

# Submission to the EPBC Act Review

**Name**

Margaret Taylor

**Organisation**

Organisation

**State or Territory**

Tasmania

**Areas of interest**

Environmental Impact Assessments; ; ; Climate change; Compliance and enforcement; ; ; Biodiversity; Water;

**Attachment provided?**

Yes

**Do you give permission for your submission to be published?**

Yes - with my name and/or organisation (if included)

**SUBMISSION RESPONSES**

**This submission was provided as an attachment only. The attachment is provided on the following pages of this document.**

**Submission to Review of the *Environment Protection and Biodiversity Conservation Act (EPBC)* from Margaret Taylor, Alan Taylor, Austra Maddox, Gil Pixley and Rosemary Scott.**

We are a group of friends based in Hobart, Tasmania. We have all been involved in seeking protection and / or restoration of our environment for many years.

Austra has been a founding member of the Florentine Protection Society, an active member of various environmental organisations, a member of the Forest Reference Group, and is currently a board member of Environment Tasmania.

Margaret and Alan were actively involved with Landcare and Waterwatch groups while they were farmers and planted trees to help restore the landscape on their farm. They joined other locals to have the Tiers above the region protected from logging so that water quality would be maintained and landslips prevented.

All of us have been supporters of Bushcare in Hobart, the Wilderness Society, Birdlife Australia, Australian Marine Conservation Society and the Environmental Defenders Office in their attempts to protect the natural environment that supports all life on the planet. We are now dealing with a finite and rapidly shrinking stock of natural resources, flora and fauna. We no longer have the luxury of treating such stock as merely available for any desired use.

Our environmental concerns include :

1. forestry management and practices,
2. preservation of natural habitat,
3. water quality,
4. fire management in wilderness areas,
5. the impacts of climate change on both broad environments and smaller eco-systems,
6. marine sanctuaries, and
7. species survival.

**The operation of the Act, and the extent to which the objects of the Act have been achieved.**

Our national environment law – the *Environment Protection and Biodiversity Conservation Act (EPBC)* has been too weak to stop logging companies clear-felling forests that are critically important to birds like the Swift Parrot and to protecting our water resources.

Under these laws, Australia has become a global deforestation hotspot, with one of the worst rates of mammal extinction in the world. Climate damage is bleaching our reefs and the *EPBC* has allowed the development of new coal mines which will further damage the Barrier Reef.

We are concerned that our wildlife, and the native forests, woodlands and grasslands they rely on, have been savaged by the drought and fires, yet Governments have continued to allow land clearing and forestry operations. That land clearing and forestry are continuing to destroy koala and other species habitat after the recent fire disaster reveals an inability to act quickly as conditions should dictate. These factors and the problems in the Murray-Darling Basin provide evidence that the Australian Government has not met its responsibilities to protect our environment and therefore must introduce and enforce stronger legislation to meet current and future environmental challenges.

Australia is clearing too much land. In 2018/19, over 37,000 hectares were approved to be cleared. This is almost 13 times the annual average rate of approval in the ten years prior to 2016/17 of approx. 2,700 hectares. The logging industry is destroying the habitat of species like the swift  
Submission re the review of EPBC Act M. Taylor, A. Taylor, G. Pixley, A. Maddox, R. Scott

parrot in Tasmania. Although regulations exist they are not enforced. See, for example [Parrots And Politics Collide In Tasmania's Trashed Forests](#). This is in spite of sound scientific research being provided. Scientists write: "Despite extensive outreach to the public and policy makers, conservation management has not kept pace with advances in knowledge and scientific evidence. Here we summarise policy and management failings that allow swift parrot breeding habitat in Tasmanian forests to continue to be logged. This practice continues in spite of extensive evidence demonstrating that the cessation of logging of swift parrot breeding habitat in Tasmania is urgently required to secure the species". <https://www.publish.csiro.au/pc/Fulltext/PC18020?subscribe=false>

Forests are integral to a healthy environment, not only in terms of habitat but also because their evaporation creates rainfall over landmasses, see Jeremy Hance [New meteorological theory argues that the world's forests are rainmakers](#) "...the root system of forest trees facilitates both storage and extraction of moisture from soil; biogenic aerosols produced by trees control the intensity of water vapour condensation over the forest; the large height of trees determines the vertical temperature gradient under the canopy, keeping soil evaporation under biotic control; "

Current decision-making processes have resulted in environmental degradation e.g. coral reef bleaching, extinction of species, loss of bio-diversity, etc., and predatory behaviour by developers. The various negative effects of climate change on our environment - both current and emerging - make the application of sound science even more critical not only to the environment but to our future as the inhabitants of this land. Without urgent reversal in policy in this regard future stocks and their use, protection, management, etc., will become largely academic questions.

### **Recommendations of previous reviews and inquiries and significant publications regarding the operation of the EPBC and potential reform**

The Senate Standing Committee on Environment and Communications recommended that a new Environment Act for Australia is needed as well as a strong independent Environment Protection Authority. After consultation with people in every state, in a unanimous report, the Committee made two recommendations to the Commonwealth:

1. to limit the drivers of faunal extinction, develop new environmental legislation to replace the Environment Protection and Biodiversity Conservation Act 1999; and
2. establish an independent Environment Protection Agency (EPA), with sufficient powers and funding to oversee compliance with Australia's environmental laws.

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Faunalextinction/Interim\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Faunalextinction/Interim_report)

Australia needs a well-resourced, independent administrative structure for the environment, with powers to investigate environmental concerns and scrutinise government policy. We believe that by establishing a clear legislative framework, backed by such a structure, it should be possible to remove environmental issues from the political sphere. Environmental goals, strategies and outcomes should be based on sound scientific advice and removed from political processes.

Australia's Threatened Species Commissioner is not able to question government actions regarding environmental protection and nature conservation. As the Covid-19 crisis has shown, governments need expert independent advice if the best outcome is to be achieved.

We support the proposals on what is needed regarding environmental laws in the paper prepared for the Humane Society by the NSW EDO: *Next Generation – Biodiversity Laws; Best practice elements for a new Commonwealth Environment Act.*

Submission re the review of EPBC Act M. Taylor, A. Taylor, G. Pixley, A. Maddox, R. Scott

### **Protecting Australia's unique environment through strong, clear and focused protections**

For the Commonwealth to hold an effective leadership role in managing Australia's environment it must have mechanisms to avoid, control and mitigate impacts on the environment, and proactive provisions that enable protection of key environmental values.

Ideally we would recommend a new federal environmental law which

1. is simpler but stronger in its protections;
2. contains clear duties on decision-makers;
3. puts a greater focus on bioregional planning;
4. contains clear and measurable outcomes that the Commonwealth and the states must achieve;
5. insists on transparency in decision-making;
6. provides for well-researched and reviewed scientific input and
7. implements the recommendations of such scientific input.

A new Australian Environment Act should make environmental protection and biodiversity conservation its primary object or aim, with a dual focus on protection and recovery of threatened species and ecological communities, and on landscape-scale conservation plans and programs.

Any changes to the *EPBC* should be under the principles of non-regression. That is, there should be no reduction in the level of environmental protection provided by the law.

### **Relationship with the States and implementation of relevant agreements between the Commonwealth, States and Territories**

It is essential for the Australian Government to lead the development of a national framework for environmental protection and restoration. Currently in Australia it is unclear who is ultimately responsible for ensuring our environment is managed well and that has allowed poor decision-making.

We recommend keeping and expanding Commonwealth environmental responsibilities in accordance with Constitutional Commonwealth oversight of the National Reserve System, Ecosystems of National Importance, greenhouse gas emissions, significant land clearing activities and significant water resources.

Decision makers must be given a legal responsibility to exercise their powers to achieve the Act's aims, apply expanded principles of Ecologically Sustainable Development (**ESD**) and non-discretionary obligations to apply the tools in the Act. These responsibilities must be clear and enforced.

Criteria must be unambiguous with transparency and public accountability for key stages of decision-making.

Currently the enforcement element is missing. All States and Territories signed a National Forest Policy to Preserve and Protect these shared Assets and Amenities (1992 and again in 1995 when Tasmania joined). The Objectives within set a sound and Responsible path.

