National Parks Australia Council

Working together for nature conservation areas

Senate Environment and Communications References Committee
Parliament House
Canberra ACT 2600

Inquiry into the effectiveness of threatened species and ecological communities' protection in Australia

The National Parks Australia Council is a cooperative group of national parks associations and environmental groups with a particular concern for the role of protected areas in protecting biodiversity and Australia's environmental assets. We have nearly 80 years experience in environmental issues. Our combined membership of over 10,000 include people working on rehabilitation and conservation projects for both marine and terrestrial areas; leading walks and work parties; studying and photographing the natural environment; representing the community on ministerial and statutory bodies; and generally promoting and protecting national parks and nature reserves and the national Reserve System for future generations.

Members have been deeply involved in the development of the original EPBC Act and in the reviews, inquiries and workshops held on its various iterations since 1999. We appreciate this opportunity to give the Committee an assessment of what the EPBC Act (1999) has actually achieved over the past 13 years. We consider that in terms of this Committee's inquiry, "the effectiveness of threatened species and ecological communities' protection in Australia", the situation is reaching a critical tipping point.

Overview

The EPBC Act (1999) is not just a simple environmental tool; its passage was the result of intense lobbying from all sides of politics. It was legislated within an economic environment which strongly supported the policy that Australia's international environmental protection responsibilities must not hold back agricultural, industrial, mining and land developments. The Act has continued to confuse and concern the public, politicians and environmentalists ever since.

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The effectiveness of the Act is wildly overestimated in the general public domain. Frequent lobbying and media work done by vested interests promotes the idea that the Act is a fearsome and troublesome thing; it will stop any development proposal in its tracks; it will protect any listed species found anywhere near a proposed development; and that any area so identified would then be protected in perpetuity. This picture is so very far from the truth.

The original mix of good intentions, complex legislative systems and underlying political expediency have been further complicated over the past decade by inquiries, amendments and processes which have made this a very difficult mechanism for protection of biodiversity and eco-systems. That said, it is superior to any State or Territory legislation. Despite its limitations, it has had some important successes, which can be measured by the strength of the opposition it continues to attract from our miners, land developers and tourism bodies.

The principle of sustainable development

There is an underlying structural fracture at the heart of the Act's ineffectiveness. The Act establishes the principle of sustainable development, ie it promotes a balance between environmental and economic values, as its core purpose. Yet it operates in a world in which the values and measures of these two systems are treated very differently. Economic performance is clearly defined, regularly measured and publicly reported in great detail in daily newspapers and on the evening news. The list of economic data fed into the political process is endless: GDP, housing starts, unemployment rates, interest rates, share prices, business confidence, consumer confidence, balance of payments, stock market performance, international ratings on our performance. Economic performance dominates political decision-making and community concerns.

At the same time, there are no established systems for measuring environmental performance, no methodology for collecting national data and no reporting worth speaking of. A single bi-annual report, the State of the Environment, is marginal to all political and economic systems and processes. Ad hoc reports from scientists and NGOs attempt to cover this gap but are piecemeal and easily dismissed.

In this hugely unequal system, the economic imperatives of growth overshadow every consideration of the Act and its role in protecting environmental values.

A more effective Act is required

The Hawke review recognised the conflicts which lie at the heart of the current legislation. It recommended a complete re-write of the Act and the establishment of three key initiatives to try to correct this imbalance:

1. An independent body which removes the key mechanisms for assessing and determining environmental risks and appropriate responses from the political sphere.
2. Frequent, detailed collection, analysis and public reporting of environmental data and information which is systematically used in political decision-making.
3. The return of community involvement in decision making and review of actions impacting upon matters of national environmental significance.

Significant features of an improved Act would be:

- An effective balance between economic and environmental values, supported by equally effective data, analysis and reporting.
- Recognition of the complexity and extent of functioning ecosystems and bio-regions beyond individual threatened species and habitats.
- Capacity to proactively manage cumulative effects of changes to ecosystems, including proposed developments, natural changes and climate change, which impact upon the health of an ecosystem.
- Capacity to assist land managers to develop and report on recovery plans for listed species and habitat where bioregions or significant ecosystems cross jurisdictions and public/private land tenure. A good example of this role in action is the National Alps Liaison committee.
- Capacity in the Act to proactively protect the environmental values of high value regions, eco-systems and their connectivity without waiting for a species or habitat to become endangered.
- Capacity in the Act to proactively assess and frequently publish state of the environment reports against specific regions and ecosystems as well as listed species and other matters.
- Capacity to proactively manage for recovery of threatened species and systems through funded, audited recovery programs.
- Independent decision making across all aspects of the Act, with specific political decision-making on broad oversight of programs, policies and processes, triage of actions to protect listed maters of national environmental significance and to significant and large scale approvals.
- Clear delineation of responsibilities between Federal and State governments which promote efficient decision making but leaves the Federal government as the actual decision maker on Federal matters of environmental significance.
- Assessment of specific development proposals would be made within well-defined, highly visible, regional environmental protection plans <u>based on ground truthing and</u>

