



WAFWA
Western Australian
Forest Alliance

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To Whom It May Concern:

Re: Inquiry into the operation of the Environment Protection and Biodiversity Conservation Act, 1999

The Western Australian Forest Alliance was formed in 1990 and works on forest and conservation issues in the South West of WA. It is an alliance of 20 groups of like-minded community groups that work on improving forest use and management, based mainly in the South West of Western Australia.

General Comments

Title

The name or title of a piece of legislation as a rule describes its aim or intent. A pertinent question regarding the *Environment Protection and Biodiversity Conservation Act, 1999* (EPBC) is how effectively it achieves what is implied in its title, ie how well it protects the environment and conserves biodiversity.

Has the EPBC been effective at a national level?

If we take native fauna as just one (but very important and indicative) aspect of our environment and biodiversity to try to determine how well the EPBC is working at a national level, we find that Australia continues to hold the worst record in the world for conserving native fauna. A British newspaper, *The Independent* reported in March this year that 'land clearing, with the resulting habitat destruction', along with altered fire regimes and feral animals, are the main reasons Australia has already suffered such a high rate of extinctions, and things are obviously not improving.

Has the EPBC been effective at a State level in WA?

In Western Australia the EPBC Act has been ineffective in preventing the accelerated loss of threatened species habitats in the South-West Region, particularly for the Western Ring-tailed Possum, Carnaby's and Baudin's Black Cockatoos, the Chuditch (Western Quoll) and the Numbat.

One of the most worrying failures of both the State and the Federal legislation meant to protect biodiversity and fauna in particular is the lack of consideration for the impacts on species of cumulative habitat loss. Each project is treated separately and assessed only for the direct impacts it will/may have on threatened species. In WA the thresholds for most native species are not even known, let alone the cumulative impacts of multiple projects happening both simultaneously and sequentially.

In WA, the Department of Environment and Conservation does not know how many hollows are needed to cater individually for the vast majority of hollow dependent species, let alone how many are needed to cater for multiple species competing for hollows for habitat and/or survival. A WA species that has recently been added to the WA threatened species list is the Brush-tailed Phascogale and it has been estimated that each female uses approx 75 hollows each year (S Rhind, 1998). In WA it is estimated that 42 species of native fauna use hollows (Abbott & Whitford, 2002), and they compete with feral honey bees for the available hollows. Given that the ranges of these 42 species and the number of hollows they each require are unknown, it is impossible for anyone including the DEHWA staff to assess 'significant impact' of the removal of habitat including hollows. Reliance on the reserve system to provide adequate, essential habitat is unproven and goes against the precautionary principle. Also, the continuing rate of loss of fauna is a worrying indicator that such reliance on the reserve system is not justifiable.

Just as worrying is the reliance on offsets or mitigation to justify a project that otherwise would not be approved, especially when these have failed in the past, eg attempts to translocate Western Ring-tailed Possums, or when they inadequately address the local loss of habitat and diversity and allow a different area of bush, not of the same vegetation type, to be used as an offset.

A stated intent of the EPBC Act implied by its title is to protect our native flora and fauna from endangering threats like: loss of habitat from land clearing, fragmentation and management practices including fire and feral animal control. If we know that the EPBC Act is not protecting our environment and conserving biodiversity, then it is fair to say that the EPBC is failing to deliver on its intent.

Suggestions: Either the title of the EPBC Act should be changed to reflect the true intention of the legislation so as not to mislead, or the EPBC Act should be greatly strengthened to do deliver its stated intent. WAFWA, not surprisingly, calls for the latter and supports whatever changes are necessary to see measurable improvements to the maintenance and protection of Australia's natural environment and biodiversity. These changes include improving the clarity of the intent and effectiveness of the EPBC Act itself.

The precautionary principle must be used more often to refuse proposals whose impacts we do not know. These impacts must include those on the individual threatened species, the suite of species that live in an area or use it for habitat, and the cumulative and interacting impacts of all proposals (and likely proposals) that could impact on those species, both immediately and in the short, medium and long term.

It is widely acknowledged that biodiversity is best protected in situ. Offsets and mitigation measures should be used much less frequently than they currently are and only ever used as a last resort. If mitigation measures have previously failed, they should not be used in other projects, until success of that measure has been proven elsewhere.

