



National Environmental Law Association

20 Years of the EPBC Act: *looking back, looking forward*

Reflections on the Hawke Review

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Integrated package of 9 core elements:

- redraft & streamline: an **Australian Environment Act**
- **Environment Commission** for project approvals, strategic assessments, bioregional plans – **ie independent planner & regulator**
- **invest in better regulatory system**: national environmental accounts, skills development, policy guidance, and spatial information
- **streamline approvals**: early engagement in planning; more strategic assessments, bioregional planning & approvals bilateral agreements
 - **ie from reactive to proactive & strategic**
- Environment Reparation Fund and national ‘biobanking’ scheme
 - **ie hypothecation and extending markets to environment**
- Environment Commission: environmental performance audits, inquiries
 - **ie independent compliance**
- **new MNES**: ecosystems of national significance, interim GHG trigger
- more **transparency**, more **access** to courts for public interest litigation
- **foresight reports** to help manage emerging environmental threats.

Overall, Government **supported**:

- streamlining
- strategic approaches
- new MNES for ecosystems
- national standards/harmonisation
- markets

but **rejected**:

- strengthening RFA compliance and interim GHG trigger (immediately)
- transferring power to new independent agencies or Courts
- any loss of control over revenue

And **note the perils of implementation**:

- initial funding incremental – strategic assessments, cost recovery
 - unclear whether main reform package would have brought \$
- early national streamlining through COAG led to ‘one stop shop’ Mark I
 - later aborted as ‘regulatory equivalent of a Dalmatian dog’
- major EPBC amendment Bill deferred to next Parliament, lapsed
 - and Departmental budget cut to cover loss of forecast revenue!

To frame objects, scope & major elements of a reformed Act, and ensure effective implementation, need to address significant policy questions:

1. What are we trying to achieve?
 - Act doesn't define ESD, only *principles* of ESD
 - formal statements of policy either dated or unhelpful
 - a goal well defined is a goal half achieved
2. How to allocate roles & responsibilities between Cth & States?
 - IGAE & COAG Heads of Agreement dated & under-implemented, some splits sub-optimal for policy, esp. biodiversity
 - unilateral action makes cooperation difficult
3. How to ensure cooperation between jurisdictions?
 - financial carrots? Prospect of unilateral action?
 - independent Cth agency? (States tend to work with these, eg BoM, CSIRO)
4. How to regulate exercise of discretion to ensure conformity with goals?
 - mandatory considerations not enough
 - conformity to environmental plans?
 - specific decision-rules, eg no clearing of critical habitat?
5. How to ensure Act is funded commensurate with its goals?
 - Budget offset rules likely to prevail unless election commitment or crisis

Thank You

