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Submission

to

**NSW Legislative Council's
General Purpose Standing Committee No. 5**

GPSC5.GPSC5@parliament.nsw.gov.au

on the

**Inquiry into the Performance of the NSW
Environment Protection Authority**

Compiled by John Edwards
For the Clarence Environment Centre

Submission to the Inquiry into the Performance of the NSW Environment Protection Authority

Introduction

The Clarence Environment Centre has maintained a shop-front in Grafton for a quarter of a century, and has a proud history of environmental advocacy. The conservation of the Australia's natural environment, both terrestrial and and marine, has always been a priority for our members, and we believe the maintenance of healthy ecosystems and biodiversity is of paramount importance.

Performance

Compliance monitoring and enforcement has been a core failing across every sector, and involving every agency for decades, none more so that the Environment Protection Authority (EPA), and its predecessors.

Monitoring of compliance, whether it be with regulations, or conditions of consent is seldom undertaken, with the Authority seemingly dependent on industry self assessment, or reports from concerned members of the public.

However, having received those reports, the EPA seemingly sees its role as an apologist, generally protecting and excusing the perpetrators, rather than resorting to prosecution, often claiming that regulatory action would be difficult and costly, while expressing a preference to *“work with the offender to achieve better long-term outcomes”*.

In the unlikely event that an offender is found to have breached a licence condition, or caused a pollution event, a “slap on the wrist” penalty is usually all that follows.

In the field of forestry, where our organisation has encountered most of our frustrations, the 'apologists' respond with excuses such as *“we couldn't find the alleged breach”*. This is helped by the Authority's policy of refusing to allow those making the complaints to accompany investigators in the field. At Royal Camp State Forest, where environmental campaigners were allowed to show where core Koala habitat had been logged, the EPA later denied finding certain areas. At the private native forestry operation at Whian Whian, conservationists that reported offences were accused of planting the evidence.

Other responses to complaints include, *“the forest understorey was to dense for foresters to safely mark up the forest prior to logging being undertaken”*, *the EPA has a different interpretation of the prescription, therefore does not consider it to be a breach*, or *“we don't consider this to be a significant offence so will be taking no further action on this matter”*.

Penalty infringement notices in the region of \$150 are sometimes issued for the more blatant offences, and in one instance reported by the Clarence Environment Centre, a \$1,500 fine was imposed. This latter was in response to the illegal logging of 2,500 square metres of Critically Endangered Lowland Rainforest in the Grange State Forest, which their forester had mapped as Scribbly Gum – Blackbutt forest, a dry sclerophyll community (neither species was present).

That illegal logging would have netted profits and royalties well in excess of the \$1,500 fine, but the most ridiculous part of this is that the investigation costs ran into the tens of thousands of dollars, a direct cost to the taxpayers of NSW, whose asset it was that had been destroyed.

On another matter in which the Clarence Environment Centre was peripherally involved earlier this year, the inappropriate rezoning of prime agricultural land at Harwood Island to expand an existing industrial site, the EPA threatened a person reporting the illegal dumping of toxic waste, accusing them of “*hindering an investigation*” because the informant could not supply an exact address for the dumping site. The informant had offered to take the investigator to the site but that offer was declined, again with the claim that it was against EPA policy to allow those reporting breaches to accompany their investigators for fear of them bringing undue pressure to bear.

In this instance the claim that more than 70 truck loads of toxic material had been dumped in a sugar cane field, was too big an issue to ignore, and the EPA did finally act, but again issued a 'slap on the wrist' \$1,500 penalty and a clean-up order, but only for 32 truck loads. The whereabouts of the remaining alleged truck loads has, to the best of our knowledge, still to be found.

We are hopeful that those involved with the Harwood Island incident will make their own submission to the Inquiry, but we sincerely hope the Inquiry will fully investigate the EPA's actions in this instance.

Processes

Our regulators are clearly under-resourced, and the paltry fines imposed on offenders suggests that investigators have been instructed to 'go easy' on some offenders. Our organisation has too often identified what we believe to be a far too cosy relationship between regulators and the industry, something that may have resulted from government restructuring that has seen, for example, ex foresters drafted into a regulatory role where they are investigating former colleagues.

With breaches of forestry regulations, there are no processes whereby concerned members of the public can appeal. The Regional Forests Agreements disallow any third party action through the courts, and the Environmental Defenders Office, the only real source of legal advice on environmental issues, has been deliberately 'hamstrung' by Governments, State and Federal, through the removal of funding.

Resorting to the Ombudsman is also futile because, like the EPA, once a complaint has been made the Ombudsman's office will not allow any further involvement by the complainant. The issues surrounding complaints are often complex, and difficult for those not closely involved to fully comprehend. Therefore, it is relatively easy for the 'accused' to 'pull the wool' over the Ombudsman's eyes, with no opportunity for the complainant to be present to expose false claims.

Recommendations

The Clarence Environment Centre recommends that:

1. More manpower be provided to allow regulators to effectively monitor on site compliance, and reduce the dependence on self-regulation by industry.
2. Those charged with compliance monitoring remain at arms-length from the industry, with no former association with those industries.
3. Third party legal action be allowed in relation to forestry breaches.
4. Plaintiffs be allowed greater opportunity to be fully involved with investigations, whether by regulators, or the Ombudsman, if they so wish.
5. Penalties truly fit the 'crime', and that there is a mechanism in place to ensure the recovery of costs associated with the investigation and subsequent litigation.
6. Sufficient power, and support, be given to investigators to properly do their jobs, free from undue pressure from above.

7. In the event that the guilty party is a government agency, that fines and costs are not imposed on taxpayers, but on those that perpetrated, and/or were responsible for the offence. Serious offenders should not be allowed to remain in their jobs, nor should they benefit from generous severance pay and other normal entitlements when dismissed. And finally that

We thank you for the opportunity to comment

Yours sincerely

John Edwards
Honorary Secretary.