

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

[eca.sen@aph.gov.au](mailto:eca.sen@aph.gov.au)

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### **Jim Walker Submission to EPBC Inquiry**

The title of the Act under scrutiny is the Environment Protection and Biodiversity Conservation Act and its apparent primary purpose is to protect the environment and conserve biodiversity.

Currently this Act is extremely ineffective at protecting the environment and conserving biodiversity.

There are many weaknesses in the EPBC Act and it should be strengthened, but the essential issue is that governments have systematically gone out of their way to exploit the weaknesses in the Act, and in most cases have simply undermined the Act altogether. The EPBC Act is currently used to protect business. The processes under the EBBC Act are used to disguise that reality by the pretence of an open and scientific process.

If governments adopted the letter and spirit of the law there would be no problem. In fact very few proposals get rejected under this legislation no matter how adverse the outcomes for the environment, threatened species, Ramsar sites or areas that theoretically are protected by the Commonwealth.

In the case of the Channel Deepening Project for Port Phillip Bay offsets were proposed for threatened species (yet to be implemented) e.g. Australian Grayling. The proposed offsets include research into the biology of this fish. This research should have been done during the decade or so during which the project was under consideration, rather than after completion of works. That way there could have been more confidence in the mitigation measures to be taken by the dredging contractors.

Offsets accepted by the Federal Minister are usually just window dressing, providing no real compensation for the damage done.

The Federal Government by agreement with the states deems the State environmental assessment process to satisfy Federal requirements. In the case of the second inquiry into the Channel Deepening Project for Port Phillip Bay no cross-examination of witnesses was allowed, none of the members of the first panel were invited to sit on the panel, and the duration of the Inquiry was too short. The proponent, Port of Melbourne Corporation, had still not finished its technical investigations when the public input and comment to the Inquiry was cut off.

One of the consequences of this fudged State process is that Fed Minister did not know about the potential radioactive contamination of sediments in the Yarra River (and possibly elsewhere in the bay). Clearly, the Federal Minister did not investigate these issues, even though it was his duty under the EPBC Act to have done so.

At present, anyone challenging a proposed action has to prove that an unacceptable detriment will occur. In a 2005 case in the Supreme Court Blue Wedges lost an application for an injunction to prevent a 'trial dredging' of Port Phillip Heads in part because damage to the Rip could not be established. In the event, the trial went ahead and damage was done when 6,000 cubic metres of rock fell into the channel deep, an area of great conservation significance. The proponent claimed that no rock would fall.

The proponent for the channel deepening project signed contracts for the works before the SEES Inquiry was complete and before approval was given by either State or Federal governments

Now we have a case, the proposed desalination plant in South Gippsland, where works are beginning before approval for a controlled action is granted by the Federal Government. The Victorian State Premier has announced publicly that the project will proceed. This was before the environmental assessment inquiry process had even begun.

The courts, to my amazement, have said that this behaviour is acceptable. My interpretation of this is that the courts are being instructed or intimidated by government, and therefore the independence of the courts is in question.

Many species are not listed as threatened under the EPBC Act only because of the extremely sluggish process and apparent lack of resources dedicated to the purpose.

My view is that the processes under the EPBC Act have become increasingly corrupted by both State and Federal governments

The EPBC Act is to protect the environment not to protect business.

There should be detailed provisions in the EPBC Act to investigate and challenge ministerial decisions before a court. The recent Federal Court decision in Blue Wedges v Fed Minister for Envirt No2 said the minister had almost unlimited discretion.

Alternatively a special environment court could be set up under the Act, staffed by people trained in environmental issues. During the case mentioned above, the QC representing the Federal Minister thought the Australian Grayling was a bird, to the amusement of the court. So much for the environment.