

Environmental Protection and Other Legislation Amendment Bill 2022

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Summary

The Wilderness Society welcomes the Environmental Protection and Other Legislation Amendment Bill that proposes further opportunities for genuine community rights in environmental decision making. Community rights must function as an interconnected system, not as a series of disconnected rights. Each right interacts with and supports the function of the others.

The Wilderness Society encourages the Queensland government to consider how it may be possible to address additional criteria through this legislation in order to provide a stronger approach to the three interdependent community rights in environmental decision-making.

Introduction

Research and practice around the world¹ shows that when communities have a genuine and meaningful say in decisions made about the environment, outcomes for nature and people are better.

The Environmental Protection and Other Legislation Amendment (EPOLA) Bill has the opportunity to address current failures in state legislation to properly ensure a consistent and fair approach to community participation in environmental decision-making. This would in turn help to drive down the wildlife extinction crisis and degradation of Queensland's globally iconic land and sea Country.

While the proposed legislative reforms will improve access to information and access to participation in environmental decision-making, there is further work needed to ensure strong community rights in environmental decision-making across the board. In the Wilderness Society's forthcoming report, *Who Holds the Power: Community Rights in Environmental Decision-Making*, the Queensland government receives low scores across most of the 16 criteria (see below).

The current absence of strong community rights in state legislation and approval processes results in governments and proponents being able to make decisions that harm the environment, contrary to pleas from the community. This results in high financial, effort and time costs burdening local communities and proponents alike. It is critical that this trend is urgently reversed. Strong community rights require governments to be transparent and accountable when making decisions about the environment, resulting in the community's improved trust in the integrity of environmental decision-making.

¹ Harding, R. (1998) *Environmental Decision-Making: the roles of scientists, engineers and the public*. The Federation Press.

What are community rights in environmental decision-making?

There are **three basic universal rights for all communities in Australia** that are fundamental to ensuring communities have a meaningful say in environmental decision-making. These rights were first globally recognised in the United Nations Rio Declaration for Environment and Development in 1992.



The three community rights for environmental decision-making are:

1. **The right to know—access accurate and useful information held by authorities:** This means that any person can access any publicly held information they need to participate in decision-making and understand the impacts of those decisions, including who will profit.
2. **The right to decide—public participation in decision-making:** This means communities need plenty of time to prepare and participate in decision-making, that participation can't be restricted to a select group of people, and that decision-makers must show how community views are taken into account.
3. **The right to challenge—access to justice for environmental decision-making:** This means that individuals and communities have specific legal rights to get decisions reviewed or remade if the decisions have been made illegally, incorrectly or unreasonably.

These community rights must function as a system, not as a series of disconnected rights. Each right interacts with and supports the function of the others.

For example, if you're a community member who's passionate about koalas, it's not possible to make meaningful, informed comment on a project that may destroy koala habitat unless you:

1. Understand the current population trends of koalas (e.g. are they dying out and becoming more endangered? Is their population increasing?);
2. Understand the impacts the project will have and how significant they are (e.g. will it wipe out all potential koala habitat in an area, or a tiny fragment of it?); and
3. Know that consultation is happening, be allowed (and supported) to participate, have enough time and resources to do so, and be able access all the information needed to do so.

And of course, to make consultation meaningful, and to ensure integrity in decision-making, it is crucial that you can see that decision-makers have actually listened to and taken your views into account, and have access to affordable, equitable justice if decisions are made illegally or if decision-makers make bad faith decisions, or decisions that will harm communities or the environment.

Thus it's important both nationally and within each jurisdiction that each right is working well, and that best practice participation is an important component of the system.

Recognising First Nations' rights and aspirations

There are many rights that influence how specific communities have a say over what happens to the environment. First Nations people have unique consent-based rights that should be recognised in Australian Law and Practice, as set out by the internationally recognised United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)².

The UNDRIP establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples. First Nations communities have applied sensitive and sustainable management and cultural practices to the land which we call 'Australia' for tens of thousands of years.

The UNDRIP was the first statement that globally recognised the rights of First Nations people to self-determination and justice based on Free, Prior and Informed Consent. These consent-based rights reflect the unique risks to First Nations people and culture in the context of dispossession, colonisation and injustice.

² United Nations Department of Economic and Social Affairs (2007) United Nations Declaration on the Rights of Indigenous Peoples. Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> [Accessed: 23 June 2022]

Who Holds the Power: Community Rights in Environmental Decision-making

To understand whether Australian jurisdictions are properly providing for community rights in environmental decision-making, the Wilderness Society engaged the Environmental Defenders Office (EDO) to analyse the primary environmental protection and planning legislation of each Australian state and territory—as well as Australia's federal nature laws—to assess how well these provide for the three core community rights established by the Rio Declaration.

The results are reported in the forthcoming report, *Who Holds the Power: Community Rights in Environmental Decision-making*. The following is a list of scores allocated to Queensland environment and planning laws across 16 criteria, as featured in the report:

- **Access to information**
 - Presumption in favour of access: 2
 - 'Any person' right: 3
 - Time limits: 2
 - Refusals: 5
 - Continuous disclosure of risk: 2.5
 - Transparency: 4

- **Public participation**
 - Prior information: 3
 - Timeliness of decision-making: 4
 - Open standing to participate: 3
 - Community views taken into account: 3.5

- **Access to justice**
 - Broad standing: 3
 - Merits review: 3
 - Judicial review: 2
 - Third-party enforcement rights: 3
 - Access to information appeals: 4
 - Access to justice: 2.5

The Wilderness Society will be in touch soon to share the report with key stakeholders in the Queensland government. The Wilderness Society's community groups in Queensland are already

campaigning for community rights in environmental decision-making, and will be meeting with their local Members of Parliament following the release of the report.

The Solution

To ensure communities have genuine and meaningful input into decisions that affect them and the environment, the Wilderness Society is calling for governments across Australia to enshrine and activate community rights in environmental decision-making (CRED).

Through the introduction of the EPOLA Bill, the Queensland government is taking positive steps to improve the integrity of environmental decision-making by reducing barriers to community access to information and participation. The Wilderness Society welcomes the EPOLA Bill's proposal to:

- Modernise and improve the efficiency of environmental authority provisions;
- Improve the environmental impact statement (EIS) process; and
- Improve compliance and enforcement powers to enable the more effective protection of the environment.

Additionally, the Wilderness Society commends the amendments which seek to lapse EIS assessment reports after three years, to ensure the assessment reports reflect contemporary environmental legislation, policies and standards; and to implement an 'easy no' to unviable proposals and seeking broader public notification and consultation.

While the proposed reforms will improve access to information and access to participation in certain aspects of environmental decision-making, further work is needed to ensure strong community rights in environmental decision-making across the board. The Wilderness Society encourages the Queensland government to work towards providing a stronger approach to the three interdependent community rights of environmental decision-making.

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