

NELR editorial

Dear Readers

This issue of NELR has focused on the progress of the two separate reviews of the EPBC Act conducted over the last 18 months. The first review by Senate Standing Committee of Inquiry has produced two reports with its final report released in April 2009. The second review led by Dr Allan Hawke, known as the Independent Review, has produced an Interim Report in June 2009 and a Final Report is to be released by February 2010. There has been a substantial body of submissions to both reviews and many of these have found support in the recommendations made to date.

The first feature article in this issue is a personal perspective on the past ten years of the EPBC Act by Queensland barrister, Stephen Keim SC. His account of the Gunns Pulp Mill litigation illustrates many of the weaknesses in the Act which have caused public disquiet. He notes that judicial review proceedings against Ministerial decisions have invariably been complex and unsuccessful, that political considerations have been rarely dormant in the minds of relevant Ministers. He concludes that the ultimate sign of failure of the EPBC Act is the very limited contribution that environmental impact assessment under that Act has made to environmental outcomes in Australia, particularly its lack of effective responses to climate change.

Our second article provides some empirical data on the operation of EPBC Act arising from a recent ACEL research project conducted by Andrew MacIntosh, Josh Fear and Jason Cummings. The project has surveyed project proponents to ascertain a range of practical consequences of referral and approval processes including estimates of the costs incurred, regulatory effort, environmental effectiveness, fairness of process and subsequent monitoring of projects. This paper concludes that overall, the EPBC Act has not been a cost-effective legislative instrument.

The third paper is an overview of the two EPBC Act Reviews which outlines the objectives and key issues arising from submissions, and some of the key recommendations and responses from the review panels. It is quite apparent from these reviews that the first ten years experience of the EPBC Act in operation has revealed many defects in the legal framework for impact assessment and biodiversity protection, and the Act is now in need of a substantial overhaul.

The final paper is an opinion piece by Sabine Elvey which comments upon the inadequacy of current consultation processes for local communities under the Queensland *Wild Rivers Act 2005*. This paper resonates well with the EPBC Act reviews, as it identifies the frustration of local stakeholders who have a statutory right to be 'consulted' about developments affecting their community, but no real mechanism for participation in decision making. Our cover photo provides a current example of this problem, with trees of up to 600 years old being felled in East Gippsland in accordance with the terms of a Regional Forest Agreement. Due to the inadequacy of the regulatory framework, the local community has had to resort to costly litigation. On 14 September 2009 the Supreme Court of Victoria issued an interim injunction to temporarily halt logging in two forestry coupes. Ironically, the clearly tragic destruction of such ancient trees, and the ecosystem services they provide, including carbon storage and sequestration, did not of itself provide any legal remedy. Rather the trees gained a temporary reprieve due to a slender legal thread, the likely impact of logging on a single listed endangered species, the long footed potoroo. For further details see the case note on *Environment East Gippsland Inc v VicForests* in this issue.

Regards
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