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Senate Environment, Communications, Information
Technology and the Arts Committee
Parliament House
Canberra ACT 2600

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Dear Secretary

Re: Environment and Heritage Legislation Amendment Bill (No.1) 2006 (EHLA Bill)

The proposed amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) contained in the EHLA Bill are of considerable importance and deserve greater consideration by Parliament than the Government has allocated. Providing two weeks for the public to consider the Bill and write submissions is insufficient, as is the time allocated for this Committee to consider public submissions and write a report.

Given the inadequacy of the timeline for this inquiry, it would appear that the Government has no intention of amending the Bill to account for any concerns raised by members of the public. This is unfortunate, as the structure and drafting of the EPBC Act is deficient in many respects as a result of poor consultation processes and the unwillingness of the Government to consider suggested amendments. It would appear the Government is prepared to repeat the mistakes it has made in the past.

Despite this, it is important that the weaknesses of the EHLA Bill are recorded before it is passed into law. Consequently, set out below are the major problems that I have been able to identify in the time provided.

1. Schedule 1, Items 68, 84 and 783, definition of impact

Item 783 inserts a definition of 'impact' in section 527E that clarifies that they include both direct and indirect consequences of an action. This change largely mirrors the findings of the Federal Court in the so-called Nathan Dam case. However, the effect of this amendment and the Nathan Dam case is then largely nullified by the changes in Items 68 and 84, which confine the relevant impacts for the purposes of Part 3, Divisions

1 and 2 to those that the person taking the action is directly responsible for and has some control over. That is, it is no longer possible for a person to be held vicariously liable for the actions of another person unless the actions were taken at the direction or request of the first mentioned person.

To the extent that the amendment removes the potential for individuals to be held vicariously liable for actions that they have little or no control over, I support the changes. However, the amendment will significantly reduce the scope of the provisions in Part 3 and potentially undermine the ability of the Act to adequately protect the matters identified in Part 3. In this regard, the changes highlight the broader deficiencies in the EPBC Act and the need for a zoning approach to be adopted that mirrors the state and territory planning regimes. For this problem to be overcome, the legislation needs to be substantially rewritten so as to reduce the uncertainties associated with the ‘significant impact test’ and ensure that all relevant actions can be adequately assessed (attached to this submission is a journal article that explores this issue in greater detail).

A drafting issue that follows on from these amendments is how the exemptions inserted via Items 68 and 84 affect the operation of relevant sections in Parts 7, 8 and 9 of the Act. In particular, it appears the effect of the amendment in Item 172 is to ensure that actions will still be controlled actions for the purposes of the referral and assessment processes even if they are exempt from the relevant provisions of Part 3 by virtue of the operation of the provisions in Items 68 and 84. In the absence of the incentive to refer actions that is provided by the prohibitions in Part 3, there is a risk that there could be a decline in referrals from the already low base. This apparent weakness is compensated to some degree by the Minister’s powers under sections 70 and 74A, along with the amendments contained in Item 184. However, the practical effect of the changes is likely to be to provide the Minister with greater discretion over the operation of the referral process and the reach of the legislation.

The changes in Items 172 and 783 appear to ensure that the relevant impacts of an action for the purposes of the assessment and approval provisions will include both direct and indirect impacts. This is a positive as it ensures that all potential impacts can be evaluated.

2. Schedule 1, Items 92 – 121, accredited management arrangements and authorisation processes

This aspect of the Bill makes significant changes to the Minister’s exemption powers contained in Part 4, Division 2. The current provisions allow the Minister to exempt actions from the operation of the referral, assessment and approval process if they are approved by the Commonwealth or a Commonwealth agency in accordance with an accredited management plan. The accredited management plan must be made under a law of the Commonwealth and comply with requirements outlined in section 33 and the regulations.

The new provisions remove the concept of an accredited management plan and replace it with accredited management arrangements and accredited authorisation processes. The

details of the criteria that the management arrangements and authorisation processes must satisfy will be outlined in regulations. Consequently, at this point it is difficult to pass judgment on the likely impact of these changes. However, on the surface, they generally do not appear to be of great concern.

Item 121 is one change that is troubling. It enables amendments to be made to accredited management arrangements and authorisation processes without the Minister needing to comply with the normal procedural requirements. In particular, there is no need for the changes to be laid before each House of Parliament. The Bill states that the Minister can only use this truncated process if ‘the Minister is satisfied that the amendments are, or will be, minor’. However, this is unlikely to act as a significant constraint as there is little chance of the Minister’s decisions being subject to judicial review. Consequently, there is the potential for the ‘minor amendment approval process’ to be abused.

