

SUBMISSION TO THE EPBC ACT REVIEW

ANON-K57V-XQK2-K

Organisation

ACT Heritage Council

State or Territory

Australian capital Territory

Areas of interest

The objects of the Act; Heritage

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.

Page 12, 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 ACT Heritage Council considers that the extension of the EPBC Act (*the Act*) to national heritage places in 2004 was a significant step as it specifically recognised ‘heritage’ (Natural, cultural and historic values) as part of the environment. The amendments strengthened Commonwealth agency obligations to manage heritage values and enabled resources to be targeted to identify and protect significant and outstanding heritage places. In this way the Act helps identify places that merit Commonwealth effort to pursue international recognition through the World Heritage List. The National Heritage List has been a significant vehicle for the nation’s recognition of, and respect for, Indigenous heritage. In addition to encouraging international standards of environmental and heritage management, national and world heritage listing has significant tourism and economic benefit for Australia and its regional communities. Protection through the EPBC Act and its regulations is generally achieved efficiently as day-to-day management can rely on tailored plans.

Page 17, 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?

The EPBC Act does not include a definition of ecologically sustainable development, it only provides principles of ESD (Section 3A) and ‘ecologically sustainable use of natural resources’ (Section 528). It is suggested that ESD be defined, informed by international standards, research and a whole of environment approach (including the cultural and natural environment). ICOMOS, associated with UNESCO, is the peak global heritage body. It has been working to promote the conservation, protection, use and enhancement of cultural heritage places and sites through creation of knowledge and advocacy and is particularly engaged with ‘sustainable development’. ESD should have a strong and integral relationship with the whole of environment, and be viewed through the three pillars of sustainability (the environment, society and economy). Cultural heritage has a vital role in sustainable development. Indeed, ‘Culture’ may be considered a Fourth Pillar of Sustainability (Reference: Agenda 21 <http://www.agenda21culture.net/sites/default/files/files/documents/en/zz_culture4pillars_d_eng.pdf >).

An awareness of costs and benefits, including those for the environment, is important. Adequate measurement of environmental benefits is an important area of research that should be funded. Lower cost economic measurements may be more efficient and better suited to assist the making of smaller scale decisions than full-blown cost-benefit analysis.

Page 18-19, Question 3. Should the Objects of the EPBC Act be more specific?

The objects of the Act appear well pitched, allowing for specific priorities to reflect jurisdictional responsibilities and respond to changing circumstances.

Page 20, Question 4. Should the matters of national environmental significance within the EPBC Act be changed? How?

The current triggers appear to adequately reflect the responsibilities of the Commonwealth.

Page 23, 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?

It is important to help facilitate proactive voluntary environmental protection by landholders, and much urban heritage benefits from regular maintenance by owners. On the other hand, regulatory systems are especially appropriate to deal with deliberate and reckless illegal activity, and successful and appropriate compliance needs to be adequately facilitated by the Act. The ACT Heritage Council considers that the need for regulation is unlikely to be replaced by voluntary mechanisms, but the approaches can certainly work hand-in-hand.

In terms of reform priorities, the ACT is in an unusual situation of high interaction between National Land (Commonwealth) and Territory Land planning mechanisms. The ACT Heritage Council would support reform efforts that ensure that all heritage places in the Territory are cared for with advice and oversight from a heritage authority (whether this be the ACT Heritage Council, the Commonwealth heritage administration including the Australian Heritage Council, or cooperatively by both systems). The statutory mechanism should support continued cooperation between jurisdictions in planning for the management of heritage places.

There is an EPBC Act reform matter of particular interest to the ACT Heritage Council. In the ACT, land is either National Land (and thus under Commonwealth planning, heritage listing and management legislation), or Territory Land (under the Territory planning, heritage listing and management legislation). However, The ACT (*Planning and Land Management*) Act 1988 allows for land of either kind to be identified as 'Designated Area' (in the National Capital Plan). Designated Area comprises land for which the Plan, administered by the National Capital Authority (NCA), may specify detailed conditions of planning, design and development.

Designated Areas wholly within National Land are clearly within the heritage listing and management system of the Commonwealth (under the Australian Heritage Council and federal minister in the EPBC Act system). On the other hand, an issue arises where heritage places in the ACT are within Designated Area on Territory Land. In such 'Designated Area Territory Land' the ACT Heritage Council has the power to list places, but it is the Commonwealth (the NCA) which has development and compliance control. The gap is that, unless the place is also listed as a National Heritage Place, no expert heritage organisation,

Commonwealth or Territory, is statutorily involved in development approvals for the heritage places affected. Currently the National Capital Authority and ACT Heritage Unit cooperate very effectively and well on heritage matters but, from a structural and transparency point of view, the NCA cannot replace an expert heritage body. It has broad functions that could include being the proponent of development.

