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To whom it may concern:

Our submission will raise points in the following areas:

i) The role of Commonwealth, state government and industry
ii) The need for greater enforcement powers for delegated authority
iii) The Precautionary Principle
iv) Disparity and unfairness of the present laws
v) Legislative revisionism
vi) Preventative social attitudes
vii) Natural Justice

1. Role of the Commonwealth

The commonwealth of Australia has an important leadership role in the management of the Australian environment and ecology; or natural resources. Since the intervention of the Hawke government in the Franklin River the Commonwealth has displayed an important moral guardianship of environmental standard. The ability of the states to look after their own environmental resources is limited by self-interest and inter-state competition. This is why only the Commonwealth has the ability, and the moral authority to look beyond interstate rivalries and make decisions about environmental protection, and stewardship of natural resources that are in the national interest. Recent advances such as the Carbon Tax, the Marine Reserves System and the mining super profits tax are excellent examples of the government getting it right in terms of positive environmental goals. The Murray Darling Basin Plan is a great example of how the commonwealth can move beyond individual state concerns; the commonwealth can move beyond the 'tyranny of small decisions' made by local government and the states and have a holistic vision for the improvement of the nation.

The same rationale applies to threatened species laws. The states have had their chance at managing the environment, and they have got it wrong, terribly wrong. Only the Commonwealth government can see beyond the parochial interests of a particular state and make decisions that are, hopefully, for the benefit of the environment. However, the tragic demise of Bimblebox nature refuge (http://bimblebox.org/) is an example of the government making a terribly bad decision, and demonstrates that the Commonwealth is in fact little better than the states and is interested primarily in economic wealth as opposed to natural wealth.

Industry claims that it is doing something to save the environment, for example BHP is a major sponsor of Arid Recovery (http://www.aridrecovery.org.au/supporters). A noble cause indeed, but

actually this areas is a fenced off reserve within the mainland, it is an ecological island. It is effectually a zoo. The landscape is so degraded that native species cannot survive without human intervention. The role of industry is tokenistic and is mainly oriented around public relations. The same company that is working so hard to save threatened species in one area describes the regulations to protect them as "torturous" (http://www.abc.net.au/news/2012-04-12/business-leaders-welcome-coag-reform-push/3946722). This is archetypal industry hypocrisy and underscores the important role of the Commonwealth in legislating the activities of mining companies and other capitalist enterprises.

2. More power is needed to enforce the laws

The problem with threatened species laws is that they have the right intent, but there is insufficient institutional power to enforce the regulations. As discussed in subsequent sections, threatened species laws are an obstacle to those in the community who are trying to do the right things, and are brushed aside by those who have interest in environmental destruction. Threatened species laws are ignored because people know that they are mostly unenforceable; or to be more to the point there is a lack of power to enforce them.

In our area of the Tweed Shire, there is copious anecdotal evidence of farmers, property developers and even humble bushwalkers ignoring threatened species regulations. By no means do we insinuate a generalisation across all these categories, but there are a few 'rotten apples' that perpetuate a stereotype.

Some examples are: the farmer who removes threatened plants or damages endangered ecological communities because they are perceived as 'rubbish'. Rainforest is known colloquially as 'Scrub', and it is seen as an impediment to agriculture. Regrowing rainforest is regularly removed from slopes and gullies in order to maintain the areas suitability for agriculture. While this is ok in 90% of cases there are areas where known threatened species occur and are deliberately removed.

Flying Foxes. Everybody hates flying foxes. It is a sad fact that this is the case. Farmers shoot them, residents scare them away and such activities are explicitly condoned by the government; consider the relocation of flying-foxes from the Sydney Botanic Gardens which has gained state and federal approval. The point that escapes attention in the debate is *THEY HAVE NOWHERE ELSE TO GO!* We have to learn to share the environment with them.

LEDA: a property developer on the Tweed Coast has waged a twenty year campaign of ecological degradation on their properties. Most recently as 2011 they entered National Park estate and undertook clearing and excavation of 'a drain' called Blacks Creek http://www.mydailynews.com.au/news/leda-admits-to-clearing-mistake/1219187/. There has as yet been no punishment for this flagrant breach of environmental standards. This case epitomises our point that there is not enough power for enforcement agencies. Or, a more damning inference drawn from the same evidence is that politicians are willing to bend the rules for the wealthy.

