

SUBMISSION TO THE EPBC ACT REVIEW

ANON-K57V-XFKK-1

Name

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Organisation

Regional Development Australia Pilbara

State or Territory

Western Australia

Areas of Interest

The objects of the Act; Environmental Impact Assessments; Decision making; Public participation in decision making;

Attachment provided

No

Do you give permission for your submission to be published?

Yes - with my name and/or organisation (if included)

SUBMISSION RESPONSES

QUESTION 1: Some have argued that past changes to the EPBC Act to add new matters of national environmental significance did not go far enough. Others have argued it has extended the regulatory reach of the Commonwealth too far. What do you think?

The EPBC Act should address matters that are of national importance or cross state boundaries. It is considered that the addition of water resources in relation to coal seam gas and large coal mining development is appropriate due to the scale and nature of the water systems in Australia. Any further additions to the Matters of Environmental Significance (MNES) must also exhibit similar characteristics of importance and scale.

QUESTION 2: How could the principle of Ecologically Sustainable Development (ESD) be better reflected in the EPBC Act? For example, could the consideration of environmental, social and economic factors, which are core components of ESD, be achieved through greater inclusion of cost benefit analysis in decision making?

It is not recommended that a cost-benefit analysis form part of the assessment of proposals as there are significant inherent risks in the quantification of non-monetary values, particularly where no reference study has been undertaken. This often results in an arbitrary assignment of economic value to a range of costs or benefits and a lack of clarity regarding how to numerically reflect the inter-relationships and/or boundary conditions.

It is suggested; however, that a greater degree of weight is given to the discussion of social and economic factors in the assessment of MNES proposals, particularly where proposals may benefit

and/or sustain nearby communities. Support should be given for proposals that maximise a range of social, economic and environmental outcomes.

QUESTION 3: Should the objects of the EPBC Act be more specific?

No. If the objects became more specific, it is possible that this would then provide grounds for exclusion of aspects addressed by the EPBC Act. Although it is considered that the Act is not delivering on the full scope of its objects, it is not recommended that the objects are modified.

QUESTION 4: Should the matters of national environmental significance within the EPBC Act be changed? How?

Consideration should be given to the inclusion of national emissions standards (including greenhouse gas emissions and air toxics) as this will remove the need for the NEPM legislation to be enacted by the States and provide a coordinated response to an issue of national significance. Additional consideration should be made for removing those MNES that are adequately protected under State legislation. This would remove unnecessary duplication of assessment.

QUESTION 5: Which elements of the EPBC Act should be priorities for reform? For example, should future reforms focus on assessment and approval processes or on biodiversity conservation? Should the Act have proactive mechanisms to enable landholders to protect matters of national environmental significance and biodiversity, removing the need for regulation in the right circumstances?

The reform agenda should focus on the last four dot points of the Objects and provide a system that actually facilitates indigenous leadership, land management and biodiversity stewardship. This should also include formal recognition of Indigenous Protected Areas. The protection of indigenous cultural heritage across landscapes is vital, as is facilitating understanding of the cultural significance of our natural resources by non-indigenous people.

It is also recommended that a greater level of resources is invested in strategic approaches to conservation, monitoring and reporting on the state of the environment. This should include preparation of bio-regional plans, recovery plans, and strategic assessments. Information on the scope and condition of environmental assets should be made publicly available to support decision-making by a range of agencies and the community, as well as information on project referrals and assessments to track progress of the implementation of the Act.

QUESTION 6: What high level concerns should the review focus on? For example, should there be greater focus on better guidance on the EPBC Act, including clear environmental standards? How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?

The Act has largely been applied in a reactive way, with protection delivered only through the assessment of proposals. This has not resulted in the promotion of ESD or protection of the environment, although it could be argued that these outcomes have been delivered in some major project areas. As stated above, greater resources should be invested in bio-regional planning and strategic assessment which produces a coordinated approach to protection of the environment.

Consideration should also be given to how the Act addresses climate change. As a minimum, the

assessment of proposals should require discussion of how the proposal mitigates or adapts to likely climate change scenarios.

With regards to assessment and approval processes, clearer guidelines should be given regarding environmental standards to be met and benchmarks for performance. Significant impact guidelines should be clarified with reasons for decisions being more transparent, possibly explained through a number of case studies. This will reduce the financial cost of assessment through greater certainty.

Duplication of assessment via State processes should also be removed to prevent the creation of excessive and sometimes contradictory approval requirements.

QUESTION 7: What additional future trends or supporting evidence should be drawn on to inform the review?