The ACT Heritage Council would recommend that the review consider a statutory mechanism to address this anomaly, for example, to formalise the role of the ACT Heritage Council in relation to developments affecting ACT-listed heritage places in Designated Areas of Territory Land.

Page 26, 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 resilience of environmental values, including those of natural and cultural heritage places, in the face of climate change, extreme weather events and fires has been an increasing concern in the Territory and elsewhere. Four-yearly State of the Environment reporting provides a means to report on the impacts but the high loss of, and damage to irreplaceable heritage places flags an increased need for national coordination and resources to improve the resilience and survival of Australia's most vulnerable heritage places. These are the places that are distributed across the Australian landscape that reflect the distinctive story of Australia. They set it apart as a destination for international tourism.

Broad national standards for protection and management of heritage places are included in EPBC regulations, and coordination may be statutory or policy measure or both. Perhaps the Act could enable a mechanism to prioritise more specific standards for matters of national management importance (eg. for measures that increase the resilience of rural cultural (Indigenous and historic) heritage places to withstand the impacts of wild fires).

The identification of heritage places remains a dynamic and innovative action but the maturing of national, state and Territory heritage lists results in an increasing corpus of valuable heritage assets to care for. It is timely to increase the focus on measures for the long-term well-being of these investments, including the production of management plans and resourcing of resilience-building infrastructure.

Page 29, Question 7. What additional future trends or supporting evidence should be drawn upon to support the review?

The Act's objects include 'to provide for the protection and conservation of heritage'. The review needs to consider the loss of identified heritage places (world, national, state, Territory and Commonwealth list), or significant loss of heritage values, since the last EPBC

review, as a result of such factors as fire, extreme storms, pests, neglect, accident and deliberate destruction. While the management of heritage is a shared responsibility of the Commonwealth, states and Territories, some issues of management increasingly warrant attention at the national level. The coordinating body *Heritage Chairs and Officials of Australia and New Zealand* provides a valuable forum for national heritage policy development. It would be useful to canvass how the trends in the causes of loss of heritage values may inform priorities and future evolution of management mechanisms under the EPBC Act.

Page 31, Question 8. Should the EPBC Act regulate environmental and heritage outcomes instead of managing prescriptive processes?

There are many instances where standards can be met most efficiently by leaving the process and means of achieving outcomes for the regulated party to determine. Sometimes, on the other hand, very clear regulatory guidance eliminates areas of doubt that can increase the costs of compliance, or the loss of environmental and heritage values through, for example, a lack of awareness of how to proceed. The approach may thus depend upon factors including information costs and the availability of expertise in relation to the particular matter.

Coordinated management plans involving all key stakeholders have been a generally very useful means to protect heritage values without process-heavy regulation. There would be efficiency in conservation plans more easily operating to protect heritage values across the jurisdictions in which the heritage is recognised. This may include greater recognition or endorsement of heritage management planning of another jurisdiction, and perhaps cost sharing to enable updated heritage conservation planning to meet the standards across relevant jurisdictions.

Page 32, 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?

There may be case for increased national coordination of measures across jurisdictions to increase the resilience of heritage places against impacts of extreme climatic events.

Page 33, 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 environmental standards with the Commonwealth taking a monitoring and assurance role? Does the information exist to do this?

National standards may assist heritage protection, and evaluations against targeted standards would help to identify priorities for the allocation of resources.

Page 35, Question 11. How can environmental protection and environmental restoration be best achieved together? Should the EPBC Act have a greater focus on restoration? Should the Act include incentives for proactive environmental protection? How will we know if we're successful? How should Indigenous land management practices be incorporated?

While restoration is a mechanism not suited to all non-renewable heritage resources, it is extremely valuable to support the use of Indigenous knowledge and land management practices, along with the input of other bodies of science, to care for country and its heritage.

Page 36, 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?

Heritage conservation management plans are a flexible means of guidance and are tailored to the particular circumstances of each heritage place.

Administrative support for Indigenous organisations to develop nominations would facilitate Indigenous heritage listings of particular interest to Indigenous people.

The ACT Heritage Council is strongly in favour of a values-based heritage system. This allows for very focussed and inclusive, rather than blunt, regulation. It is especially well suited to heritage places like homes in private ownership, as it allows reasonable scope for sympathetic change whilst conserving the heritage values that are important to the community.

There is a strong case for initiatives to encourage and support private heritage conservation. Some useful incentives already exist, including subsidised heritage advice.

Page 38, 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?

The ACT Heritage Council generally supports strategic mechanisms, such as conservation plans, conservation agreements and strategic assessments of larger-level programs or plans, where they increase certainty, effectively protect heritage values and reduce costs.

