



Submission to Senate Standing Committee on Environment and Communications Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015

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The Conservation Council ACT region is the peak non-government environment organisation for the Canberra Region, and has been the community's voice for the environment in the Canberra region since 1979.

We represent the interests of community conservation organisations in the region as well as the broader environmental interests of all the citizens of the ACT.

Our mission is to achieve an ecologically sustainable and zero net carbon society through advocacy, education, research and engagement with community, the private sector and government.

The Conservation Council is active in a number of campaign areas. Our current focus includes:

- **Biodiversity Conservation** – protecting our unique ecological communities and the Bush Capital
- **Climate Change** – a regional, national and global challenge
- **Planning** – the right things in the right places
- **Transport** – connecting people and places
- **Waste** – being efficient through closed-loop systems
- **Water** – smart use of a scarce resource
- **Governance** – for a Smarter, Sustainable Canberra

The Conservation Council ACT Region appreciates the opportunity to make a submission on this matter.

The bill would repeal section 487 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC). Section 487 extends standing to seek judicial review of decisions to certain individuals, organisations and associations.

The Conservation Council believes s487 of the EPBC Act allows for increased rigour in the approvals process for projects which impact on Matters of National Environmental Significance.

By definition, the *Environment Protection and Biodiversity Conservation Act 1999* is meant to protect our nationally and globally important natural assets.

Matters of National Environmental Significance include World Heritage Areas, the Great Barrier Reef and threatened species and ecological communities. We believe that s487 is one of better parts of the EPBC in providing standing to seek judicial review of decisions to certain individuals, organisations and associations and these entities should continue to have the right to seek remedy under s487 if there is a legitimate concern that a decision on a development would impact on these assets.

EPBC s487 does not allow 'open standing' whereby anyone can bring an action, but it does allow an environmental group that has engaged in relevant environmental research or activities in the previous two years, and has environmental research or protection included in its objects of association, to bring an action.

The Explanatory Memorandum to the EPBC in 1998 said of s487:

This clause extends (and does not limit) the meaning of the term 'person aggrieved' in the Administrative Decisions (Judicial Review) Act 1977. A person or organisation will have standing under these provisions only if the person or organisation has engaged in a series of activities (including research) for the protection or conservation of the environment. There must be a genuine and consistent pattern of such activities for there to be 'a series' of activities.¹

Standing for environmental organisations under s487 seeks to promote rigorous and effective environmental review for approvals that potentially affect matters of national environmental significance. Removing s487 and abolishing this extended standing will preclude environmental groups from acting on behalf of affected communities and from performing their important function as a watchdog.

Any attempt to weaken the current standing provisions in the Act would be a backward step for Australian environmental law at a time when we should be strengthening our laws and institutions.

¹ *Environment Protection and Biodiversity Conservation Act 1999* Explanatory Memorandum (Circulated by Authority of the Minister for the Environment and Heritage, Senator the Hon Robert Hill), <https://www.comlaw.gov.au/Details/C2004B00223/f59d5a38-084a-4013-9ca6-377326f85b55> (1998) p113

As stated by the NSW Independent Commission Against Corruption in its review of the NSW development approval processes:

Merit appeals provide a safeguard against biased decision-making by consent authorities and enhance the accountability of these authorities. The extension of third party merit appeals acts as a disincentive for corrupt decision-making by consent authorities.²

The Conservation Council's view is that environmental protection legislation should be both rigorously applied and enforceable. The Commonwealth government, in its administration of the EPBC Act, stands one step removed from many of the economic and other drivers of development impacting on specific ecosystems of significance. This means the Commonwealth government is often more able to make decisions needed to protect ecological areas or systems of significance, and to insist on offsets where it proves impossible to avoid an impact. State and Territory governments are more likely to gain from particular projects impacting on high conservation value areas. Political and economic drivers can exert a strong pressure on State and Territory governments, leading to them being more likely to compromise at the expense of the environment.

One issue specific to the ACT is the different roles of the ACT Government in relation to environmental regulation and decision making. The ACT Government is the Territory's largest landholder and the ACT Government also evaluates environmental impacts and has the power to make decisions about approvals under the EPBC Act. This is a clear conflict of interest. The ACT Government releases land for residential developments, both to provide for housing and also to generate revenue for the Government. Via its Land Development Agency, the ACT Government is the proponent in many development proposals affecting ecosystems of significance such as threatened natural temperate grasslands (NTG), box-gum woodlands and species dependent on these threatened areas.

While the Government does seek to consider environmental values, avoid destruction of some areas of NTG and box-gum woodlands, protect identified threatened species and offer offsets, there are many examples of either destruction or encroachment on these areas in the ACT. These include:

- Proposal to put buildings on a small but stable NTG area and threatened golden sun moth population in Campbell;
- Development at Ngunnawal impacting on a small golden sun moth population;
- Bushfire asset zones being within Mulligan's Flat Nature Reserve rather than in the adjoining development footprint;

² ICAC, 'Corruption risks in NSW development approval processes: position paper' http://www.icac.nsw.gov.au/component/docman/doc_download/1280-corruption-risks-in-nsw-development-approval-processes-position-paper (September 2007) p46

- Inclusion of pink-tailed worm lizard habitat in fire management asset protection zone (disturbance by slashing and fuel reduction burns) in Coombs. This development was halted following a Conservation Council appeal to the ACT Civil and Administrative Tribunal.

Consequently, the effective implementation of the EPBC Act by the Commonwealth is vital to the conservation of threatened biodiversity of the ACT. The last resort option for third parties to challenge poor decisions is vital to uphold high standards of conservation.

The potential for challenges by third parties encourages proponents of projects to fully consider the consequences of insufficient planning and accounting for environmental values, thereby reducing the number of inappropriate proposals that reach a stage where litigation might be pursued.

The Conservation Council has found that our organisation having standing on environmental matters has probably led to better and earlier discussions with proponents, including the Government, and better development outcomes for all parties.

The Conservation Council supports the right of certain individuals, organisations and associations to seek judicial review of decisions under the EPBC. The Conservation Council encourages the Senate Standing Committee on Environment to reject the *Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015*.

Recommendation 1)

The Conservation Council ACT Region recommends that the Committee recommend against the repeal of section 487 of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC).