

# SUBMISSION TO THE EPBC ACT REVIEW

ANON-K57V-XY2J-T

## Name

Andrea Crampton

## State or Territory

New South Wales

## Areas of Interest

Environmental Impact Assessments; Compliance and enforcement; Biodiversity; Conservation;

## 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?**

I welcome the broader inclusion of more areas to be covered by the ACT as regional or State-based decisions are perhaps more open to bias and conflicts of interest. Ideally, an independent entity would play a role in deciding what should and should not be added for it to them be managed via the act

**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 long term cost to the environment utilising the worst-case scenario for climate change should be prioritised over the other 2 factors which are arguable much easier to adapt and modify as time and thus new information comes to hand.

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

The objects should be more directive for example rather than  
b. to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and  
c. to promote the conservation of biodiversity; and

replace the word promote with direct, or foster or facilitate. The concept of promote is too broad and amenable to interpretation outside the intent of objectives

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

An addition needs to be added that provides protection for valuable but not yet threatened areas so that less \$\$ is needed to protect and manage them compared to when they are threatened. Eg. areas of high biodiversity of no less than X% of a states natural areas.

**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?**

Yes the act should have more proactive provisions for landholders who want to enhance the biodiversity protection. Biodiversity conservation should also be prioritised along with enhanced ability to monitor and enforce regulations as rules and legislation are pointless if there are no provisions for enforcement or the enforcement is tokenistic.

**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 environmental standards should be re developed with the view of protecting the environment in the worst case scenario from climate changes and then the relevant protectins/standards clearly communicated to stakeholders in a manner that is relevant to their context. Further these then need to be rigorously enforced with penalties that act as true deterrents

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

The international biodiversity report (<http://www.fao.org/state-of-biodiversity-for-food-agriculture/en/>) should be included as well as any available information from the ongoing Royal Commission into National Natural Disasters (<https://naturaldisaster.royalcommission.gov.au/>). Further, the air quality sections of each state based 'state of the environment report could also add much needed information.

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

If a suitable reliable entity/process was in place for managing the processes needed to support the ACT then yes the ACT could focus on developing and overseeing the environmental and heritage outcomes that include aspects peculiar to each state but also noting what state activities impact the overall environmental (including air quality) of the nation. The inclusion of climate change and land clearing as well as enhanced air quality measures would be a much needed and welcomed inclusion to the regulatory framework of the act.

**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 Commonwealth should have a stronger role and thus remove state-based biases and conflicts of interest. An additional oversight committee independent of the government consisting of key stakeholders including environmental experts, climate experts, health advisors as well as industry should be enlisted to provide oversight and help identify areas of strategic focus each year.

**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?**

A combination of all three approaches with fluidity for any issue to be moved from the most flexible to the fully legislative as more information becomes available or the issue is noted as having risen in strategic importance.

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

The ACT could balance proactive and restoration with an urgent need for proactive protection of areas of biodiversity as well as enhancing air quality provisions once these are in place then more restoration activities may be viable. It seems pointless to restore one area while other areas are still being cleared as then it seems the government is playing catchup to industry. Success would be a better outcome in the next FAO biodiversity audit and a reduction in the loss of species. Indigenous land management practices should only be incorporated in areas where there is clear proof they are more effective than other means for the animals and then environment. The exception would be sacred sites where the land management may be part of the related cultural activities

**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?**

Heritage should not override environment needs and thus management can be with place-based or value-based as long as the environment needs are prioritised. As Indigenous places are very local the management and facilitation of such places should be removed from the act and placed in the hands of the states.

**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 first instance, the act should be simplified in terms of key steps and processes with similarly clear standards and frameworks. Self-assessment by a business should not be supported and case by case assessments required. These should be supported by clear guidelines and enforced

appropriately. A one desk approach that incorporates relevant state requirements should be prioritised with the highest level of environmental protection enforced.

**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?**

Duplication should be removed and the States mandated to deliver the ACT outcomes in a consistent manner using transparent regular reporting with funding incentives and penalties for failure to enact the ACT.

