

Please attach the following **one-page summary** to your submission.

Comments on the Interim Report for the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)

Summary

Name of author/organisation: Bat Advocacy

Date: 27th July 2009

Which chapter(s) of the interim report are you commenting on?

Chapter 4 – Environmental Impact Assessment
Chapter 19 – Governance and Decision-making
Chapter 20 – Review Mechanisms

Key points of submission

Where a controlled action is assessed by means of a Public Environment Report, DEWHA has discretionary authority to publish a draft of the PER Guidelines for public comment. The criteria which determine whether or not the draft PER Guidelines are published for public comment need to be clearly documented and applied consistently

The Internet tools that provide for searches of referrals are inadequate.

The method of publishing key decisions on the internet is not reliable and lacks a method of notifying interested parties of changes.

Where a proponent has submitted additional material in support of their request for reconsideration after the closing date for public comments, it is at the discretion of the assessor as to whether the new material is made publically available and/or subject to public comment. The criteria under which this decision is made must be clearly documented. The new material must, for the sake of transparency, be made publically available even if public comment is not invited.

References

Referral: 2008/4323 Singleton Council/Natural Resources Management/Burdekin Park, George Street, Singleton /NSW/Relocation of Flying Foxes From Burdekin Park

Referral: 2008/4363 Clarence Valley Council/Natural resources management/The Maclean Rainforest Reserve and adjacent gully area/NSW/Flying Fox Dispersal Action.

Referral: 2008/4646 Botanic Gardens Trust/Natural resources management/Sydney/NSW/Relocation of Grey-Headed Flying-Fox Colony

Confidentiality statement:

Note that all submissions unless otherwise indicated will be published on this website. You MUST indicate on your submission if you wish for your submission not to be published. If you wish for your submission to not be published please mark your submission as 'Confidential'. You should note that even if your submission is not published, the title of your submission and the name of the submitting organisation or individual will be published on the web site. If you wish to not have your details published please contact the Secretariat before making a submission. Contact details from of individuals making submissions will be limited to name, suburb and State/Territory.

Do you want this submission to be treated as confidential?

No

~~These comments contain personal information of a third party individuals. The third party individual consents/does not consent (delete or strike out that which is not applicable) to the publication of their information.~~ Not Applicable to the Bat Advocacy Submission

Independent Review of the EPBC Act
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28th July 2009

Thank you for allowing us the opportunity to comment on the interim report of the Independent review of the *Environment Protection and Biodiversity Conservation Act 1999*.

We have limited our comments to 4 very specific items within the Interim report in which we have experience through our interest in referrals that have potential impacts on the grey-headed flying-fox (*Pteropus poliocephalus*) a species listed as vulnerable to extinction under the EPBC Act.

Chapter 4 – Environmental Impact Assessment

Interim Report Reference 4.65

Point 4.65 makes mention of the guidelines provided to a proponent for the preparation of a draft PER. These guidelines present a detailed explanation of the information DEWHA requires the proponent to include in their draft Public Environment Report.

DEWHA have the discretionary authority to publish a draft of the PER Guidelines and to make these available for public comment. This allows interested parties to provide feedback to DEWHA that might result in changes being made to the PER Guidelines before they are formally issued to the proponent.

The criteria by which a decision is made by DEWHA as to whether or not draft PER Guidelines should be made available for public comment are unclear. Recent examples suggest that the criteria are too subjective and/or being applied inconsistently.

Referrals 2008/4323, 2008/4363 and 2008/4646 each relate to proposals for the dispersal of colonies of grey-headed flying-foxes. Clearly, referral 2008/4646 (for the dispersal of the Sydney Royal Botanic Gardens colony) represents a far more complex action than referral 2008/4323 (for the dispersal of the Singleton Burdekin Park colony) or referral 2008/4363 (for the dispersal from Maclean Rainforest Reserve and Gully).

Draft PER Guidelines were made available for public comment for the Singleton and Maclean actions and it is clear that the final PER Guidelines benefitted from the public comments. However, the PER Guidelines for the more complex Sydney Royal Botanic Gardens action were not made available for public comment and are, we would suggest, weaker as a result.

It is our recommendation that when a controlled action is to be assessed by Public Environment Report, the default position should be that draft PER Guidelines should be published for public comment. At very least, any individual or group that made a submission on the referral should automatically be given the opportunity to comment on the draft PER Guidelines.

Interim report reference 4.177

The present Internet-based EPBC search tools¹ make it difficult or impossible to search for referrals that relate to a specific listed item under s.17 and s.18

¹ <http://www.environment.gov.au/epbc/notices/index.html>



It is our view that one should be able to search for matters that affect a specific listed species or community.

Chapter 19 – Governance and Decision-making

Interim Report Reference 19.80

The system by which key decisions are published on the Internet is not effective.

- There is no way of being automatically notified of changes in notices on a particular referral
- Notices are not always posted in a timely manner

Given the importance that these listings have for stakeholder groups, the process of public listing should not rely on the viewer having to visit the pages periodically to determine whether there is a change in the notices that have been posted for a referral.

An example of unreliable posting is the case of the Final PER Guidelines for referral 2008/4323. The notice that the guidelines had been issued was not posted online until more than a month after the issue date.

We suggest that all notices, including of key decisions, should be publicly available on the website by the close of the working day following the issue of notice and that interested parties should be able to request to receive email notifications when new notices are posted.

Chapter 20 – Review Mechanisms

Interim Report Reference 20.23 – 20.28

Section 78 allows for a proponent to request a reconsideration of a previous decision that their referral represents a controlled action.

The proponent is required to submit substantial new information that is then subject to public comment. However, the current process provides the proponent with the opportunity to submit additional material after the closing of the public comment period and for that material to neither be made public nor subject to public comment.

The assessor does have the discretion to publish this new material for comment but the criteria by which this decision is made are not publicly available and are, apparently, subjective. As it stands, material that significantly changes the scope of the action may not be available for public review.

We would suggest that the s78 reconsideration request by Botanic Gardens Trust in relation to referral 2008/4646 is an example where material submitted to DEWHA after the closing of the public comment period should, at very least, have been published with the remainder of the referral detail².

We would also suggest that the new material should have been made available for public comment. In practice, even informal comments on such new material (that material having been obtained by means other than from DEWHA) have, in at least one case been acknowledged with a response that indicated that the submission would not be considered because it was submitted outside the public comment period.

² http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=4646



We recommend that any material submitted by the proponent to DEWHA in support of a request for reconsideration must be made public regardless of whether the public comment period has ended or not. We also consider it important that public comment on this material be accepted and considered, provided it is received within a suitable time period. This should encourage proponents to include all relevant material at the time of submission rather than delaying until the public comment period has concluded in the knowledge that that additional material may be excluded from public review.

In addition, the criteria by which the assessor determines whether or not the new material should be subject to public comment should be clearly defined and publicly available.

This concludes our submission.

Sincerely

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