accurate GPS data. This is a reversal of the current proponent-driven assessment process.
    - A natural step for any development proposal would be to demonstrate that the proposal fits within these master plans, as is currently the case for other planning restrictions such as State and local government master plans.
  - A clear continuing role and value for the community and environment groups to participate in relevant aspects of the Act including assessments, listing of matters and development, ground truthing and auditing of regional plans.
    - Change is also required in the way community groups operate. For example, there is a significant lack of economic expertise in the environment sector and this needs to be urgently addressed.
    - There needs to be better cooperation between different groups and different levels of environmental activism and involvement.
    - Broad community understanding of, and support for environmental values and services need to developed.
    - Governments have to play a role in funding better consultation and interaction between the community and its environmental protection processes.

Specific points against the terms of reference

In this submission we intend to pay attention to those terms of reference with which we have the most experience. As regards ***"(a) management of key threats to listed species and ecological communities***" we strongly support the report of the Australian Network of Environmental Defender's Offices Inc (ANEDO) *An Assessment Of The Adequacy Of Threatened Species & Planning Laws In All Jurisdictions Of Australia,* November 2012.

The Invasive Species Council has also done thorough analysis of the impact of the EPBC Act on invasive species and we support their call for strengthening of the Act to better deal with feral pests and habitat protection.

We support the widespread disenchantment with "(***b) development and implementation of recovery plans"*** as underfunded and under-reported at all levels of government. Other submissions will address this with more direct expertise.

(c) Management of critical habitat across all land tenures.

We would like to pay particular attention to the existing proposal to list under the ACT, National Parks as a matter of national environmental significance. The current situation is a clear example of the inadequacies of the Act in managing complex ecosystems across land tenures.

National parks are not national at all but managed according to a wide range of legislative measures, objectives, priorities and management systems. Essential feral pest control stops at state borders but the pests do not. Natural ecosystems ignore state boundaries yet management strategies to conserve them may differ widely and are rarely coordinated. Despite their key role in conservation, national parks have become the subject of political horse-trading. Respect for their role in conservation of biodiversity is at an all time low:

- The NSW government introduced recreational shooting into NSW national parks in return for two votes in its upper house on privatisation of its electricity generators.
- Other political deals done recently in NSW include commercial horse riding in wilderness areas as a favour to long standing political supporters - in contravention of its own wilderness legislation; proposed legalisation of duck shooting in return for further privatisation measures; and grazing in the River Red Gum national parks for a handful of farmers. This is not an exhaustive list; the NSW government is now examining a return of logging in the River Red Gum parks and restoring logging to northern NSW national parks under pressure from timber lobbyists.
- The Victorian government is continuing to pursue its ill advised grazing “research” in the Victorian alpine national parks in the courts. The Federal Minister was able to intervene in this case because of the demonstrable presence of nationally listed species, not because of the inherent dangers to the alpine bioregion of the reintroduction of grazing. He has no power to intervene in similar circumstances in NSW, where there is, as yet, no direct evidence of impacts on a listed species.
- The Queensland government has announced its intention to introduce legislation to give priority to tourism and other economic development in its national parks. Legislation is being altered to allow 30 year leases for eco-tourism facilities in National Parks, erode the principles governing National Park management, facilitate greater access to high impact forms of recreation (for example, quad bike tours have been approved for Woondum NP, a black diamond mountain bike course will be constructed in Conway NP, and it is likely that horse riding will be allowed in most Qld National Parks next year) and the Newman Government is currently undertaking a review of recently gazetted National Parks with revocations highly likely.
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A cost effective, logical solution would be to make national parks a matter of national environmental significance because of their importance to the overall conservation of biodiversity. The Federal Minister for Sustainability, Environment, Water, Population And Communities, Tony Burke, recognised the threats to national parks and himself initiated moves to make national parks matters under the Act. In an address to the Sydney Institute as far back as 20 July 2011 he stated:

