

SUBMISSION TO THE EPBC ACT REVIEW

ANON-K57V-XQQQ-R

Name

Peter See

Organisation

10 Deserts Project

State or Territory

Western Australia

Areas of interest

The objects of the Act; Indigenous Australians; Matters of National Environmental Significance; Biodiversity

Attachment provided?

Yes

Do you give permission for your submission to be published?

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

SUBMISSION RESPONSES

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



Independent Review of the EPBC Act A Submission from the 10 Deserts Project April 2020

Background to the submission

The 10 Deserts Project (10DP) is an Indigenous-led partnership for healthy country, healthy people and a strong Indigenous voice for Australia's desert country.

Spanning 2.7 million square kilometres or 33% of Australia, the project focusses on building the capacity of Indigenous people to look after country, working together on common threats, investigating sustainable income streams for future activities and enabling the inter-generational transfer of traditional cultural and ecological knowledge. The project is enabled with financial support from the BHP Foundation.

Further information on the project can be found at www.10deserts.org

This submission has been prepared for consideration by the review by the 10DP project team with endorsement by Desert Support Services, the lead agency for the project. Other partners to the project may provide their own submissions focussing on issues of concern to their constituents. Due to time constraints and the impact of COVID-19 on remote communities and partners, this submission does not have the formal endorsement of the partners.

1. ABOUT THE EPBC ACT

THE HISTORY OF THE EPBC ACT

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?

As discussed in responses to questions that follow, we believe that the scope of matters of national environmental significance need to be broadened to include other regional ecosystems and landscapes, particularly those under, or with the potential to be under, indigenous management, using traditional knowledge. This will require a widening of the definition, and the scope to utilise a broader suite of mechanisms beyond 'protection' and existing 'offsets', to include ecosystem improvement / restoration and greater cultural inclusivity.

WHAT THE EPBC ACT DOES

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?

There needs to be a greater or more targeted recognition in the Act of:

1. indigenous cultural and community development considerations in ESD recognising the need for these to be at the core of decision-making about developments that impact on Indigenous lands and waters; and
2. processes of decision making that seek to optimise social, economic and environmental outcomes with a particular attention to equity and enabling traditional owners to be heard in decision-making processes.

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

No response

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

Yes.

In its current form the scope of biodiversity conservation under the Act is too narrow. It does not recognise non-threatened and non-national heritage listed regional ecosystems, nor place any limit on impacts such as the general loss of biodiversity more generally.

The Act should be amended to include recognition of important significant landscapes and regional ecosystems to biodiversity protection and provide for new triggers to be included such as greenhouse gas emissions. Targets should be set for protection of these regional ecosystems and, in that context, a new range of incentives for investment in their protection be introduced under the Act. This would complement the existing biodiversity offset provision, which is too limited in its application.

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?

More flexible and proactive mechanisms for biodiversity protection would be welcomed, particularly where that involved indigenous communities. More could be done to broaden the provisions of the Act for the protection of the environment on a landscape or regional scale. That is, better and wider use of the existing mechanisms such as regional strategic assessments and bioregional planning. Within the context of these, targets or measures for 'ecosystem protection' and/or 'ecological condition' could be established. With a widening of the allowable incentives for investment, beyond just offsets, new mechanisms for investment could be encouraged to meet these levels of desired protection. This would address the overly limited scope of the provisions in the existing Act.

However, along with this potential relaxing of *assessment* regulation, there needs to be a shift of resources to an on-ground outcomes audit program, supported by penalties and provisions for restoration, when required.

THE PERFORMANCE OF THE EPBC 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 dominance of triggered ecological impact assessment under the Act means that it has a limited role in wider-scale biodiversity protection. As the Discussion Paper observes, *“the health of the Australian environment and its biodiversity has continued to decline”*.

Moving forward, what is required under an amended Act is provision for:

1. greater strategic, regional assessments and planning, with these including targets and thresholds for ecological change / condition in all Australian bio-regions;
2. much greater levels of inclusion of indigenous knowledge in establishing these;
3. more efficient site / project-specific impact assessment; and
4. provision for a greater diversity of mechanisms to secure private investment on biodiversity management at landscape scale, including to support indigenous land management programs.

