

SUBMISSION TO THE EPBC ACT REVIEW

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Name

Angela Ragusa

State or Territory

New South Wales

Areas of Interest

Threatened species; Matters of National Environmental Significance; Environmental Impact Assessments; Great Barrier Reef; Climate change; Compliance and enforcement; Biodiversity; Conservation; Wildlife trade; Commonwealth national parks; legal protection of native species from hunting & inhumane population control/management;

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?

Stronger environmental protection legislation and enforcement is required that transcends conflicts-of-interests between economic/sociocultural norms/preferences and ecological necessities for substantial and continued environmental regeneration, conservation, and security of a sizable % of Australia's land mass. Encroachment from land development, agricultural, military, industry, and other sectors requires stronger national legislation to ensure all states/territories have sizable reserves that prioritise biodiversity in its own right, without jeopardy from hunting, fishing, water diversion, development, poor land management, disease, etc.

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?

As the majority of Australian governance and legislation benefits humans/society, this Act would be best if it more strongly and rigorously, if not nearly exclusively, prioritises pro-environmental consideration, irrespective of socioeconomic implications. The environmental cost - as in, the cost to degrading/improving the environment, ought to be the only 'cost' considered by this Act.

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

Yes, the Act's objectives are presently far too vague. SMART objectives ought to be created in light of independent academic environmental research so that measurable outcomes can be achieved by the government, on par, or surpassing, those of other nations regarding the reduction of greenhouse gas/carbon usage (& not by offsetting - by actually using less fossil fuel burning technologies), designation of greater % of the continent to national parks/reserves with a higher % of the federal budget to support the enhancement of biodiversity, and a suite of specific objectives to attenuate/reduce deleterious human impacts from over-grazing, land burning/clearing, toxicification from industrial & individual practices, etc. of environments - air, land, and water.

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

Clean air quality would be fantastic to see included as an 'object' of urgency. The Act's focus is overly 'heritage' centred, rather than proactive to utilise scientific research to inform areas of heightened environmental fragility that require stronger national legislation to uphold their ecological integrity. The Act could be improved by shifting the narrative to one of prevention rather than response to biodiversity protection (as in, why only protect 'threatened'/endangered species? All of Australia's wildlife and natural environments ought to be equally worthy of legal safeguarding from humans' harm, regardless of their deemed 'cultural' value to humans).

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?

Focus should be prioritised on Biodiversity conservation. How to legally support landholder actions regarding conservation management ought to be very carefully considered as high variation exists in scientifically-informed knowledge/literacy regarding 'best practice'. 1080 and Roundup, for example, ought to be legally banned in Australia based upon scientific evidence, yet these are regularly/widely used - including by Government - for 'feral' animal killing and weed control. Reforms ought to be independently reviewed & strategies recommended by ecologists in each area of consideration, not left up to those who can afford to own land, and use it for their own economic profit, to determine the best pro-environmental practices. Once stringent lists of recommendations are created based upon scientific knowledge, then legislation can support their enactment without onerous government intervention.

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?

Yes, clearer environmental standards would be a welcome change, as would internal consistency amongst regulatory bodies. For instance, promoting population growth by federal policies such as the 'baby bonus' contradicts global research evidencing human population growth is counterproductive to environmental sustainability, at least assuming Western lifestyles are

continued.

I cannot comment on the other two questions at the present time.

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

Including key findings from the international biodiversity report (<http://www.fao.org/state-of-biodiversity-for-food-agriculture/en/>) would be worthwhile, as well as World Health Organisation guidelines around clean air, United Nations reports around population growth, and a sizable body of research around the need to contain suburbanisation / urban expansion through more stringent urban planning policies, ideally that are federally orchestrated (to minimise state/local council conflicts-of-interests), to inform future trend/change management that is more pro-environmental.

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

Strong regulatory enforcement for environmental protection that delivers measurable improvements for the environment is recommended.

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, the Act should increase the Commonwealth's jurisdiction to enforce and deliver pro-environmental outcomes, even if this presents an economic or social cost, provided the reasons for enforcement are empirically grounded and in the interest of supporting biodiversity and environmental health improvement, as scientifically documented. Independent assessors with suitable academic qualifications in ecology should oversee the outcomes which are benchmarked against global best practices for mitigating the impacts of land clearing, climate change, pollution, hunting, urbanisation, population change, etc. on the quality (& where relevant, quantity) of Australia's air, land, water, and animal/plant species.

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. There should be binding policies to increase the regulatory scope and power of the Commonwealth to enforce - and deliver (not merely monitor/evaluate) improved air quality, water quality, land quality, and biodiversity outcomes that are measurable and aligned to standards that put Australia on par, or ahead, of global leaders in each indicator. Areas of greatest environmental value - such as old growth forests, areas with high biodiversity, threatened species, etc - ought to be

legislated by the Commonwealth as 'off limits' for logging, grazing, burning, or any other practice that jeopardises its future integrity.