Page 38, 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?

In relation to heritage, the roles and responsibilities for heritage identification and regulation at different levels are mostly well separated. In management of places, there may be efficiencies in contracting services delegated to States and Territories. For example, by consolidation of management plans.

Page 39, 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 publically (sic) available?

In heritage management, mechanisms like heritage agreements and conservation management plans can be used to identify, with some precision, activities that are unlikely to have an adverse impact on heritage values. These have an advantage over blanket regulatory exemptions in that they can be tailored to the particular circumstances of a place.

Online national databases that reduce search time for heritage information are considered to assist conservation. Wide access to environmental assessment data is conducive to cheaper environmental compliance and better community education. Due care must of course be taken with sensitive cultural information when Indigenous heritage values are involved.

Page 41, 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?

While species-specific protection has a role, our view is that a landscape-scale approach to protection of cultural and natural heritage places is likely to be more effective than species-specific or place-specific measures, especially in maintaining the environmental context of Indigenous heritage places.

Page 42, Question 17. Should the EPBC Act be amended to enable broader accreditation of state and territory, local and other processes?

Accreditation of expert and resourced government systems with a statutory framework seem more likely to be successful in environmental protection than wider accreditation of bodies operating under voluntary codes.

Page 43, Question 18. Are there adequate incentives to give the community confidence in self-regulation?

The ACT Heritage Council applauds the vast majority of private owners who value and maintain their heritage properties. However, circumstances can change quickly and it is uncertain that self-regulation has been demonstrated to adequately protect heritage. When dealing with irreplaceable heritage assets, there is a very high consequence of failure. The Council nevertheless strongly supports the use of incentives that lead to better heritage protection.

Page 44. 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 mechanisms should be added to the Act to support the role of Indigenous Australians?

ACT Heritage Council Submission - 2020 EPBC Act Review Discussion paper

While the Act has many mechanisms for engagement and involvement of Indigenous Australians, it may be useful to consider the significant impost on time and resources for increased engagement by the communities. Aboriginal liaison officers are a key to linking with communities, and enabling more effective input. Statutory measures for Indigenous involvement in heritage identification and management would be better implemented through increased training and support for such positions.

Page 45. 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?

There is a strong case for communities to have access to decision-making materials that would, in any case, be available through freedom-of-information processes. There is also scope for considering new community-based bodies to deepen consultation. In dealing with the membership of existing decision-making bodies, care will be needed to ensure that the advice of expert advisory bodies under the Act retains an overall expert character, to ensure community confidence. Valuable insights are obtained from representatives with a wide understanding of community perspectives on environmental and heritage issues, and active consultation and engagement with the community should remain a key element in the work of decision making bodies under the EPBC Act.

Page 47, 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?

While the ACT Heritage Council does not have a particular view on the Act's decision-making model, it is strongly in favour of there being a separate body, expert in heritage matters, advising on heritage under the Act.

Page 48, 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?

It may be useful to include calculations of 'historical embodied energy' (ie. the energy and resources invested by past generations in construction) along with heritage values, in the accounting equation when considering the viability of conservation and adaptive reuse options for heritage buildings.

If reliance on self-regulation is increased, there will need to be a substantially increased investment in audit and compliance mechanisms. Equally, there will be a need to produce guideline publications and other resources, like case studies, to enable owners and managers to effectively meet the standards.

Page 49, Question 23. Should the Commonwealth establish new environmental markets? Should the Commonwealth implement a trust fund for environmental outcomes?

The ACT Heritage Council would be interested to see discussion of the concept of a Commonwealth trust for long-term environmental and heritage outcomes.

Page 49, Question 24. What do you see are the key opportunities to improve the current system of environmental offsetting under the EPBC Act?

Offsets are generally not an option for managing unique heritage assets, although economic measures like tradeable development rights are used in urban conservation.

Page 50, 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 risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?

Consideration should be given to better publicising the charitable status and tax-deductibility of gifts made for the purpose of preserving or protecting Australia's Indigenous and historic cultural heritage places (under the *Charities Act 2013*, paragraph 12(1)(e) and ss.16(2)). Incentives, developed with appropriate advice from the Australian Taxation Office, could also be sensibly directed to encourage the establishment of trusts to support heritage conservation by the managers of heritage places or by not-for-profit heritage bodies.

Page 52, Question 26. Do you have suggested improvements to the above principles? How should they be applied during the review and in future reform?

The principles on pages 51-52 of the document provide a generally good foundation for the review. The Council suggests that processes of deregulation be accompanied by concomitant increases in monitoring, audit and compliance capacity and activity, to ensure sound heritage outcomes.