



**Committee Secretary Senate Standing Committees on Environment and
Communications PO Box 6100 Parliament House Canberra ACT 2600
16 January 2014**

**Logan and Albert Conservation Association (LACA) Submission to the Senate Inquiry
in to the Environment Legislation Amendment Bill 2013**

Thank you for the invitation to comment.

LACA makes the following comments in relation to the Environment Legislation Amendment Bill 2013:

1. LACA believes that this amendment puts the legal requirements of the EPBC Act at the whim of the minister. There are a number of provisions in the Act which require the Minister to have regard to relevant approved conservation advice. Contradicting these, Schedule 1 in this amendment to the EPBC Act provides that decisions made under the EPBC Act would not be invalid merely on the basis that the requirement to have regard to a relevant approved conservation advice is not met. LACA is of the view that it is not clear in the wording of the document that this retrospective legislation amendment cannot be used again to bypass MNES in future decisions at the whim of the minister
2. LACA notes that, with this amendment to the EPBC Act, the Abbott Government breaks with the conventional system of scientific impartiality practised by all previous Environment Ministers, who have accepted the advice of the TSSC since the *Environment Protection & Biodiversity Conservation Act* (EPBC Act) came into force in 2000 and the *Endangered Species Protection Act* before it in 1993. This sets a dangerous precedent which will challenge the critical function of the TSSC, further weaken the Act and as a consequence place additional pressure on Australia's already challenged natural estate.
3. There is considerable potential for this Bill to set a precedent which will encourage more of the practice - regularly observed by LACA - where consultants collude with the proponent to talk down site environmental values and even leave critical MNES discoveries unreported that could potentially jeopardise a project under the EPBC Act. In this respect, the Bill may make it pointless for community groups to refer these MNES to the minister when a proponent's consultant has failed to list them. As

such, LACA believes the Bill has the capacity to further reduce the democratic rights of communities to defend their landscapes, flora and fauna from poorly conceived development decisions.

4. LACA also believes that where a proponent makes an outset judgement that a proposed project will not need referral to the Federal minister under the EPBC Act (ie believes it does not contain MNES) and proceeds through the approval process, and a community group steps in to inform the minister that there are significant MNES under threat, this amendment or iterations of it may provide the opportunity for the minister to ignore the new information in spite of the very real threat posed to significant fauna or flora. In this respect the Bill represents an abrogation of Australia's responsibilities under national and international agreements to provide adequate protection for its unique natural estate.
5. LACA believes that the precedent established by this Bill will present a serious obstruction to genuine consideration of MNES as States take over EPBC approval processes under the recent bilateral agreements.
6. LACA condemns the use of retrospective legislation in this way which is claimed to provide industry 'certainty'. Clearly the highest level of certainty derives from the adherence to the law as it stands, and as it is understood. Under regular pressure of legislative retrospectivity, no one can have certainty. Certainty is better assured for both proponents and opponents of a development if the law is followed properly.

Barry Fitzpatrick (LACA spokesperson for biodiversity, water and climate)