

# SUBMISSION TO THE EPBC ACT REVIEW

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## Name

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## Organisation

ACT Office of the Commissioner for Sustainability and the Environment

## State or Territory

Australian Capital Territory

## Areas of Interest

Threatened species; Matters of National Environmental Significance; Environmental Impact Assessments; Climate change; Decision making; Biodiversity; Conservation; Water;

## 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 Office of the Commissioner for Sustainability and Environment (OCSE) recognises the unique nature of the Australian environment and supports all measures to protect biodiversity and improve ecological sustainability. The EPBC Act should enable the addition of new NMES as required to ensure the ongoing protection of biodiversity and to increase the outcomes and effectiveness of ecological sustainable development (ESD). OCSE also encourages regular updates of NMES to maintain the relevance of the EPBC Act.

Consideration should be given to species and communities listed as vulnerable, rather than just those listed as endangered. The EPBC Act should work to conserve these and prevent species and communities from becoming endangered, not just protect those already under significant threat.

In terms of the ACT region, the effectiveness or otherwise of past EPBC Act changes is not clear. Effectiveness can only be determined through the ongoing monitoring and assessment of the status of NMES affected by development and offset programs. However, as determined by the 2019 ACT State of the Environment report

([https://www.envcomm.act.gov.au/\\_\\_data/assets/pdf\\_file/0009/1483569/SOEFull.pdf](https://www.envcomm.act.gov.au/__data/assets/pdf_file/0009/1483569/SOEFull.pdf)), this information is not currently available. A formal and mandatory approach to monitoring and

assessment needs to be included as part of the ESD process where NMES are concerned. The current national reporting requirements are not adequate for this purpose, monitoring and reporting at the local level is required.

**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 incorporation of ESD would be best served by ensuring that the EPBC Act specifies a precautionary approach to decision-making to prevent negative outcomes from development and other decisions relevant to the EPBC Act. This should include considerations of biodiversity, climate change, resource use, environmental health, human health and wellbeing, and the long-term impacts on future generations. Economic assessments should necessarily consider potential and long-term impacts on the environment as well as human health and wellbeing, rather than simple calculations of economic benefit in terms of profits and jobs created. For example, ongoing impacts from land use change, habitat destruction and the loss of ecosystem services etc are likely to require future rectification which can cost future generations far more than any initial profit calculated from simple and short-term economic assessments.

In addition, there are many environmental and human wellbeing values which cannot be accounted for (intrinsic values), such as the emotional and wellbeing responses to the loss of greenspace, biodiversity etc. The use of cost benefit analysis needs to acknowledge limitations in addressing such values.

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

The listed objects could be improved by incorporating the following specific objects:

- Climate change – this should be a separate consideration encompassing all potential impacts of development on climate change and its management. This includes increased emissions from land use change and any long-term ongoing resource use.
- High value ecosystems – protection of high value ecosystems should be included, not just endangered communities. The loss of high value ecosystems has significant implications for biodiversity and ecosystem services.
- Significant resource reliance – land use changes requiring significant ongoing resource use needs to be specifically noted. This includes increased water and energy use.

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

The current matters are likely specific enough as they cover most important matters. However, objects should be regularly reviewed to ensure relevance and to enable rapid response to new significant matters.

**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?**

Biodiversity protection should be a priority for this review. Reporting undertaken by this office (ACT State of the Environment 2019 [https://www.envcomm.act.gov.au/\\_\\_data/assets/pdf\\_file/0009/1483569/SOEFull.pdf](https://www.envcomm.act.gov.au/__data/assets/pdf_file/0009/1483569/SOEFull.pdf)) clearly shows that biodiversity continues to be significantly impacted by ongoing development and climate change. This needs to be addressed by the EPBC Act review.

The OCSE does not support the removal of regulation for biodiversity management. As shown by the long-term issues relating to the protection of native vegetation, it is clear that relaxing approval processes can result in significant negative and avoidable impacts.

**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 question of effectiveness in terms of positive outcomes for biodiversity and ESD should be a priority. There needs to be an improvement in high quality data around the impacts of decisions made and the performance of the offsets required as part of the approval process. In particular, positive outcomes for MNES (i.e. increased populations or improved habitat condition) need to be demonstrated where offsets have been used.

Economic costs are not a primary priority in terms of operation and administration. It is the positive outcomes (i.e. improved biodiversity or habitat) and long-term benefits that should be focussed on for this review.

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

As discussed in Question 6, evidence of effectiveness is critical. It is important for the review to be evidenced based.

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

OCSE sees significant benefit in using outcomes based approaches, however, this should be done whilst still managing the prescriptive processes. Positive outcomes can only be achieved where underlying processes are effectively managed.

Outcomes could be assessed using targets to determine effectiveness (increase in species populations, habitat condition and extent etc). These targets can then be used to inform ongoing independent monitoring and assessment i.e. assessments based on meeting agreed targets.

