



Tasmania
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Tasmanian Government
Department of Tourism, Arts and the
Environment

*Submission to the Senate Environment, Communications,
Information Technology and the Arts Committee*

**Inquiry into the Environment and Heritage
Legislation Amendment Bill (No. 1) 2006**

October 2006

Inquiry into the Environment and Heritage Legislation Amendment Bill (No. 1) 2006

Amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)

Submission by the Tasmanian Department of Tourism, Arts and the Environment

General Comments

The Tasmanian Government sees the review of the EPBC Act as an opportunity to foster tangible improvements in the inter-governmental relationships surrounding this important legislation.

The Department of Tourism, Arts and the Environment is primarily involved with the EPBC Act through the provisions relating to the assessment of activities that trigger the EPBC Act, and the provisions relating to Heritage listing. A bilateral agreement has been negotiated between the State and Australian Governments to accredit the Level 2 and Projects of State Significance processes for the purposes of the EPBC Act. The Tasmanian Government notes and supports that a number of the proposed amendments will make operation under this bilateral agreement less onerous from an administrative perspective.

There is a broad range of environmental and heritage legislation operating in Tasmania, some of which has recently been updated or is currently undergoing major review. The State Government may in future seek to open negotiations to secure accreditation or recognition that such State legislation complies with the requirements of the EPBC Act. This would assist in reducing doubling up of approvals under both State and Commonwealth legislation and assist in providing quick decisions for straight forward proposals. State legislation that would fall into this category may include the *Historic Cultural Heritage Act 1995*; *Forest Practices Act 1985*; *Threatened Species Protection Act 1995*; *Nature Conservation Act 2002*, and potentially the new Aboriginal Heritage Legislation that is currently being developed.

Providing certainty

A number of the amendments proposed will assist with streamlining, to a degree, some of the processes associated with assessment processes or increasing flexibility. A number of these will benefit proponents of developments in Tasmania, and the State Government supports these amendments.

The Tasmanian Department of Tourism, Arts and the Environment is aware of concerns both from proponents and other agencies that the approvals process and timeframes involved under both Commonwealth and State legislation can cause considerable delays to the development approvals process.

We note that the amendments take some steps to reduce these problems and provide that the EPBC Act approval can be carried out in parallel with the State approval processes or that the EPBC Act approval may even precede the State processes. We support these amendments.

We encourage the Commonwealth Government to investigate a process by which strategic investment nodes/corridors for industry and major infrastructure can be exempted from the need for a referral under the EPBC Act, where it has been demonstrated in advance of a development application that development of a site for a range of activities does not trigger a referral.

Again, this would assist with ensuring certainty for development of major projects for the State. For example, planning a major investment in a new inter-modal hub would benefit immensely from the increased certainty accorded if a general exemption is provided from the Australian Government, following appropriate specified research or studies, in advance of going through the planning approval process.

We also note that problems have previously arisen when the State's requirements differ from those of the Commonwealth on the same issue, and while in previous instances, solutions for differences between the two jurisdictions have ultimately been able to be resolved, the time taken to achieve a resolution has caused significant delay in development project processes. It is therefore important to ensure that there is uniformity in the conditions and that the Commonwealth Minister is fully supportive of moves to rely upon the State's conditions in these instances, to ensure timely approval processes.

It is noted that the amendments include widened powers for accrediting State assessment processes. The Tasmanian Government would be willing to explore with the Australian Government a system of even greater integration with the State approval system, to further streamline the processes.

Amendments requiring some clarification

There are several amendments the Tasmanian Government feels will require some clarification and perhaps the development of suitable administrative procedures or guidelines, especially where an assessment is being carried out under the provisions of a bilateral agreement. These include:

- **Item 321** enables variation of the proposal or the proponent without the need to initiate a new assessment. When an assessment is being carried out under a bilateral agreement, it will be important that the State and Australian Governments have a common view on the extent to which a proposal can be varied without becoming a “new” proposal.
- **Items 244 to 249.** The current Section 130 (1B) under which the State advises the Commonwealth that the matter has “been assessed to the greatest extent practicable” is to be replaced by Section 132A (3) under which the Commonwealth Minister *may* request the State Minister to supply “a notice stating the method that has been used to assess the certain and likely impacts of the action on things other than matters protected by the controlling actions of the provision”.

The implications of this change are not clear without some clarification on when and on the basis of what criteria the Minister is likely to exercise his/her discretion to ask for a notice. We request some further information on this point.

Heritage Issues

- **Elimination of the Register of the National Estate**
Tasmania notes that the proposed phase out period is five years. Tasmania, as part of its extensive review of state Heritage legislation and procedures, is already in the process of amending its heritage register and developing a three tiered register of items of local, state and national significance. This process, although underway, will take several years to complete.
- **Management arrangements or process**
The Tasmanian Government supports the replacement of “accredited management plans” with “accredited management arrangements” or an “accredited management process”. This will give greater flexibility in how World Heritage and National Heritage listed places are managed.
- **National Listing (324E)**
The Tasmanian Government also supports the simplified outline of the new usual listing process for National Listing (new section 324E), which involves an annual cycle around 12 month “assessment periods”. This is considered a positive change, allowing the Minister and the Australian Heritage Council a sensible timeframe in which to prioritise and assess nominations. The proposed changes should also enhance State Governments’ ability to respond to nominations.

However it is suggested that the timeframe for public comment on nominated places (section 324G) should be extended to 90 days, to ensure State Governments and interested parties have sufficient time to submit comments on what may well be a large number of nominations in any one state within the 12 month cycle.

- **Emergency Listing (324K)**
While the Tasmanian Government does not object to the changes proposed to the emergency listing process (section 324K-JQ), it is suggested that the State and Australian governments agree to a non-statutory process that will ensure the Australian Heritage Commission or the Department of Heritage and Environment consults the Secretary of the Tasmanian Department of Tourism, Arts and the Environment prior to the federal Minister making any emergency listing of a Tasmanian place.