

SUBMISSION TO THE EPBC ACT REVIEW

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Name

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State or Territory

Queensland

Areas of Interest

The objects of the Act; Threatened species; Matters of National Environmental Significance; Environmental Impact Assessments; Great Barrier Reef; Cumulative impacts; Compliance and enforcement; Decision making; Biodiversity; Conservation; Sustainability, Precautionary Principle & Intergenerational Equity;

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?

Initially, the Act and MNES were extensions of the powers of Commonwealth into areas previously regarded as the exclusive jurisdiction of the States, but I consider this was appropriate and accepted by Australians given widespread community concern over environmental degradation related to land use and planning/development control, unforeseen at the time of Federation. It is now accepted that the Commonwealth will regulate activities which have potential to threaten matters of national and international significance. In general, Commonwealth involvement in environmental regulation provides opportunity for simplification and greater consistency (better for all parties) than separate State & Territory regulation, but at the risk of duplication. I think the scope of Commonwealth involvement under the current EPBC Act is appropriate at the current time (let's firstly just get the thing working like it was supposed to, adequately resourced, more effective and less politicised) subject to my suggested improvements under Question 3 to include greater powers to prevent extinctions and enforce recovery plans.

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?

ESD requires consideration of environmental, social and cultural factors, but the 'economic' aspect should be limited to consideration of costs and benefits to the public. Cost Benefit Analysis for private investment is not an appropriate matter for consideration in decision-making under the EPBC Act. The role of government is to look after the public interest, and ensure that industry and the private sector can compete with clear rules on a level playing field (both nationally and internationally). If a reasonable environmental (or safety, or labour) regulation causes a particular industry to be financially unsustainable, then it may not be an industry that is in the national interest unless it can improve its performance. Historically, governments which abolished slavery, introduced the Plimsoll Line in England for shipping safety, and (in USA) regulated the motor vehicle industry after Ralph Nader published 'Unsafe at Any Speed', were all faced with dire predictions from industry lobbyists that these burdens and delays on business would cause economic ruin and national uncompetitiveness, which proved unfounded. Does anyone now consider that the car industry is crippled by over-regulation, which in all countries specifies vehicle safety measures in exceptionally fine detail? In most cases, government 'red-tape' and 'green-tape' appear to create jobs, not weaken economic growth. That is certainly the case for the environment profession (which I am part of) and all the 'green sector' consultants, employees and agency staff.

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

Yes ... the prevention of extinctions (at national, state and regional level) should be an object of the Act, with powers to enforce (or at least require annual reporting of) species recovery plans.

And the reference to environmental assessment and approvals, by referring to 'streamlined' but not 'rigorous', sends a message that the Act rates efficiency over effectiveness.

A better wording of this objective would be: "provide an effective national assessment and approvals process for specific actions, and frameworks for cumulative and proactive strategic environmental assessments"

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

The list of MNES should always include those features for which Australia has a global stewardship responsibility viz. our biodiversity ('at risk' species and communities, as listed by independent scientists), migratory species, World Heritage and other land, wetland and ocean areas recognised under treaties. However the list of MNES should be periodically reviewed apolitically through an enquiry process (with submissions). Inland waters which cross State boundaries, and groundwater & aquifers shared by States, also require Commonwealth regulation and some of this should be addressed (as a national environmental asset) through MNES under EPBC. I would also like the concept of MNES to be extended to include cultural significance (Matters of National Environmental and Cultural Significance) although this would need to be defined.

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?

Most of the 71 recommendations of the 2009 Hawke Review are also long overdue and high priority for implementation. The highest priority is the creation and adequate resourcing of a Commonwealth Environmental Protection Agency or Environment Commission (as per Hawke Review); and an independent Commissioner accountable to and reporting to Parliament; and a requirement for a rolling series of transparent State of the Environment reports (eg. one each year but covering say 5 main topics such as biodiversity, water & rivers, waste and pollution/contamination, so that topic is subject to a SoE every 5 years). Effective SoE reporting of course requires targets, benchmarks and criteria ... you can't manage what you don't measure ! Another priority, which the Commonwealth is in the best position to introduce and coordinate, is pro-active strategic environmental assessment - driven by and responsible to government, not industry. The costs of each SEA could be recovered from the 'benefitted industries' through charges levied on subsequent approvals, similar to the concept of headworks charges.