**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?**

The EPBC Act needs to take a strong role in delivering environmental and heritage outcome for those species and communities where they occur across states and territories and where the species/community is nationally important.

In terms of articulating outcomes, given the need for localised assessments, it would be beneficial for jurisdictions to have the key role in this area. This could be done through SoE reporting at the jurisdictional level, as well as ongoing regular reporting on EPBC Act outcomes (such as for specific offsets). It is also important that outcomes reporting is undertaken by independent organisations.

Oversight of outcomes could come from the Commonwealth and reporting being the mechanism to determine achievements.

**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?**

OCSE supports the use of environmental standards. Standards have been shown to be effective in a range of industries to improve outcomes. Targeted standards will enable specific requirements to be incorporated for a range of management issues and ecosystem/biodiversity types.

In terms of how such standards could be incorporated, the targeted standards approach would be preferable. Broad standards may not be specific enough to prevent negative outcomes and non-binding options are unlikely to be strong enough.

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

In general terms, a greater focus on restoration would be highly beneficial to improve the condition of natural ecosystems and ecosystem services. However, this would depend on condition assessments being undertaken to determine the need for, and effectiveness of, any restoration work.

A greater focus on restoration is perhaps more easily achieved with specific regard to offsets, where restoration is fundamental for:

- ensuring that offsets deliver appropriate outcomes through habitat and other improvements, and
- meeting the need to respond to the degradation of offsets from events such as bushfire and drought to ensure the required outcomes can be achieved after such events.

Incentives should be included for private land restoration to enable landholders to undertake

required improvements. A vital component of this will be the funding of community groups who provide much of the work on private land (e.g. Landcare, various Friends of groups etc)

Ongoing monitoring and reporting is required to determine restoration effectiveness. This should be done by jurisdictions to ensure accurate reporting at the local level. Local monitoring could be reported to the Commonwealth and then the Commonwealth synthesises and reports nationally.

The incorporation of Indigenous land management practices should be done as per question 12.

**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?**

Indigenous heritage and land management are vital considerations for the EPBC Act. This review should incorporate direct engagement with Indigenous groups to determine how best to incorporate Indigenous interests and ongoing involvement. This is an area that should be under continuous review as partnerships and knowledge of interactions with the indigenous communities develop.

**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?**

OCSE supports the use of strategic assessments and has produced two independent audits to meet requirements of the EPBC Act. These are the Molonglo Valley strategic assessment ([https://www.envcomm.act.gov.au/\\_\\_data/assets/pdf\\_file/0003/1208811/FINAL-Independent-Audit-of-the-Molonglo-Valley-Strategic-Assessment-5-June.pdf](https://www.envcomm.act.gov.au/__data/assets/pdf_file/0003/1208811/FINAL-Independent-Audit-of-the-Molonglo-Valley-Strategic-Assessment-5-June.pdf)) and Gungahlin strategic assessment ([https://www.envcomm.act.gov.au/\\_\\_data/assets/pdf\\_file/0007/1168405/FINAL-report-7-Dec-with-changes-from-EPSSD-Independent-Audit-of-the-Gungahlin-Strategic-Assessment-November-2017-A14477882.pdf](https://www.envcomm.act.gov.au/__data/assets/pdf_file/0007/1168405/FINAL-report-7-Dec-with-changes-from-EPSSD-Independent-Audit-of-the-Gungahlin-Strategic-Assessment-November-2017-A14477882.pdf)). Both relate to the development of large suburban areas within the ACT.

These audits disclosed the importance of timely reviews, the need for corrective action requests to be made, and the value of recommendations – a national approach would be unlikely to adequately provide the level of coverage and detail required. The ACT Government has responded positively to both audits and OCSE is confident that the assessments will help to improve outcomes.

Benefits of the localised and independent reporting undertaken for the strategic assessments include:

- There appeared to be a tendency to ‘set and forget’ the administrative management of Strategic Assessments in the relevant bureaucracies. For example, the audit of the Molonglo Valley Strategic Assessment was only issued after it was discovered to have been overlooked, and this only occurred after the audit of the Gungahlin Strategic Assessment (which post-dated the Molonglo Valley Strategic Assessment) was commenced. The Molonglo Valley audit should have been commenced well before the Gungahlin audit.
- The need to ‘police’ the operations of developers involved in works which might impact MNES became apparent in the Gungahlin audit when a patch of golden sun moth habitat was encroached upon and there was no corrective strategy in place. This matter was resolved by a CAR

process and actually had little impact on the MNES itself. However, it was a matter of concern that there were no protocols in place in the event of a breach of the requirement to protect MNES until the independent audit called for specific action.