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

1. Yes
2. Yes
3. Research and evaluation
4. only to the degree that they support environmental improvement that can be measured by achieved outcomes (ie - increased animal populations, plant regeneration, etc. Where there is a conflict between Indigenous culture/environmental protection, the Act ought to prioritise the environment over any human interest, regardless of the human's culture/social group affiliation

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?

Disaggregating environmental and heritage protection - by separating them into different Acts - could be worthwhile. Although there may be knowledge/interest overlap on specific topics, the governance of each is quite different, and differently informed/best managed. For instance, Indigenous Australian culture is local, not national, and thus would be better divested to states/territories and councils where an Indigenous Board / body self-governs in a manner informed, yet independent of, the Commonwealth/State intervention on Indigenous cultural heritage sites. The question of place/value based is misguided, as the dichotomy is a false one.

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?

Retaining case-by-case for 'exceptional circumstances' within a broader 'strategic assessment' model might improve processing. Initial leadership ought to be by an impartial and suitably qualified/independent party, after which a committee could be established for ongoing review/administration, with case-by-case reviews scaffolded according to environmental 'risk' so high-risk can be blind-reviewed by a panel of qualified experts. No self-review ought to be endorsed.

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?

- a. Yes.
- b. this is one possible strategy, provided no conflicts-of-interest exist or mechanisms to deal with such are incorporated in the Act. Having national standards that are mandatory would support compliance provided penalties for non-compliance are enforced.

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?**

- a. no
- b. n/a
- c. not at the expense of this action detracting from more tangible pro-environmental outcomes for the near-future
- d. yes

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?

This would be best informed by published, peer-reviewed ecological research.

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

cannot comment

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

cannot comment

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?**

The Act should separate 'the environment' from 'cultural heritage' and the Act should have primary jurisdiction over just the environment, as environmental law; Indigenous Australians should have sole management of Indigenous heritage sites, conferred by the Act, with reporting responsibility back to government bodies on relevant practice/policy matters. The natural environment should be protected by the Act in accordance with the best available empirical knowledge (as evidenced from scientific and Indigenous research/practices); scientists should communicate/speak on behalf of the scientific literature and Indigenous Australians should speak/communicate on behalf of their community's evidence-based practices. A 'representative structure' is a mechanism that could support including a diversity of knowledge sources, whereby each source has the premise of pro-environment behaviours/recommendations as a guiding principle.

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?

Much sociological and psychological research evidences individual opinions reflect, and are created/influenced by, mass media, politics, religion, peers, family, and other elements in society that are likely to be less informed by scientific environmental research. Since populism is a poor way to manage political systems, the participation of 'the public' would be best included by a strengthened EOI process calling for a new Advisory Board where applicants' formal and informal qualifications are submitted and reviewed to identify how best individuals' expertise could inform decision-making processes for an Act modified to deliver stronger regulation for environmental issues. As the Act is a formal piece of legislation, community involvement would be best if aligned with relevant and demonstrable expertise, rather than be personal opinion-based. Community

engagement could be augmented around environmental education to increase the public's environmental literacy/lifelong learning and promote 'taking action' that supports national areas/initiatives of environmental priority. Regarding transparency, there is scope for improvement. Making decisions, priorities, data, and programs/evaluations - as well as the profiles of individuals on communities/in decision-making roles (i.e., their affiliations, backgrounds, etc to disclose allegiances/networks) - would help to increase transparency.

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 structure of social systems largely affects how decisions are made and by whom. In the present structure, great power is held by one Minister. While this may support efficiency, it also is a more authoritarian structure. Creating a new advisory board composed of a majority of members credentialed in ecology/environmental studies would support/increase the Act's function to improve the nation's environmental protection and regulation of environmental degradation, possibly modeling a representative democracy where each state/territory has a proportional # of representatives on the Board, which is chaired by a Minister yet where decisions are bound to a majority vote. Altering the Act so it is not confounded by 'environmental, social, and economic' factors, to one with sole responsibility for 'the environment', led by the Minister for the Environment, might help to increase the MP's advocacy capacity for what is presently a very undervalued interest area; Australia has a long history of economic prioritisation at the expense of the natural environment. It would be great if the environment could achieve at least equal standing as a national priority with the economy.

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

a. maybe - provided they do not support industry/business/individual practices that are otherwise environmentally damaging

b. yes!