High on my agenda (as a Life Fellow of EIANZ, inaugural Board member and past Chairman of the Certified Environmental Practitioner scheme) also is Recommendation 24 for an enforceable Code of Conduct for environmental consultants, based on the model of the CEnvP scheme established by EIANZ. As I have argued in conference papers, and as recommended by Professions Australia, governments can have effective but low-cost (and low-risk) oversight of professional standards by encouraging professional associations to establish, administer and police their own certification or registration schemes, which must meet certain legislated standards (eg. have a Code of Ethics and disciplinary & appeal procedures) in order to be recognised in agency statutes and accompanying schedules, for example all those regulations which stipulate that documents and sign-offs be by a 'suitably qualified person'. Agency can periodically review each profession's certification/registration scheme to ensure it continues to meet the standards specified in regulations. This would be a win-win arrangement for the professions and for governments, and go some way to addressing the low level of community trust in environmental assessments undertaken on behalf of, and paid for, by the proponents of development.

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?

At a high level, the EPBC Act should recognise the extinction crisis of the Anthropocene and our global responsibility to look after the unique Australian environment (climatic variability, 60K years of indigenous management, low fertility soils, ancient ecosystems, fire-dependency, high rates of extinction, distinctive patterns of ecological succession, high biodiversity only partly documented, vulnerability to invasive species etc) . There also needs to be recognition that the science of conservation biology and landscape ecology is still evolving, as is our biota's response to European settlement. Standards change, but the EPBC Act must create a framework which (as a 'bottom line') prevents environmental destruction while at the same time encouraging and rewarding 'beyond compliance' best practice. Legislation needs to allow environmental regulation and management to adapt to changes in the underlying science, as well as climatic changes and cumulative impacts. With respect to effectiveness, I'm afraid the EPBC Act scores at best a 4/10 while it has forced industry and State/local governments (and to some extent the media) to focus on environmental assets of significance at national scale, and has undoubtedly led to some environmentally-

destructive development projects to be abandoned or at least improved, it has not prevented or slowed the rates of extinctions, has not achieved 'buy-in' from and constructive engagement with rural and regional communities, it has led us down the false path of off-sets and has not advanced our society towards the goal of ESD. At its most basic, ESD requires decision-makers (based on the best possible information available, and the precautionary principle) to achieve a balance between the environment, social (community, health and cultural considerations) and economic factors but the Act give little guidance to how to tackle this juggling act. I think some simple guidelines should be included eg. where a species is at risk of extinction or a water body is already at the limits of its assimilative capacity, environmental factors should be a primary consideration.

With respect to economic costs of the administration and operation of the EPBC Act, I consider environmental protection to be one of the highest responsibilities of all governments, to ensure we leave a liveable, attractive and diverse planet for our great-grandchildren ... this should be our goal, even if we are inconvenienced by higher process and a decline in our high-consumption living standards , just like in wartime. Of course any government should keep costs under review and achieve efficiencies where possible but not through any reduction in environmental regulation, monitoring, compliance policing, planning and management, and incentives for improvement. The current climate and extinction crises, plus air pollution and its health impacts, the enormous costs to the taxpayer of remediation (of abandoned mines and contaminated sites) all show what can happen if governments do not control the 'natural' tendency of the market-driven private sector to destroy 'the commons' en-route to maximising profit.

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

Climate change, increasing volatility (bushfires, floods, storms/cyclones, droughts, sea level rises, invasive species, coral bleaching, plant and animal diseases, and pandemics), and galloping extinction rates appear to be part of our immediate future, unfortunately.

Australia is in a good position to commit resources to environmental science and management skills which will benefit not only our community, but also throughout our region. We are leaders in many relevant fields, and have the climate, resources and experts to lead the world in renewable energy.

There is however one group of people, unique on this Earth, who have survived on and managed this beautiful but difficult continent for millenia, through long climatic and geomorphic cycles, keeping their culture intact we must now, before it's too late, humbly learn from our indigenous people.

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

I support the concept and principles of performance-based regulation, as has been the basis of Queensland planning legislation for decades. It is much better at adapting to change and encouraging innovation than prescriptive regulation. Ideally, a performance based system will have broad Desired Environmental Objectives (based on the objectives of the Act), clear Performance Criteria, and specific Acceptable Outcomes for those who wish to take a smooth easy path to approvals. And some self-assessable codes are appropriate, because no government agency can (or should) send public service inspectors to check every site and farm. However this approach is easily

abused and deliberately misunderstood by all 'sides' - by Councils and regulatory agencies, by developers and their consultants seeking loopholes to subvert the legislative intentions, by the media, by lawyers and Courts, and by community activists and conservation NGOs. I truly hope that your Review of the EPBC Act can devise a better balance between performance-based and prescriptive approaches.

