



The Greater Mary
A S S O C I A T I O N
Inc.

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The Secretary

Senate Standing Committee on Environment, Communications and the Arts
PO Box 6100
Parliament House
CANBERRA ACT 2600
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Dear Sir/Madam

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

Thank you for the opportunity to make submissions to the Senate Inquiry into the operation of the EPBC Act.

Our organization, the Greater Mary Association Inc. represents communities in the downstream section of the Mary River and Great Sandy Strait who are concerned about the impacts of the proposed Traveston Crossing Dam on endangered and vulnerable species, on our local economy and on our people.

Our experience of the operation of the EPBC Act to date has been through our exposure to the processes associated with the assessment of the proposed Traveston Crossing dam, the Northern Pipeline Interconnector Stage 1 and 2 and the compliance audit on the Paradise Dam.

It is our assessment that the EPBC Act has significant scope for improvement in ensuring that it protects Matters of National Environmental Significance and gives due attention to alternatives and social and economic impacts. We offer the comments contained in this submission as a contribution to the process of strengthening the Act so that it may more reliably conserve our biodiversity and protect our environment.

Yours sincerely

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Comments on the operation of the EPBC Act

1. Weak enforcement of compliance

The Paradise Dam audit has brought to our attention an inadequacy in the way in which non-compliance with the EPBC Act is enforced. In the case of the Paradise Dam the non-compliance related directly to the threat the dam poses to the Queensland lungfish and to the barrier to movement the dam creates for all species of fish and turtles.

The fact that the downstream fishway has never operated represents a tremendous design flaw in the dam. In addition the upstream fishway has not operated reliably and has very questionable efficacy for passage of the lungfish. This is a classic case of a non compliance that can be readily demonstrated. The failure of any prosecution to date to address this non compliance at Paradise Dam severely weakens the capacity for the Act to be used to ensure mitigation measures are both implemented and achieve their desired objectives.

As a community group concerned with protecting the Mary River, you may understand how this destroys our confidence that there would be appropriate enforcement and evaluation of any mitigation measures proposed as part of the Traveston Crossing dam. It also creates a culture in which proponents feel comfortable proposing endless mitigation measures to obtain approval, safe in the knowledge that they will not be held accountable if they fail to implement the measures or if the measures themselves fail. Such a culture diminishes the community's trust in the legislation and the government. It is also inconsistent with the intent of the EPBC Act.

2. Untested mitigation measures increase risk to endangered and vulnerable species

In the history of the EPBC Act there are instances of untested mitigation measures being incorporated in projects when the risk of failure of the mitigation measure is very high.

The fish transfer devices at Paradise Dam are examples of such untested mitigation measures. As the non compliance with respect to this aspect of the approval conditions for Paradise Dam shows, this test has failed.

The Species Conservation Centre proposed as a mitigation strategy for the Traveston Crossing Dam is another example of an untested mitigation measure. This proposed centre also has the additional problem of not supporting in situ conservation of species and their ecosystem. It may be that the centre can breed the species, although that is yet to be proven, but surely the EPBC Act is about conserving our biodiversity as a whole, not just maintaining species in artificial zoo like conditions in a visitor centre. This centre will not replace the habitats of endangered and vulnerable species destroyed by the dam nor will it help 15 other endangered and vulnerable species listed in the EIS for the proposed dam. In addition, funding for the centre has only be guaranteed for 10 years, begging the question of what happens after that to the maintenance of the research and breeding programs.

Prior to the approval of projects the mitigation measures need to be proven to be effective. This is consistent with the precautionary principle on which the EPBC Act is

based. To do otherwise would be to gamble with the extinction of species, a situation which runs counter to the intent of the EPBC Act.

3. *Absence of national level assessment process based on vulnerability to climate change and contribution to climate change*

Despite the fact that the proposed Traveston Crossing dam is predicted to have more greenhouse gas emissions than any of the readily available alternatives, there is no mechanism for assessing this in an accountable and enforceable way at the federal or state level.

There is also no mechanism for assessing the way in which future decreases in rainfall will exacerbate the impacts of the dam or render it useless for its intended purpose of a water supply to Brisbane.

This is clearly an instance of our legislation not keeping pace with the attitude of the public on a very important issue and the shifts in thinking about water supply that climate change demands.

We request that the inquiry consider the possibility of the EPBC Act addressing these aspects of a project proposal. This could occur through the Matters of National Environmental Significance or through strengthening the obligation on the Minister to give detailed consideration of alternatives.

4. *Process for the consideration of alternatives and economic and social impact must be more clearly defined and strengthened.*

In its purest form an EIS aims to compare the do nothing scenario with a range of alternatives and present a convincing case as to why one alternative is better than another. The way in which the EPBC Act is currently applied does not emphasise the comparison of alternatives adequately.

