

## **Environment and Heritage Legislation Amendment Bill (No.1) 2006**

Submission to the Senate Environment, Communications,  
Information Technology and the Arts Committee  
Margaret Blakers<sup>1</sup>, 27 October 2006

The EPBC Act is Australia's premier environmental law. In the six years since it came into force, there has been no comprehensive review of its effectiveness, nor even completion by the Minister of legislated requirements such as the review of matters of national environmental significance (s.28A). To introduce such complex changes without notice and without consultation displays arrogance towards the community and disregard for the government's duty of care for the environment.

### **Timing**

It is no accident that the Bill has been rushed into Parliament and scheduled to avoid the release of the State of the Environment (SOE) Report, which to some extent constitutes a report-card on whether the EPBC Act is achieving its objectives. The SOE reports come every five years. The 2006 Report should have been received by the Minister on or before 30 September 2006 and must be tabled in Parliament within 15 sitting days of receipt, probably before the end of November 2006. The Bill should not proceed until there has been time to assess the SOE report.

### **Urgency**

This is a major overhaul of the EPBC Act. The Bill's 414 pages of amendments are too complex for non-lawyers to analyse and in any case way too voluminous to be assessed quickly, but it is clear that they are not just fine-tuning to improve efficiency. For an Act which is only six years old, the apparent need to make substantive changes to large sections begs the question of why now? No case has been made for urgency. No justification has been given for the 15-day limit on input to the Senate Inquiry.

### **A hollow act**

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.

While the exemptions proliferate, the Bill strengthens some Commonwealth processes. This is appearance not reality, as the actions to which they apply diminish in number and significance.

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## **Climate change**

It is incomprehensible that legislation described by the Minister as ‘world class’ and providing ‘a comprehensive national approach to environmental protection’ has nothing to say about the most urgent and far-reaching environmental issue of our time -- climate change.

The most vital change required is to introduce an environmental assessment trigger for greenhouse gas emissions (with no exemptions for classes of actions), coupled with targets and timelines for reducing emissions.

## **Biodiversity**

The critical services provided by ecosystems, such as carbon storage, nutrient cycling, water supply and mitigation of environmental hazards (including climate change), are threatened by the extinction crisis we are now experiencing. This wave of extinctions, caused by human action, is so critical that the UN recently added a new goal to the Millennium Development Goals, namely: to significantly reduce the rate of biodiversity loss by 2010.<sup>2</sup> Australia will have to report formally to the UN on its progress.<sup>3</sup>

The EPBC Act focuses on species, rather than genetic or ecosystem diversity, and even at that level is ineffectual. There are multiple simple changes that could improve its operation, such as making compliance with recovery plans and threat abatement plans binding on individuals and agencies other than the Commonwealth.<sup>4</sup> The Bill goes nowhere near giving proper legal support to the conservation of genetic and species diversity and the landscape-wide, long-term protection of ecosystems. Without this, we have no hope of meeting the 2010 biodiversity target.

## **Recommendations**

I do not share the Minister’s complacency about the state of Australia’s environment and the effectiveness of the EPBC Act. We are facing multiple environmental crises, especially climate change and accelerating loss of biodiversity. The Bill is not addressing these issues; instead it is streamlining processes for developers. There is no urgency for these changes and the Bill should be withdrawn pending a proper review and evaluation.

1. Reject the Environment and Heritage Legislation Amendment Bill (No.1) 2006 in its present form.
2. Require the Minister to table immediately his report on the review of matters of national environmental significance, made under s.28A of the EPBC Act.

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<sup>2</sup> The 2010 target was originally agreed in 2002, by Australia and other parties, under the International Convention on Biological Diversity.

<sup>3</sup> Note also that the Commonwealth Biodiversity Strategy (1996) and the National Objectives and Targets for Biodiversity Conservation (2001-2005) are way out of date, indicative of the government’s general lack of interest in biodiversity conservation.