> *"This week I am writing to my state colleagues to seek their views on extending National Environmental Law to better protect those areas with high biodiversity and which State Governments have chosen to designate for land based protection such as National Parks as matters of National Environmental Significance under National Environmental Law. It would only apply where States choose to designate the land as National Park. It would not affect any existing activities. It would only be triggered when there was an attempt to introduce new mining, logging, grazing or significant and inappropriate land clearing. States would still have full control over the boundaries of National Parks. But where National Parks exist and have high biodiversity, National Parks would be considered of National Environmental Significance and protected under National Law."*

Unfortunately it appears the COAG process to devolve federal decision-making powers to States and Territories at the behest of the Business Council of Australia has superseded this initiative.

We urge this Committee to support the proposition that national parks be made matters of national environmental significance as originally proposed.

d) Regulatory and funding arrangements at all levels of government.

In respect to this reference, we wish to provide the Committee with clear evidence that the current move towards strategic assessments a tool for more strategic Federal involvement is failing at the first tests. This approach is based in a fundamental misconception that higher level strategic planning can adequately substitute for specific case-by-case assessment of proposals. Experience t date has shown that State/Federal co-operation is not improved by this strategy and that environmental outcomes are more at long term risk under such an assessment than under a case-by-case assessment.

Case study 1: The Melbourne EPBC Strategic Assessment

In a February 2010 media release, Federal and State environment ministers heralded the Melbourne Strategic Assessment as "…a new era in Commonwealth-State collaboration on planning and environmental management". But over two years later it still hasn't delivered environmental security, and with further extensions to the growth areas announced by the Baillieu government, the wheels are falling off.

The native grasslands that once spread from Melbourne to Portland have been vastly diminished. Scientists believe that since European settlement 90-95% of these grasslands have been destroyed, and that as little as 1% remains as high quality habitat, making it one of the most endangered habitat type in Australia.

Grasslands and associated ecosystems such as Grassy Woodlands are both listed as 'critically endangered' under the Commonwealth Environment Protection and Biodiversity Conservation Act, and are home to 25 fauna species and 32 flora species listed as endangered or threatened. The grasslands around Melbourne contain many of these native plants and animals. In many ways they are like an ecological Noah's Ark.

Species include the critically endangered Golden Sun Moth, the Plains Wanderer, Growling Grass Frog and Striped Legless Lizard, plus numerous important native plants such as the critically endangered Plains Rice-flower and Matted Flax-lily.

Often called wildflower meadows by enthusiasts, native grasslands are a uniquely Victorian part of our natural heritage. But Melbourne's urban sprawl is now threatening what's left. The plan includes the planned clearing of 5,000 ha of grasslands, some of very high conservation significance, under a large centralised offset scheme. In addition there will be clearing and offset of plain grassy woodlands and destruction of habitat for a number of federally listed species such as the growling grass frog.

The planned growth areas of greater Melbourne metropolitan area have increased by over 40,000 hectares over the last few years. The new growth zones now have the capacity to provide enough land for 30-50 years of new housing and urban development (depending on the economy). This growth is all running smack into the last remaining parts of one of the most endangered habitat types in the country, as well as a raft of threatened species listed under national environmental laws.

For a detailed explanation of how a very bureaucratic strategic assessment process has worked see attachment I: *The Melbourne Strategic Assessment – EDO briefing, July 2012*

The Victorian National Parks Association, in consultation with local conservation and environment groups, has put in detailed submissions to the process which commenced in 2009. The initial consolation period was very short and the three key issues identified in the July 2009 submission included:

1. A rushed process sets a poor precedent for Federal assessment.
2. New reserves plan needs clarity.
3. Better protection of high value sites within new growth areas is needed.

The full 60 page submission can be found at.
http://vnpa.org.au/admin/library/attachments/SubmissionsNEW/UGB27july2009/Overview-summary.pdf

or http://vnpa.org.au/page/publications/submissions

There was not any further formal public consultation, under the strategic assessment process, until the release of draft sub-regional species plans in December 2011. While there had been progress in some of the draft plans in protection of key high conservation areas in the growth areas and habitat corridors for species such as the growling grass frog, concerns remained around:

1. Approval timing and sequencing.
2. The impact of parallel decision making processes.
3. Further investigation of some areas is incomplete.
4. A lack of a monitoring and evaluation framework.