Our view is based on our knowledge that in making a decision about the proposed Traveston Crossing dam, Minister Garrett will not have clear cut guidelines relating to consideration of alternatives, nor would he be required to justify his support for the proposed dam over many viable alternatives if he were to approve it. In the assessment process to date, there has been no onus on the proponent to give a comprehensive analysis of alternatives and the relative social, economic and environmental impacts. Given that in the case of the proposed Traveston Crossing dam the proponent, Queensland Water Infrastructure, has been formed for the sole purpose of building the dam it is unrealistic to expect they would present an analysis of alternatives that showed that the proposed dam is not the best option. There is also no clear onus on the Queensland Co-ordinator General to give detailed consideration of alternatives. That is the reason why it is so important that the EPBC Act require the Minister to complete such an analysis in a consistent and transparent way.

The absence of detailed analysis of alternatives to the proposed Traveston Crossing dam is very frustrating for groups wanting to prevent the damming of the Mary River as there

is a significant body of work by leading water experts which shows that there are many options which are more cost effective and less socially and environmentally destructive. For the EPBC Act to protect matters of national environmental significance in a way that supports positive social and economic outcomes a consideration of alternatives is essential.

5. Lack of a systemic approach to consideration of impacts

Several of our concerns about the EPBC Act have been incorporated under this heading. They all relate to considering the potential impacts, mitigation measures and alternatives to a proposal in a systemic way. A systemic approach would mean that the interconnections between the environment, society and the economy are integrated into the assessment process and that the consequences of a project are considered in a broader sense. The points we make in this regard are as follows:

Cumulative impacts given cursory consideration

Although there is some attention paid to cumulative impacts of a development in the EPBC Act, our experience with the proposed Traveston Crossing dam is that these impacts are considered in a cursory way only. For instance, the cumulative impact of the damming of the Burnett river (Paradise Dam) followed by the damming of the Mary River on the Queensland Lungfish population has been given scant consideration. This is despite the fact that, according to Professor Jean Joss, the cumulative impact of these two developments would be the destruction of 80% of the natural breeding habitat of the species.

Boundaries drawn around proposals ignore significant consequences of projects

In our experience with the proposed Traveston Crossing dam, selective drawing of boundaries around projects, or in other words the narrow scope of projects, has resulted in significant consequences being ignored. The first case of this in relation to the proposed Traveston Crossing dam was the separation of the construction of the pipe to pump the water to Brisbane from the construction of the dam. As a result of this separation, the pumping costs and environmental, social and economic impacts of the pipeline are not considered together with the impacts associated with the dam. The Northern Interconnector Pipeline Stage 1 and 2 and the Northern Regional Pipeline projects constitute the pipeline to Brisbane – three separate projects which are all needed in order for the proposed dam to be able to supply water to Brisbane. Despite this, their assessment has not considered the impact of the extraction of the water that the pipe is built to carry. Similarly, the assessment of the dam has not considered the additional impacts associated with the construction and operation of these pipelines. In our view the pipeline projects should be considered together with the dam project. This is because this dam is being built to transfer water from one catchment to another and cannot serve its intended purpose without a pipeline.

Another example of the way a narrow scope is used to reduce assessment demands is the separation of the Traveston Crossing Dam project into two stages which represent different water levels and associated flooding extents. This was agreed to by the former Environment Minister Malcolm Turnbull under the EPBC Act despite the fact that the dam wall will be built to the height required for stage 2 and that the proponent is seeking to acquire properties with the stage 2 inundation area whilst only Stage 1 is being

assessed. It has been our argument all along that both Stage 1 and Stage 2 need to be considered as a whole and that the Minister should be considering future impacts of stage 2 in his decision.

6. *The need for EPBC Act to have oversight on environmental flow provision*

In the assessment of the proposed Traveston Crossing dam the proponent relies heavily on the Mary Basin Water Resource Plan to back up their arguments that sufficient environmental flow will be provided.

However, this Water Resource Plan (WRP) is a very controversial document. The Community Reference Panel for the Mary Basin WRP stated public that they were "profoundly deceived" by the Government and refused to endorse the final version of the plan. This plan and the environmental flow provisions in it are critical to the survival of endangered and vulnerable species in the Mary River and to the ecological integrity of the estuary, the internationally significant Great Sandy Ramsar wetland. The WRP doesn't consider environmental flows to estuary. Despite this there has been no consideration of the Mary Basin WRP under the EPBC Act or other federal mechanism designed to protect Matters of National Environmental Significance.

Better outcomes for protection of Matters of National Environmental Significance (MNES) would be achieved if there were mechanisms in place to ensure that documents such as the Mary Basin WRP are scientifically based and aimed at protecting MNES.

7. *Assessments proceed when there is insufficient data about endangered and vulnerable species*

It is of great concern to us that the assessment of projects which are likely to impact on endangered and vulnerable species proceed when there is inadequate data to ensure that projects do not have a significant impact on these species.

Some key species of the Mary River illustrate this situation. The Mary River Turtle, which occurs nowhere else in the world and is poorly understood does not have a recovery plan in place. Under these circumstances, one must ask how can the impact on the species be assessed in the absence of a recovery plan. Similarly, the recovery plan for the lungfish is not yet complete and the plan for the Mary River cod is way overdue for review.

It is our view that these documents must be finalized before an assessment is possible under the EPBC Act.