

Michael Noble

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

20 September 2008

Dear Sir/Madam,

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

I wish to make a submission for consideration by the Senate Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC). I am a strong supporter of the need for national environment protection legislation. However, during the last 18 months of direct experience with the function of the EPBC I have become very disillusioned with the administration of the Act.

Observations from my experience

As a public sector planner based in Launceston, Tasmania I have directly encountered several occasions where development proponents have informed the Australian Government of proposed actions to be considered for referral. The outcomes have been very disconcerting. These situations have included:

- The upgrading and construction of several dams within the Freycinet National Park and an adjacent reserve. The project involved significant potential for spread of *Phytophthora cinnamomi* and destruction of (primarily State listed) threatened species. The Tasmanian Conservation Trust made a submission and the project was listed as a controlled action (2004/1778). Following this decision, the Tasmanian Government had input and the controlled action decision was reversed.
- Mining (Van Dieman Mines Pty Ltd) in Mt Cameron Regional Reserve. This reserve was declared following the Regional Forests Agreement (RFA), to protect an environmentally sensitive area in NE Tasmania. The EPBC referral (2006/3061) included destruction of a significant number of individuals of threatened species. The extent of project impacts on the reserve easily rivalled the site impacts of the proposed Gunns Ltd pulp mill (proposed for Tasmania's Tamar Valley). Stuningly, the Van Diemans project was not declared a controlled action, and has gone ahead with major (largely unmonitored) impacts.
- Mineral exploration in Dan's Hill Conservation Area (another RFA reserve) in the West Tamar area is about to begin – (a reserve within Barnes Hill referral 2008/4353). The reserve contains several EPBC listed species. Destruction of

threatened plant species (thousands of individuals) for exploration is to occur. This again has been deemed not a controlled action. Almost certainly (due to known nickel deposits), an open cut mine will follow with massive impacts on threatened species.

From my experience, Tasmania's threatened species legislation is very weak and the non-government environment movement does not have anywhere near the capacity to respond to referrals. Where NGOs have responded to the EPBC referral, they have been inevitably "rolled" by local political pressure and influence. On other occasions the 10 working days to respond to a web-listing "notification" has been easily missed. The effect of an EPBC referral in Tasmania seems to be:

- Silence in response to referrals, due to lack of environment NGO capacity;
- A "not controlled action" go ahead from a Canberra bureaucracy; and
- Tasmanian Government officers administering the weak Tasmanian threatened species legislation seem effectively disempowered by the EPBC finding, and inevitably write permits to destroy as required.

EPBC administration lacking credibility

If you happen to be a threatened plant species listed under the EPBC, your fate seems much more tenuous than if you are a publicly known threatened animal species. For example, if any one of the above examples involved the destruction of one Tasmanian devil it would almost certainly be treated very differently by EPBC administrators. However, destruction of literally thousands of threatened plants of similar status does not require the proposal to be a controlled action. Where is the science in such decisions?

Likewise with high profile proposals such as the proposed Gunns Ltd pulp mill, versus lesser known, but similarly destructive projects such as the Van Dieman mines in Mt Cameron Regional Reserve. One is considered a controlled action, whilst another of similar or greater destructive potential is not. This appears to be determined by the political profile and potential controversy of the project, not the environmental damage implications.

Regional Forests Agreement inspired loopholes

In Tasmania the EPBC gives effective exemption to activities controlled under forest practices legislation. This legislation is used for land clearing approvals in Tasmania. As a consequence, each of the above projects – mines and dams – utilise forest practice plans (initially designed for logging) for vegetation clearance. As "harvesting" is not occurring, critical aspects of the Forest Practices Code 2000 (such as streamside reserves) are not necessarily required or implemented (depending upon the particular forest practices plan). For example, strip mining right through significant waterways can legally occur.

My initial expectation that the EPBC could offer some hope where weak local legislation for threatened species doesn't, has been well and truly dashed. From my experience, the effect of the EPBC administration for the majority of situations in Tasmania seems to erode the arguments of those who would try and achieve some level of result with local legislation. Aside from Tasmania enacting some threatened species legislation with

integrity, perhaps decentralisation of the Canberra EPBC bureaucracy to state-based localities may be one way to assist this situation. Political will to see the EPBC properly administered is urgent if the legislation is to regain and maintain any credibility.

Thank you for consideration of my submission.

Yours sincerely,
Michael Noble.