

Inquiry into the Environment Legislation Amendment Bill 2013

Submission from the Department of the Environment

Introduction

The Australian Government Department of the Environment welcomes the opportunity to make a submission regarding the Environment Legislation Amendment Bill 2013 (the **Bill**). Should it be passed by the Parliament and receive Royal Assent, the Bill would:

- (a) address the implications arising from the Federal Court's decision in *Tarkine National Coalition Incorporated v Minister for Sustainability, Environment, Water, Population and Communities* [2013] FCA 694 (the **Tarkine case**); and
- (b) amend the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the **EPBC Act**) to provide additional protection for turtles and dugong which are listed threatened, migratory or marine species ('listed' turtles and dugong) by increasing the financial penalties for various offence and civil penalty provisions; and
- (c) amend the *Great Barrier Reef Marine Park Act 1975* (Cth) (the **GBRMP Act**) by providing additional protection for protected species under the GBRMP Act, if those species are in the Genus *Dugong* (dugong); or the Family Cheloniidae (hard shelled marine turtles); or are the species *Dermochelys coriacea* (leatherback turtles).

Context for the submission

The EPBC Act is the Australian Government's central piece of environment legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, heritage places, Commonwealth marine areas and, in relation to coal seam gas and large coal mining activities, water resources – defined in the EPBC Act as matters of national environmental significance.

The GBRMP Act is the primary piece of legislation relating to the Great Barrier Reef Marine Park. The GBRMP Act provides for the conservation of protected species through zoning, issuing of permits and implementation of plans of management in the Great Barrier Reef Marine Park. The GBRMP Act includes aggravated civil and criminal offences for killing or injuring a protected species which includes listed threatened, marine or migratory species under the EPBC Act.

Amendments relating to approved conservation advice

Approved conservation advices are statutory documents developed under the EPBC Act. They contain information on key threats to listed threatened species or ecological communities and actions needed to aid the recovery of the species or ecological community. The Minister must ensure that there is an approved conservation advice for all listed threatened species and ecological communities at all times while the species or community remains listed under the EPBC Act.

Schedule 1 of the Bill provides that decisions and instruments made under the EPBC Act prior to 31 December 2013 would not be invalid on the basis that the requirement to have regard to a relevant approved conservation advice was not met.

The purpose of Schedule 1 is to address the risk to past decisions made under the EPBC Act arising from the Federal Court's decision in the Tarkine case. In that decision the Federal Court declared invalid the approval given to Shree Minerals Limited under Part 9 of the EPBC Act due to a failure to "have regard to" a relevant approved conservation advice, as required under section 139(2).

In this case, the decision brief relied on by the former Minister for the approval given to Shree Minerals Limited stated that conservation advices had been considered in the preparation of the Department's advice and had informed the Department's recommendations. However, the relevant conservation advice document itself was not attached or specifically referred to in the briefing for the approval. Since the Federal Court declared the environmental approval given to Shree Minerals Limited invalid on 17 July 2013, the Department has ensured that relevant approved conservation advices are included in the package of information considered by the Minister when making relevant decisions.

Schedule 1 does not reduce the level of protection provided for threatened species and ecological communities under the EPBC Act. The requirement to consider relevant approved conservation advices before making relevant decisions under the EPBC Act will continue. The Department's practice that approved conservation advices are used to inform its recommendations will continue. Further, the EPBC Act will continue to require that all relevant information is to be considered in decisions on whether to approve projects, including environmental, economic and social information.

The Bill is designed to ensure the validity of decisions made under the EPBC Act prior to 31 December 2013 to provide certainty to industry. The Bill will not affect the rights of interested parties to challenge EPBC Act decisions in the courts. Rather, it provides assurance to stakeholders that previous decisions under the EPBC Act will not be invalid because of a technicality, that is, the Department did not attach approved conservation advices to a decision brief.

The Bill provides necessary investment certainty for industry stakeholders with existing decisions under the EPBC Act and the projects that rely on those decisions. This is intended to ensure that all projects with existing approvals, including major projects with long-term investment benefits for the Australian economy, have legal certainty.

Amendments relating to turtles and dugong protection

Schedule 2 of the Bill amends the EPBC Act and the GBRMP Act to provide additional protection for dugong and turtle populations from the threats of poaching, illegal trade and illegal transportation. The amendments triple the financial penalties for various offences and civil penalty provisions relating to listed dugong and turtles. These amendments will deter persons from committing offences or breaching civil penalty provisions by imposing increased penalties in respect of the illegal killing, injuring, taking, trading, keeping or moving of turtles and dugong.

The amendments address concerns that the current penalty provisions in the EPBC Act and the GBRMP Act are not high enough to protect turtles and dugong from the increasing threats of poaching, illegal hunting and illegal transportation and trade.

On 15 August 2013 the Government announced its 'Dugong and Turtle Protection Plan' which aims to protect the dugong and turtle population of Far North Queensland and the Torres Strait Islands. As part of the Dugong and Turtle Protection Plan, the Government committed to '[w]ithin six months introduce Federal legislation tripling the penalties for poaching and illegal transportation of turtle and dugong meat.' The Government also committed to support a specialised Indigenous ranger program for marine conservation along the far north Queensland Coast and for strengthened enforcement and compliance.

Under the *Native Title Act 1993* (Cth), native title holders have a right to exercise native title rights to harvest marine turtles and dugong for the purpose of personal, domestic, or non-commercial communal needs. These native title harvesting rights will not be affected by the Bill.

Conclusion

The Bill provides legal certainty to existing decisions under the EPBC Act to address the implications of the Tarkine case. This does not reduce environmental protections under the EPBC Act and it is the Department's practice that approved conservation advices will continue to be used to inform its advice on relevant decisions under the EPBC Act.

The Bill also demonstrates the Government's commitment to the conservation of turtles and dugong and strengthens the capacity to preserve the Great Barrier Reef as an important feature of national and world heritage for future generations.