Koalas are becoming extinct: Recently the Queensland state government announced its intention to fund $3.2 million to a vaccine for Chlamydia in Koalas. This misses the point that populations only become fatally sick once they have become damaged by other threatening processes, in the case of SE Qld, this is primarily from development/habitat fragmentation and associated pressures of urban

living; cars, dogs, and abuse by human beings (http://www.brisbanetimes.com.au/queensland/koala-shot-and-left-for-dead-20111014-1lo5c.html). National Geographic Magazine has recently published a great article on the Koalas slide towards extinction. The plight of Koalas demonstrates that Australian culture and society fails to appreciate the inherent natural qualities of the continent. We have a development model based on a frontier mentality (Dovers) which is leading to the demise of 'cherished' natural icons.

The simple answer is that politicians need the will to prevent further environmental amelioration and develop appropriate enforcement techniques within existing institutional structures that neutralises the complacent attitude of the wealthy and the ignorant. Without the power to enforce the laws, they are a mockery of environmental protection. They do provide a point that the community rallies around from time to time and demands action from authorities; action that rarely materialises. Failure to act on promises or existing laws breeds cynicism and contempt for government.

The most obvious solution is to increase funding for National Parks and similar authorities. These institutions are already perceived as 'the police of the bush' and their authority could be easily enhanced, if there was sufficient political will. Much to the dismay of the environmental movement, the opposite seems to be happening and government is reducing environmental oversight (witness the recent attempt by the PM department to reduce the EPBC act and hand approval processes back to the states). Current state policies seemed to be aimed towards the rapid removal of environmental law

Proper consideration needs to be given to the environment. It is impossible to consider humans, human activity, society, culture and its associated infrastructure as somehow separate from the natural world. Flying Foxes cannot be relocated if they have nowhere else to go (only the ignorant wave their hands at the hills, scoff, and say, 'well, there's plenty of space for them "out there"'). Koalas cannot be saved from extinction if there is an economic imperative to colonise their habitat in the name of development. More effort needs to be given to integrating Australian society with the environment, the current (but waning) resources boom is an anathema to environmental consciousness; predictions of a Liquid Natural Gas boom by the end of the decade epitomise the gulf between economy and ecology. Without the power to enforce them, threatened species laws are not living up to the expectation of the community.

3. Adherence to the precautionary principle

Ecologically Sustainable Development (ESD), or sustainability represents an attempt to create a new paradigm that merged both the progressive economic theory with the complexity ecological knowledge. ESD is associated with a whole range of criteria that are excellent goals, but have rarely been achieved. The term "sustainability" was originally referred to a linked series of statements that had been defined by the UN World Commission on Environment and Development in a 1987 report Our Common Future. The core concepts linked to ESD are; i) sustainable use of resources, ii) principle of integration, iii) the precautionary principle, iv) intra- and intergenerational equity, v) the conservation of biodiversity and ecological integrity and, vi) the externalisation of environmental costs.

Understanding the concept of precautionary principle in particular has been a major challenge for governments, while it has been made a part of legislation (eg. The NSW Protection of the Environment Administration Act, 1991) it is rarely applied. The approval process for many developments will rarely consider the principles of ESD; this is largely because of misunderstanding about the intent of such provisions. The intent is to guide decision makers to err on the side of caution and request greater information about the impact of developments on the environment.

The principles of ESD have been made part of some legislation such as the Environmental Protection and Biodiversity Conservation Act (1999). However, actually enforcing these guidelines can be a major problem for government, developers and the community (Whelan 2004). The NSW state has recently revised much legislation designed to protect the environment such as Threatened Species Conservation Amendment 2006 Biodiversity Banking and the revision of part 3A Major Projects (2005) of the EP&A Act (1979), the National Parks and Wildlife Amendment Bill 2010 (Visitors and Tourists), and in particular The Major Events Bill (2009), which enabled a rally race through national parks and private residences. This revision activity is construed by some a deliberate agenda on the part of government to diminish the quality of environmental protection and stifle public opposition by legitimising the destruction. The process of environmental awareness continues to be a clash of ideologies, and instead of building a unified 'shared belief' in matters like climate change as proposed by Marshall (2009), our perspectives are divergent and dependent on pre-existing worldviews.