3. Schedule 1, Items 122 and 352, bioregional plans

These items enable the Minister to exempt actions that are taken in accordance with a bioregional plan. Bioregional plans can be made under Part 12 of the EPBC Act. Item 352 clarifies that they are not legislative instruments.

There is the potential for this process to be used as a way of avoiding proper scrutiny and assessment. There are no formal public consultation processes for bioregional plans that are made in relation to non-Commonwealth areas. Presumably these processes will be decided on an ad hoc basis. In relation to Commonwealth areas, the Act states that the ‘Minister must carry out public consultation on a draft plan in accordance with the regulations’. From what I understand, the current regulations do not contain any provisions relating to bioregional plans.

The Bill does contain requirements that must be satisfied before the Minister can declare an action or class of actions exempt from the referral, assessment and approval provisions under section 37A. These requirements are similar to those that apply in relation to other exemption provisions in the Act. Unfortunately, they are too broad to provide an adequate constrain on the Minister’s powers.

For example, the legislation states that the Minister cannot exempt an action if he/she ‘considers that the action ... would have unacceptable or unsustainable impacts on a matter protected by the provision’ (section 37B(3)). There are two main points to note about this restriction. Firstly, the question about whether the impacts are unacceptable or unsustainable is not a jurisdictional fact – the Minister is the judge of the seriousness of the impacts and the decision can only be reviewed on a limited number of administrative law grounds (for example, relevant/irrelevant considerations, unreasonableness, bias etc.). Secondly, the concept of ‘unacceptable or unsustainable impacts’ is so subjective as to be virtually meaningless.

Given the nature of the powers conferred on the Minister under these provisions, there is a risk they will be used to reduce the opportunities for public consultation and oversight.

An additional issue that arises in this context is section 37J, which states that the Minister cannot make a declaration exempting an action that consists of certain nuclear installations. This restriction does not cover a number of types of nuclear actions, including controversial actions like nuclear waste facilities and uranium mining and milling. Why the Government has chosen to allow these types of nuclear actions to be exempt from the normal assessment and approval provisions is unclear as it is not mentioned in the Explanatory Memorandum.

4. Schedule 1, Item 122 and 544, conservation agreements

These provisions allow the Minister to exempt actions from the referral, assessment and approval provisions of the EPBC Act if they are taken in accordance with a conservation agreement. The concerns in relation to these provisions are essentially the same as those outlined above. Namely, that they may be misused as a means of diminishing public scrutiny and proper oversight.

In this case, the Minister is prohibited from making an exemption declaration unless he/she is satisfied 'the actions to which the declaration relates are not likely to have a significant impact on the matter protected by the provision of Part 3 proposed to be specified in the declaration'. However, there is no public consultation process in relation to either the making of conservation agreements or a conservation agreement exemption declaration.

Preferably, all draft conservation agreements should be required to be published on the internet, and an opportunity be provided for public comment, before they are finalised.

The new provisions relating to conservation agreements make mention of nuclear actions and, again, limit their application to certain types of nuclear developments. There is no explanation of why the Government wishes to leave open the option of exempting nuclear waste dumps and uranium mining through this process.

A technical problem with these provisions is that there does not appear to be a penalty for non-compliance with the conditions of a conservation agreement unless the condition relates to remediation and is entered into under section 307A. An injunction can be obtained by a party to a conservation agreement to enforce the terms of the agreement, but there is no direct penalty for non-compliance. Ordinarily, this is understandable because conservation agreements are voluntary and they are designed to encourage activity through the provision of positive incentives. However, given that conservation agreements will be able to be used to exempt actions from the referral, assessment and approval procedures, there is a need for parties to be subject to direct sanctions if they fail to abide by the terms of the agreement. Similarly, there is no direct penalty for failing to comply with the conditions to an exemption declaration made under section 306A.

This issue could be rectified by the inclusion of a civil penalty provision that requires a person taking an action that is the subject of an exemption declaration made under section 306A to comply with the conditions of the conservation agreement and the declaration.