The full submission can be found at
http://vnpa.org.au/admin/library/attachments/PDFs/Submissions/Submission%20to%20Growth%20Areas-dec2011.pdf

Since the release of the draft strategies for consultation, the Victorian Government has failed to comply with the Program Report endorsed by the Federal Minister under the Assessment process in a number of respects and seems to have largely ignored the steps agreed with the Commonwealth. Many of the improved conservation outcomes outlined in the Draft regional and sub regional strategies, appear to have been dropped or ignored.

For example, the Victorian government has dropped one sub species strategy for south brown bandicoot, and moved to re-write it, to avoid establishing habitat corridors. It also has released additional growth areas and detailed precinct structure plans for urban develop which were at odds with draft sub regional species strategies and regional conservation plans.

See attached briefing of the issues in attachment 2 *Nature On Melbourne's Doorstep Under Threat – Overview* – July 2012.

Detailed growth area specific issues can be found at:
http://vnpa.org.au/page/nature-conservation/urban-sprawl/destroying-habitats

Fourteen environment groups have recently written to the Federal Environment Minister on the 4 December 2012, outlining a series of non-compliance with what was initially agreed between the jurisdictions. There are four key area of concerns:

1. Lack of an Independent Monitor.
2. Inadequate consultation.
3. Incorrect sequencing of planning and documents.
4. Inadequate protection for matters of national environmental significance.

See attachment 3 for a copy of the letter*: Melbourne Strategic Assessment: Non Compliance with Program Report.*

Conclusions

The Melbourne assessment was the first and most advanced joint strategic assessment carried out under the EPBC Act. It has failed so far to deliver "…a new era in Commonwealth-State collaboration on planning and environmental management". Instead it has created a process which has been secretive, lacking in transparency, good public policy process and scientific rigour. To date it is delivering dubious ecological outcomes.

The difficulties of the process itself included unrealistic timeframes for public consultation, inadequate review of evidence and again, the prioritising of economic development over environmental protection. The operation of offsets was particularly problematic as this process exposed the inadequacies of the offset system in actually replacing 'like for like' when very little of the original habitat type exists.

The process has been a windfall for the property development industry, who not only get their approval process and assessment undertaken by the tax payer (including $3-5 million of government funded environmental surveys), but also get a upfront or umbrella regulatory approval – bankable for decades (up to 40 years).

> **The strategic assessment process is not fulfilling its key role of protecting endangered species – in fact it may be worse than the previous regulatory frameworks.**

The Victorian National Parks Association in conjunction with the EDO and local groups would be pleased to give the committee a detailed briefing on this process

Case study 2: The strategic assessment of the Lower Molonglo Valley Aprasia habitat.

- The ACT government proposed a major housing development which, among other environmental risks, impacted on the habitat of the listed Aprasia (pink work tailed lizard).
- A lengthy process, from which community groups such as the ACT Conservation Council were often excluded, finally determined certain actions to allow development to proceed but which would protect the Aprasia habitat.
- Follow-up by the Conservation Council revealed that approval was being sought by the land Development Agency for housing which required Aprasia habitat to be treated as an Asset Protection Zone under the ACT's Strategic Bushfire Management Plan.
  - This would involve burning the habitat every 2-3 years, removing rocks and/or mechanical slashing.
- The Conservation Council in conjunction with the ACT Environment Defender's Office, formally objected to this part of the development plan. In subsequent negotiations it was successful in delaying planning approval for the disputed housing section until the formal Management Plan agreed to under the strategic assessment is approved.
- Subsequent investigation by the Council discovered that this agreement was not communicated to the areas responsible for the slashing, burning and rock removal by the relevant managers and preparatory work was planned in the immediate future.
- Good will on the part of individual officials resulted in a site inspection and agreement on appropriate activities to reduce fire risk to the area of currently approved housing while protecting the Aprasia habitat from both development and fire mitigation activities.
- Five different management plans impacting on the Aprasia habitat will be developed for the area in next two years. It remains to be seen whether the government agency will then pursue its original intent to place housing in close proximity to the Aprasia habitat.

Conclusions:

1. No one in the ACT or Federal governments checked that the final development proposal actually removed those parts of which would impact on the Aprasia habitat from the developer's submission for formal planning approval.
2. The strategic assessment may have failed to take into account the provisions of the Strategic Bushfire Management Plan despite this being a highly visible government priority.
3. There has been no follow through to ensure the Management Plan, as mandated by the strategic assessment, has in fact been developed in a timely fashion.

