

# SUBMISSION TO THE EPBC ACT REVIEW

ANON-K57V-XQM2-N

## Name

Anonymous

## State or Territory

Australian Capital Territory

## Areas of Interest

## 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?**

Any amendment to the Act for matters of national significance must be justified by scientific evidence.

To date, climate change and the consequences of severe weather are not referenced, making it difficult for those applying the Act to be clear on the expectations of the Commonwealth. These two environmental aspects are key to Airservices' considerations in relation to its environmental approach, as we can facilitate emissions savings for our customers and increasingly need to adapt our service offerings to increase their resilience to weather extremes.

The Act should also consider that ecological diversity may impact the safety of the public and of operational services delivered by industry. For instance, restoration of habitats in areas surrounding aerodromes may increase the risk of animal strikes and inadvertently increase the risk to people.

Amendments to the Act should deliver improved alignment between matters of national and state/territory environmental significance.

**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?**

Any amendment to the Act to promote ESD would be beneficial, such as clear direction and granularity on how organisations should be managing their resource load and the specific requirements or criteria for consideration of ESD within capital investment. This could be on a monetary scale basis for the size of the investment to trigger ESD consideration, however decisions should be based on both financial and non-financial benefits (e.g. community, lower emissions). Improved clarity within the Act would assist organisations to address the ever increasing societal pressure to implement ESD for operational assets by setting a clear benchmark of expectations.

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

The level of detail for the objects of the Act is considered appropriate.

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

The Act should include clear definitions of significant social impact, particularly in relation to noise which would assist our organisation to balance community concerns regarding aircraft noise with the operational and safety imperative to deliver critical services to the aviation industry.

**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?**

The priority focus for reform should be 'Assessment and Approval'. Specifically, Section 160 with respect to defined 'significant impact' is a continual point of ambiguity within the aviation industry particularly with regard to how flight path changes are evaluated. Amendments to the Act should more clearly inform 'environmental (and social) significance' for community noise impacts, which we can then translate to the aviation context.

Opportunity to seek exemptions for triggering Environmental Impact Assessments, which is geared towards standards of heavy industry, should be developed and provide better clarity around referrals, which in turn provides efficiency for the assessment process.

**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?**

Improved guidance and standards should be provided to ensure greater clarity in areas such as aircraft noise impacts.

We have no costings in regard to the economic costs to Airservices for complying with the EPBC Act.

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

The review paper has outlined four mega trends that cover most elements that require consideration. However, in response to population and economic growth there should be a focus on supporting infrastructure and how the Act may address this growth area and link with ESD requirements - specifically, transport infrastructure such as additional runways or airports.

The health and societal impacts of noise (including aircraft noise) are becoming a key focus area, particularly with the rapid growth in urban density, and the aviation and road transport sectors. Clearly linking the potential health impacts of aircraft noise in Australia to national guidelines and regulatory criteria would provide transparency to both the community and aviation industry on aircraft noise impacts in the residential setting.

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

Making the Act less prescriptive could result in organisations setting standards inconsistently across industry due to variance in interpretation. The provision of improved guidance and standards could clarify the environmental or heritage objectives, improve industry application, and reduce uncertainty and delays.

**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?**

Increased clarity with regard to land tenure would be beneficial in the application of the Act with respect to Commonwealth, state and private land, particularly regarding source of pollution and the migration across these differing land tenures. It is currently unclear how Airservices is to consistently manage land contamination that crosses these jurisdictional boundaries, and this improvement to the Act would directly benefit in the provision of our services.

A key weakness of the current Act is the lack of a Commonwealth environmental regulator (i.e. environmental protection agency) to enforce obligations and other relevant Commonwealth environmental regulations.

**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?**

National standards for industry that operate across multiple jurisdictions would be beneficial. Targeted guidance/standards would assist industry in achieving the objectives of the Act. This could be a similar approach to the National Environment Protection Council.

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

The Act should place greater emphasis on proactive management for both restoration and protection measures undertaken by industry. This would benefit from being supported by a reward-based system, similar to existing state environmental legislation for proactive protection, rather than only a focus on consequence for not undertaking good environmental management practices.

**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?**

Airservices operates hundreds of navigational aids, with some located within or adjacent to culturally important places. The current Heritage Management Plans are a sensible management tool for assets in these places. The current values-based system achieves the intent to protect these places.