Another issue of potential concern is that sections 37M and 306A do not require actions that are declared to be exempt to be carried out in accordance with the terms of the conservation agreement. Indeed, if these provisions are read literally, it is even arguable that the actions do not need to relate to the substance of the conservation agreement. The Minister can place conditions on the declaration, and the actions must be taken in accordance with those conditions. These conditions could include a requirement that the action be carried out in accordance with the conservation agreement. However, the current drafting leaves this to the discretion of the Minister.

It would be preferable if the legislation explicitly required any actions that are declared to be exempt to be carried out in accordance with the terms of the conservation agreement.

5. Schedule 1, Item 130, prior use exemption

This amendment is intended to clarify when a lawful continuation of a use will fall within the exemption contained in section 43B. Subsection 43B(3), which will be inserted by the Bill, states that a continuation of a use does not include a change in the location of where the action is occurring, or a change in the nature of the action, ‘that results in a substantial increase in the impact of the use on the land, sea or seabed’.

This change appears to widen the scope of the exemption and to depart from existing use exemptions in other jurisdictions. For example, in New South Wales, section 107 of the *Environmental Planning and Assessment Act 1979* states that existing uses do not include an increase in the area being used over and above the area actually used prior to the commencement of the relevant statutory instrument.

In addition, the application of the existing use of exemption will rely on the application of a ‘substantial increase in the impact’ test, which is inherently ambiguous.

Given this, it would be preferable if the scope of the exemption was narrowed so as to confine existing uses to the actual physical use that was occurring prior to the commencement of the Act.

6. Schedule 1, Item 166, amending bilateral agreements

This amendment allows the Minister to amend bilateral agreements without having to comply with the consultation and accountability requirements. The only restriction on the use of this procedure is that the Minister must be ‘satisfied that the amendment will not have a significant effect on the operation of the principal agreement’ (section 56A). There is the potential for this new procedure to be misused.

7. Schedule 1, Item 168, sunset clause for bilateral agreements

This amendment removes the five year sunset clause on bilateral agreements and enables these agreements to run for an indefinite period. The idea behind the sunset clause was to ensure that real and proper consideration is given to the effectiveness of the bilateral agreement and to provide the public with an opportunity to contribute to any new agreement that may be prepared.

Under the new procedure, the Minister must cause a review of a bilateral agreement to be carried out once every five years. However, there is no formal process for public consultation. The reduction in public accountability is regrettable.

8. Schedule 1, Items 178, 255 and 273, multiple option referrals and approvals

These amendments will allow proponents to refer an action to the Minister that contains several different options for how, when and what the action will entail, and for the Minister to approve one or more of the options. The object is to provide proponents with greater flexibility. However, in doing so, this provision will undermine the effectiveness of the Act and the public's ability to participate in the assessment and approval processes.

Of particular concern is how multiple option referrals will be treated under the controlled action decision and assessment processes. For example, in relation to the controlled action decision, it is unclear how the Minister will decide for the purposes of section 75 whether the action is likely to have a significant impact on a matter protected under Part 3. Do the impacts of the action include all potential impacts from the options canvassed, the impacts from the most favoured option, or the worst case impacts from all of the options? The revised definition of impact in section 527E suggests that the impacts will include all potential impacts, yet this issue is unclear. Similarly, in relation to the assessment process, it would appear that all of the options will have to be assessed.

The resulting breadth in the referral and assessment process will make it difficult to evaluate the likely impacts of actions, and present problems for members of the public seeking to participate in the referral and assessment processes. As was noted in the Commonwealth Auditor-General's report on the EPBC Act that was published in 2003, the international evidence indicates that assessment reports are ineffective in predicting the likely environmental impacts of developments. One US study found that only 30 per cent of the outcomes predicted in assessment reports were similar to the ultimate outcomes. Permitting multiple option referrals is likely to exacerbate this problem and undermine the effectiveness of the regime.

9. Schedule 1, Items 210 and 217, assessment on referral information

These amendments create a new assessment process called assessment on referral information. The idea is that the Minister will be able to carry out an assessment process on the information provided under Part 7 rather than the proponent being required to submit additional information under Part 8.

When the Minister decides to use this process, the Department will have to prepare a draft recommendation report and then publish it on the internet and provide members of the public with 10 business days to comment on the report. The report will then be finalised and presented to the Minister. This entire process is required to be completed within 30 business days.

This process is likely to lack the necessary rigor to be effective. It is also too short to enable adequate public participation and transparency. Given the presence of the preliminary documentation process, it is unnecessary and should be removed.