No comment

QUESTION 8: Should the EPBC Act regulate environmental and heritage outcomes instead of managing prescriptive processes?

Utilisation of the EPBC Act to proactively protect significant, nationally important environmental and heritage values is supported, particularly in comparison to achieving outcomes in an ad-hoc manner as a result of the assessment of proposals. Environmental protection recommendations should be based on bio-regional planning, strategic assessment and transparent analysis, and supported with resources to continually manage, monitor and report on conservation status and environmental quality.

QUESTION 9: Should the EPBC Act position the Commonwealth to take a stronger role in delivering environmental and heritage outcomes in our federated system? Who should articulate outcomes? Who should provide oversight of the outcomes? How do we know if outcomes are being achieved?

Consideration should be given to the establishment of an independent Environmental Protection Agency to ensure decisions are not politically motivated. The agency must be adequately resourced and empowered to protect the environment as well as biodiversity through strategic assessments, bio-regional planning and management agreements, particularly with indigenous people. Meeting our obligations under international agreements should be a primary focus as well as addressing cumulative impacts, and monitoring and reporting of information on assessed proposals and the state of the environment. Changes in environmental condition, particularly those that are approved, should also be reported.

QUESTION 10: Should there be a greater role for national environmental standards in achieving the outcomes the EPBC Act seeks to achieve? In our federated system should they be prescribed through:

- **Non-binding policy and strategies?**
- **Expansion of targeted standards, similar to the approach to site contamination under the National Environment Protection Council, or water quality in the Great Barrier Reef catchments?**

- **The development of broad environment standards with the Commonwealth taking a monitoring and assurance role? Does the information exist to do this?**

The prescription of environmental standards is supported where these are evidence-based and transparently adopted to provide greater certainty for proponents. These should be prescribed only where the environmental context is broader than a single State. Monitoring should be undertaken with standards revised to incorporate learnings where relevant. This should occur through the establishment of key performance indicators and reporting against these indicators.

QUESTION 11: How can environmental protection and environmental restoration be best achieved together?

Through bio-regional planning and establishment of appropriate conservation reserves and management frameworks which consider threatening processes and incorporate joint management by indigenous people. This would need to be adequately resourced and delivered effectively in close collaboration with State and local government, industry and the community.

Ongoing audit of approved proposals to ensure that both rehabilitation commitments are completed, and offsets are appropriate is also critical.

QUESTION 12: Are heritage management plans and associated incentives sensible mechanisms to improve? How can the EPBC Act adequately represent Indigenous culturally important places? Should protection and management be place-based instead of values based?

This question should be answered by the indigenous community.

QUESTION 13: Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments? Who should lead or participate in strategic assessments?

Yes. This should occur in response to strategic planning for cities and towns, strategic resource planning and supporting infrastructure planning to ensure that cumulative impacts are assessed, and conservation outcomes are optimised. These assessments should be undertaken in close collaboration with local government, industry and the community but led by an independent Environmental Protection Agency. Consideration must also be given to the level of detail required to complete the assessments, which should be appropriate to the level of detail provided by the strategic plan. Resources must be allocated to ongoing monitoring and a process established for review and revision.

QUESTION 14: Should the matters of national significance be refined to remove duplication of responsibilities between different levels of government? Should states be delegated to deliver EPBC Act outcomes subject to national standards?

Yes. The current system of dual assessment is inefficient. The system increases uncertainty and costs for projects considerably and does not result in improved environmental outcomes. This will require rationalisation of species listings to remove inconsistencies.

QUESTION 15: Should low-risk projects receive automatic approval or be exempt in some way?

- **How could data help support this approach?**
- **Should a national environmental database be developed?**
- **Should all data from environmental impact assessments be made publicly available?**

“Low-risk” projects are unlikely to have a significant impact on the environment so are unlikely to be assessed. All data from environmental impact assessments should be made publicly available. This could occur via a layer, updated by the environmental assessment agency, that is made available through existing information portals such as National Map.

QUESTION 16: Should the Commonwealth’s regulatory role under the EPBC Act focus on habitat management at a landscape-scale rather than species-specific protections?

Yes. Although protection of endangered species is important, landscape scale conservation has the potential for more significant outcomes and is more likely to be able to address threatening processes such as climate change.

QUESTION 17: Should the EPBC Act be amended to enable broader accreditation of state and territory, local and other processes?

Yes. As stated previously, the inefficient duplication of assessment of protected species should be undertaken via State mechanisms. This could free up much needed resources which could then be used to undertake strategic assessments and bio-regional planning, as well as monitoring and reporting on environmental condition.