**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?**

Yes all environmental impact assessments should be publicly available. A second-tier process for low-risk projects that involves less paperwork and quick time around should be considered rather than automatic approval to ensure that the ACT is followed consistently across areas and that the definition of low-risk is applied correctly.

**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?**

Yes biodiversity at a landscape scale will ensure a more robust level of protection rather than focusing on the needs of one identified species at the potential risk of others. Such consideration should ensure the protection of at-risk species by a broader consideration of the area including air and water quality.

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

Broader accreditation of states and private entities (e.g. environmental assessors) would be a suitable path but there still needs to be a collective oversight and channel of communication.

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

No - the balance is in favour of seek forgiveness and a small fine rather than seek permission and jump the hoops. The penalties need to be greatly enhanced along with the clarity of expectations and standards.

**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 can provide an overarching framework for the assessment of important sites but the implementation and management should be at a more local level

**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?**

Community members with appropriate qualifications and experience could be part of bodies involved in reviewing the frameworks for low risk projects as well as commenting on state reports and how they have met their obligations and the setting of strategic focuses on an annual or biannual basis. This would be in addition to enhancing community representation on the advisory and decision making bodies with any community representative not an employee of an industry with a potential conflict of interest.

**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?**

First the clarity of standards and expectations, then the clear articulation of penalties and how they will be enforced from this will come a path for clear decision making...this clarity should be prioritised over transparency which in some cases may involve confidential information and thus full transparency not possible. But the steps and that any application was reviewed at the key steps should be transparent.

**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?**

Tax cut incentives and other fee waivers for companies that show a consistent reduction in negative practices ie decreased air and water pollution, reduction/ceasement of land clearing, adoption of materials and processes that do not harm the environment. For states similar financial incentives could be levied eg increased GST revenue.

An independent committee that includes community members could play a role in deciding that the changes have been made and noting the appropriate level of award.

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

A trust fund to manage the impact of climate change and natural disasters should be developed ASAP and be funded by the penalties enforced on those that do not abide by the ACT as well as any other state base fines levied at companies for crimes against the environment including pollution of air, land and water. Environmental markets should not be considered as they may run counter to the intent of the ACT if one area is given the capacity to destroy the environment by offsetting the impact from the positive work of others. Any market approach should only be temporary for those that are working towards improved practices at the time the new act is passed who can demonstrate that they aim to meet the targets within 5 years with penalties enforced if they do not.

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

It needs to be a temporary measure that promotes the polluting entity to improve and only be able to offset for a defined period.

**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?**

I would suggest that private and philanthropic investments would be best channelled to organisations who work in line with the ACT and show their commitment to the act such as land conservation groups, animal shelters and rehab, environmental education spaces. Such funds should not be part of an offset fund as that would be asking environmentally interested parties to pay for pollution.

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

I think the indigenous aspects should be part of a different ACT that is perhaps managed at the state level or via a different commonwealth group. If this ACT is to be environment centred then it needs to be not drawn into the needs of one group of people when developing standards and frameworks. This step may help enhance the clarity of the ACT's scope and intent as well as assessment and regulatory capacity. The local aspect of indigenous issues can make it difficult to contextualise in a manner that fully aligns with the other goals of the ACT.

The principles could be enhanced by the explicit recognition of the support for the non human animals and their rights to space, clean air and clean water. The concept of protecting and enhancing biodiversity could also be made more directly explicit.

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

No - too open to interpretation that results in a weakening of outcomes. The complexity of the document as well as the lack of clear networks and connections to state and other regulations may be preventing appropriate enactment, enforcement and concerted attempts by agents to work within the ACT's intent.

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

There are perhaps not enough funds given to supporting stakeholders to understand the ACT and certainly not enough funds are given to enable effective oversight and provisions of penalties

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

No - there is not enough provisions for climate change nor consideration of the sentience of animals which is an emerging area in other countries.

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

Biodiversity

recognition of sentience of non human animals and their rights to clean land air and water as well as safety and humane treatment.

Clear and transparent guidelines as well as support for those trying to incorporate the intent into

their business and practices.

enhanced penalties for those that do not follow the ACT

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

As above.

clarity

bigger penalties

more direct attention to climate change, the sentience of animals etc

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

Air quality needs greater consideration.