Dear EPA,

This document is my personal submission on the EP Act (1986) amendments. I begin with an overview and summary, followed by specific changes that I contend should be made.

In my submission I will also make reference to the EP Act Exposure Draft ("the Exposure Draft"), submitted by the EPA along with other documents on the EPA's Consulation Hub.

Overview

Section 4A of the EP Act (hereafter "the Act") sets the scene for the purpose of the Act, with several laudable principles. However, throughout various sections of the Act, some of these principles seem to have been forgotten or discounted when specifying what can and cannot be done. In short, the Act is about ensuring protection of the environment. It is not about ensuring "achieving a balance", "cost effectiveness", or any other similar phrase which effectively waters down the *protection of the environment* component. Nor is it about "business as usual". WA has an increasing list of threatened, or near threatened species and communities, and this is no accident - it is because of "business as usual" and various acts, including the EP Act, which permit both large-scale and small, but insidious, degradation and destruction of the natural environment. As such, my recommendations aim at restoring the pre-eminence of the protection aim of the Act.

Other critical components that the Act should foster, if not guarantee, are accountability and transparency: all decisions need to be based on the best available information and science, and they need to be publically available. Doing so helps to foster confidence in agencies and decisions relating to the Act; failing to do so does the opposite.

Presently, the Act does not recognise that many currently threatened species and communities were once common and not threatened. That is, the loss (destruction) of individuals of common species and parts of ecological communities leads inexorably towards total annihilation; loss is a threatening process. Protection should also be given to common species and communities, in keeping with the precautionary principle of s4A, unless the best scientific evidence and analyses can prove that such loss would not contribute to an increase in threat to their existence.

The term "significant" is not defined in the Act, yet is used presently and in the Exposure Draft in cases such as "significant detrimental effect" or "significant impact". Such uses demand that a clear and scientifically defensible definition be used for "significant": when exactly is an impact "significant"?

Specific Recommendations

A new section needs to be added to limit the time a Ministerial Statement can remain valid. It is patently absurd, and potentially in contravention of s4A, that a Ministerial Statement from a bygone era can have effect in a potentially very different world and environment. In effect, all Ministerial Statements relating to the Act should have a "sunset clause" thereby voiding the Ministerial Statements after a set time period, which I suggest would be 10 years.

Part III

All publications should be publically available from the EPA (published via its website), not simply be in a daily newspaper or government Gazette.

Part IV (Exposure Draft)

All reporting should be done publically (be publically available). All assessment decisions and justifications should be publically available.

Section 39A

Part (1) should include amendments to state that the decision to assess, or not, needs to be accompanied by a decision report detailing the reasoning behind the decision.

Section 51

In general, whenever a clearing permit is granted (or not) all reasoning and justifications for the decision should be publically available. Justifications should be based on the best available science and data. When data is lacking, the precautionary principle (s4A 1) should apply and the permit should not be granted. It should rest with the clearing proponent to fund the provision of ecological data, where such data is lacking.

Additionally, cumulative impacts of granted clearing permits, together with all other clearing, should be considered when assessing (and granting) a clearing permit.

Section 51D (Exposure Draft)

Part (4) (a) states "whether the area proposed to be cleared (the area) is small relative to the total remaining vegetation". What is "small"? This is not defined and comes under the same problematic area as "significant" (mentioned above). If clearing can be scientifically justified as having negligible impact then it can be argued to be acceptable. This part should state that, not use amorphous words like "small". I suggest this be modified to:

(a) whether the impact and area (the area) or the proposed clearing is negligible relative to the total remaining vegetation

Section 51G

A maximum time limit of (something like) 10 years should apply to clearing permits. Because environmental circumstances and degradation may change over time it is irresponsible to grant a permit with a huge lifetime.

Section 51K (and/or 51M)

Justification for amendments to clearing permits should be given, be scientifically justifiable and be publically available.

Section 51H and 51O

An offset to counterbalance residual impact should only be allowed if the proposed clearing may be at variance with a clearing principle; or, the variance with a clearing principle is justifiably deemed to be minor. If a clearing permit is granted when such a variance occurs, or may occur, then the Decision Report must state all reasoning and justifications for allowing clearing to proceed - all data and justifications should be publically available.

s51O (3) should be deleted. Apart from those potential or minor variances (mentioned above), a clearing permit should not be granted if the clearing is seriously at variance with any of the clearing principles; no offsets should be considered to be sufficient to counterbalance potential residual effects in such instances. The rationale for this is that it is often the case that clearing, even of threatened ecological communities, is permitted because it is considered that the impact can be counterbalanced. This is patently false (e.g., see May, J., et al. (2016), Are offsets effective? An evaluation of recent environmental offsets in Western Australia, Biological Conservation).

Section 51Q (Exposure Draft)

Part (2) should state that the publishing be public, i.e.

The CEO must publically publish in a prescribed manner prescribed particulars of the record.

Section 100

In s100 (1) (a) to (e), a decision by the EPA should be able to be appealed (and handled by the Office of Appeals Convenor), irrespective of the decision. Subsections (a) to (e) should be deleted and replaced with:
a recorded decision of the Authority that a proposal is not to be assessed may lodge with the Minister an appeal in writing setting out the grounds of the appeal.

The rationale for this is to ensure consistency and transparency of the assessment process; decisions by the EPA may be flawed and it can only lead to better protection of the environment if flawed decisions can be appealed.

Schedule 5

Part 1, Principles should also provide protection for state-listed Priority species and communities, e.g.:

(k) it includes, or is necessary for the continued existence of, priority flora; or

(l) it comprises the whole or a part of, or is necessary for the maintenance of, a priority ecological community; or

Priority species and communities should be defined to be those listed at State-level.

In addition, biological linkages and corridors need special protection. A new clearing principle should be:

(m) it forms part of a biological linkage or corridor, which would be severed should clearing occur

The proposed amendment in the Exposure Draft to the definition of threatened ecological community is adequate, i.e. it is essential to also include Commonwealth-listed TECs.

Threatened flora should also include Commonwealth and IUCN-listed threatened species.

Schedule 6

Schedule 6 provide many, blanket exemptions, which could be in total contravention to the protection of the environment. These should not be allowed in their current form. A general condition, probably based on the (revised) clearing principles of Schedule 5 should apply to all exemptions. That is, a statement at the top of Schedule 6, such as the following, should be inserted:

Clearing for which a clearing permit is not required is permitted under the following circumstances, provided that the clearing principles of Schedule 5 are not violated.

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