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

Dear Committee Secretary,

Tarkine National Coalition welcomes the opportunity to make submission to the Committee on the *Environment Legislation Amendment Bill 2013*.

Of particular concern to us is the validation of past decisions that failed to consider Approved Conservation Advice.

The decision by Marshall J in the case *Tarkine National Coalition Incorporated v Minister for Sustainability, Environment, Water, Population and Communities* [2013], clearly demonstrated that in the assessment of the Shree Minerals' project, the Minister had failed to comply with his obligations under the *Environmental Protection and Biodiversity Conservation Act 1999*. In particular, the Minister failed to have regard to the Approved Conservation Advice, this advice being a statutory document required to be considered under the Act.

The *Environment Legislation Amendment Bill 2013*, in our view, seeks to excuse the failure of Ministers to comply with the legislation that they are charged to administer. This is a dangerous precedent. The intent of the Bill is clarified in the fact that the application of the provisions relating to such excusing is sun-setted, indicating that the proponents of the Bill acknowledged that such a provision was in fact undesirable and distorted the proper conduct of environmental assessments under the Act.

If the intent of the relevant sections of the Bill are to provide certainty to developments that may have been granted approvals where the Minister also failed to consider Approved Conservation Advices, then the capacity currently exists for the Minister to reconsider those matters, as was done in relation to the Nelson Bay River mine following Marshall J's decision in the *Tarkine* case. No amendment to the Act is required, and the integrity of the Act is maintained.

We do consider that other areas of the Act do require strengthening to ensure that the intended operation of the assessment process is to be realised.

In the assessment of the Shree Mineral's Nelson Bay River Mine, the Recommendation Report provided to the Minister by the Department articulated the threat to the Tasmanian devil, Spotted tailed quoll and Wedge-tailed eagle and the failure of proposed mitigations to adequately address such threats. In particular:

*From the Recommendation Report Nelson Bay River Magnetite / Hematite Mine, Tasmania (EPBC 2011/5846), Department for Water, Environment, Sustainability, Population and Communities.*

21. The primary threat to the survival of the Tasmanian Devil is Devil Facial Tumour Disease (DFTD), an infectious, malignant cancer spread by biting and fighting over food, mating, establishing dominance or during juvenile dispersal. Populations in the north-west (including the study area) are considered the last stronghold that is disease free. There is a real risk that indirect impacts from project activities could increase the spread of this disease, endangering the north-west population stronghold.
47. The department concludes that based on the current information (final EIS), the proposed offset of part of the mining lease will be inadequate compensation for the loss of in excess of 150ha of habitat for the affected listed threatened species, particularly the Tasmanian Devil.

The greater threat to the Tasmanian Devil population in the Tarkine region is the spread of Tasmanian Devil Facial Tumour Disease (DFTD). The Tasmanian Devil population in the Tarkine is currently DFTD free and further development in the region may accelerate the spread of the disease.

*From the Supplementary Recommendation Report Nelson Bay River Magnetite / Hematite Mine, Tasmania (EPBC 2011/5846), Department for Water, Environment, Sustainability, Population and Communities.*

18. The department considers that the proposal is also likely to facilitate the spread of the Devil Facial Tumour Disease (DFTD) by promoting increased mobility and intermingling of Tasmanian devils, through increased availability of attractants such as anthropogenic food waste and roadkill, and through dispersal routes such as cleared road verges and other miscellaneous cleared areas. These potential impacts are difficult to quantify, but are considered to be significant because:
  - DFTD is the key threatening process for the species;
  - the proposal is in an area that is currently relatively unaffected by DFTD; and
  - the impacts of the proposal contribute to the cumulative impacts of proposed and likely development within the region.
21. The FHPZ (fauna habitat protection zone) proposed by the proponent is not considered by the department to constitute effective mitigation or compensation for likely impacts – the habitat of the FHPZ is of questionable quality in comparison to that which would be lost, the security of the FHPZ is limited to the life of the mine, and inadequate consideration has been given to impacts on Tasmanian devils already resident in the FHPZ.

23. (*In relation to the Tasmanian Devil*) However, the department considers that residual significant impacts remain likely, particularly in view of potential cumulative impacts of development in north-western Tasmania,
27. (*In relation to the Spot-tailed quoll*) However, the department considers that residual significant roadkill impacts remain likely, particularly in view of potential cumulative impacts of development in north-western Tasmania,
31. However, the department considers that residual significant roadkill impacts remain likely in the case of the wedge-tailed eagle, particularly in view of potential cumulative impacts of development in north-western Tasmania,

Despite these recommendations, the mine was approved, and later re-approved. It is of note that in neither instance was the recommendation report made available to the public (TNC having obtained it through the court process). It was also the case that in the original approval, the Statement of Reasons sought from the Minister was some three weeks late.

It is our contention that the public statements made by the Minister in announcing his decision were inconsistent with the Recommendation Reports, and that were the Recommendation Report publically available at the time, then the Minister's decision would have likely reflected the concerns more accurately.

It is our view that the transparency and accountability built in to the early stages of the assessment process should be consistently applied to the decision making. In the early stages, the proponent's referral documents, the Minister's proposed assessment guidelines, and the proponent's environmental impact statements all being made publically available and subjected to a public submission process. The publishing of the Recommendation Reports prior to final Ministerial decisions, and a requirement that a published Statement of Reasons accompany a decision would apply greater scrutiny, and consequently an incentive for Minister's to more dutifully comply with the Act.

It would also in our view reduce periods of uncertainty to successful proponents, particularly as currently an affected party has 28 days to seek a Statement of Reasons, Minister has 28 days to provide a Statement of Reasons, and the affected party has 28 days to lodge an application for judicial review. Provision of a Statement of Reasons at the time of a decision would reduce this 84 day period to 28 days. This would allow for any challenges to be lodged earlier, minimising the likelihood of works having commenced and avoiding additional costs to proponents.

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