

SUBMISSION TO THE EPBC ACT REVIEW

ANON-K57V-XQBF-X

Organisation

Local Government Association of Queensland

State or Territory

Queensland

Areas of interest

Threatened species; Matters of National Environmental Significance; Environmental Impact Assessments; Great Barrier Reef; Cumulative impacts; Climate change; Compliance and enforcement; Decision making; Biodiversity;

Attachment provided?

Yes

Do you give permission for your submission to be published?

Yes – with my name and/or organisation

SUBMISSION RESPONSES

This submission was provided as an attachment only. The attachment is provided on the following pages of this document.



17 April 2020

Professor Graeme Samuel AC
Chair of EPBC Act Review Expert Panel
Dept Agriculture, Water and the Environment
Canberra ACT 2601

Dear Professor Samuel

Review of the Environment Protection and Biodiversity Conservation Act 1999

Thank you for the opportunity to provide comment on the *Environment Protection and Biodiversity Conservation Act 1999* Review.

The review of the Act is of interest to Queensland local governments as local governments in Queensland play an important role in protecting and enhancing local biodiversity through their role in land use planning and development assessment, as land manager but also through the capacity building of community groups, by encouraging stewardship and sound environmental management.

Although local government experience with the Act are many and varied, comments to this review focus on Matters of National Environmental Significance; clarifying and strengthening frameworks and terminology across jurisdictions; transparency and accountability; consideration of cumulative impacts; environmental offsets and the application of strategic assessments.

Please find enclosed the Local Government Association of Queensland's detailed submission developed in consultation with Queensland local governments.

Please don't hesitate to contact Kristy Gooding, Senior Advisor – Natural Assets and NRM [REDACTED] or Crystal Baker, Lead – Planning and Development [REDACTED], should you wish to discuss any aspect of these comments.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Sarah Buckler', is written over a light blue circular stamp.

Sarah Buckler PSM
GENERAL MANAGER - ADVOCACY

Environmental Protection and Biodiversity Conservation Act 1999 Review Submission

April 2020



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The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association setup solely to serve councils and their individual needs. The LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. The LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

1.0 Introduction

The Local Government Association of Queensland (LGAQ) welcomes the opportunity to provide comment on the '*Environmental Protection and Biodiversity Conservation Act 1999 (the Act) Review*'.

The LGAQ Policy Statement, the definitive statement of the collective voice of local government in Queensland, holds the following positions relevant to environmental protection:

5.1.6.4 Local government seeks appropriate policy and legislative frameworks from the federal and state governments to allow necessary decision making and responses to climate change to occur without prejudice or undue risk exposure to councils.

5.3.6.2 Local government seeks to work cooperatively with the Federal and State Governments to protect biodiversity values in Queensland.

5.3.6.4 Local government seeks the reinstatement of a local government's right to seek offsets for matters of local environmental significance that are largely the same as matters of national or state environmental significance in geographical areas where the state and federal governments have determined they do not require offsets.

6.1.1.1 Local government should be recognised as the sphere of government immediately responsible for land use planning and development assessment.

6.1.1.2 Local government supports an effective planning system guided by appropriate legislation and balanced social, environmental, cultural and economic interests.

6.1.1.5 Local government opposes state government land use planning policy or intervention that inhibits local decision making.

The Australian Government's role is to set the broad strategic vision and objectives and to develop robust regulatory frameworks for biodiversity conservation in Australia. Local governments in Queensland look to the Australian Government to provide leadership on key environmental issues which underpin the Australian economy, such as biodiversity conservation.

The review of the Act is of interest to Queensland local governments as local governments in Queensland play an important role in protecting and enhancing local biodiversity through their role in land use planning and development assessment, as land manager but also through the capacity building of local community groups by, encouraging stewardship and sound environmental management.

However, Queensland local governments experience with the Act are many and varied, and largely depend on geographic location, development pressures (such as master planned residential communities) and the presence of Matters of National Environmental Significance (MNES).

