

# **Additional comments by the Australian Greens**

## **ECITA report on the committee inquiry into the Environment & Heritage Legislation Amendment Bill (No. 1) 2006**

This bill is a catalogue of measures to delegate, displace and otherwise evade the Commonwealth Government's responsibilities for matters of environmental significance.

The bill seems designed to absolve the Commonwealth from its responsibilities at the same time as investing even more discretionary powers in the hands of the Minister. This is particularly evident in the changes relating to bilateral agreements, bioregional plans, Regional Forest Agreements and conservation agreements.

The recent high court decision outlining the broad powers of the Commonwealth in relation to corporations should make it easier for the Government to regulate in the interests of the national environmental matters covered under the Act. Instead there is an increased devolution of responsibility back to the States and Territories.

The bill is clearly intended to tip the balance further in favour of project developers, as acknowledged in the Explanatory Memorandum. The intention of this legislation should be to protect our national environment, not to fast-track and smooth the way for environmentally destructive activities.

As the depth of environmental crisis in Australia is becoming more evident the Commonwealth Government should be seeking to strengthen its environmental protection and biodiversity conservation legislation, not weakening it.

### **Matters of National Environmental Significance**

Australian Greens Senators support the inclusion of climate change as a matter of national significance that should be included as a trigger under the Act. We are particularly concerned that the existing EPBC Act fails to take account of the impacts of climate change on Australia's environmental protection and biodiversity conservation. It is an indictment on the failure of the Commonwealth Government to engage with the likely implications of climate change that in 2006 they are introducing amendments to the EPBC Act that still do not address this issue. While changes to the EPBC Act alone would not be sufficient to address the wide-ranging implications of climate change for the nation, Australian Greens Senators regard the introduction of this bill as another missed opportunity to tackle this issue of national importance.

In addition to climate change, we propose a number of items which clearly represent matters of national environmental significance and should be brought within the ambit of the Act. Given the increasingly serious impacts of climate change on water resources and the renewed emphasis on the importance of terrestrial ecosystems as

carbon sinks, it is essential that at least the following additional Matters of National Environmental Significance be added:

- Broadscale land clearing
- Construction of large dams
- Large-scale surface or ground water extraction or diversion

The absence of such triggers is an acknowledgement by the Government that it does not consider these issues to be of national environmental significance, which is hardly a credible position.

Noting that in recent weeks the Commonwealth Government has indicated a change in policy and expressed a desire to begin to engage in International agreements on climate change which will involve some of these very issues, it would be prudent to delay the passage of this bill to allow an examination of possible changes to the bill in light of these new international commitments.

The current requirement under s.28A of the Act is for the Minister to review the need for new triggers every five years and to publish a report on the findings. We object to the proposal to remove this provision, and argue that the passage of the bill should be delayed until the Minister has tabled the findings of the current review.

### **Bioregional plans (Schedule 1, Items 122 and 352)**

While in principle the concept of bioregional planing is worthy of further investigation, in practice the drafting of these items within this bill opens substantial loopholes and introduces highly discretionary powers for the Minister to exempt actions if they are carried out in accordance with bioregional plans.

“There is the potential for this process to be used as a way of avoiding proper scrutiny and assessment.... there is a risk they will be used to reduce the opportunities for public consultation and oversight.” (submission 60; The Australia Institute)

'Nuclear actions' in particular may be entirely exempt from assessment under the terms of these items, for which no explanation is given in the explanatory memorandum.

In his statement to the Committee, the Australia Institute's Deputy Director Andrew Macintosh was very clear about the potential for nuclear installations to escape public scrutiny:

**Mr Macintosh** —Yes. As you said, you could prepare a bioregional plan that exempts a nuclear waste dump, for example, from the operation of part 3. That is the relevant provisions that concern nuclear actions; I think it is section 22. As a result, once the bioregional plan has been prepared then that action is exempt and you do not have to go through a public process. The interesting thing is that in preparing the bioregional plan there is only guaranteed public

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consultation in relation to plans prepared in Commonwealth areas, not in relation to bioregional plans prepared in states.

**Senator SIEWERT** —So let me get this right. If it is not in a Commonwealth area, a state could prepare a bioregional plan saying, ‘It is okay to have a nuclear waste dump or uranium mining,’ and therefore, because it is not part of the exemption, it would not need to be assessed.