2. WHAT THE FUTURE LOOKS LIKE

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

Existing trends in landscape management and biodiversity protection that need to be embraced by an amended Act include:

1. vastly increased remote sensing information to measure changes to landscape condition (work being done by CSIRO, Geoscience Australia and other partners) - available to a wider diversity of stakeholders, closer to real time and at higher resolution;
2. greater investment by private sector in biodiversity conservation on Indigenous managed and / or private land (both philanthropic and investment for financial return in productive landscapes);
3. the emergence of voluntary semi-regulatory mechanisms (eg. ‘credit’ schemes. For current examples, please refer to the ‘Reef Credit’ scheme in Queensland and the ‘EcoAustralia’ Credit scheme in Victoria);
4. The emergence of biodiversity ‘co-benefit’ schemes to augment carbon credits (eg. The Land Restoration Fund scheme in Queensland);
5. Significantly greater involvement of indigenous groups in landscape management programs with the potential to effect significant improvements to ecosystem protection, monitoring and reporting at landscape scales potentially as a paid service (eg. 10 Deserts Project particularly around fire management, feral herbivore and buffel grass control; coordinated Savannah burning programs in Northern Australia;)

3. FOCUS AREAS: HOW CAN THE EPBC ACT BE IMPROVED?

A. THE ROLE OF THE EPBC ACT

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

No, not necessarily. It should and can do both.

There's opportunity to increase the efficiency and efficacy of existing prescriptive project-specific impact assessment processes (including greater synergy between the Commonwealth and states and territories), while adding and enhancing innovative and more strategic mechanisms aimed at achieving outcomes.

However, as has been discussed above, of more concern the four key aspects of modernising the role of the Act from the perspective of the 10DP are:

1. Considerably more effort to incorporate indigenous knowledge and aspirations in strategic regional assessments and establishing targets, measures and thresholds for acceptable change to ecosystem condition. This would include a stronger focus on recognising and including local Indigenous community-based planning into decision-making;
2. A new perspective on approaches to delivering offsets that includes enhancements of regional ecosystems and landscapes not directly associated with the impacted site under investigation;
3. A facilitation of far greater levels of private sector investment in enhancing landscapes through mechanisms such as biodiversity credit markets;
4. Facilitation of accessible, cost-effective and culturally appropriate verification of ecosystem outcomes.

B. BETTER ENVIRONMENT AND HERITAGE OUTCOMES

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?

Yes, there's clearly a need for a greater role by the Commonwealth. Broadly, there's a need for much greater consistency between jurisdictions on environmental outcomes and means of achieving.

Examples include:

- The 10 DP works mainly across three jurisdictions (WA, NT, SA). While it has been instrumental in coordinating discussions across jurisdictions, its efforts are hampered by different regulatory environments (e.g. control of feral herbivores)
- Offset programs should be national – or at least based on nationally consistent principles and utilising national databases and information;
- Use of remote sensing information should be standardised and readily available (the majority of this is from commonwealth agencies).

Environmental standards

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?**

Yes. The EPBC Act should be amended to move towards a national standard setting approach, based on the best available science and traditional indigenous knowledge, and strongly linked to regional landscape and ecosystem outcomes.

While these can be non-binding on states and territories, the value of these is that they provide:

1. a suite of targets to guide investment by both the public and private sectors;
2. incentives for the development of innovative investment schemes, such as voluntary biodiversity credit markets.

In regard to indigenous inclusion at a landscape scale there are several opportunities. Of particular interest in this submission is the work of the 10 Deserts Project. It is working with 7 indigenous partner organisations and 3 conservation organisations covering 2.7 million sq kms (representing 33% of mainland Australia, including 3 states and 1 territory). There are several regional ecosystem / landscape types in this area, and we believe that there is opportunity for the Commonwealth, in consultation with indigenous communities and respective state and territory governments, to establish broad regional ecosystem health targets. This would incentivise investment and help facilitate the establishment of innovative mechanisms by indigenous groups to work with private capital to meet these biodiversity and cultural inclusion outcomes.

Environmental protection and restoration

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?**

Further to the response to Q 10, if the focus of the amended Act was on Outcomes (regional ecosystem / landscapes, threatened species and ecosystems), then it would be logical for the Act to address both protection and restoration. That is, to protect some sites and ecosystems from impact and to facilitate the restoration of degraded landscapes.

The 10 Deserts Project is working at a landscape scale to address habitat restoration through re-introduction of right-way fire practices (i.e. combining both traditional Indigenous and contemporary fire practices), as well as feral camel and buffel grass control in the project area. By reducing uncontrollable, hot, wildfires, and re-introducing cooler, mosaic burning patterns, the on-ground evidence collected over the past decade by regional indigenous organisations is that vegetation and fauna biodiversity is enhanced. The success of this program can be monitored by a mix of remote sensing and selected ground assessments at reference sites.

However, what is missing from this is a strategic environmental and cultural planning framework with policies, strategies, targets, standards and measures. We are not suggesting this be incorporated into the Act. Rather, the role of the Act would be to:

1. Facilitate the requirement to develop such a 'plan' for the arid zone (&/or sub-regions within);
2. Recognise these required outcomes, thereby providing a 'head of power' for stakeholders collectively to achieve these;
3. Facilitate a revised suite of mechanisms to achieve these outcomes through a mix of protection, offsets, and investment in restoration;
4. Provide for a consistent means of cost-effective, culturally appropriate, landscape-scale verification of outcomes.