In this context, Queensland local governments undertake a range of activities in order to protect and enhance their local environment, including:

- land-use planning and development assessment processes identifying and protecting areas containing matters of local, state and/or national environmental significance;
- biodiversity conservation and management, within council and strategic assessments;
- protection of significant environmental assets, especially for managing future growth;

- coastal management, including managing sea level rise and coastal flooding through protection of native coastal vegetation and development assessment;
- environmental asset protection, including management of council reserves, environmental regulation compliance, soil and water quality monitoring and regulation, and management of invasive plants and animals; and
- cultural and built-heritage management and protection.

The LGAQ has prepared comments to the most pertinent questions for Queensland local governments outlined in the *Review of the Environmental Protection and Biodiversity Conservation Act 1999 Discussion Paper* and has made 17 recommendations, summarised below:

- **Recommendation 1: The LGAQ recommends any changes to the Act and/or associated governance arrangements, continue to support Queensland councils as the sphere of government immediately responsible for land use planning and development assessment, and in their role in biodiversity conservation.**
- **Recommendation 2: The LGAQ recommends the objects of the Act are expanded to include consideration of a changing climate and impacts of disasters on biodiversity.**
- **Recommendation 3: The LGAQ recommends additional Matters of National Environmental Significance such as ecosystems of national significance, vulnerable ecological communities, nationally significant river systems, wetlands and ground water dependent ecosystems be considered for inclusion in the Act.**
- **Recommendation 4: The LGAQ recommends the streamlining of terminology across jurisdictions, to better support biodiversity conservation outcomes.**
- **Recommendation 5: The LGAQ recommends consideration be given to establishing an independent expert advisory panel responsible for evidence-based decision making in relation to MNES to provide greater levels of transparency, in consultation with stakeholders.**
- **Recommendation 6: The LGAQ recommends the thresholds for referral and assessment are reviewed to ensure decisions are well founded and adequately consider cumulative impacts on MNES.**
- **Recommendation 7: The LGAQ recommends the investigation of a national environmental data program to share information to support broader landscape assessments and prevent individual developments being assessed in isolation.**
- **Recommendation 8: The LGAQ recommends ‘an important population of a vulnerable species’ is more adequately defined in the Act to take into account the potential for cumulative impacts.**
- **Recommendation 9: The LGAQ recommends harmonisation of environmental offsets frameworks across all three levels of government to enable local governments to protect MLES where the Commonwealth or State governments determine an offset is not required and to ensure consistency across multiple jurisdictions.**

- **Recommendation 10:** The LGAQ recommends the current Commonwealth offset framework is improved through the provision of clearer definitions and the establishment of regular monitoring and reporting to ensure environmental outcomes and to improve accountability.
- **Recommendation 11:** The LGAQ recommends the establishment of an appropriately resourced monitoring, compliance and enforcement framework for MNES is developed collaboratively between all levels of government and other key stakeholders.
- **Recommendation 12:** The LGAQ recommends the terms ‘significant impact’ and ‘controlled action’ is clarified and clearly defined within the Act to avoid confusion and improve transparency.
- **Recommendation 13:** The LGAQ recommends a review of biodiversity conservation legislation across Australia with a view to ensuring consistency and minimising complexity and increased information for proponents who may trigger referral to the Act.
- **Recommendation 14:** The LGAQ recommends the establishment of clear requirements for the type of information provided by proponents when a referral is triggered under the Act, including survey design and effort for particular species.
- **Recommendation 15:** The LGAQ recommends the suggested independent expert advisory panel are used to vet the materials submitted as part of a referral to ensure decisions are made on the best available science.
- **Recommendation 16:** The LGAQ supports further investigations into the use of strategic assessments, where appropriate, to provide for protection of the environment on a landscape or regional scale and streamline existing assessment processes, provided there is surety for increased biodiversity protection and all relevant stakeholders, including local government, are adequately consulted.
- **Recommendation 17:** The LGAQ recommends investigation and establishment of new environmental markets, such as environmental trust funds accompanied by appropriate governance measures, to support the delivery of priority biodiversity conservation activities.