**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?**

In the absence of clear ‘environmental (and social) significance’ criteria in relation to aircraft noise impacts, environmental assessments of flight path changes should be able to be collated as a single once off ‘strategic assessment’. This would substantially reduce a considerable amount of time, effort and resources in undertaking case-by-case assessments for relatively minor changes that typically have no significant impacts. These are currently assessed against significance criteria developed ‘in-house’, and which have not been approved or endorsed by the Department of Agriculture, Water and the Environment. This comprehensive process is undertaken in an effort to meet the intent of the nonprescriptive conditions within the current EPBC Act.

**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?**

Removal of any ambiguity regarding different levels of government and the application of national standards would be appropriate given the multiple jurisdictions in which we operate. The Act should provide increased clarity on the regulatory position of contamination and specifically across different land tenure for this reason. As such, specific national standards should be applied consistently across all states and territories, for example for contaminated land standards and aircraft noise standards.

**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?**

Projects assessed as low risk should be exempt from referral to the Minister to assist in reducing approval delays. Airservices has implemented an internal system for ‘screening out’ relatively low-risk on-ground and flight path changes from detailed environmental assessments.

Data or case studies (of similar low-risk changes) would support this approach, and these could be gathered in a national database. The availability of data through a national database extracted from environmental impact assessments would be beneficial in making more scientifically informed decisions on projects. This would assist in cost savings for industry, in addition to the exemption process, by projects demonstrating that impacts are low risk and not triggering a particular assessment level.

**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 comment provided as Airservices has a relatively small geographical footprint (i.e. isolated navigational assets). However, we note that species-specific protection (and protection of endangered ecological communities) is sufficient in the current system.

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

Alignment of Commonwealth, State and Territory environmental standards, guidelines and significance criteria should be an aim of any revisions made.

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

Self-regulation has not been demonstrated as effective in any legal framework to date and provides too much ambiguity. Communities require greater clarity around the purpose and application of the EPBC Act (and its related assessment and approval processes), in order to have greater confidence in self-regulation if this occurs.

**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?**

Airservices supports the engagement of Indigenous Australians in culturally important places.

**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 consultative approach to decision-making during the ‘Assessment and Approval’ stage of the EPBC Act would allow communities to be more engaged and may lead to greater acceptance of assessment outcomes. However, for communities to have meaningful input into decision making, they would require a clearer understanding of the EPBC Act, its purpose and application, and the assessment and approval process (as per our response to Question 18). The mechanisms implemented to support this approach would need to ensure that unwarranted delays in the assessment or approval processes are avoided.

**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?**

Airservices works collaboratively with the national aviation safety regulator, and would not be averse to seeing a reformed governance structure in which a national regulatory body is established. However, decision-making structures should take priority in governance arrangements, as transparency should be part of the process. EPBC Act decision-makers should be supported by the same set of consistent governance arrangements, for clarity and transparency.

**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?**

Processes, decision-making structures, and other regulatory mechanisms could be modified based on innovative approaches within current state regulatory frameworks and other federal bodies such as the US EPA. For instance, the NSW EPA operates a risk-based rating for operational facilities based on the level of control measures implemented and environmental performance of the organisation. For those with a low risk rating, this equates to reduced cost of operating approvals and a lower level of governance by the regulator.

Organisations that maintain a comprehensive Environmental Management System (EMS), which under this mechanism would provide confidence to both government and the community that environmental risks are managed appropriately, would justify a lower level of external governance, as the EMS is focused on delivering compliance with requirements and to drive increased environmental performance. Organisations that maintain a high level of EMS maturity and sophistication would be seen as a safeguard to deliver the intended outcomes of the Act.

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

As a government owned organisation, no comment is provided on environmental markets. However, the financial costs of remediation of legacy issues such as PFAS contamination will be significant for the government. A bond or assurance as a trust would ensure appropriate funding of remediation and rehabilitation of unforeseen impacts in the future. This would benefit the community, environment, Government and industry. An example of the effectiveness of this trust exists within QLD, for predominantly mining activities associated with any approvals.

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

As a government owned organisation, no comment is provided on environmental offsetting.

**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?**

As a government owned organisation, no comment is provided in relation to this question.

**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 expressed are suitable and should be supported.

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

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

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

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

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

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

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