

# LETTERS TO THE EDITOR

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Dear Editors

I am writing to you in respect of an article recently published in Australian Environmental Law News titled "How Well Does The EIA Process Protect Biodiversity?". I am disappointed that an article so factually out of date was published and it is difficult to understand why the author would seek publication of an article which claims to be a review of the effectiveness of the EIA process in protecting biodiversity, when in fact, vital parts of the EIA process documentation as applied to the case study are not even cited. The timing of the paper (July 1993) and the fact that four references are cited with 1993 dates suggests that Mr Buckley chose not to include in his review three documents, all of which were available at least six months prior to July 1993 viz.,

- Supplement to the Draft EIA (released December 1992) that was sent to all respondents who forwarded submissions on the DEIS and to anyone else who requested it.
- Commonwealth Environment Protection Authority review report on the Mt Todd EIS (released January 1993).
- Conservation Commission of the Northern Territory Assessment Report of Mt Todd EIS (released January 1993).

Contrary to the version of events elaborated by Mr Buckley, the EIA process at Mt Todd did not end with publication of the Draft EIS document. Zapopan distributed more than 150 copies of the Draft EIS to government agencies, libraries, environmental organisations and the general public. In total, forty submissions were received during the six week public review period closing 23 November, 1992. More than 65% of all submissions received dealt exclusively with Gouldian Finch related issues. A Supplement to the DEIS was prepared and submitted to all respondents and any member of the public who requested one. The project was assessed under both the Commonwealth Environmental Protection (Impact of Proposals) Act 1974 and the Northern Territory Environmental Assessment Act 1982.

To take issue on only one part of the report on Page 49 PT.12, Mr Buckley's assertion that areas outside the main pit were not searched for nests is false. Table 3.1 at Page 19 of the Supplement to the DEIS lists the areas that were searched for nests outside the main pit area. Wide areas were searched in the tailings dam, northern and southern waste dumps, heap leach and plant area. Not a single Gouldian Finch nest was located in these regions.

I could cite over a dozen other points in the article that, in our view, are misleading, inaccurate or just plain wrong.

Whilst acknowledging that the Mt Todd Project received development approval, the author failed to mention that such approval was granted conditionally upon the proponent complying with stringent criteria to ensure that all actions of the proponent affecting the conservation (i.e. biodiversity) of the Gouldian Finch be subject to the scrutiny of an independent Recovery Team. Further, Mr Buckley failed to mention that Zapopan is required to monitor the breeding success of the Gouldian Finch in the Yinberrie Hills throughout project life as part of the development approval and that any mine induced impacts will be determined independently by the Recovery Team. Subsequent requirements (if any) for mitigating measures will be determined jointly between the proponent and the Recovery Team with full cost to be borne by this Company.

To present a case study of the Mt Todd Project in the context of reviewing the effectiveness of EIA process legislation whilst simultaneously omitting vital process documentation central to the development decision is, in our view, a misrepresentation of the facts and of the entire EIA process as it was applied at Mt Todd. Several other criticisms of the DEIS document are inaccurate and unwarranted in the light of information available prior to publication of the article in Australian Environmental Law News. The EIA process documents omitted from Buckley's article lend considerable supporting evidence to substantiate statements made in the DEIS. It would have been helpful if Mr Buckley had ascertained all the relevant facts pertinent to the issue before claiming to examine the project in the context of a case study; regrettably, this was not done.

Zapopan for its part remains committed to monitoring the project's effects on the Gouldian Finch and is also contributing to a National Recovery Plan for the species which was initiated at the time of approval of the Mt Todd Project. With regard to issues of risk and uncertainty, monitoring results obtained during the 1993 breeding season, at a time when project construction activities were well advanced, confirm the continued breeding success of the Gouldian Finch in the Yinberrie Hills and lends support to the predictions in the EIA process and to both the Northern Territory and Commonwealth governments acceptance of them in approving the project.

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**Executive Chairman**  
**Zapopan NL**

Dear Editors

#### BIODIVERSITY AND EIA: THE MT TODD CASE STUDY

Thank you for the opportunity to respond to criticisms by Strapp (1993) over the article on biodiversity and EIA in the July issue of *Australian Environmental Law News*. The allegations are the more serious as they are levelled at AELN as well as the author. They are unfounded for reasons set out below. Incidentally, in re-reading the article I have discovered a number of typographical errors. None have any bearing on Strapp's criticisms; but it is worth noting that "unclogged" on p.45, para 2 should of course read "unlogged"!

**Choice of case study.** In using Mt Todd as a case study (Buckley 1993) I did not imply that it deserved particular criticism; and I expressed no opinion as to whether development approval for the project should or should not have been granted (Buckley 1993, p.47, para 1). There were two reasons for using Mt Todd as a case study. The first is that it involves a species with high public visibility (Buckley 1993, p.47, para 1). If the EIA process in Australia does not protect Gouldian Finches at Mt Todd, it is unlikely to protect less conspicuous species such as fish, plants and arthropods affected by forestry, farming or electricity generation, for example.