Please don't hesitate to contact Kristy Gooding, Lead – Natural Assets and NRM [REDACTED] [REDACTED] or Crystal Baker, Lead – Planning and Development [REDACTED] should you wish to discuss any aspect of this submission.

2.0 Background

The *Australia State of the Environment Report* (2016) indicates the number of threatened species and threatened ecological communities has increased since 2011. This report also indicates that there is no indication that the major pressures on biodiversity outlined in the 2011 State of the Environment report have decreased; and Australia's biodiversity is continuing to decline. The report emphasises that new approaches are needed to prevent accelerating decline in many species. The ongoing threat of a changing climate as well as the recent impacts of bushfires upon biodiversity highlights the importance of ensuring the national legislation that aims to protect biodiversity is functioning optimally.

3.0 Importance of the Act

Queensland local governments view the Act as an important piece of legislation to ensure a consistent framework for biodiversity conservation and ecologically sustainable development can be implemented across Australia. The protection of biodiversity should remain the focus of the Act, although the Act, regulation and associated policies need to be dynamic and responsive to emerging threats and challenges to biodiversity conservation.

Queensland's planning framework is also underpinned by the concept of 'ecological sustainability', with the purpose of the *Planning Act 2016* section 3(1) being to '*establish an efficient, effective, transparent, integrated, coordinated, and accountable system of land use planning (planning), development assessment and related matters that facilitates the achievement of ecological sustainability*'.

Ecological sustainability is defined in section 3(2) of the *Planning Act 2016* as:

"...a balance that integrates:

- (a) the protection of ecological processes and natural systems at local, regional, State, and wider levels; and
- (b) economic development; and
- (c) the maintenance of the cultural, economic, physical and social wellbeing of people and communities."

Section 3(3) of the *Planning Act 2016* further explains each of the (a)-(c) components listed above and specifically includes '*accounting for potential adverse impacts of development on climate change...*' in the context of maintaining cultural, economic, physical and social wellbeing of people and communities.

The current objects of the Act are viewed as sufficient, although it is suggested that additional objects should be included to address issues associated with a changing climate and disasters as they relate to the conservation of biodiversity.

Recommendation 1: The LGAQ recommends any changes to the Act and/or associated governance arrangements, continue to support Queensland councils as the sphere of government immediately responsible for land use planning and development assessment, and in their role in biodiversity conservation.

Recommendation 2: The LGAQ recommends the objects of the Act are expanded to include consideration of a changing climate and impacts of disasters on biodiversity.

4.0 Matters of National Environmental Significance

Whilst there is support for the current nine Matters of National Environmental Significance (MNES), a number of councils have noted that the Act needs to have the flexibility to incorporate additional MNES as new environmental issues emerge. It is suggested that the following issues be considered for inclusion as MNES through this review process including ecosystems of national significance, vulnerable ecological communities, nationally significant river systems, wetlands and ground water dependent ecosystems.

Recommendation 3: The LGAQ recommends additional Matters of National Environmental Significance such as ecosystems of national significance, vulnerable ecological communities, nationally significant river systems, wetlands and ground water dependent ecosystems be considered for inclusion in the Act.

Queensland councils also note the criteria for threatened species and ecological communities differ in each State/Territory. Consistency in terminology through inclusion of a definition in the Act would assist in streamlining legislation across borders and support greater species conservation.

Recommendation 4: The LGAQ recommends the streamlining of terminology across jurisdictions to better support biodiversity conservation outcomes.

5.0 Which elements should be priorities for reform?

Queensland councils suggest the focus of the Act should remain the conservation of biodiversity, however, there are a number of elements of the Act that need to be reviewed and considered for reform including transparency and accountability; consideration of cumulative impacts; the implementation of environmental offsets; and compliance and enforcement.