An essential aspect of assessing effectiveness to deliver stated aims is ongoing monitoring and evaluation. This failure was noted by National Audit Office. Yet it is still not currently being done, which makes assessing against stated aims, adaptive management, and revising strategies meant to protect and conserve, impossible. A program of strategic ongoing monitoring as to the effectiveness of assessment levels and protection measures must be implemented immediately.

Objects

When we look further to determine what the details of the intent of the EPBC Act are, we find that here too, protection and conservation of either environment or biodiversity are not what is explicitly described or demanded, eg section 3 of the EPBC Act outlines its objects, including,

crucially, to “*provide for* the protection of the environment...” [s3.1(a)] and to “*provide for* the protection and conservation of heritage” [s3.1(ca)]. (Our emphasis!)

To be required to ‘provide for protection’ is too vague and requires that measures to anticipate problems or reduce their harm be implemented without there being any certainty that the measures will in fact protect the environment from the potential and/or real harm.

Recommendation/s: The objects of the EPBC Act need to be changed to be consistent with the implied intent of its title. Escape clauses like ‘provide’, ‘promote’, ‘assist’, ‘recognise’ ‘strengthen’, ‘enhance’ etc need to be removed and replaced with unequivocal statements clearly linked to how the environment will be protected and biodiversity conserved.

Ministerial Discretion

Throughout the EPBC Act the Minister for the Environment is given absolute discretion, including to NOT act to protect the environment or conserve biodiversity.

There are a number of things that the Minister *could do*, or must *take account of*, but no criteria or standard for environmental protection that has to be met. Just two examples of this include the process for assessing and approving actions which impact on matters of national environmental significance, and the listing of threatened species/communities which (since the 2006 amendments) is not required to be kept up to date. The current backlog of unprocessed nominations is totally unacceptable.

How can the EPBC Act be ensuring protection of threatened species/communities when it is not even considering their nominations for protection efficiently?

Recommendation/s: The EPBC Act must be amended so that the Minister for the Environment is only given absolute discretion when that discretion improves the protection or conservation of the environment. If for whatever reasons, the approval processes at either the State or the Federal levels have failed to adequately protect, then the Minister can (and should) make a decision to rectify this. The decision and substantiation must be made public so that failures in the processes meant to protect and conserve the environment and biodiversity are evident and transparent, along with failures to improve them.

Regarding the process for assessing and approving actions that impact on matters of environmental significance, transparent, consistent standards clearly linked to environmental protection, must be introduced immediately.

The requirement to keep the listing of threatened species/communities up to date must be reintroduced immediately and the backlog of nominations waiting to be processed dealt with within a reasonable timeframe ie 6 months.

Miscellaneous points in brief

The community needs to be better engaged with the EPBC Act.

This could be done by improving the transparency of the process and by providing the opportunity for third party referrals.

Because of the lack of monitoring, auditing and feedback regarding the performance of the EPBC Act to achieve environmental outcomes, it is pretty much impossible for NGOs and the community to assess its effectiveness.

This needs to be improved and the process made public, clear and open to scrutiny.

The point immediately above is relevant to the key threatening processes identified by the EPBC Act but then not reported against in terms of how well the EPBC Act has been at reducing their impacts.

There needs to be regular public reporting specific to key aspects of the EPBC Act so interested parties can see how it is performing at protecting the environment and conserving biodiversity.

Specific issues not adequately addressed by the EPBC Act

EPBC Act should be amended so that it applies to areas covered by a Regional Forest Agreement

Pursuant to Section 38 (1) of the EPBC Act, Part 3 of the Act (Requirements for environmental approvals) does not apply to areas covered by a Regional Forest Agreement (RFA).

The Act relies on the RFA for the South-West Forest Region of Western Australia (WA RFA) to protect the environment and biodiversity of the Region.

The 1999 RFA claims that it provides for the ecologically sustainable management (ESFM) of forests in the Region.

The RFA defines ESFM as:

Forest management and use in accordance with the specific objectives and policies for ecologically sustainable development as detailed in the National Forest Policy Statement.

The National Forest Policy Statement (NFPS) has as its first goal:

To maintain an extensive and permanent native forest estate in Australia and to manage that estate in an ecologically sustainable manner so as to conserve the full suite of values that forests can provide for current and future generations. These values include biological diversity and heritage, Aboriginal and other cultural values.

The Forest Management Plan (FMP) for the Region, required by the RFA, came into operation on 1st January 2004..

