

Submission to the Senate Inquiry into the Operation of the Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act 1999)* has become known to me as a result of my involvement with a group of people who sought to protect the kangaroos on Defence Department lands at Belconnen in the ACT from the deaths that eventuated for about 500 of these kangaroos (the majority being females or infants) between mid May and early June of 2008. My brief submission here uses this Belconnen kangaroo situation as a case example according to which the *EPBC Act 1999* can be assessed at least in part.

As I began to conduct private research into the Belconnen kangaroo situation it soon became clear that the *EPBC Act 1999* was being relied upon very heavily by the people pushing hardest to have the Belconnen kangaroos killed (see, for example, the report at http://www.environmentcommissioner.act.gov.au/___data/assets/pdf_file/0009/95796/AttachmentG.pdf). In other words, the *EPBC Act 1999* was being used, it seemed to me, as a "lethal weapon" by those pushing hardest to have the Belconnen kangaroos killed. I found this whole situation barbaric and absurd, and hence extremely disappointing. I believe environmental *protection* legislation such as the *EPBC Act 1999* should always be used in a *protective* manner, and never in a lethal or otherwise hostile manner towards any native species or specimen, nor any species or specimen for that matter. It's 2008, and we humans are surely now capable of non-lethal solutions to human-caused environmental problems like this Belconnen situation rather than the lethal "solution" that eventuated in part because the operation of the *EPBC Act 1999* allowed such a lethal outcome to eventuate.

The influence of the *EPBC Act 1999* upon the situation with the Belconnen kangaroos was complicated in practice by the existence of political borders and associated wire fencing that divided the otherwise continuous grasslands precinct where the kangaroos were living into two roughly equal parts each of approximately 100 hectares. The kangaroos were all located – indeed fenced in by high fencing without any escape corridors – on approximately 100 hectares of Commonwealth (Defence Department) grassland that was adjacent to another 100 or so hectares of similar grassland owned by the ACT government. So we had a classic border anomaly type situation such that an otherwise continuous grassland precinct was subject to Commonwealth (Defence) control on one side of the border and ACT Government control on the other side. The ACT Government constantly criticised the Defence Department for not managing the Defence lands in the manner the ACT Government thought apt in light of the *EPBC Act 1999* and other legislation (see, for example, ACT Chief Minister Stanhope's media releases titled *Defence reminded of 'legal obligations' on roo sites* [16 July 2007, at <http://www.chiefminister.act.gov.au/media.php?v=5780>] and *'Political' refusal to cull may be referred to DPP* [23 August 2007, at <http://www.chiefminister.act.gov.au/media.php?v=5888>]), and such bickering, blame-shifting and buck-passing in this Belconnen kangaroo situation leads me to believe that legislation such as the *EPBC Act 1999* will only ever work when Australia operates as a fully seamless natural environment along the lines of the fully seamless national economy that Prime Minister Rudd and others have promised us all. In other words, I believe legislation such as the *EPBC Act 1999* will only be fully effective when Australia either (1) amalgamates Commonwealth, State and Territory governments (or abolishes State and Territory governments as generally understood) to form a single

national government with a single set of laws for the environment and generally, or (2) otherwise achieves a fully seamless regulatory system for the protection of our natural environment in which political border issues and jurisdictional bickering type issues like those that arose at Belconnen here are consigned to history.

Whereas good legislation ought to be robust enough to withstand selective or arbitrary application and mischief generally, the Belconnen kangaroo situation has clearly shown that the *EPBC Act 1999* and other similar legislation certainly can be used and abused arbitrarily, selectively and mischievously. Specifically, the ACT Government plans to use the ACT owned 100 or so hectares of the continuous Belconnen grasslands precinct described above for housing. The ACT government webpage at http://www.actpla.act.gov.au/topics/significant_projects/planning_studies/lawson_planning_study states that "the area of Lawson controlled by the ACT Government has now been included on the land release program for sale during 2009/2010", and the aerial view of the area at http://www.actpla.act.gov.au/_data/assets/pdf_file/0011/10046/Aerial_View.pdf clearly illustrates the continuity of the grasslands across the border dividing Defence and ACT lands. So the ACT government pushed hard to have kangaroos killed on the Defence owned part of this continuous grasslands precinct, in order to save various animals and plants from the damaging impact of kangaroos, as required – they claim – to comply with the *EPBC Act 1999* and other legislative obligations, but at the same time is allowing the ACT owned part of this precinct to be converted into a building site for several years at some stage in the near future following land sales during 2009/2010 – with all the associated construction dust and chemicals that will almost certainly do much more damage to the nearby plants, insects and reptiles than any kangaroos could ever do – in order to build houses on it! So the *EPBC Act 1999* and other legislation applicable to this Belconnen grasslands situation was vigorously enforced on the Defence Department side of an arbitrary fence border, but totally ignored on the ACT owned side, as if the reptiles, insects and plants supposedly protected through the killing of 500 kangaroos on the Defence lands all "conveniently" ensured that they always stayed on the Defence part of this continuous precinct alone, and never ventured on to the ACT Government part earmarked for future housing!

Whereas good legislation should support and demand principled conduct, the *EPBC Act 1999* and other legislation sure seem to have been applied in a highly selective, arbitrary and mischievous manner at Belconnen. Surely the *EPBC Act 1999* and other applicable legislation should apply to the ACT owned part of this continuous grasslands precinct the same as it has been applied to the Defence owned part, noting that the protected plants, insects and reptiles can obviously spread, climb or fly through or over or under the fences that divide the Defence and ACT owned parts!

In summary, I believe Australia needs uniform national environmental *protection* laws that (1) are robustly *protective* of Australia's precious natural environment, (2) call for non-lethal solutions rather than lethal ones to the greatest extent possible, and (3) ensure that situations like the Belconnen kangaroo killing debacle as described here can never be repeated in the future.

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