5.1 Transparency and accountability

The assessment and approvals process within the Act need to be greatly improved to assist in streamlining processes and ensuring transparent decision making. For example, one local government in Queensland have had over 30 referrals through the Act during the last year, all of which have been approved or conditionally approved. A large number of these applications have been determined to present a 'significant impact' to threatened species, yet no applications were refused. Some of these projects have been able to progress through the delivery of offsets, however, there is no clear and transparent method for determining if the offset is in fact delivering appropriate environmental outcomes that address the impacts occurring as a result of development.

Scientific and evidence-based decision-making processes are essential for public confidence and to ensure sound environmental decision making. Queensland local governments believe data provided by proponents such as Environmental Impact Assessments and project reporting should be made publicly available. The move towards greater transparency should not only include the publication of the information underpinning decisions, but also information about the processes that are being used to make decisions.

Additionally, Queensland councils have indicated there is the need to ensure transparency in decision making. It is suggested the use of independent experts, such as an advisory panel may be a sound governance measure to improve the transparency of decision making.

Recommendation 5: The LGAQ recommends consideration be given to establishing an independent expert advisory panel responsible for evidence-based decision making in relation to MNES to provide greater levels of transparency, in consultation with stakeholders.

5.2 Cumulative impacts

The true nature of the impacts of a proposal on MNES, even if substantial, are difficult to determine at a local level. For example, over 2,400 hectares of Grey-headed Flying-fox winter foraging habitat has been referred for assessment under the Act and subsequently cleared within one Queensland local government area. Only three applications out of 35 were deemed to be a 'significant impact' to grey-headed flying-foxes, although these vegetation types are well recognised as critical winter foraging habitat. While each impact may be relatively small in the context of a species with such a broad range, the total cumulative impact has never been addressed and the result has been a slow chip away at the critical habitat for the species.

Recommendation 6: The LGAQ recommends the thresholds for referral and assessment are reviewed to ensure decisions are well founded and adequately consider cumulative impacts on MNES.

As a result, it is essential that the cumulative impacts on MNES are monitored and taken into account in the decision-making process. To facilitate this, it is suggested that a national environmental data program that links state, territory, local government and Non-Government Organisation data is established to share information and ensure decisions are made using full information to support monitoring, compliance, planning, assessment and reporting.

Recommendation 7: The LGAQ recommends the investigation of a national environmental data program to share information to support broader landscape assessments and prevent individual developments being assessed in isolation.

In addition, cumulative impacts are more likely to occur for species listed as 'Vulnerable' under the Act. This is because impacts are only significant to 'important populations' of a 'vulnerable' species whereas any population of an Endangered and Critically Endangered species are deemed significant. With the exception of a few species, such as the koala which has specific guidelines, defining an important population of a vulnerable species is problematic and often impossible to do at the scale of a single referable impact.

Recommendation 8: The LGAQ recommends 'an important population of a vulnerable species' is more adequately defined in the Act to take into account the potential for cumulative impacts.

5.3 Offsets

Feedback from Queensland local governments indicates support for environmental offsets in relation to MNES, but there are a number of recommendations for improving the transparency, accountability and delivery of this measure to ensure environmental protections. If offsets are to persist as a reasonable approach to biodiversity conservation, then a more effective framework is needed to ensure effective environment outcomes ensue.

Importantly, within the Queensland environmental offsets framework Queensland local governments have indicated that in the situation where the Commonwealth does not require an offset for MNES, but the local government consider an area to be a Matter of Local Environmental Significance that is the 'same or substantially the same' as MNES, there is no provision for an offset to be sought by local government in the same geographic area. It is essential that local governments can protect environmental values where the state or federal government does not. Additionally, there are differing offset processes and requirements in operation across the three levels of government, creating confusion for users of the system.