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?

I think the current 'positioning' is appropriate. Let's not allow the media to portray this review as a centralist grab for power, or any gains will be lost in yet another tribal right-left battle. Let's just make the current system work better, and maybe consider a widening of the Commonwealth powers at the next review.

Environmental protection and nature conservation will always be controversial and 'political', in the sense that it requires society to agree on use and allocation of resources, and balancing the present and the future, so it is appropriate that competing interests will seek to have more decisions made by the Commonwealth, or more decisions made by States and local government, depending on where they think they'll have more influence. The basic test should be ... if a matter is of national significance (or crosses State boundaries), the Commonwealth should be the final arbiter and should articulate the outcomes and standards but if its of State or regional significance, leave it to the States. And local government should look after local interests. But this principles should apply just to determining who is the final arbiter - many issues are multi-faceted and involve multiple levels of government, so we need to continue and adequately resource the current effective frameworks for apolitical collaboration, many of these are inter-agency committees and forums.

In terms of outcomes, the Act should provide a framework for setting measurable standards and success criteria (maybe in a schedule) as the basis for accountable reporting, preferably by the independent Environment Commissioner.

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?**

Yes, national standards are essential for most things, maybe with some allowance for local variation for example while standards for discharges at their source are important, there may be a need for tighter standards where the receiving waters are already poor quality or unusually sensitive (eg poorly flushed)

As with pollution, contamination and water quality standards, these are best developed Australia-wide by industry and academic researchers working collaboratively with regulators and consultants,

with funding, coordination and oversight by government.

There is no 'one size fits all' approach to whether they should be mandatory or non-binding, it depends on the risk. Risks to human health, ecosystem viability or species extinctions are more appropriate for mandatory standards than, for example, risk of weed invasion or control of feral pests.

Neither is there 'one size fits all' with respect to the information base for broad environmental standards - in some cases there is, in other cases not, in which case a precautionary principle should apply (depending on the environmental and health risks).

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

Yes regarding restoration

Yes regarding incentives

'Success' should be guided by science and indigenous managers working together (what does 'healthy country' look like?), although experienced rehabilitation managers should also be involved, to add their perspectives regarding feasibility and time frames.

Indigenous land management practices specific to each region and type of environment (where known) should be one of the foundational building blocks for restoration ecology in Australia, along with independent science.

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?

No comment - this is not my field.

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

Yes, SEAs would be great reform, as long advocated by the International Association for Impact Assessment (IAIA)

not as a replacement for case-by-case assessments, but to set the context and standards, and frame the scope, for project-specific EISs; as well as providing a template of 'Initial Advice Statements' and dealing with region-wide, consequential and cumulative impacts.

As commented in relation to a previous question, the Commonwealth is the best position to initiate, fund and commission SEAs; although there could be some cost recovery from subsequent development approvals.

This initiative would necessarily be somewhat experimental and every SEA will be different, but it will be important to undertake a thorough review to describe 'lessons learnt' after each one.

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?

No, there will inevitably be overlap - a wetland may be 'only' of State significance, but provide habitat for migratory species of national significance.

But this doesn't mean that States should not be delegated responsibility for delivering EPBC outcomes. This is feasible and desirable.

At present a developer and associated consultancy team can work with a State regulatory agency to refine a project proposal such that the environmental impacts can be satisfactorily managed, but the Commonwealth agency may disagree.

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

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

Low-risk projects should not be exempt, but can be code assessable or self-assessable (but still subject to legal challenge or compliance inspection if the code requirements are breached).

Data especially remote sensing and downstream water quality monitoring are essential tools .

A national environmental database (possibly with some secure password-protected sections for commercial-in-confidence information) would be a big step forward, although it is recognised that Australia and the States have already made many worthwhile advances in this direction already. The 'default' position should be that all EIS information is publicly available, unless there is good reason not to.

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?

Both.

In theory, the landscape scale works best

but doesn't deal well with the environmental responsibilities of individual developers for habitat loss on specific sites.

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

Yes

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

No.

But we need self-regulation for some activities (agency regulators cannot be everywhere) as happens with many other aspects of our society.

Input from the community and stakeholders (such as farmers and industry) will be necessary, over many years and throughout all regions, to answer the basic question "Given that some level of self-regulation must be part of our environmental protection system, what would give you confidence that it is working as intended?"