Heritage protection and management

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?

Management of cultural sites is critical to traditional owners and aligns with their cultural aspirations and obligations.

Many of these sites are not recorded in the arid zone and traditional owners can be cautious about identifying sites to external parties. This makes place-based protection and management approaches problematic.

The Act needs to recognise data gaps and the incomplete listing of important cultural heritage sites and landscapes – and provide mechanisms for supporting community-based assessment of these values prior to development approvals (including consideration of values articulated in existing community-based plans such as Healthy Country Plans and other NRM plans).

C. MORE EFFICIENT AND EFFECTIVE REGULATION AND ADMINISTRATION

Reducing regulatory complexity

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?

No, both are required. Strategic, landscape assessments for bio-regions need to provide the framework for more local case investigations and assessments. For the 10DP project area, strategic assessments, followed by defining outcomes for biodiversity, landscape and cultural management would greatly enhance the framework and potential funding opportunities for on-ground work.

Also refer responses to Qs 10 and 11 above and 14 below.

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?

There may be efficiencies gained from more streamlined project impact assessment between the Commonwealth and jurisdictions. However, more significantly for the 10DP as argued in this submission, the provisions of the Act should be broadened to provide for a wider role for the Commonwealth in setting national standards and consistency, and requiring large-scale regional assessment that establish strategic outcomes, facilitate the means of achieving these, and standards and processes for verifying these outcomes.

Simpler and clearer interactions with government

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?**

It is necessary to be very cautious about defining “low risk projects”. Data for the desert is generally less available and / or recorded. It follows that areas that may appear as unimportant, could have significant biodiversity and cultural values. Allied with this is the fact that traditional owners are sometimes reluctant to identify and record cultural site values, possibly leading to heritage listing which in turn may invoke more external controls being put on traditional owners.

This issue highlights the need for a planning and assessment process that enables these gaps to be identified and filled – with techniques to identify important sites, landscape and connectivity with protocols built in to protect sensitive cultural knowledge.

Regional approaches

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?

No, it should and can do both.

While there are provisions for protection of threatened species and communities, there’s scope to widen the scope of the Act to facilitate defining and achieving habitat management outcomes at a landscape-scale. As discussed later in this submission, the 10DP area would provide a useful case study for this to be implemented.

However, within this wider landscape context, it would be important to also have a focus on specific categories of individual species with higher threat levels. Also refer responses to Qs 10, 11 and 13.

Alternative regulatory approaches

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

Yes, but not just state and territory processes.

With the emergence of semi-regulatory schemes and verification methods outside government, the Act should allow for the ‘accreditation of other schemes and processes. Examples of these private sector processes and methods are: (eg. Reef Credit Scheme by GreenCollar; Accounting for Nature’s environmental condition verification method).

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

No response

D. INDIGENOUS AUSTRALIANS’ KNOWLEDGE AND EXPERIENCE

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?

We suggest three areas of improvement are required that can be given effect under the Act, as well as in policy for best practice:

1. Enhancing Impact Assessment

The following should be strengthened in the Act:

- a. Added requirements to ensure that Aboriginal knowledge is always included in environmental impact assessments. In much of the desert there is little available data on threatened species so often assessments do not need to address what may be known by the traditional owners. Currently, it is left to the discretion of respective project proponents with regards to how much they want to ask traditional owners. The Act should be amended to require mandatory consultation.

2. Strategic Assessments and Establishing Regional or Landscape Scale Outcomes

The following should be strengthened or included in the Act:

- a. The requirement for indigenous involvement in defining strategic outcomes, targets and measures for bio-regions / regional landscapes. The emphasis here might be two-fold: (i) areas subject to large projects or areas where there is considerable development activity (or the potential for this); and (ii) areas that are seeking to attract private investment in Aboriginal land / habitat management practices for which defined biodiversity outcomes are required.
- b. When developed, recognition (not endorsement) of these strategic bio-regional plans under the Act.

3. Creating mechanisms that facilitate and incentivise private investment in large scale Aboriginal land / habitat management programs

The current offset provision in the Act is narrowly focussed and difficult for Indigenous land management programs to take advantage of and help fund ongoing programs. Additionally, with the lack of an accredited method (by the ERF) for supplying ACCUs in much of the land under Aboriginal management, the existing potential income stream to support programs is primarily limited to ad-hoc and limited government and philanthropic grants.

