- the NPI Stage 2 (undergoing EIS process under EPBC)
- Traveston Crossing Dam (TCD) Stage 1 (undergoing EIS process under EPBC)
- TCD Stage 2 (flagged in all planning documents, not requiring assessment yet)
- Northern Regional Pipeline and water offtake works for Traveston Crossing Dam. (Unknown proponent, required to connect TCD to the the NPI)

These projects are planned as a clearly connected and totally integrated suite of actions impacting on the same set of MNES in the Mary River, yet they have been divided into a set of smaller actions, being undertaken by nominally different proponents by the one overarching proponent. This greatly hinders the effective assessment of the cumulative environmental impact of the overall plan. It is important to note that the calculation of predicted economic returns, the planning and design of all these actions was undertaken in a wholly integrated manner, yet the assessment of environmental impact of this suite of actions under the EPBC act has been deliberately sliced and diced into a number of completely separate assessments.

The effectiveness of responses to key threats identified within the EPBC Act, including land-clearing, climate change and invasive species, and potential for future measures to build environmental resilience and facilitate adaptation within a changing climate;

Our observations with respect to the effectiveness of the act are, although it is a critically important piece of legislation and has made some significant progress in some matters, it has clearly been insufficient to halt the generally continuing decline in Australia' s biodiversity. In fact, the rate of loss of biodiversity over the ten years of operation of the act has continued to accelerate. In addition, the act has no legislative power over actions on grounds of their likely contribution to adverse climate change, and this must be seen as a significant restriction to it's ability to protect Australia's environment and biodiversity generally.

The effectiveness of Regional Forest Agreements, in protecting forest species and forest habitats where the EPBC Act does not directly apply;

Based on consultation with a wide range of landholders in the course of our employment, our comment on the RFA process is that insufficient heed was taken of the specific management knowledge of affected landholders on the issues of effective forest management. The process tended to alienate many land managers that would otherwise have been valuable allies in the sustainable management of forests and conservation of important remnant ecosystems if the initial process had been handled more sensitively

We believe that the creation of national parks and conservation areas that resulted from the RFA process has not been supported by sufficient on-ground management resources to ensure the maintenance of the conservation values for which they were created. Our personal experience relates to an adjoining property to our own with very high ecological values which was changed from a forestry area to National Park via the RFA.

Although forestry workers and local landholders had taken a long-term interest in preserving this particular area, no attempt was made to engage with local people in the formulation of management plans or the assessment of the biodiversity values. Insufficient funds have been allocated to the management of this area, and the area is now in decline, threatening the loss of integrity of a significant remnant as a direct consequence of the land tenure change under the RFA.

The impacts of other environmental programmes, eg EnviroFund, GreenCorps, Caring for our Country, Environmental Stewardship Programme and Landcare in dealing with the decline and extinction of certain flora and fauna; and the impact of programme changes and cuts in funding on the decline or extinction of flora and fauna.

We believe that community-based programmes are the essential ingredient for achieving on-ground change in the management of Australia's ecological resources. In our opinion, the amount of volunteer and landholder time, effort and capital contribution, and the willingness of professional staff to work passionately for comparatively low wages and little or no job security has been completely undervalued at all levels of Government. Indeed, community-based organizations are often perceived as a hindrance by government because they often insist on the proper application of the EPBC Act and partake in troublesome public comment.

Having said so, the creation of several new layers of bureaucracy lying between the funding sources and the on-ground implementation of the programmes like those mentioned has not seen the most efficient use of scarce resources in past years. The current funding situation is particularly uncertain and undesirable. It is most inappropriate for government bodies such as CSIRO to be placed in direct competition against community based groups for access to short-term 'junk food' environmental funding like “Karing for Country” (KFC). State and federal bodies should be sufficiently funded to be able to function effectively and securely in their own right.

If active community involvement in measurable on-ground action is not financially supported, then all the fine words enshrined in legislation like the EPBC act are just a means of creating more work for the burgeoning army of highly paid environmental consultants and bureaucrats who read and write each others' greenwash cut and pasted from their last 1000 page EIS. This will not achieve real change in attitudes and practice in environmental management and future generations will not thank us for this sort of behaviour.

The application of bilateral agreements

In general, the assessment of major projects by means of bilateral agreements with the relevant State Government is a sensible procedure, which should lead to efficient use of resources in assessing projects where the State and Federal governments have overlapping jurisdiction and a common interest in furthering the aims of the act.

However, in cases where the proponent has strong links to the State Government (eg. a wholly government-owned corporation), there is a clear and undeniable conflict of interest in the State Government operating in the simultaneous roles of proponent and assessor under a bilateral agreement. In the case of Queensland, State infrastructure projects being delivered under the State Development and Public Works Organization Act are assessed by the State Coordinator-General. By tradition, the Coordinator General is also the Director of the Department of Infrastructure. In this case, the same individual is placed in the ethically untenable position of being the person with the responsibility for delivering the project for the state at the same time as being charged with the 'neutral' assessment of the project under the EPBC Act on behalf of the Commonwealth. We believe that this is a fatal flaw in the use of bilateral agreements as the Act now stands.

We hope that these comments can contribute in some way to the improved operation of the act in the future.

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