10. Schedule 1, Item 217, assessment on preliminary documentation

These amendments change the procedures that apply in relation to the assessment on preliminary document process. A major problem with the process is the lack of a statutory timeframe for public comment in relation to the publication of the preliminary documentation. The relevant provisions (see sections 95(2)(c) and 95A(3)(d)) merely state that the direction by the Minister will include a timeline for public comment. This should be amended to ensure that members of the public have at least 30 business days to evaluate and comment on a proposal.

11. Schedule 1, Item 251, inviting comments before approval decision

This amendment will require the Minister to provide proponents with an opportunity to comment on the proposed approval decision before it is made. This is obviously a response to the Bald Hills case where the Minister was forced to settle a claim before the Federal Court because he had failed to provide the proponent of the wind farm with an opportunity to comment on a report prepared by a consultant for the Department.

This amendment also contains a similar process for members of the public to comment on approval decisions, only the Minister has a discretion rather than an duty to provide the opportunity.

These changes appear to be unnecessary and unduly weighted towards the interests of developers. Where new information arises in the approval process, the general law requires the Minister to provide the proponent with the information and to give them an opportunity to be heard. This is necessary to ensure natural justice. However, this amendment goes beyond the requirements of natural justice, thereby adding costs to the process, while providing proponents with additional access to the decision-maker that is not guaranteed to members of the public.

12. Schedule 1, Item 313, powers to extend period of approval

This amendment allows the Minister to extend the period of approval for a proposed action. There is currently no public consultation requirement in relation to the exercise of this power. It would be preferable if members of the public had an opportunity to comment on proposals to extend an approval.

Similar public consultation requirements should also be considered in relation to the Minister's powers to amend and revoke approval conditions (see Part 9, Division 3).

13. Schedule 1, Items 314 to 318, strategic assessments and endorsed plans

These amendments create a new process whereby the Minister can exempt actions or a class of actions from the operation of the referral, assessment and approval process if they are taken in accordance with a policy, plan or program that is endorsed in a strategic assessment process. This process is similar to the one created in relation to bioregional plans and conservation agreements. It means that if a policy, plan or program is strategically assessed under Part 10, the Minister can exempt actions taken under the plan

from the referral, assessment and approval processes without having to go through the bilateral agreement (section 29) or Commonwealth plan (section 33) exemption declaration provisions.

This process is deficient as there is no Parliamentary oversight of strategic assessments (as there is in relation to the bilateral agreement and Commonwealth plan processes) and very little opportunity for public participation and consultation in relation to strategic assessments, the endorsement of plans and the making of exemption declarations.

As with the amendments relating to conservation agreements and bioregional plans, a loophole has been created for certain nuclear actions so that they can be made exempt via endorsed plans. There has been no explanation for the inclusion of this nuclear loophole.

14. Schedule 1, Item 321, modifying referrals prior to approval decisions

This amendment allows proponents to modify referrals while they are in the process of being assessed under either Parts 7, 8 or 9. It provides that the Minister must not accept an application to modify a referral unless he/she is satisfied ‘that the character of the varied proposal is substantially the same as the character of the original proposal’ (section 156B(2)).

Notwithstanding this restriction, there is a significant risk that this power will undermine the effectiveness of the referral, assessment and approval regime. At the very least, it will diminish the transparency of the regime and capacity of the public to participate in the assessment processes. Of particular concern is the absence of a public consultation requirement in relation to the exercise of the power to modify proposals.

This section should be removed. If it is retained, the public should have an opportunity to comment on applications to modify proposals.

15. Schedule 1, Items 172 and 173, biodiversity surveys

These amendments remove the requirements relating to the conduct of biodiversity surveys in Commonwealth areas. This change could be justified if there was evidence that the resources saved by not doing surveys were being used to achieve other environmental objectives in a cost-effective manner. Unfortunately, the evidence suggests that the majority of the environmental programs run by the Commonwealth are ineffective and inefficient.

The requirement to carry out surveys should be reinstated; at least until such time as it can be demonstrated that the Commonwealth is using its resources in the environment portfolio in cost-effective manner.

16. Schedule 1, Item 353, definition of conservation dependent species

This amendment changes the definition of a conservation dependent species by removing the requirement that the species be likely to become threatened in another category within five years and inserting a process-based definition for fish species. The fish species

requirement is that: the species is a fish species; the species is the focus of a management plan; the plan is in force under a law of the Commonwealth or state; and cessation of the plan would adversely affect the conservation status of the species.