4. The failure to communicate between government agencies very nearly resulted in destruction of the site by third party government agencies.
5. The role of the ACT government as planner, proponent, developer, partner in the strategic assessment, environmental protector and manager of fire risk resulted in a compounding conflict of interest and administrative confusion which worked to the developer's advantage.
6. The role of the Conservation Council was critical to the protection of the habitat from destruction.

Case Study 3: Failure of EPBC to protect Bimblebox Nature Refuge.
Federal funding of $300,000 of National Reserve System funds was used to purchase this property in central Queensland. However, it is unlikely that its place in the National Reserve System and the habitat that this nature refuge provides for the endangered Black-throated finch will protect it from the China First coal mine.

Recent on-site survey efforts have yielded over 150 other bird species and nearly 300 plant species, including two that they are yet to be formally named. If the coal mine is allowed to proceed, it will be the first time that a Queensland property covered by a Nature Refuge Agreement is destroyed for mineral extraction.

Conclusion:
The continuation of mining rights in the National Reserve System is sending a clear message to conservation landholders that their stewardship of the land, often over many generations, is always at risk when confronted with development, particularly mining and extraction industries. Their commitment and the sustainability of their work is not held in any regard at all.

Note that 40 Agforce members have Nature Refuges on their properties, covering over one million hectares of land in Queensland

e) Timeliness and risk management within the listings processes
Risk management of the listing process is extremely poor because of the constricted process for listing. The National Parks Australia Council was opposed to the changes to the listings process introduced into the Act in 2007. We feared they would further politicise the listing process and time has shown this to be the case. Despite rejecting community concerns on the new restrictions to the listing process, the current government did not establish a conservation theme was for the assessment period commencing 1 October 2011. The current theme, corridors, restricts application for listing to only those species

and ecosystems which fit within this category. This is very poor risk management and has never made sense in an era categorised as the latest mass extinction period.

Timeliness of the listing process compares very unfavourably with the emphasis on timeliness for the approvals process. Whereas the department reports in detail on time taken to assess approvals within the tight timeframes of the Act, there is not even a report on the length of time it takes to approve a listing of a species. However there is some indication of the long and patient process in the sentence in the 2011-12 annual report: "Several nominations from previous years were also eligible for reconsideration for inclusion on the assessment list." This supports anecdotal reports of delays of several years in the listing process for a particular species.

(f) The historical record of state and territory governments on these matters.
This submission has given examples above of the level of political expediency exercised by state governments in ignoring their environmental responsibilities. However, we have also given examples of the Federal government's failing to enforce outcomes from their own strategic assessment process. There are no heroes in the current environmental protection systems.

What is required is a strong Federal presence and sensible cooperation between jurisdictions. All jurisdictions need to agree on clearly defined responsibilities; compatible national data collection, analysis and reporting; cross-jurisdictional cooperation and planning; and nationally agreed auditing and reporting of compliance as essential components of Australia's environmental protection legislation, systems and processes.

(g) Any other related matter.
NPAC members are deeply concerned at the devolution of Federal approval powers to the States and Territories. This is the greatest threat to environmental protection since the Federal government first became involved in this area. The current system is not perfect but at least it provides alternate appeal processes to State decisions in many instances.

Apart from the many strong arguments against Federal action to relinquish its responsibilities, there is a multiplier effect in any proposal to pass over Federal powers and responsibilities: it undermines the role and capacity of State and Territory in environmental agencies. State environmental agencies regularly refer to Federal processes when negotiating with their own central agencies to protect listed matters. If the Federal government vacates this space, there will be no holding back the erosion of environmental protections.

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Summary

The principle of balance and fairness is a fundamental feature of Australian society. But we have gone too far in trying to promote sustainable development at the expense of the environment. Soft words and media releases will not protect our endangered species and ecosystems. We need practical, efficient and independent systems and process enshrined in laws which are effectively monitored, audited and enforced.

Thank you for the opportunity to make this submission to your enquiry. We are happy to provide further information on subjects should you wish. We look forward to your findings.

Yours sincerely

Christine Goonrey
President
18 December 2012

Attachments:

1. *The Melbourne Strategic Assessment – EDO briefing, July 2012*
2. *Nature on Melbourne's Doorstep Under Threat – Overview*
3. *Melbourne Strategic Assessment: Non Compliance with Program Report*

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