- NGO commentary about the audits raised the following:
  - the need for ongoing community consultation,
  - the need to be able to audit the financial contributions made by the government (which was specifically excluded from the audit terms of reference), and,
  - generally, the implications of using biodiversity offsets.
- Overall, while there may have been complaints about the unnecessary burden of environmental regulation, it was not apparent in these two audits and that this impacted the strategic assessment processes. The point could be made that more oversight, not less, would have been appropriate, given the Strategic Assessments are intended to protect MNES.
- It would appear that when monitoring and evaluation is attached to the Strategic Assessments and it is properly oversighted by the relevant specialists and government departments there can be positive outcomes from the application of both direct and indirect offsets.

However, there may be cases where case by case assessments are also appropriate. The EPBC Act should support both options and applied as required.

**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?**

OCSE has no comment on this question. This is best addressed by jurisdictions who administer the Act and the Commonwealth.

**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?**

No. All projects need to go through some level of assessment prior to approval. It is important that appropriate risk assessments are undertaken to determine if a project is indeed low-risk. Impacts may be overlooked if projects receive automatic approval.

OCSE supports the development of a national environmental database, and publicly available EIAs. This public transparency would help improve environmental management, assessments of outcomes, strengthen assessment accuracy and improve public confidence in the approvals process.

**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?**

It should do both. The protection and maintenance of habitat is necessary to maintain biodiversity. However, there would still need to be species specific protections to ensure endangered species are

appropriately managed e.g. for those impacts that place pressure at the species level, but not necessarily the broader ecosystem.

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

The EPBC Act should focus on the objectives for the MNES species and ensuring adequate protection is maintained for these national species. Accreditation is the mechanism for ensuring this protection and should be regularly checked and monitored.

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

OCSE has no comment on this question.

**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 mechanism should be added to the Act to support the role of Indigenous Australians?**

Indigenous heritage and land management are vital considerations for the EPBC Act. This review should incorporate direct engagement with Indigenous groups to determine how best to incorporate Indigenous interests and ongoing involvement.

**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?**

The EPBC Act should include measures to ensure appropriate community involvement in decision-making. This is especially relevant for any development where the community may be directly involved.

For this to occur there needs to be an appropriate level of representation along with access to relevant information to enable informed discussions for decision-making. As with Indigenous participation, the best approach for this should be determined through direct engagement with community groups, including environmental groups and industry.

**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?**

OCSE has no comment on this question.

**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?**

OCSE has no comment on this question.

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

OCSE has no comment on this question.

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

One of the key opportunities is to improve outcomes reporting to determine the performance of offsets. In OCSE's 2019 ACT State of the Environment report ([https://www.envcomm.act.gov.au/\\_\\_data/assets/pdf\\_file/0009/1483569/SOEFull.pdf](https://www.envcomm.act.gov.au/__data/assets/pdf_file/0009/1483569/SOEFull.pdf)), we stated that it was "not currently possible to assess whether offsets have ensured no net loss of biodiversity following land development". Improved offset monitoring and assessments will not only enable outcomes reporting but will improve the knowledge base required to improve management practices and effectiveness – for both habitats and specific species.

OCSE recommends the review introduce formal requirements for ongoing monitoring and reporting for all offset areas.

**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?**

OCSE has no comment on direct investment from the private sector however, should private investment occur it must be with full transparency to ensure that investments align with the conservation of the MNES.

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

OCSE has no comment on this question.

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

It is difficult to determine this. Given the continuing degradation of ecosystems and biodiversity across Australia, particularly around populated regions, it is most likely that the Act is not effectively delivering. It is concerning that after 10 years there is not specific data to inform this question. Future implementation of the EPBC Act should consider how measurement of the Acts effectiveness can be undertaken and reported.

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

OCSE has no comment on this question.

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

As per question 27, given the ongoing loss of habitat and species, it is unlikely future challenges can be met by the Act if changes are not made to strengthen environmental protection and effectiveness of management.

This review should consider the future challenges of climate change and urban/population expansion and incorporate measures to ensure the Act can address the protection of MNES for future protection.

**QUESTION 30: What are the priority areas for reform?**

Improving the protection of biodiversity and natural ecosystems. Improved ESD in terms of reducing climate change impacts and minimising the ongoing resource use associated with changes to more intensive land uses.

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

The main change required is to improve the outcomes of the Act. The Act needs to prevent further loss of habitat and biodiversity, as well as improve current environmental condition. This can only be achieved through improving the capacity of the legislation to prevent impacts on the natural environment. This will depend on significantly reducing the negative impacts from proposed developments, either through the non-approval of high-risk projects, or the incorporation of strict conditions (which are appropriately monitored) where high-risk developments are necessary. To do this, the Act needs to be strengthened, particularly around the approval process, to ensure environment is the main consideration in decision-making.

Strengthening the requirement for ongoing monitoring and reporting is also fundamental to determine that measures are being effective, particularly for offset programs.

Finally, making approvals and monitoring information publicly available would help improve environmental management, the assessment of outcomes, strengthen assessment accuracy and improve public confidence in the approvals process.

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

No – many thanks for the opportunity to provide comment and feedback.