The FMP does not establish ESFM because:

1. It allows logging to continue when climate change will have serious harmful impacts on WA's forests that will reduce their growth such as decreased rainfall, increased range of Phytophthora dieback (see Blyth, J., Hopkins, A.M, and Bradshaw, J. (1991, unpublished), *The greenhouse effect and Western Australian forests*, Department of Conservation and Land Management
2. It allows logging in forests where the rainfall will decline, or has already declined, to a level that will not support forest if the existing forest is logged (e.g., all jarrah forest where the rainfall will be less than 600 mm/yr, such as the eastern jarrah forest) (see Blyth et al., above). Thus it does not maintain the current forest estate.
3. It sets an allowable cut of sawlogs on the basis of data and modelling that have been seriously questioned.
4. It allows a cut of jarrah sawlogs that is already admitted to be unsustainable: 131,000 m³/yr instead of 90,000 m³/yr (see Hansard, Estimates Committee, 24 May 2007).

5. The interim guidelines for the selection of Fauna Habitat Zones (FHZs), established to ensure that biodiversity recovers between one logging rotation and the next, were required to be finalised by public 31st December 2004, but a draft of this document still has not been released for public consultation.
6. The Guidelines for Soil and Water Conservation and for the Management of FHZs, required to be finalised by 31st December 2005, have only reached the public consultation phase.
7. Since 2004, when the FMP came into operation, two forest species, the Brush-tailed Phascogale (*Phascogale tapoatafa*) and the woylie (*Bettongia penicillata*), have been listed as endangered under the State *Wildlife Conservation Act 1950*.

Thus the EPBC Act's reliance on the WA RFA to protect biodiversity is misplaced and the Act should be amended so that it applies to the WA RFA region as it does elsewhere.

Recommendation/s: Because the WA RFA has not established ecologically sustainable forest management, it should not be allowed to displace the operations of the EPBC Act for areas it covers for 20 years (until 2019) and therefore the sections of the EPBC Act that exclude the Act for areas with a Regional Forest Agreement should be repealed.

Greenhouse Gas Emissions

With Australia now being a signatory to Kyoto, the Commonwealth must now ensure adherence to targets set under international conventions.

Furthermore, the IPCC has identified 'the need for forest-based mitigation analyses that account for natural variability, use primary data, and provide reliable baseline carbon accounts'. (Naburrs et al. 2007)

The ANU recent study, 'Green Carbon, The Role of Natural Forests in Carbon Storage' found that the 'default IPCC value for temperate forests underestimates by ten times the carbon stock of Australia's temperate forests.' (Executive summary, 2007)

In WA in 2006-7, 10,000 ha of native forests were logged and then burnt. The vast majority of the wood was either burnt or ended up as waste. The greenhouse gas emission contribution of continued logging is substantial due to both the loss of stored carbon and an increase of carbon released into the atmosphere. The contribution of logging our native forests must be properly accounted for when Australia is assessing contributions to national targets for greenhouse gas emissions. When the Government is considering how to reduce Australia's greenhouse gas emissions, protecting natural forests from disturbance should be included in the suite of measures because it is viable, achievable and requires no new infrastructure or investment to implement.

Furthermore, the forests left intact provide carbon sequestration and ecosystem services such as clean air, fresh water, healthy soils and essential habitat.

Protecting our native forests from further degradation will both reduce greenhouse gas emissions and help conserve the biodiversity of the South West of WA.

Recommendation/s: Major projects and land-use activities like clearing and logging (including post-logging burning) and mining that exceed or have the potential to exceed agreed to thresholds (though we do not necessarily have adequate baseline data or ongoing data capture to assess this) should now automatically become Matters of National Significance triggering the EPBC Act or its replacement legislation.

The EPBC Act should be amended to make provision for an end to logging and burning of natural forests so that the large amounts of carbon stored in natural forest vegetation and the organic material in forest soils can be retained as an effective response to climate change. Additionally, natural forests will become increasingly important for biodiversity as refugia for fauna and flora attempting to escape the effects of climate change.

An environmental protection act that clearly implies in its title that it is about protecting and conserving our environment and biodiversity needs to have a clear objective of actually protecting the environment and conserving biodiversity.

It then needs to be publicly accountable as to how it is performing against that objective.

It is not good enough to be aspirational, it is nearly 10 years since the EPBC Act came into operation. It is time for it to 'get real' about what it was intended to deliver.

Thank you for the opportunity to comment.

Best wishes
Ms Jael Johnson
Convenor
WAFA