

## Environment Protection and Biodiversity Conservation Act: 10-year review

### BACKGROUND

The 10-year review of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) is drawing to a close. Final consultations are occurring with stakeholder groups before a report is handed to the Government, by 31 October 2009.

The EPBC Act provides that the Act must undergo an independent review every 10 years to assess its operation and whether it is meeting its objectives. Terms of reference for the 2009 review required the panel to report on the appropriateness of current matters of national environmental significance and the effectiveness of biodiversity and wildlife conservation arrangements under the Act.

### CONSULTATION PROCESS

The first stage of the review was a discussion paper released on 31 October 2008 and a call for public submissions. 220 submissions were received by the panel, with 38% from environmental NGOs, 16% from other NGOs such as industry bodies, 19% from individuals and 6% from corporations.

The Australian Network of Environmental Defender's Offices (ANEDO) wrote an extensive submission calling for:

- proper implementation of ESD principles;
- better implementation of Australia's international environmental obligations under the Convention on Biodiversity, the World Heritage Convention, the Convention on International Trade of Endangered Species, and the UN Convention on Climate Change;
- adoption of greenhouse emissions and land clearing as new matters of national environmental significance;
- removal of the regional forestry agreement exemption;
- longer public consultation periods for approvals and better public access to information;
- strengthening of third party rights of appeal and enforcement;
- clarification and strengthening of safeguards around strategic impact assessment;
- broadening of threatened species protection into ecosystem protection;

- better Indigenous engagement and involvement;
- greater structure around decision-making including requiring decision-makers to make decisions within the objects of the Act and ESD principles;
- development of better principles for biodiversity offsets, and rigorous implementation of those principles; and
- better monitoring and enforcement of the Act and increased resourcing to administer all aspects of the Act including threatened species listing and biodiversity management.

Many of these recommendations were also raised by many other submitters.

After submissions were received the panel also held in person consultation sessions with stakeholder groups.

## REVIEW PANEL INTERIM REPORT

The review panel released an interim report of its findings in June 2009 which discusses in depth (326 pages) the views of submitters. The interim report was not intended to give interim recommendations, however comments that indicate which way the panel is leaning on certain issues can be found buried throughout the report.

To date the areas where the panel appears to be considering recommendations are:

- new matters of national environmental significance for land clearing and water extraction (7.21 & 9.28). It is not clear what form these could take as there are many options;
- no recommendation for a climate change/greenhouse trigger if there is to be a CPRS (8.54);
- no removal of the regional forestry agreement exemption, but some changes to the way the exemption operates such as better monitoring of whether RFAs are being properly implemented by the States and a removal of the EPBC exemption if they are not (6.115);
- establishment of an independent assessment body to conduct EPBC assessments with final decision-making power remaining with the Minister (19.73);
- changes to the threatened species listing process such as Commonwealth accreditation of State lists (12.62); and
- better public access to courts for review of decisions (20.83, 20.86, 20.128, 20.133).

## NEXT STEPS

The panel is due to report its findings and recommendations to the Environment Minister by 31 October 2009. The report is unlikely to be released at that time but will be reviewed by the Government and responded to in early 2010.

Despite the significant number of calls for reform of the Act throughout this process there is no guarantee that any recommendations made by the review panel will actually be implemented by Government. It is therefore important that concerns about the effectiveness of the EPBC Act continue to be presented to the Federal Government to encourage reform.

If you would like further information or advice about the EPBC Act review or the operation of the Act please contact Nicola Rivers, EDO Policy and Law Reform Director on 03 8341 3100.

## ABOUT THE ENVIRONMENT DEFENDERS OFFICE (VICTORIA) LTD

The Environment Defenders Office (Victoria) Ltd ('EDO') is a community legal centre specialising in public interest planning and environment law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice.

In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working collectively to protect Australia's environment through public interest environmental law.

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