The inclusion of this definition for fish species is intended to provide the Government and the fishing industry with a loophole in relation to the listing of commercial fish species. At present, if a commercial fish species is listed (other than as a conservation dependent species) then there are restrictions on whether it can be exported under Part 13A (wildlife trade provisions). The species also attracts protection under Parts 3 (referral, assessment approval process) and 13 (Commonwealth area permits). As a result, the Government has refused to list any commercial fish species, notwithstanding the fact that a number of species meet the listing criteria (for example, southern bluefin tuna and several species of dogfish).

This new process will enable commercial fish species to be listed, but ensure that fishing for the species can continue in accordance with current fishing practices.

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.

17. Schedule 1, Item 359, maintaining lists of threatened species

This amendment removes the requirement for the Minister to ‘take all reasonably practical steps’ to ensure the lists of threatened species and ecological communities are kept up-to-date (i.e. ensure they contain all eligible species and communities).

This change has obviously come about because of the Government’s desire to avoid listing politically contentious species and communities and its failure to adequately maintain the lists. The situation with ecological communities illustrates this point.

There are approximately 2,800 threatened communities in Australia. However, the list of threatened communities under the EPBC Act currently includes only 36 communities. The Government has recently announced that it no longer intends to count degraded aspects of communities as part of the listed community for the purposes of the Act. This has undermined the ability of the legislation to achieve its objects (and it is arguable that this approach is illegal). The proposed amendment to remove the obligation to maintain the lists in an up-to-date condition will further erode the effectiveness of the Act.

18. Schedule 1, Items 360 and 361, listing decisions

These amendments slightly alter the listing process in relation to threatened species and ecological communities. They state that when making a listing decision, the Minister can only consider matters relating to whether the species or community meets the listing criteria and the effect that the listing will have on the ‘survival’ of the species. It appears that the purpose of the second limb of the process is to ensure that the Minister can refuse to list species and communities if he/she believes the listing will not advance the conservation of the species or community.

In practice, the power to refuse listings on this basis creates a loophole for the Minister to exploit when wanting to avoid a controversial listing decision. This was illustrated by the Ministers decision to refuse to list the southern bluefin tuna on the grounds the listing would jeopardise its chances of recovery.

The listing processes should be scientifically-based. All species and communities that meet the listing criteria should be listed. The provision of loopholes in the process undermines its credibility and its usefulness to the community and decision-makers. It also weakens the ability of the legislation to achieve its statutory objectives.

19. Schedule 1, Item 365, disclosure of advice from TSSC

This amendment prevents the disclosure of the advice from the Threatened Species Scientific Committee on the listing of a species or community until after the Minister has made his/her final decision. At the moment, the advice of the TSSC is required to be disclosed as soon as the 90 day timeline for the decision expires.

The intent of this provision is to reduce the transparency of the regime. It should be removed.

20. Schedule 1, Items 364, 366 and 368, new threatened species nomination and listing process

These provisions create a new process for nomination and listing of species and ecological communities. Currently, members of the public can make nominations and the nominations have to be assessed. After the assessment, the Minister is required to make a decision on whether or not to list the species or community.

Under the new process, there is an annual assessment cycle. Members of the public can make nominations at the start of the cycle. However, the list of nominations is vetted first by the TSSC then by the Minister. Further, the timelines for decisions are set by the TSSC and the Minister rather than being outlined in the legislation. The timelines for assessments can be extended, but only for a maximum of five years. In comparison, the timelines for the Minister's final decisions can be extended indefinitely.

This process vests almost complete control of the listing process in the Minister and the handpicked TSSC. It will guarantee that controversial nominations are avoided and that the lists only include those species and communities that are politically palatable. As history proves, this inevitably means that the species and communities that are most in need of protection will be excluded.

21. Schedule 1, Items 382, 411, 437 and 461, consultation register for Commonwealth area permits

This amendment removes the existing provisions concerning public consultation on Commonwealth area permits that relate to threatened species, migratory species, cetaceans and marine species. This is a positive change because the old provisions relied on people registering their interest with the Department. However, the new provisions

only provide members of the public with 10 business days to make comments. This is insufficient and should be extended to a minimum of 30 business days.