In Tasmania there are clear guidelines as to what species are threatened or endangered available in government documents: <https://dpiwwe.tas.gov.au/Documents/threatfauna.pdf>

There are also clear guidelines for the management responsibilities:

<https://www.fpa.tas.gov.au/%20data/assets/pdf%20file/0007/112696/Guiding%20Policy%20for%20the%20operation%20of%20the%20Forest%20Practices%20Code%20updated%2027%20Oct%202014.pdf>

*Guiding Principles for the application of the forest practices code 8.1. The long term conservation of environmental and social values should be principally achieved through the maintenance of a permanent forest estate and a reserve system containing formal and informal reserves, with a contribution to the conservation of these values through management actions under both regulatory and voluntary mechanisms.*

*8.8.Biodiversity Forest practices will be conducted in a manner that recognises and complements the contribution of the reserve system to the maintenance of biological diversity, ecological function and evolutionary processes through the maintenance of viable breeding populations and habitat for all species.*

*This policy has been prepared by the Forest Practices Authority as context for the application of the Forest Practices Code following changes made to the Forest Practices Act in 2013. It is intended that this policy will be implemented by the FPA pending amendment of the Code following consultation with the Forest Practices Advisory Council, the Forestry Corporation and Private Forests Tasmania pursuant to s 32 of the Act and noting requirements for public exposure and rights of objection to amendments under s 33 of the Act.*

*Endorsed by the Forest Practices Authority on 20 December 2013 (updated 27 Oct 2014 following the proclamation of the Forestry (Rebuilding the Forest Industry) Act 2014*

Tasmania has not enforced these provisions and news reports on land clearing in NSW and Queensland would suggest those states have also failed in this regard. Clearly, with numerous and now questionable "Special Exemptions", the Aims of this Policy has not been achieved.

New triggers for federal protection need to be included. In addition to the existing matters of national environmental significance, the National EPA should assess actions that significantly affect the following:

1. the National Reserve System (terrestrial and marine protected areas)
2. Ecosystems of National Importance
3. Vulnerable ecological communities (alongside other listed species, populations, ecological communities and critical habitat)
4. Significant land-clearing activities
5. Significant greenhouse gas emissions
6. Significant water resources (beyond coal and gas project impacts). Powers to declare other matters of national environment significance.

### **Governance of the Act**

Strong institutions are required to steer proactive and evidence-based environmental policy advice, development, coordination, oversight and compliance activity. As recommended by most conservation groups, two new statutory environmental authorities should be created, separate from the Department of Environment.

1. A new National Sustainability Commission would coordinate national plans and actions. They would ensure the collection and reporting of accurate environmental data to set national environmental standards. They would provide high-level oversight and give strategic advice and oversight to ministers, agencies and the wider community.

Submission re the review of EPBC Act M. Taylor, A. Taylor, G. Pixley, A. Maddox, R. Scott

2. A new National EPA—to assess, approve or refuse projects, monitor project-level compliance and take enforcement action.

Such organisations must have independent governance and provide independent and transparent advice to Ministers. They should provide clear criteria for how decisions are made, ensuring these decisions are based on science. Decision processes and outcomes must be publicly available to give the public reasonable time to make comment.

Bioregional planning provisions should be strengthened to allow the Commonwealth to identify 'no go zones' such as critical habitat, where development cannot occur. Decision-makers should be required to make decisions that give effect to bioregional plans.

We would suggest that a robust and independent science-based mechanism be developed as a central part of any environmental regime. Such mechanisms could include, for instance, expert panels assembled for specific areas, which would then assess any science-based evidence and data collection. We are not proposing standing panels, but rather very specific expert groups which would be in a position to assess peer reviewed science and other material presented on any proposals or management plans. The expert panel's findings would be public and open to scrutiny.

### **Making decisions simpler, including by reducing unnecessary regulatory burdens for Australians, businesses and governments**

If the Commonwealth laws are clear and being enforced and the States bring their laws and regulations into line, there will fewer problems. Simpler, timely and accountable listing processes for nationally protected matters, backed by strengthened protections would provide certainty.

A new framework should be established with an emphasis on integrated, multi-sector bioregional plans to coordinate action, protect natural and cultural heritage places, achieve biodiversity goals and ensure ecologically sustainable development. This gives public and private developers a clear picture of what is acceptable.

If the rules are clear and the duty of governments is to uphold and enforce those laws then it would be easier for businesses to make decisions. The current mix of federal and state rules adds to confusion and compliance costs.

Any changes to the *EPBC Act* should follow the Precautionary Principle with specific provision for the engagement of the public concerning the level of acceptable risk and potential harm.