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?**

Must be done, we have a lot to learn (humbly) from indigenous land and water management; First step is to start a respectful conversation, being prepared to change our minds about long-established 'European' management practices associated with industrialised agriculture.

Not sure how best this can be achieved - this is not my field

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?

A cautious agreement with this principle.

We need community inclusion in setting the 'rules'; but once we have a set of rules in place to protect things of national significance, they shouldn't be overturned by purely local interests. So ... yes to lots more community involvement in environmental advisory bodies and those associated with developing the 'rules'; but not to project-by-project approval processes.

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?

The big reform recommended is a Commonwealth Environment Commission, adequately resourced, and with a Commissioner reporting independently to Parliament

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?

Support and strengthen the profession of environmental practice, regulate consultancies through 'licencing' certification and registration schemes, and together (regulators and the profession plus maybe the PI insurance industry) can raise standards, eliminate unethical 'hired guns' and increase the level of community and media trust in the profession. If the Commonwealth agency trusted consultants to undertake rigorous assessments, tell the truth and give honest expert opinions no matter who was paying them (as required by the EIANZ/CEnvP Code of Ethics and Professional Conduct), some of the 'heat' would go out of environmental approval controversies. If we all agree on trusted facts, then the discourse and debate can rightly focus on values.

The safeguards need to be

- (a) that government(s) approve and list certification / registration schemes which meet their standards, as was agreed to by the Heads of EPAs (HEPA) in 2019 but apparently never implemented, and periodically review such approvals, so that any references to 'suitably qualified persons' in environmental regulations can be defined as those certified or registered by schemes approved and listed under a Schedule; and
- (b) that any member of the public, or any organisation (including government agencies) can bring a complaint about a consultant's alleged breach of the Code of Ethics before the disciplinary provisions of that scheme.

As indicated in response to a previous question, this approach is a win-win for both the profession and regulatory agencies, who achieve effective control over standards with little cost and risk.

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

This is worth exploring
but the bottom line is enforcement and sanctions for non-compliance

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

None - the system is a failure and an invitation to misleading commitments and complicity between agencies and developers to pretend it is working.

In-situ habitat removal cannot be 'offset' by increasing the level of protection on existing habitat (which is already occupied by its own suite of animals) elsewhere.

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?**

The best use of donated money in Australia appears to be the purchase, fencing and management of land specifically for nature conservation.

It is a source of pride that so much of Australia's land reserved for such purposes is under the management of these dedicated organisations; but it is to our shame that governments can no longer fund this activity from tax revenue.

So it would be good to explore ways in which public sector financing could be used to maximum advantage in nature conservation but not through offsetting;
and in any case I don't think the EPBC Act is the appropriate vehicle to do this

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

I do not consider that 'making decisions simpler' should be one of the principles of the Act, except inasmuch as all legislation should be as simple as possible. But (as with all legislation), it is better to be complicated, fair and effective than to be simple inequitable and useless.

However all aspects of environmental legislation need to create a legible 'level playing field' - landowners, lessees, miners and developers (and conservationists) need clear rules as to what they can and can't do and where development is prohibited or can occur (Go / No Go maps) , albeit with environmental protection conditions.

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

No ... but we shouldn't 'throw the baby out with the bathwater'.

There is widespread acceptance of the concept and principles of MNES and the 'right' of the Commonwealth to approve or disapprove certain things, and to set standards.

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

OK, but woefully under-resourced, and has too few officers with environmental management and development approvals practice experience

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

Some processes are OK eg. the schedules of endangered and threatened species can be amended on the advice of a scientific committee (although this can be a bit slow at times); and there is a proven process to change the matters listed as MNES

but in Queensland there is frustration that 'Threatened Ecological Communities' do not correspond with the more sophisticated Regional Ecosystem mapping.

However it is in the area of technological advances that I think the Act needs to be updated including:

--'live' maps which are periodically updated (through a transparent and accountable manner)

--remote sensing as evidence of compliance breaches

--quick 'translation' of EIS information into publicly accessible databases and maps

QUESTION 30: What are the priority areas for reform?

As per responses to a previous question:

Commonwealth Environment Protection Agency or Commission, with an independent Commissioner reporting to Parliament

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

One of the strange things is that EPBC Act controls 'actions' (ie. is not triggered until certain actions take place), whereas State and local government environmental protections are triggered at development approvals stage. While all parties have generally achieved 'work around' solutions to this anomaly, it has potential to create some 'grey areas' and some difficulties for State agencies to take over responsibility for EPBC Act assessments

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

A whole of government commitment to ESD, forming the basis for all departments and legislation