22. Schedule 1, Items 388, 415, 448 and 465, appeals to AAT

These provisions remove the right for people to appeal Commonwealth area permit decisions that are made by the Minister personally to the Administrative Appeals Tribunal. This is a retrograde step and it demonstrates a fear of accountability and transparency on behalf of the Government. The amendment should be removed.

23. Schedule 1, Item 421, important cetacean habitat areas

This amendment creates a new process to enable the Minister to declare marine areas to be 'important cetacean habitat areas'. In principle, this sounds like a sensible idea. However, it is unclear why there is the need for this process when the Minister can already declare areas to be critical habitat for threatened species or Commonwealth reserves. There is a risk that this process could be misused for political purposes, just as the National Heritage List has been misused.

24. Schedule 1, Item 528, wildlife trade AAT appeals

This provision removes the right for people to appeal wildlife trade permit decisions that are made by the Minister personally to the Administrative Appeals Tribunal. This amendment should be removed.

25. Schedule 1, Items 550 and 567, National and Commonwealth Heritage Lists

These provisions change the listing processes for the National and Commonwealth Heritage Lists. The processes are similar to those outlined above in relation to threatened species and ecological communities. Again, the changes expose the process to even greater politicisation and undermine the integrity of the lists. There should be a heritage-based listing process that is overseen by an independent statutory authority rather than a compromised, politically-based process that is overseen by the Minister.

26. Schedule 1, Item 767, notice to produce or attend

This provision allows the Minister to force people to provide information on a potential violation of the Act. There are safeguards to prevent self-incrimination, however, I query whether the provisions constitute an unjustified intrusion into civil rights. This issue needs further consideration.

27. Schedule 1, Item 835, detention of foreigners

This amendment creates new powers that allow detention of foreigners suspected of committing an offence and the transfer of foreigners from environmental detention to immigration detention. The most alarming provisions concern the detention of suspects for up to seven days while the offence is investigated (see Division 5, pp. 331 – 332). Detention can be in a prison, remand centre or any other place determined by the

Minister. Investigating officers are also given powers to carry out strip searches without a warrant.

These provisions appear to be inconsistent with equivalent provisions for arrest for Commonwealth offences in Part IC of the *Crimes Act 1914*. To the best of my knowledge, people can only be held for four hours under the *Crimes Act* before an application for an extension must be made to a magistrate.

These provisions require further investigation to determine their likely impacts on civil rights and compatibility with Australia's international obligations.

28. Schedule 1, Items 840 and 841, register of the national estate

These provisions abolish the register of the national estate. The removal of the register is a significant loss to the heritage community. Given the nature of the register (i.e. it is primarily an information tool), its removal appears to be driven solely by a desire to remove the remnants of the Whitlam Government from the federal sphere.

29. Schedule 2, Part 7, transitional provisions relating to listings

These amendments contain the transitional provisions concerning threatened species, ecological communities, National Heritage places and Commonwealth Heritage places.

Places that are currently in the assessment pipeline will automatically be re-nominated and go to the start of the relevant new listing process (i.e. they are deemed to be nominated for the first assessment cycle, although they are not deemed to have been selected for assessment). This is problematic with regard to controversial places like the Burrup Peninsula as it will mean that they could potentially be excluded from the listing process, notwithstanding the fact that the assessment is underway or completed.

The transitional provisions give the Minister the power to declare that existing nominations are deemed to be at a certain stage in the assessment process. However, there is no compulsion to exercise this discretion, meaning that a number of contentious nominations could be prevented from being assessed.

Conclusion

The EPBC Act has many deficiencies and it has been administered poorly since it commenced in July 2000. Few of its environmental objectives are being achieved, despite the fact that it has cost taxpayers in the order of \$150 million. However, there is an urgent need for comprehensive federal environmental legislation and the EPBC Act has the potential to make a significant contribution to the protection and conservation of important elements of the Australian environment. This potential will only be realised if the environment protection provisions of the Act are improved, greater attention is paid to the integrity of the listing processes and the administration of the legislation is handed over to an independent statutory authority.

Unfortunately, the EHLA Bill constitutes a significant retrograde step for federal environmental law. There are a number of positive aspects of the Bill; however, these are outweighed by the negatives. The objects of the Bill appear to be to provide greater discretionary power to the Minister, reduce transparency and accountability, and further politicise the listing processes.

The Bill should be rejected by the Senate.

Yours sincerely

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