The precautionary principle should be enshrined in all environmental legislation and provisions as the priority element of both initial assessment and final decision-making. This is a cultural issue as well as a process issue : at present, the prevailing culture on many environmental proposals is to give priority to other values - e.g. tourism , extractive potential, etc..

### **Streamlining and integrating planning to support ecologically sustainable development.**

The first requirement will be to establish the two bodies mentioned previously: a new National Sustainability Commission and new National Environmental Protection Authority. It is essential to have National Ecosystems Assessment to holistically identify important natural assets, their status and the 'ecosystem services' that nature provides to human society.

A national environmental data and monitoring program that links federal, state and territory data on biodiversity, strategic planning and environmental impact assessment would ensure strong

biodiversity outcomes.

Along with Management Plans for Bioregional areas there should be a new system of five-yearly National Environment and Sustainability Plans.

There must be better resourcing and foresight for agencies, conservation programs and natural resource management, including multi-sector investment in ecosystem services, databases and new tools.

### **Improving transparency to ensure better use of information, accountability and trust in the system**

The Act should encourage strong public participation through greater community engagement and transparency with clear reasons for decisions. Any changes to the *EPBC Act* should follow the Precautionary Principle with specific provision for the engagement of the public concerning the level of acceptable risk and potential harm.

We believe there should be community engagement and public participation provisions at all key stages of the Act, from strategic planning to project assessment and compliance monitoring, reporting and enforcement.

The Act should provide the right for interested community members to seek review of key decisions under the Environment Act. Governments should have to seek public input into proposals concerning national parks so that all interested parties can make submissions – a process which was ignored in the recent Lake Malbena decision in Tasmania.

There should be easily accessible, timely, public information on actions and decisions with a right for the community to seek judicial review of legal errors and to pursue civil enforcement for a breach of the Act or regulations. Protective costs orders should be introduced for legal actions brought in the public interest.

The EPA could develop a modern compliance and enforcement toolkit to deter misconduct and improve public trust. They should provide an online monitoring and reporting hub for comparative analysis; easy public and professional access to public registers; and transparent, up-to-date information about environmental outcomes across Australia.

### **Indigenous peoples' knowledge and role in the management of the environment and heritage**

Indigenous groups and communities should be specifically consulted on what reforms they would like for the *EPBC Act*, and new federal environmental laws.

Reforms that groups could be consulted on include:

1. An Indigenous advisory council to advise when establishing bioregional plans and recovery plans.
2. A position for at least one Indigenous Commissioner on the new National Sustainability Commission.
3. A requirement that Indigenous heritage places are primarily identified and assessed by Indigenous representatives.

4. For actions affecting Indigenous Protected Areas, Traditional Owners and/or Indigenous land managers could be prescribed as the approval authority if they wish to have this responsibility.
5. Ensuring that any third party benefits arising from the utilization of genetic resources that are on Traditionally Owned land or seas are shared in a fair and equitable way with Traditional Owners and Indigenous communities, based on mutually agreed terms, consistent with the Nagoya Protocol on access and benefit sharing under the UN Convention on Biological Diversity.
6. A requirement of free, prior and informed consent of traditional owner groups for actions impacting indigenous land.

New Commonwealth cultural heritage protection laws are needed to replace the outdated *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

### **Economic stimulus**

It is quite clear that if our recommendations were followed there would be employment opportunities at Commonwealth, State and Regional level. New departments and responsibilities requiring expert advice would encourage co-operation with the nation's Universities. The need for local study and reporting and enforcement would extend activities to every region in the nation.

The need for local rangers provides local employment. In response to the threats from fire in the new climatic conditions, there is an absolute necessity to train and employ an expert fire service. Following the recent fires there is a vital need for restoring ecosystems. The type of landscapes affected will mean a requirement for a lot of manpower.

Supporting partnerships to deliver for the environment, supporting investment and creating new jobs is all possible.

### **A new national environmental framework must be built on five key principles:**

1. National leadership
2. A central role for communities in decision making
3. Trusted and independent institutions
4. Delivering strong environmental outcomes
5. Ensuring resilience in the face of climate change

Austra Maddox [REDACTED] [REDACTED]  
 Gil Pixley [REDACTED]  
 Rosemary Scott [REDACTED] [REDACTED]  
 Alan Taylor [REDACTED]  
 Margaret Taylor [REDACTED]