Submission to

Independent review of the EPBC Act

28th April 2020
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**Introduction**

The Environment Protection and Biodiversity Conservation Act (EPBC Act, or ‘the Act’) is vital in ensuring we maintain and grow our natural environment. The Act introduced in 1999 was key in formalising the national focus on key natural habitats and heritage.

In Australia’s federated system there exists dual oversight of the environment that has led to confusion and inconsistency on protecting the environment, confused stakeholders, and inconsistent and delayed decisions on project assessment.

With the continued loss of habitat and the worsening impacts in the State of the Environment reports, it is vital that the decadal review of the EPBC Act is amended to ensure that the Act is fit for the future, and works with all States.

Climate Change and continued biodiversity loss from land clearance are two of the largest impacts to the Australian Environment we face. The impacts of climate change will be wide ranging and exacerbate historical pressures on the environment. It is crucial that the Act does not inhibit measures to protect the environment through direct or indirect measures in the Act.

The act directly inhibits a suite of technologies the Intergovernmental Panel on Climate Change (IPCC) concludes will be essential to mitigate greenhouse gas emissions. Nuclear Power is the second largest source of low carbon power behind Hydro globally and a key technology in mitigating carbon emissions. The Act as it stands prohibits Nuclear Power under s140A, however nuclear installations are triggered under s22.

For the Act to be “fit for the future” the outright prohibition of a key mitigating technology as per the IPCC needs to be reversed. The review acknowledges that “community and business expectations of governments are vastly different from 20 years ago”, Bright New World contends that this is accurate in the case for nuclear power in Australia. Community attitudes have changed to support the legalisation of nuclear power\(^1\).

**Bright New World recommends that s140A is amended to remove ‘a nuclear power plant’ and insert it into s22 under the definition of ‘nuclear installations’**

The Act can indirectly inhibit the progress of protection and conservation through inefficient processes and lack of clarity on environmental standards. Having an Act that is clear in its outcomes and supports statutory institutions to provide clarity on areas of greatest need are vital.

A statutory institution that is impartial and independent reporting on the state of the environment and providing guidance on best practice environmental guidelines, processes and principles to all stakeholders will assist in delivering the outcomes of the EPBC Act.

This will assist environmental NGOs and project proponents to target key areas of the environment to conserve and protect. With the benefits of an impartial and independent scientific body basing decisions on the best science available and accountable to the Australian Parliament.

**Bright New World recommends that the reporting on Australia’s environment, outcomes of environmental protection, a national environmental database, guidance and best practice standards be included in an independent environmental statutory authority authorised under the EPBC Act.**

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Discussion paper responses:

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1. Matters of National Environmental Significance

Q1. 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?

The Matters of National Environmental Significance (MNES) in the act are open to amendment and change as the Government sees fit. If the MNES are deemed to be not sufficient for the time they are open to change through the Parliamentary process. This process enables the debate, consultation and review of amendments to ensure they achieve national environmental outcomes. It is essential that these outcomes are clearly defined and published.

A recent amendment was the water trigger to protect vital water resources from the impacts of coal and coal seam gas production. This reflected the needs of the environment with the needs of the community. There exists mechanisms to amend and adapt the MNES within the Australian parliament and adding additional prescriptive parts will only lead to increased comprehension of the Act. Where stakeholders have identified that the Act is ‘difficult to navigate, inflexible, and duplicates States and Territory processes’, additional comprehension or complexity will add to this concern.

The Act needs to ensure that the matters listed in the MNES are general and applicable across a broad and diverse range of Australian habitats that can be adaptable to meet the future pressures on the Australian environment.

Q4. Should the matters of national environmental significance within the EPBC Act be changed? How?

The purpose of the section is to ensure that nationally significant fauna, flora, habitats and places are protected under the Act. The purpose of this review is to ensure the Act is fit for the future with the pressures the environment is due to face in the future and that ‘community and business expectations of governments are vastly different from when the EPBC Act was first legislated’.

One area of importance noted in the discussion paper is the Australian environment in a changing climate. The reduction of greenhouse gas emissions is crucial to mitigate and limit these pressures on the environment. Uranium and Nuclear Power are vital to mitigating greenhouse gas emissions to limit the impacts of climate change on our environment².

Australia remains as a nation with notably high power sector emissions intensity based on 2019 data³. In 2010, a report by ClimateWorks observed the major reasons for this:

"An abundance of cheap domestic thermal coal and a moratorium on nuclear power are the main drivers behind the high carbon intensity of Australia’s power sector."⁴

In 2016, a Royal Commission called by the South Australian government handed down its final report after considering hundreds of submissions, in a process that was set up to be "evidence-based, open, transparent and independent". Among twelve recommendations, the Commission recommended the removal of existing state and federal prohibitions on the nuclear power generation (Recommendation 8), and made the basis of its conclusion perfectly clear:

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“There will in coming decades be a need to significantly reduce carbon emissions and as a result to decarbonise Australia’s electricity sector. Nuclear power, as a low-carbon energy source comparable with other renewable technologies, may be required as part of a lower carbon electricity system. While the development of other low-carbon technologies will influence whether nuclear power would be required to meet Australia’s future energy needs, it would not be able to play a role unless action is taken now to plan for its potential implementation. The Commission recommends that the South Australian Government pursue removal at the federal level of existing prohibitions on nuclear power generation to allow it to contribute to a low-carbon electricity system, if required.”