- **Recommendation 9: The LGAQ recommends harmonisation of environmental offsets frameworks across all three levels of government to enable local governments to protect MLES where the Commonwealth or State governments determine an offset is not required and to ensure consistency across multiple jurisdictions.**

The LGAQ provided a submission on behalf of its members to the Queensland Government review of the Queensland Environmental Offsets Framework in 2019. Some recommendations from this submission apply equally to the Commonwealth environmental offsets framework including the need for:

- Stronger application of, and guidance for the ‘avoid’ and ‘mitigate’ components of the mitigation hierarchy.
- A review of the offsets calculator to ensure the true cost of delivering offsets is accounted for and enables delivery of sound environmental outcomes commensurate with the impacts of development.
- Clear guidance to support decisions regarding the location of offset delivery projects to minimise environmental impacts, noting land supply pressures in certain local government areas make this challenging in some circumstances.

Additionally, the following is needed in a national context:

- Development of a set of standards for environment offsets, enabling consistency and alignment between jurisdictions.
- Creation of an offsets register, including an advanced offset register.
- Increase opportunities and education for private landholders to support registration of properties as advanced offsets.
- Greater clarity around key terms and themes in the *Environment Protection and Biodiversity Conservation Offset Policy*. In particular, greater clarity regarding what the Australian Government views as ‘additionality’ and ‘suitable location of an offset site’ is sought.
- A clear and more consistent method for determining habitat quality at both the impact site and the offset receival site through the *EPBC Offsets Calculator*.
- Consent from the property owner as part of the assessment process, prior to the land being proposed as an offset.
- Greater transparency is needed to improve trust in the system and to ensure environmental outcomes are being delivered through this method. Auditing and review of the environmental outcomes that are being delivered via offsets should be publicly reported upon on a regular basis.

Recommendation 10: The LGAQ recommends the current Commonwealth offset framework is improved through the provision of clearer definitions and the establishment of regular monitoring and reporting to ensure environmental outcomes and to improve accountability.

5.4 Compliance and Enforcement

Effective compliance and enforcement monitoring of approval decisions and associated impacts on MNES is a long standing concern of Queensland local governments. In 2014, the Australian National Audit Office found significant shortcomings with compliance management in relation to the Act. A follow up audit in 2017 found limited progress had been made to improve compliance monitoring. Not only is monitoring crucial to evaluate the effectiveness of the decisions made resulting from Act approvals, it is also vital to engender public confidence and support for this legislation. Given the scale and resources required, it is recommended

that the review consider the development of a monitoring, compliance and enforcement framework to address this important issue.

Recommendation 11: The LGAQ recommends the establishment of an appropriately resourced monitoring, compliance and enforcement framework for MNES is developed collaboratively between all levels of government and other key stakeholders.

6.0 Operation of the Act

Consultation with Queensland local governments suggest there is scope for a number of operational aspects of the Act to be reviewed to improve the functionality of the Act, such as clarifying terminology; streamlining legislation; and strengthening the information provided by proponents.

6.1 Terminology

The terms 'significant impact' and 'controlled action' are considered ambiguous and open to interpretation. As these terms are critical for the triggering of referral under the Act, it is vital this terminology is clearly defined and understood by key stakeholders.

Recommendation 12: The LGAQ recommends the terms 'significant impact' and 'controlled action' is clarified and clearly defined within the Act to avoid confusion and improve transparency.

6.2 Streamlining legislation between jurisdictions

An important, ongoing concern raised by Queensland local governments is a perceived duplication of state/territory and Commonwealth government conservation legislation. A lack of clarity around responsibilities, processes and listings arises where the Act exists alongside State and territory biodiversity conservation legislation with similar aims. Queensland local governments have also noted the differing terminology between different jurisdictions, increasing the complexity of biodiversity protection. A review of the Act's relationship with other Commonwealth and state environmental legislation is considered worthwhile to ensure consistency and minimise complexity. A standard methodology for assessment of activities (potentially an automated online tool and interactive mapping helping proponents identify and prompt whether the activity needs referral and what's required) would be highly valued.