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

Environmental offsetting ought not be supported as it diverts focus and investment from innovating change / stopping problematic behaviours. Incentives to change environmentally-damaging behaviours are needed (i.e., support for transitioning to clean energies - air, solar, switching to non-plastic options for production/packaging, etc, etc) as pollution to the earth cannot actually be 'offset' by economic transfers and practices such as carbon sequestration, tree planting, etc. have environmental costs as well.

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?**

best not 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?

The 2nd principle - "Making decisions simpler - Achieving efficiency and certainty in decision making, including by reducing unnecessary regulatory burdens for Australians, businesses and governments." is one I would recommend modifying/removing. Australia ought to be aiming for rigour and quality, not simplicity, in environmental law and protection. Where regulation is a 'burden', it ought to be asked, 'why/how so?' in light of the function it serves. If the function is stringent environmental protection, then it ought to be retained. Governments, businesses, and individuals faced with complex problems might be ill-served by 'simple' decisions. Legal reform is best advised by ensuring the pro-environmental goal can/will be achieved, and then writing policy/practice guidelines to make this happen.

3rd - "Indigenous knowledge and experience - Ensuring the role of Indigenous Australians' knowledge and experience in managing Australia's environment and heritage." - Environmental law ought to be informed and created in light of the empirically tested and measured pro-environmental outcomes it achieves, regardless of the source of knowledge guiding this action. If pro-environmental outcomes can be derived from a specific aspect of Indigenous knowledge/experience, then it ought to be retained; if it detracts from pro-environmental outcomes, then it ought to be excluded. And, as noted previously, heritage would be better managed as a cultural, not environmental, issue with heritage policy/law separated from environmental law and governance.

5th - "Supporting partnerships and economic opportunity - Support partnerships to deliver for the environment, supporting investment and creating new jobs" - critical thought is needed here, and strict guidelines, as this begs the question. 'partnerships with whom?' For instance, a partnership with the coal industry might produce jobs and fund environmental projects, yet it is also supporting the coal industry. A Code of Ethics might be useful, if one doesn't already exist, around partnerships.

Using the definition of 'principles' provided, "what is important to Australians, and our goals for national environmental law" - the 1st "Effective protection of Australia's environment" appears to be the only relevant principle as the rest may be categorised as administrative practice guidelines.

National goals for national enviro law could be:

1. (as is)
2. establish laws and processes that effectively prosecute environmental polluters
3. increase the % of 'full-circle' industries and products to reduce landfill/pollution and provide socioeconomic incentives to achieve this
4. create laws that support further environmental education for citizens that is inclusive of a range of knowledge forms, including Indigenous understanding of Country
5. achieve parity with leading nations for global environmental goals (i.e., ICCG; UN) etc.

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

cannot comment on this

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

cannot comment on this

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

No - the legislation is weak, poorly enforced, has priorities that fail to take into account the current state of environmental damage and biodiversity loss and it is underfunded in its administration.

QUESTION 30: What are the priority areas for reform?

Strongly enforced and regulated environmental protection in light of scientific research regarding what is damaging the environment, reducing biodiversity, and polluting air/land/water. In general, mitigating/minimising humanity's further negative impacts on the earth and its non-human inhabitants through the creation and enactment of legislation, whilst supporting and incentivising the regeneration/restoration process through increased government budget prioritisation and expenditure.

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

Yes.

a. Changing native animal legislation - I would like legislation that stops the 'culling' of kangaroos in the interest of land holders' 'management' rights and Government population control measures. Consideration of Indigenous knowledge/practice regarding kangaroo populations, as noted by Wiradjuri elders in the Riverina, might better guide the understanding of their breeding cycles. Further, the designation of native animals as 'feral' supports the agricultural industry at the expense of supporting biodiversity (i.e. - the Commercial Club in Albury, NSW used existing legislation to kill 150 corellas on their golf course because they were 'damaging their trees', with permission granted by the National Parks Authority). The interests of industry and business commonly are supported/prioritised under existing legislation which allows native animal killing by provision of 'permits' for seemingly any 'inconvenience' to humans, with loopholes at local/state levels requiring closure/over-ruling by federal legislation.

b. Inclusion / prioritisation of law creation to protect Australia's air quality - i.e. a Clean Air Act - as the government and individual burning of land, increase in wood heater usage, and continuation of diesel engines, supported by strong industry lobby groups (i.e. automobile, trucks, shipping, trains, etc.) , alongside a lack of government incentives for electric cars and green energy continue to negatively affect the health of humans and the environment from air pollution. Measurement and monitoring does not provide clean air and air 'in the country' is often more polluted from agriculture and industry than in metropolitan Australia so national laws are necessary.

c. Consideration of how the Act might include, as a national priority, renewable energy, and decreasing/ending government investment in coal power plants, whilst protecting the country from nuclear waste/uranium mining.