Therefore, we are suggesting that what is required to support greater and more extensive Indigenous land management are additional mechanisms that encourage private (and public) investment in their programs.

In our responses to Q 10, 11, 13, 14, 16 above, we emphasise the importance of amending the scope of the Act to include those biodiversity outcomes and programs that indigenous programs are principally focussed on:

- biodiversity protection and enhancement in remote areas and in bio-regions that are generally under-represented in national and community considerations (though not necessarily in representation in the National Reserve System) of Australia's biodiversity values and significance (eg. the deserts; remote savannah regions);
- landscape-scale habitat restoration through re-introducing right-way fire management; and
- biodiversity enhancement through feral animal and weed control.

This blend of biodiversity protection and enhancement, coupled with use of Aboriginal traditional knowledge, practices and cultural values, is a powerful combination and is potentially emblematic of the next phase of large-scale biodiversity protection programs in Australia. However, the policy and institutional framework to support this and encourage investment is lacking. While we are not suggesting that amendments to the EPBC Act alone can give rise to this large-scale program, it has a key role to play.

Two key linked trends are relevant to defining the way forward and amendments required to the Act:

- the emergence of much higher levels of private investment in biodiversity protection and restoration on land not in the protected area estate; and
- the establishment of voluntary mechanisms that attract private investment to support specific environmental outcomes (eg. the Reef Credit scheme in Queensland).

The 10DP and its partners are keen to develop a mechanism that provides a reputable means for private capital to invest in biodiversity protection and restoration by Indigenous land managers, using a mix of scientific and traditional knowledge. It is envisaged that this is primarily 'social and environmental impact investing' on behalf of their corporation's shareholders, rather than investing for financial return.

As emphasised throughout this submission, we believe that what is required for the framework or architecture of this to be achieved is:

- statutory or policy recognition of the biodiversity values, traditional knowledge, protection objectives and broad restoration objectives represented in bio-regional plans;
- mechanisms that allow private investors to invest in contributing to achieving those outcomes, supported by appropriate cost-effective methods of verification.

Recognising this combination of mechanisms acting in concert is required to support greater and sustainable indigenous engagement with biodiversity management, the following should be strengthened or included in the Act:

- a. Creating the provision for voluntary bio-regional or regional biodiversity plans to be developed (to some guidance / standards) articulating biodiversity and cultural values, objectives and implementation strategies and measures;
- b. Broaden the activity of the Act to creating the means for these plans to be recognised as measures under the Act contributing to Australia's biodiversity outcomes;
- c. Creating a means by which new 'credit' schemes can be recognised under the Act, perhaps by meeting basic requirements and national consistency standards.

The emphasis here is NOT on creating statutory plans or credit schemes. This is too onerous for all parties. Rather, we are suggesting a 'light touch' approach to providing recognition to natural and cultural values of bio-regions and the substantive habitat management work being undertaken by indigenous land managers over a very substantial area of Australia's land mass which has significant biodiversity and cultural values.

E. COMMUNITY INCLUSION, TRUST AND TRANSPARENCY

Inclusion and transparency

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?

refer response to Q 19

Governance, certainty and accountability

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?

refer response to Q 19

F. INNOVATIVE APPROACHES

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?

Offsets and market-based approaches

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

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

Alternative financing approaches

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?

A consolidated response to Questions 22 - 25

The 10 DP is currently participating in a Biodiversity Credits Working Group with other interested organisations that is looking at the opportunities to develop a biodiversity credits market within Australia. The aim of a market would be to attract investment by corporates and philanthropic organisations into conservation or natural resource management activities.

While most activity in this area is currently around regulated offset requirements, government can play a critical role in:

- Modifying the offset requirements to allow for more flexibility and the strategic use of offsets including offsets that support existing aspirations and priorities identified in local Indigenous healthy country plans or existing NRM plans;
- Encouraging investment in proactive conservation management through the creation of a biodiversity credit market with a system of accounting for changes in biodiversity or habitat and trading credits either as a part of offset requirements or for more general biodiversity outcomes.

The Commonwealth could support the development of a biodiversity credit market that would allow for corporate and philanthropic investment to deliver environmental outcomes in addition to the existing offset requirements.

Offsets can be ad-hoc or not available under the current arrangements. In places where there are limited options due to land tenure or other issues, alternative strategic offset arrangements should be possible. This could include enhancing or building connectivity to existing NRS properties and regional or landscape scale initiatives to address key threats or opportunities to restore EPBC priority species.

A biodiversity credits market could assist with improving the current system of environmental offsetting.

The use of offsets should be restricted however where the negative impacts of a proposed development are so significant as to threaten the existence of a particular species or other triggers under the Act.

4. PRINCIPLES TO GUIDE FUTURE REFORM

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

No response