**Timing and sources.** As stated in the article (Buckley 1993, p.51, Acknowledgments), the body of the text was written for the NSWNPWS conference on biodiversity in July 1993. As also stated in the article in three different places, however, the Mt Todd case study was written in November 1992, during the period of public submissions for the Mt Todd DEIS: "The case study report below. . . was written during public review of the DEIS" (Buckley 1993, p.47, para 1); "CASE STUDY. . . Written after the DEIS was released for public comment and reflecting publicly available information. . . at that time (Buckley 1993, p.47 para 6, first sentence in case study); "case study. . . written. . . in November 1992" (Buckley 1993, p.51, Acknowledgments). My comments in the case study were on the EIA process to that date, as further emphasised by specific references to the DEIS throughout. Comments by Strapp (1993) in this regard are presumably rhetorical. If Zapopan would care to send me copies of the three additional documents cited, however, I should be glad to examine them and if appropriate revise my comments accordingly.

**Role of the DEIS.** If the EIA process is working well, however, the DEIS ought to be sufficiently complete and accurate to need little modification through supplements and government assessments; because only the DEIS is subject to formal public comment. A DEIS should identify all the major environmental issues correctly, predict potential environmental impacts accurately, and describe proposed management and mitigation measures fully, together with proposed monitoring and rehabilitation programmes. If the three additional documents listed by Strapp (1993) were indeed "*central* to the development decision," as he says (emphasis added), then the DEIS, presumably, was not; in which case the EIA process was presumably deficient in this instance. As Strapp says, the DEIS is not the end of the EIA process; but nor should it be only the beginning. This issue is by no means peculiar to Mt Todd; there have been many development proposals in the past decade where supplements and assessments have made major changes to the DEIS. An iterative approach to EIA may indeed have advantages (see, e.g. Buckley 1991d, 1992a, b as cited in Buckley 1993); but only if each step is open to formal public comment, and the government authority determining the development application is required to consider comments on all stages, not merely the first.

**Uncertainty and monitoring.** The second reason why I used Mt Todd as a case study is that it illustrates the difficulties associated with scientific uncertainty (Buckley 1993, p.42, para 2; p.46, para 1; p.47, para 1). Both the proponents and the NT Government devoted considerable funds and effort to establishing the size of Gouldian Finch populations at Yinberrie Hills and elsewhere. Despite this, however, at the time of the DEIS the confidence limits on those estimates were still extremely broad. If the Gouldian Finch population at Yinberrie Hills fell for any reason once the Mt Todd project commenced, this would not be statistically detectable unless or until a very major reduction had occurred; by which time any recovery measures might well be too late to be effective (Buckley 1993, p.48, numbered para 4; p.49, numbered para 12). In addition, the DEIS did not detail what recovery measures could be taken, and with what chance of success (Buckley 1993, p.50, numbered paras 13, 17). It is not clear from Strapp (1993) whether the Supplement, Assessments, or Recovery Team have changed this situation. The issue is one of ecology and statistics, not politics or law. It is, of course, good news for the Gouldian Finch that it is continuing to breed at Yinberrie Hills. But here is a question for Zapopan, the NT Government, and the Recovery Team. Consider the hypothesis that the number of breeding pairs of Gouldian Finches in Yinberrie Hills has fallen by 10% or more since project construction commenced; or if it's easier to test between the 1991 and 1993 breeding seasons. With what statistical confidence, on the basis of monitoring carried out to date, can this hypothesis be rejected? If the answer is  $p > 0.05$ , then here's a second question: What proportional reduction in population over the same period can be rejected with a probability  $p < 0.05$ ? Note that the DEIS itself (Appendix 16; Faith and Wood 1992, as cited in Buckley 1993) suggests that the monitoring programme for the project should be designed so as to be able to detect a 10% reduction in the Yinberrie Hills population of Gouldian Finches (Buckley 1993, p.50), numbered para 15).

**Public access to monitoring data.** Strapp (1993) notes that Zapopan is required to monitor the population and breeding success of Gouldian Finches as a condition of development approval; that Zapopan's actions are subject to scrutiny by an independent Recovery Team; and that if any mitigation measures are required, Zapopan will bear the cost. It is of course a standard condition of approval for any major development project that the proponent or operator should monitor environmental parameters which may be subject to significant impact, and pay for any rehabilitation or mitigation measures. Indeed, DEISs normally contain detailed proposals for both. During the 1970s and early 1980s monitoring data from Australian projects were not generally open to public scrutiny. In the late 1980s and early 1990s, however, corporate environmental management practices in this regard have changed in response to changing community attitudes; freedom-of-information laws have provided legal access to monitoring data in some jurisdictions; and community consultative groups have become commonplace. I trust, therefore, that we can look forward to annual and unrestricted publication of Zapopan's monitoring results in a scientifically verifiable format, audited by the independent Recovery Team, whose members will of course be listed by name?

**Conclusions.** It is clear from the above that the criticisms by Strapp (1993) are unfounded. In using Mt Todd as a case study, however, I did not set out to criticise Zapopan; and nor am I doing so now. I simply used the Gouldian Finch as an illustration. I am sure my colleagues in industry, conservation organisations and government could argue at length as to how much substantive protection EIA processes should or should not provide for biodiversity in Australia, in view of possible consequences for the country's economy and inhabitants, human or otherwise. I merely argue that in practice, they provide very little.

#### References

- Buckley, R.C. 1993. How well does the EIA process protect biodiversity? *Australian Environmental Law News* 2/1993: 42-52.
- Strapp, T. 1993. Letter. *Australian Environmental Law News*, this issue.

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