**Mr Macintosh** —Yes, that is right. If they prepare a bioregional plan that said that in a state, yes, that would not have to be assessed under parts 7, 8 and 9, and also the public would not be guaranteed of having any consultation on the preparation of the bioregional plan.

We do not support the Government’s approach to bioregional plans and strongly recommend against the adoption of these items.

### **Bilateral agreements and evasion of Commonwealth responsibility**

Many of these amendments appear designed to compensate for resource shortages within DEH by scaling back important functions within the Department and evading Commonwealth responsibility for environmental protection.

The main mechanism for divesting responsibility away from the Commonwealth Environment Minister is through assessment and approval bilaterals and exemptions such as those seen in Regional Forest Agreements.

“The amendments overall reinforce the doughnut-like propensities of the EPBC Act. The centre, where the Commonwealth is directly responsible for environmental impact assessment and matters of national environmental significance, is hollowed out by creating multiple routes for the Minister to divest his obligations. These routes or processes, modelled on Regional Forest Agreements, enable classes of actions to be exempted from Commonwealth environmental impact assessment. The states and territories will become the dominant environmental decision-makers. The experience of RFAs shows the agreements themselves are environmentally inadequate and the capacity of the Commonwealth to monitor or enforce them is weak to non-existent.”  
(Submission 18; Margaret Blakers)

We therefore support the removal of the ability to delegate *approval* powers to States and other Commonwealth agencies. This will require the Government to provide commensurate resources to DEH and Minister’s office so that these responsibilities can be properly discharged.

Furthermore, Australian Greens Senators believe that *Assessment* bilaterals should be subject to Parliamentary scrutiny and disallowance.

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## **Regional Forest Agreement regions (Item 189)**

Sections 38 – 42 of the current Act exempt forestry operations conducted in accordance with Regional Forest Agreements. We do not support the broad-scale exemption of forestry operations from proper assessment by the Commonwealth.

“It makes little sense to establish a uniform national system of environmental protection, but then to render it inapplicable to the very projects and activities that are likely to be most contentious and most in need of a public, national approach. Unfortunately, that is exactly what has happened in some instances. The most sweeping example is found in sections 38-42 of the EPBC Act, which exempt forestry operations conducted in accordance with Regional Forest Agreements. (submission 27; the Australian Conservation Foundation.)

The Australian Network of Environmental Defenders Offices (ANEDO) note that item 189 has the effect of prohibiting the Minister from considering adverse impacts of a forestry operation if it is within an RFA region. That the Government considers it necessary to specifically exclude the Minister from taking actual environmental damage into consideration simply because of the existence of an administrative boundary shows how far this legislation has strayed from a science-based approach.

The Australian Network of Environmental Defenders Offices notes:

“The limits on Ministerial consideration is unwarranted. It is artificial in the extreme to excise certain potential real impacts of a proposal because of an artificial (policy-derived) exemption (submission 17)

## **Definition of conservation dependent species (Schedule 1, Item 353)**

This item within the bill will enable commercial fish species to be listed as 'conservation dependent' thus ensuring that commercial fishing can continue despite the species being under threat. This is designed so that species that are threatened can escape mandatory protections such as export restrictions. To date, only one commercial fish species has ever been listed under EPBC (the Orange Roughy), despite several reaching critical thresholds (for example southern bluefin tuna; dogfish; some shark species). Instead of strengthening the law, this amendment weakens it.

As a result, a flawed process for protecting commercial fish species has been further weakened.

“This process undermines the operation of the environment protection provisions in the legislation, as well as the scientific integrity of the list of threatened species. It places the short-term interests of the fishing industry ahead of the conservation of biodiversity” (submission 60; The Australia Institute).

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The marine environment is clearly an area where national leadership is called for. Instead, the EPBC Act has perpetuated a complex administrative arrangement which has hampered true bioregional marine planning and done nothing to prevent the collapse of commercially important fish species.

### **Conclusion**

These amendments are being rushed through without adequate community consultation, before the Australian National Audit Office has finalised its assessment of the implementation of the Act, before the public reporting on the triggers of matters of environmental significance (as is required under the Act) has taken place, and before the 2006 State of the Environment report has been released. These matters together raise serious questions as to why these changes are being pushed through with such undue haste, when pertinent information is close to hand. These amendments are not supported by the community, they do not deliver better environmental outcomes, and in fact function to further set back environmental protection at a time when it is crucially needed.

This Bill should be withdrawn.

**Senator Rachel Siewert**  
**Australian Greens Senator for Western Australia**