Recommendation 13: The LGAQ recommends a review of biodiversity conservation legislation across Australia with a view to ensuring consistency and minimising complexity and increased information for proponents who may trigger referral to the Act.

6.3 Provision of information by proponents

Queensland local governments have noted the provision of information by proponents to the Commonwealth is often insufficient to support a comprehensive assessment of the risks to MNES in making decisions.

For example, defining an 'important' population at the scale of a single referral is made more difficult by the nature of information used to assess a referral. Information is provided solely by the proponent, relying heavily on desktop assessment and limited field surveys. All desktop surveys have an element of sampling bias and cannot be used to make a true determination of presence or absence. While there are a number of survey guidelines for various threatened species these are not comprehensive and many species are missing. Councils also site cases

where the best sources of information to support decision making are not used and instead rely on substandard datasets.

In some circumstances the recommended survey effort is not sufficient to reduce the risk of false negative detection, meaning that some species are missed or not considered in determining the significance of an impact. For example, some proponents in a particular Queensland local government area have spent two nights undertaking spotlight searches and found no evidence of the Vulnerable Greater glider. However, literature on the species suggests two survey nights only has a 10-70% chance of positive detection and five nights is required to have a 90% confidence of positive detection. As there is currently no method for peer review or vetting of data and survey techniques used by proponents to inform the assessment process, decisions are being made without adequate information.

Recommendation 14: The LGAQ recommends the establishment of clear requirements for the type of information provided by proponents when a referral is triggered under the Act, including survey design and effort for particular species.

Recommendation 15: The LGAQ recommends the suggested independent expert advisory panel are used to vet the materials submitted as part of a referral to ensure decisions are made on the best available science.

7.0 Should the EPBC Act require strategic assessments

Queensland local governments consider strategic assessments to be a highly valuable and underused tool and supports the use of mechanisms such as strategic assessments and bioregional planning, to provide for protection of the environment on a landscape or regional scale. A strategic assessment could streamline processes, provided that adequate rules, guidelines and factsheets are developed, and all relevant stakeholders are adequately consulted.

Greater use of strategic assessments could also minimise the risk of cumulative, regional impacts by providing a clearer holistic view of the net impacts to a species or ecosystem across a broader geographic area, rather than simply assessing development specific impacts. They also provide the opportunity to plan for matters like water security and climate change adaptation that cross local government and State borders. However, it is critical that strategic assessments are led by those who possess the technical knowledge around the true nature of impacts and can demonstrate impartiality. It is also critical that the level of surety that is currently provided by independent processes operating at a State and Commonwealth level for biodiversity protections are upheld through a strategic assessment process by implementing appropriate checks and balances and ensuring there is adequate consultation with affected stakeholders.

Recommendation 16: The LGAQ supports further investigations into the use of strategic assessments, where appropriate, to provide for protection of the environment on a landscape or regional scale and streamline existing assessment processes, provided there is surety for increased biodiversity protection and all relevant stakeholders, including local government, are adequately consulted.

8.0 Establishment of new markets

Queensland local governments are supportive of exploring opportunities for new environmental markets. However, it is noted that care needs to be taken to ensure such

markets do not compromise the desired outcomes of biodiversity conservation or exploit a specific environmental attribute.

A trust fund, as mentioned in the Act review discussion paper, would be useful to ensure ongoing funding for vital works and campaigns, as long as stringent governance measures guiding the use of the funds are established. The trust fund could be a useful funding source to adequately invest in and implement the threatened species recovery plans that are largely not being delivered.

Recommendation 17: The LGAQ recommends investigation and establishment of new environmental markets, such as environmental trust funds accompanied by appropriate governance measures, to support the delivery of priority biodiversity conservation activities.