

Submission by Heather Kenway to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999

Many assessments have documented continuing environmental decline since the EPBC Act was put into place. Climate change is now accelerating the impacts on the environment of a significantly larger and different economy, greater population, a still largely fossil fuel based energy system, and dominance of large corporations in most aspects of economic life, both rural and urban. The 2019-20 bushfires have wreaked dreadful environmental damage on forests and their wildlife and suffering on rural communities, with an economic cost on the whole country. Yet there are now indications that both Commonwealth and some State governments and industries are using the shut-down resulting from the covid-19 health crisis to weaken environmental protections still further, with limited opportunity for fuller parliamentary and public scrutiny of these changes.

Clearly the EPBC Act has not been able to halt or sufficiently modify environmental decline. Equally clearly split responsibilities between the Commonwealth and the States and Territories complicate resolution of disputes. While the Discussion Paper says this review of the EPBC Act is not a review of environmental policy, this limitation is plainly absurd. It is long past time for a fundamental overhaul of environmental policy and the assumptions on which it is based. Trying to constrain the review rather than tackling policy failure is surely a recipe for future failure.

Australia has land and marine ecosystems and species that are wonders of the world - unique plants and animals, many found nowhere else on earth; and many of which are in a sorry state compared with what they once were, a situation we now need to address urgently.

The state of the environment - in Australia and globally - ultimately puts constraints on what we can do economically and socially, and some of these constraints, or at least the results of ignoring them, are now much clearer than they were when the EPBC Act was enacted. Scientists are now warning us that we are in danger of breaching planetary boundaries that in combination maintain planetary stability, of which two are climate change and biodiversity. And we are already seeing and acknowledging the impacts of climate change and the importance of taking urgent action to address its causes. The importance of biodiversity conservation and its significance in climate and water cycles is less well understood by political leaders and the general public, but no less urgently needing new national policy directions.

This is another reason why it is essential to review environment policy and not just look at the mechanisms that now outdated policies have bequeathed to us in the Act. We need to reassess the goals and means of achieving them.

We need to reevaluate the relative weights given to environmental, economic and social values: the old idea that they could be “balanced” now seems at best optimistic, at worst cynical. Overall, repeated environmental crises, including extinction rates, suggest that we now need to put far more emphasis on measures to protect and rehabilitate damaged ecosystems, and to make them more resilient to inevitable environmental change; to take a much harder look at policies and subsidies that encourage and entrench environment-damaging industries when less damaging alternatives are available or could be devel-

oped; to question trade-offs of region against region, to apply good data and scientific rigour to investigations.

At this time, when plans are being developed for the likely long period of economic and social revival after the combined impacts of bushfires, cyclones and floods, and the drastic economic shut-down in response to covid-19, there is a worrying lack of attention to measures to ensure that the environment is not put at greater risk, that rehabilitation measures are developed and funded.

The Commonwealth has largely abrogated to the States its responsibilities in regard to the forestry industry, and effectively exempted compliance by States entering into Regional Forest Agreements with the Commonwealth from EPBC Act prescriptions, on the incorrect assumption that the States would apply protections at least equal to those the EPBC Act aspired to. In NSW the problem has been compounded: contrary to the situation in other States legal rights to challenge failure to follow environmental prescriptions have been abolished. The outcome has been disastrous. The RFA arrangements need to be ended.

Under the cover of claims of ecologically sustainable development, and of “balancing” economic, social and environmental interests, Ministers and their agencies have overseen industrialised logging that has led to conversion of multi-species, multi-aged forests to forests dominated by single species favoured by industry, serious loss of biodiversity, unhealthy weed infestations, and as the recent bushfires have made clear, to more bushfire prone forest ecosystems. It has led to loss of carbon stores and diminution of the natural capacity of forests to draw carbon dioxide from the atmosphere. Large-scale forest degradation has adversely affected the water cycles and clean water availability. There are serious impacts on other industries and the communities depending on them. Additionally globalisation has increased bio-security threats.

Nonetheless, with support from the Commonwealth, and despite the toll of the bushfires and the added dislocation and impoverishment of rural communities as a result of the covid-19 economic shut down, the NSW Government seems intent on native forest logging business as usual, based on pre-fire assessments, so far barely modified. And logging contrary to expert scientific advice that unburnt refugia forest areas should have priority for protection, and burnt forests should be left to recover, with the barest minimal clearing for safety and access.

The forestry industry, at modest cost and with large environmental benefits, could have a healthy and profitable plantation-based future.

Why are governments still determined to keep on logging native forests, when economically as well as environmentally it is a nonsense, and socially there are sensible solutions for accommodating change? What are the policy levers that could facilitate and accelerate change? The EPBC Act cannot achieve it.

What seems all too obviously needed for the forestry industry surely applies also to many other industries if environment protection and biodiversity conservation are to be far better supported. Single crop agriculture over vast areas and the sorry recent history of the Murray-Darling raise questions about whether environmental priorities should be far better reflected in policy decisions on what economic activities are acceptable, and about a policy response to the political influence of powerful industry groups. These are not easy

judgments to make, and politically fraught, but there is a good deal of sound science to help such decisions.

Surely we should now be asking some more fundamental questions, and establishing some new boundaries to secure environmental protection and biodiversity conservation. Not just fiddling with case by case determinations.

Again to use the example of the forestry industry, are there other inputs that could be used for the products that we need/want to produce? Clearly there are, despite industry claims to the contrary, and many are available using plantation wood or other base products entirely.

Why would we tolerate logging and burning native forest for electricity and other bio-fuels for example, when renewable, economically sound processes are available for electricity production, and it would make more environmental (and arguably economic) sense to use other bio-materials for advanced bio-products like bitumen?

Why is research funding provided for industries without serious questions being asked about what commercialisation will mean for natural biodiversity? Of course we need research, and help in getting new industries off the ground, but the hoops on environment protection seem to be low or non-existent at critical decision points.

Why is it considered virtuous to be technology neutral on inputs to energy production, focused primarily on cost, but not with a strong, broader view of environmental responsibilities? There are obvious limits to what markets alone can achieve.

There are also a range of practical institutional and funding aspects to the question. There are pros and cons to having mega departments determine environment/development conflicts internally and without independent scrutiny: especially when the decisions move consistently in favour of industry and development against environmental protections. Repeated cost-cutting and reductions in staff in environment protection positions (especially more experienced staff) are often a signal that the “balance” has shifted further away from what is needed. These are not matters that can be solved by maintaining the existing legislative framework and its underlying rationales.

As Australia emerges from its current upheaval there is an urgent need to give environmental values a weighting that better reflects the risks that ecological and climate scientists tell us we should be addressing as a matter of urgency. The EPBC Act is not an appropriate vehicle for that task. That task needs a fundamental policy overhaul.

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