Coal Seam Gas mining represents yet another failing on the part of government, federal, state and local, to heed the precautionary principle. There is copious evidence about the perils of CSG mining, both in terms of environmental effects such as contaminated water, and health effects such as exposure to increased methane. Then of course there are the psychological effects of loss of amenity and lifestyle to consider. CSG mining represents a collective government failure to appreciate the value of environmental protection instead of economic development. The precautionary principle is resolutely ignored in favour of increases in economic measures such as GDP and export revenue.

4. **It is harder for the people who are trying to so the right thing, than for those who are flouting the law**.

As a bush regenerator working in the Tweed Valley, northern NSW, an area which has a startling array of biodiversity comparable to Kakadu or the Daintree, one legislative requirement faced is the necessity of a S 132C license under the NSW threatened species conservation Act. This permit is required to work around threatened species and provides regulations restricting the type of activities that can be undertaken. However, in the case of farmers and developers no license is ever obtained, and when a breach of the Act occurs it is punished with a mere 'slap on the wrist'. A recent example of this occurred when a contractor for a developer was given a minimal fine after undertaking extensive clearing of threatened species (http://www.environment.nsw.gov.au/media/Decmedia09103003.htm). While touted as a success by the state authority, the criminal actions described in the case epitomise the contempt in which environmental laws are seen by those who wish to make a quick profit from some form of development. Ultimately in this case the fine was paid by the contractor's employer and represents a mere pittance of the eventual profit to be made at the site. This highlights, again, point 1, above, that the power to enforce threatened species legislation is inadequate and needs to be strengthened.

Another example, again anecdotally, is that of the wildlife carers who must jump through numerous legislative hoops to do their job of releasing healed animals back into the wild. When householders and rural property owners catch a reptilian or Australian mammal, the reaction is to kill it, or hopefully, relocate it to a National Park. However, it is prohibited for wildlife carers to do what the public does.

For those members of the public who volunteer their time or are otherwise employed in ecological restoration activities, meeting legislative requirements are seen as part of the job. They are a necessary nuisance. However, for the public and flagrant wrongdoers the legislative requirements are ignored or unknown. This is compounded by the fact that they are very rarely enforced and if enforced, then only slightly so.

5. Revisionism

The concept that environmental legislation is somehow an impediment to business because of red tape is a furphy. Recent moves by the Federal government to assuage business interests by removing red-tape are a worrying development that seems to be part of a recent trend of favouring the economy over ecology. http://www.pm.gov.au/press-office/coag-signs-proposals-cut-red-tape.

The Caldera Environment Centre (CEC) has welcomed many of the advances that the current government has made in the environmental arena. For example, the CEC applauds both the Carbon Tax and the National Marine Reserves System as prudent, progressive, and politically courageous first-steps toward addressing very serious environmental issues of a global scale. Other noteworthy accomplishments from the CEC's perspective include significant investment in renewable energy and the halting of the Traveston Dam project, which may very well have preserved the Mary River Turtle and the Australian Lungfish from extinction. On many counts, your Government has an excellent record on matters of environmental conservation.

Against this background, the CEC is utterly appalled at the COAG proposal to relinquish to state and territory governments the powers relating to assessment and approval of environmentally sensitive that are currently provided for under the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act). If agreed to, this will, to a much greater extent, place the fate of the natural environment in the hands of a (NSW) state government that is currently:

- Allowing hunting (with firearms!) in National Parks and Nature Reserves;
- Recommencing duck hunting after a 15 year moratorium on this inhumane
- activity;
- Undertaking 'scientific' logging (ecological thinning) of River Red
- Gums along the Murray River and selling the timber for firewood;
- Cavalierly ignoring both independent scientific opinion and the will of
- its constituents by making virtually all of the land within its jurisdiction – arable and environmentally sensitive lands alike – available to coal and unconventional gas miners, at immense environmental and social cost;
- Proposing 'scientific grazing' in National Parks such as Kosciusko;
- Proposing to abolish Environmental Zones from the Local Environmental
- Plans of six councils (and six only) on the NSW Far North Coast; and

- Gutting public services, including funding for National Parks and
- National Parks officers.