It’s crucial to note the date of this report, since although the factual and technical information examined by the Royal Commission remains broadly current, much of the cost and technological readiness assumptions available at the time have progressed substantially.

With respect to the EPBC act, the prohibition exists in Section 140A. The history of how this section came to be has been documented by Bright New World6. While this is outside of the Part on Matters of National Environmental Significance, it would be prudent with the other Federal level legislation and approvals a nuclear facility would trigger, section 140A(b) ‘a nuclear power plant’ is removed and inserted into the definition of 'nuclear installation' in section 22(1).

2. Efficiency of the Act

Q6. 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 key issue is the duplication and inconsistent approvals process between the State and Federal levels of government. Projects that undergo a State assessment process that is accredited under Part 5 of the EPBC Act should not face additional delays in approvals if that assessment has deemed the impacts of that project have been measured, consulted on, appropriately managed and offset where need be.

The Act should set out clear environmental standards that are broad so they can be applied in a range of scenarios. Having standards that are too prescriptive narrows the focus of the Act and can result in environmental and biodiversity issues that are missed at the time of assessment due to a prescriptive process.

Q14. 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?

The bilateral approvals process was created to ease the duplication of State and Federal level assessment processes. National MNES should be retained in the EPBC Act to provide an additional layer of protection for nationally significant regions, flora and fauna.

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3. Environmental protection and restoration

Q11. How can environmental protection and environmental restoration be best achieved together?

- Should the EPBC Act have a greater focus on restoration?
- Should the Act include incentives for proactive environmental protection?

Yes. The Act should contain provisions in it to recognise the effort of environmental NGOs and other bodies efforts to restore native vegetation and habitats. These efforts should be measured, studied and reported against published areas of need. An impartial independent statutory authority would assist in providing guidance on areas of greatest conservation or protection need.

- How will we know if we’re successful?

Restoration projects should have to report against key measurable indicators to demonstrate the restorative effort these programs have achieved. This can be reported to an impartial statutory authority, included in state of the environment reporting and update national conservation and protection areas of need. Particularly where trusts, such as the Natural Heritage Trust, are utilised to fund restoration projects. This will have the additional benefit of gatekeeping frivolous projects that add little-to-no benefit to restoration or conservation needs.

Q15. 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 publically available?

There is potential to go too far with an approvals process that automatically approves low-risk projects. There needs to be clear data that is up-to-date and current for the specific biosphere where a project is being proposed in. This will enable a proper assessment of whether a project is deemed to be “low-risk”.

To this end a national environmental database should be developed with the assistance of State environmental departments, through COAG, to provide a clear map of areas of conservation and biodiversity significance and need. Data from environmental impact statements often includes current environmental surveys. These should be incorporated into this national database to ensure that the database is accurate.

Q16. Should the Commonwealth’s regulatory role under the EPBC Act focus on habitat management at a landscape-scale rather than species-specific protections?

It should focus on both. Habitat protection will ensure the protection of specific species while improving the natural environment for other species in a region of conservation need.

4. Community and Stakeholder involvement

Q19. 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?

Under the federal Native Title process there exists the ability for environmental department officials to engage with native title groups to understand their environmental protection and biodiversity conservation processes. As these native title determinations have a registered
incorporation managed by a board of Indigenous Australian members it provides the formalised interface to understand needs and contributions.

**Q20. 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?**

Involvement in these advisory and decision making process should only be open to groups that have demonstrated clear environmental and biodiversity conservation efforts through on the ground conservation, or research. There is a risk that increasing participation to groups with political or activist agendas will impact on these bodies impartiality.

Having a clearer portal on community consultation will still ensure these groups have their say on decisions but membership be restricted to those with on the ground experience in physical conservation and research with an institution.

**Q25. 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 risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?

Better biodiversity databases and a national environment map should be the main focus if there was to be better public sector and philanthropic investment in environmental protection and biodiversity conservation. This will ensure that funds are directed to areas of need, and if used as an offset directed to an area of similar biodiversity.

There will need to be co-ordination with State environmental departments as there exist funds in trusts, for example Native Vegetation. Clarity over where funds are, their use and a fund at the national level to support areas deemed nationally significant is important to ensure conservation outcomes are achieved.

By using public funds to improve conservation and biodiversity outcomes will ensure that projects report and monitor their outcomes to provide the assurances that funds are being used effectively with Parliamentary oversight and will input their outcome into a national database that updates areas of need and restoration.