QUESTION 18: Are there adequate incentives to give the community confidence in self-regulation?

No comment

QUESTION 19: How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management?

- **How can we best engage with Indigenous Australians to best understand their needs and potential contributions?**
- **What mechanics should be added to the Act to support the role of Indigenous Australians?**

This question is best answered by the Indigenous community. However, consideration should be given to the requirement for joint management of all national parks and conservation reserves and sole management of land in Indigenous Protected Areas.

QUESTION 20: How should community involvement in decision-making under the EPBC Act be improved? For example, should community representation in environmental advisory and decision making bodies be increased?

No comment

QUESTION 21: What is the priority for reform to governance arrangements? The decision-making structures or the transparency of decisions? Should the decision makers under the EPBC Act be supported by different governance arrangements?

An independent Environmental Protection Agency should be established to administer the Act. Although the agency would still need to report to the Federal Minister for the Environment, this would remove the possibility for politically driven outcomes.

Emphasis should be placed on collaborative planning and assessment that involves all stakeholders as early in the process as possible. This should include local government, landowners, industry and the community (including indigenous groups) and consensus reached at an early stage regarding the

shared outcomes and objectives that benefit all (i.e. the achievement of ESD).

Transparency should be improved through publication of a greater range of information, including advice and reports provided to the Minister to support decisions, statements of reasons for decisions and audit & compliance reports.

QUESTION 22: What innovative approaches could the review consider that could efficiently and effectively deliver the intended outcomes of the EPBC Act? What safeguards would be needed?

No comment

QUESTION 23: Should the Commonwealth establish new environmental markets? Should the Commonwealth implement a trust fund for environmental outcomes?

A greater degree of resources must be invested in ongoing monitoring and reporting on the condition of the environment. This would then provide an evidence base for better decision-making by agencies at all levels and also improve knowledge of environmental issues by the community. This information is likely to then be used to support better environmental outcomes by individuals and organisations wishing to take action on climate change and other significant environmental risks. Market-based mechanisms which are likely to result in investment in an environmental trust fund by the private sector are therefore supported.

QUESTION 24: What do you see are the key opportunities to improve the current system of environmental offsetting under the EPBC Act?

No comment

QUESTION 25: How could private sector and philanthropic investment in the environment be best supported by the EPBC Act?

- **Could public sector financing be used to increase these investments?**
- **What are the benefits, costs or risk with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?**

No comment.

QUESTION 26: Do you have suggested improvements to the above principles? How should they be applied during the review and in future reform?

RDA Pilbara supports the recommended principles to guide future reforms. These principles must be at the forefront of any suggested changes to the Act, with any decisions justified against an assessment of its compliance with these principles.

It is recommended; however, that consideration is given to the emphasis on “protection” over enhancement and/or management, as just “protecting” an area without ongoing management, monitoring and continual improvement in practice is unlikely to be able to address threatening processes or impacts of climate change.

It is also suggested that the importance of bio-regional planning and strategic outcomes is elevated or specifically recognised, together with the need for ongoing monitoring and assessment against agreed indicators.

QUESTION 27: Is the EPBC Act delivering what was intended in an efficient and effective manner?

No. Dual assessment of protected species (MNES) is resulting in increased time delays and cost to proponents, in addition to sometimes creating conflicting requirements and conditions. The emphasis on achieving outcomes via assessment of individual projects is reactive and does not support consideration of cumulative impacts, threatening processes or the most effective and efficient way to retain or enhance regional environmental values. There is a lack of transparency in decision making and uncertainty regarding appropriate thresholds or trade-offs.

QUESTION 28: How well is the EPBC Act being administered?

No comment.

QUESTION 29: Is the EPBC Act sufficient to address future challenges? Why?

No. The current lack of a strategic focus and preference for project-based assessment means that it is likely that environmental quality will continue to decline. This does not support a coordinated effort to address threatening processes such as climate change.

QUESTION 30: What are the priority areas for reform?

- Removal of duplication of state processes and consolidation of protected species and communities lists;
- Increased transparency and guidance for decision-making;
- Increased collaboration and engagement of stakeholders, particularly indigenous groups;
- Increased focus on bio-regional planning, representative conservation reserves systems and collaborative management, and strategic assessment; and
- Increased level of monitoring and reporting of environmental quality including against agreed indicators.

QUESTION 31: What changes are needed to the EPBC Act? Why?

No comment

QUESTION 32: Is there anything else of importance to you that you would like the review to consider?

No thank you.