Further, the CEC strongly contends that instead of diminishing the laws that operate in protection of the environment, they should be strengthened; the increasing numbers of animals and plants being added to the endangered species list is clear evidence of the laws' inadequacy. The koala is one pertinent example; the koala has recently been added to the Endangered Species list, primarily because of the failure of NSW and Queensland state governments to protect them under their own legislative powers and processes.

In our local area of the Tweed Shire in far northern NSW the coastal Koala population is expected to become extinct over the next 30 years because of habitat fragmentation, disease and increased urban sprawl; that is, because of the NSW State Government's disregard for the natural environment.

In view of the NSW Government's dismal record on environmental issues, the CEC contends that to hand states and territories further powers on environmental matters is tantamount to 'environmental vandalism', a term which Prime Minister Gillard used to describe state environmental policies in 1999. There is nothing to suggest that these policies have improved in the years intervening that comment.

Finally, the Chairman of BHP's recent description of current environmental approval processes as 'tortuous' is telling: to a corporation whose business it is to tear minerals from the earth and move them great distances at globally competitive prices, any regulation that adds to costs is tortuous. In this instance, the regulation – specifically, the EPBC Act – is tortuous because it actually goes some way to ensuring that industry accounts for environmental and ecological concerns. The EPBC Act is far from perfect. The protections it affords our natural environment should be strengthened, not diminished. At the same time, particularly in view of the current state of NSW politics, it serves one invaluable function from the perspective of the CEC, and of the community: it provides hope, through the knowledge that the Commonwealth retains the capacity to intervene in the state governments' more egregious assaults on the natural environment.

6. Preventative measures, Holistic worldview

Once again the Koala provides an example of species sliding towards extinction because of a collective failure to incorporate an appreciation of the environment and natural landscape values into contemporary Australian culture and society. If there was a genuine appreciation for the ecology of the Australian continent, then species like the Koala would not be becoming gradually extinct. Moreover if there was enough resources and authority invested within the proper departments at a state and federal level then adequate protection of habitat and corridors would be a priority rather than a privilege that has to be demanded by the community.

Throwing money at bush regeneration is akin to providing extra-large beds in hospitals for obese patients; it is an admission of social failure. Threatened species recovery plans and the work to implement them similarly are a failure of environmental leadership, in effect it is ecological triage

(treeage?). 99% of the Big Scrub Rainforests of northern NSW have been cleared, yet, still there is clearing of remnants and significant regrowth for the purposes of agriculture and development. Planning for Climate Change has fallen off the political radar. This is an important topic that will dominate life in the next few decades.

Without a holistic view of the environment and humanity's place within it (the biosphere), inevitably our society will be doomed to repeat the mistakes of earlier civilisations and incrementally diminish the environment from something wonderful into something quite harsh and ordinary.

7. Earth rights and Natural justice

The main way to restore a proper sense of social ecological responsibility is to promote the concept of Rights of Nature. This concept is an extension of the Enlightenment ideal of the Social Contract which has seen the concept of universal suffrage extend beyond the realm of property owning males, to include all men, women, coloured people and indigenous people. Now there is a growing consensus that the planet itself and its component organisms have rights too.

The hypothesis of Gaia proposed by James Lovelock states that interconnected relationships between the Earths biosphere, lithosphere, atmosphere and hydrosphere compare to a living organism. The fact that the Earth is capable of sustaining life and is a self-regulating system that is able to maintain an environment in homeostatic equilibrium provides the basis for this assertion. One example of interconnectedness are the presence of Dimethyl sulphides emitted from Coral reefs which provide the basis for cloud nuclei in tropical areas, it is claimed that the presence of DMS increases the average rainfall (http://discover.scu.edu.au/2010/issue3/index.php/5/).

The extension of rights to nature through laws like threatened species protection legislation is an ultimate signpost of a civilised society. It demonstrates that a culture is able to value other objects greater than material possessions. Decreasing environmental protection is a backwards step for society, and represents an emphasis on economy over ecology.

Yours Sincerely

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