<sup>4</sup> See for example papers from the Biodiversity Summit 2006, [www.biodiversitysummit.org.au](http://www.biodiversitysummit.org.au)

3. When the SOE 2006 report is published, initiate a comprehensive public inquiry into the adequacy of the EPBC Act and other federal environmental legislation and institutions,
4. Introduce urgent legislation, either stand alone or by amending the EPBC Act, to address greenhouse gas emissions and climate change.
5. Repeal the RFA exemption.
6. Recommend the Auditor General conduct a review of Australia's performance in protecting biodiversity against Millennium Goal 7, to reduce the rate of loss of biodiversity by 2010.

## **A few more detailed comments**

### **1. More exemptions than actions**

The Bill vastly expands the range of exemptions to the point where the Commonwealth could relieve itself entirely of any obligation for evaluating environmental impacts. The exemption mechanisms include –

- Actions in accordance with Regional Forest Agreements (see also comments on item 189 below).
- Actions covered by a Ministerial Direction in accordance with a Bioregional Plan. Bioregional plans must include but are not confined to Commonwealth areas.
- Actions covered by a Conservation Agreement. Conservation Agreements can be made with any person and can cover any land, public or private. The Conservation Agreement can include a declaration that specified classes of actions do not need EPBC approval. The Conservation Agreement is supposed to result in a 'net benefit' to biodiversity conservation or heritage protection, which leaves the door wide open to trade-offs such as large scale clearing of native vegetation supposedly 'offset' by planting or improved management elsewhere.
- Actions declared not to require approval under a Bilaterally Accredited Management Arrangement or a Bilaterally Accredited Authorisation Process. The management arrangement and the authorisation process have to be provided for in state or territory legislation and accredited by the Minister. Coupled with the Bilateral Assessment Agreements, the Commonwealth can ultimately exempt itself from having to undertake any environmental impact assessment at all.

The constraints on making declarations and agreements are weak. Bilateral Agreements can be of unlimited duration (item 168).

### **2. Wood supply for pulpmills, chipmills, wood-fired power stations and charcoal plants exempt (Item 189)**

The amendment appears to exempt all forestry operations in RFA regions from Commonwealth EIA, provided an RFA is in force or under negotiation at the time the

development application is made. It prevents the Minister from considering adverse impacts of clearing, logging, burning, site preparation, road construction and log transport (RFA forestry operations) in deciding whether an action is a controlled action. There can be no consideration of whether an action is even capable of being carried out in accordance with an RFA.

Large developments such as pulpmills, chipmills, wood-fired power stations and charcoal plants are the beneficiaries of this amendment. They could lock in wood supply for decades, without Commonwealth assessment, providing only that an RFA was in force at the time of the initial application. Plantation establishment, including where native forests are cleared, would also be exempt. Logging to supply Gunns pulpmill is probably also exempt.

### **3. Review of matters of national environmental significance ignored**

The Minister is preparing a report on whether additional matters of national environmental significance should be regulated (s.28A of the EPBC Act). Public comment was sought between 1 April 2005 and 2 May 2005. Since then, not a peep. Nor are new matters of national environmental significance added in this bill.

The absence of both report and action is part of a systematic pattern of non-compliance by the Minister with his obligations, including listing of threatened species, preparation of recovery plans, preparation of threat abatement plans.

There is broad agreement that at minimum global warming, rivers and aquatic systems, and clearing of native vegetation should be added to the matters of national environmental significance.

### **4. Third parties shut out (item 763)**

The removal of the provision which protects third parties from having to give an undertaking for damages, when seeking an interim injunction, will massively curtail the potential for public interest litigation to protect the environment. That no doubt is its intention.

No reason is given for the change. The dismissive manner in which the impact is described in the Explanatory Memorandum is insulting to groups and individuals who have courageously taken up the expensive and difficult task of trying to enforce the law. The Minister's failure to enforce compliance should not be compounded by pricing the community out of the courts.