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TITLE: Lack of political will leads to problems for Earth

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PUBLICATION: The Canberra Times

PUBLICATION DATE: 11/12/06

At the entrance to one of the CSIRO buildings at the bottom of Black Mountain is a quote that reads, "Cherish the Earth for man will live by it forever". As a Bill passed in Parliament last night shows, this simple message was one that the Federal Government preferred to ignore.

Back in 1999, the Government overhauled the original Commonwealth environment laws that were introduced by the Whitlam Labor government. The old laws needed updating and the Government obliged, creating the loftily titled Environment Protection and Biodiversity Conservation Act.

While an improvement on the original laws, the EPBC Act has proven to be a failure, largely because of a lack of political will.

The Act is supposed to perform two crucial roles: restrict development in order to protect matters of national environmental significance; and inform policy-making by providing comprehensive lists of threatened species and other important aspects of the environment. Neither of these objects has been fulfilled.

The environment protection functions have largely been neglected, while the lists have been overlooked and manipulated for political purposes. The tale is told by the statistics on the administration of the Act.

Since the Act began in July 2000, only four developments have been refused approval by the minister. Enforceable conditions have been placed on a miserly 150 developments and, to make matters worse, a significant proportion of these conditions have been replicas of conditions imposed under state processes or have been virtually unenforceable due to their ambiguity. Moreover, when the Commonwealth Auditor-General reviewed the operation of the Act, he found that few of these conditions were being monitored by the department.

Possibly of greater concern has been the rate of non-compliance and the Government's unwillingness to prosecute environmental offenders. This has been most obvious in relation to the sectors that have the greatest adverse impact on the environment: agriculture, fisheries and forestry.

Since the Act commenced, about 2.5 million hectares of native vegetation have been cleared in Queensland alone, mostly for agriculture. But only 11 agricultural developments from Queensland were referred to the minister between 2000 and 2005. Ten of these involved minor clearing proposals. Only two of the clearing proposals were thoroughly assessed and none were stopped.

In total, less than 50 agricultural developments from all over Australia were referred to the minister during this period. Similarly, less than five referrals were made in relation to forestry and none were made from the commercial fishing sector.

These figures strongly suggest there has been widespread non-compliance with the Act. Yet this and other similar evidence has been ignored by the Government. In six years, only two enforcement actions have been taken one was successful, the other was dismissed at the committal hearing.

The listing processes have been no less of a disappointment. The National Land and Water Resources Audit identified more than 2800 threatened ecological communities, but only 36 have been listed. Likewise, only one commercial fish species has been listed as threatened, notwithstanding the fact that many meet the listing criteria and 17 Commonwealth fisheries have been classified as overfished. Against this backdrop, the Government introduced a 410-page amendment Bill into Parliament in October and claimed that the changes would rectify problems in the Act and streamline assessment and approval processes. The truth is less promising. The Bill creates new loopholes for developers, reduces accountability and transparency and further politicises the listing processes.

There are currently at least 10 major exemptions in the legislation that allow developers to avoid the normal approval processes. The amendments add three more. Two of these could be used to enable radioactive waste dumps and uranium mining to avoid the normal processes and evade proper public scrutiny.

Of great concern are the new listing processes. Previously, members of the public could nominate species, ecological communities and heritage sites and the Government was required to assess the nominations and decide whether to list them. Now, the processes are completely under the control of the minister.

There are also alarming new powers that allow foreigners suspected of breaching the Act to be detained for up to seven days without charge and to be stripped searched without a warrant.

Not everything in the Bill is negative. But overall, it constitutes a significant retrograde step for environmental protection. Unfortunately, the Commonwealth's retreat from its environmental responsibilities is set to continue. The communique from the last meeting of the Council of Australian Governments flagged the Federal Government's intention of delegating its approval functions under the EPBC Act to the states. This could result in the Commonwealth having little or no direct role in environmental regulation. In layman's terms, this means that environmental victories that hinge on Federal Government involvement (like the prevention of the damming of the Franklin River in Tasmanian) could be things of the past.

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