

17 April 2020

Via website: <https://environment.au.citizenspace.com/epbc-review/epbc-act-review-submission-discussion-paper/consultation/subpage.2019-11-13.1004570130/>

Dear Sir/Madam

Independent Review of Environment Protection and Biodiversity Conservation Act 1999

The Construction Material Processors Association (CMPA) is dedicated to the representation and service of its Members in the Victorian Earth Resources industry. The CMPA represents a broad spectrum of businesses that extract and process hard rock, gravel, sand, clay, lime, and soil. CMPA members also operate recycling businesses.

CMPA members are typically small to medium sized family and private businesses, local government and utilities. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2018/19, the sector supplied 63 million tonnes of construction materials to the market, at a value of approximately \$1.1 billion. Small to medium quarries account for approximately half of this production.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria and Australia.

Thank you for the opportunity to comment on the discussion paper. The CMPA response to the questions posed in the discussion paper are as follows.

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?

Central to this question is whether the matters added are of “national environmental significance”. So, the question turns on the extent to which the matters are assessed properly and not simply added because the catchall “precautionary principle” determines that it/they must.

There are examples (e.g. Golden Sun Moth) where the local advice of an expert or experts in the field was not to include as a matter of national environmental significance and yet it went ahead anyway. The ongoing cost of that decision is significant. And for what return?

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?

Are “environmental, social and economic factors” core components of ESD? In practical reality, the environmental component, through the “precautionary principle”, has suzerainty over the other two, unless the social and economic components reach a size that governments are forced to react.

Writing the (supposed) ESD principles into the EPBC Act would necessitate the empowerment of a tribunal before which the arguments would be adjudicated; it is unreasonable to expect a public servant to rule on Matters alone.

Question 3

Should the objects of the EPBC Act be more specific?

Yes and no.

Much of Box 3: The objects of the EPBC Act is vague and fanciful. So, to that extent, the objects could be more specific. But more important is the underlying effect of the EPBC Act as it is currently constituted.

Comments on each of the “objects”:

(a) As an overarching principle, this is okay, but the devil is in delivery.

(b) This object is arguable from the perspective of many industries. How can you conserve and ecologically sustain the natural resources from a quarry?

(c) The Act, through its punitive and restrictive measures, creates an implied liability on any private landholder’s balance sheet. Rather than “promote the conservation of biodiversity”, it does the exact opposite: any landholder with an eye to opportunity and their balance sheet and the knowledge and wherewithal to act, will do so.

(d) Heritage means what exactly?

(e) A cooperative approach to the management of the environment is a worthy aim but through highlighting its punitive provisions (see c above), the Act, in the main, achieves an adversarial rather than a cooperative outcome with the majority of non-public land managers.

(f) “to assist in the cooperative...” means little.

(g) Tokenistic and of dubious value.

(h) Tokenistic and of dubious value.

Question 4

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

In general, what makes up the list doesn't matter but the regulatory constraints that attend listing does. If the regulatory system of application, assessment, adjudication and penalty is to continue then the Matters list should only include items that are/were subject to a transparent and rigorous selection process and are well defined biologically (in most cases) and spatially.

world heritage Taking note of World Heritage listing is fair enough but including items automatically within the EPBC Matters list is not. All EPBC listing should be part of a rigorous Australian assessment in which world heritage listing can play a part.

national heritage This seems rather to be out of place in the EPBC Act. Is it not subject to its own statutes?

wetlands of international importance (listed under the Ramsar Convention) Taking note of Ramsar listing is fair enough but including items automatically within the EPBC Matters list is not. All EPBC listing should be part of a rigorous Australian assessment in which Ramsar listing can play a part. The genesis of Ramsar listing was rather generic and of self-interest: countries nominated their own wetlands to be included in the Ramsar list.

listed threatened species and communities This really should be a centrepiece of EPBC deliberation. But the definition of “species and communities” needs attention.

A “species” has some probity as a definition in biology—an exclusive gene pool—but increasingly, what seems to be the influence of political or ideological taxonomy loosens that definition to include what used reasonably to be counted as “subspecies” as full species, simply to be included within the ambit of legislative recognition.

A “community” is more problematic because there are effectively no boundaries to the occurrence of a “community” of any biological assemblage, named or not. Any group of biological entities comprises a community. Defining a biological community as threatened or in need of legislative protection raises real questions in the field about what it is and where it is. The protection of law should apply to areas that are defined spatially, not through the discovery or dis-allowance of named communities in the field.

listed migratory species This list adds another layer of complexity and cost to the assessment process for little apparent tangible gain. If species (taxa) must be included in a Rare and Threatened “List” for protection, much better to do the job taxon by taxon i.e. by rigorous analysis of data, taking into account the fact that a taxon is or might be migratory.

protection of the environment from nuclear actions (such as uranium mines, although nuclear power plants are prohibited), An example of a broad-brush matter that damages any credibility the EPBC Act might have.

marine environment Too vague. Why not terrestrial environment as well?

the Great Barrier Reef Marine Park Doesn't the National Parks designation confer enough protection?

protection of water resources from coal seam gas development and large coal mining development
Anti-development. Should not pick out a particular industry as an EPBC Matter. Protection of water quality etc. should be generic within Planning Frameworks.

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?

Assessment and approvals are a costly and irritating way to try to arrest the supposed decline in biodiversity. We repeat the observations made under Question 3 above.

The Act, through its punitive and restrictive measures, creates an implied liability on any private landholder's balance sheet. Rather than "promote the conservation of biodiversity", it does the exact opposite: any landholder with an eye to opportunity and to managing her balance sheet and the knowledge and wherewithal to act, will do so.

Leading on from that is the conclusion that proactive mechanisms that put value on biodiversity outcomes will be the best way forward if meaningful outcomes on non-public lands are to be expected. So called statutory "protection" does nothing to engender positive management, and management for biodiversity outcomes is what is required above all.

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 EPBC Act has probably been effective in the narrow criterion of "protection" of some assets but that is not where lies the problem of, for instance, biodiversity conservation. It lies in management. The EPBC Act is poorly constructed to enable investment in biodiversity. The Australian Taxation system is better placed.

Question 7

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

Not exactly sure what this means.

Question 8

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

No. But a distinction should be drawn between "heritage" and "environment". In our understanding, heritage tends to be relatively static and definable c/f the naturally dynamic and indefinable environment. True, benchmarks of environmental status are possible but are in general rather blunt. Not sure about the distinction but both approaches outlined above, at the private landholder level, misses the point—the land manager must have skin in the game: there must be some advantage to the land manager before "desirable" environmental outcomes proceed.

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?

This might well be a constitutional matter. But, in general, the further removed from the sites of responsibility, the more unlikely that meaningful and efficient outcomes will issue.

An exception to this generality would be the operation and design of the Tax Act to generate meaningful outcomes in conservation.

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?

No idea. "Prescribed" and "non-binding" seem to be rather contraindicative.

- 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?

To be policed by whom?

- The development of broad environmental standards with the Commonwealth taking a monitoring and assurance role? Does the information exist to do this?

The dynamic nature of the Australian environment, even without the overlay of probable rapid climate change, rather suggests the application of "standards" to be impractical.

Question 11

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

Confused concepts.

- Should the EPBC Act have a greater focus on restoration?

Not sure how an Act that is mainly regulatory in nature can move to a proactive management-oriented structure.

- Should the Act include incentives for proactive environmental protection?

Protection, in a dynamic system?

- How will we know if we're successful?

Benchmarking? But on what basis?

- How should Indigenous land management practices be incorporated?

No opinion.

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?

No opinion.

Question 13

Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments?

Do not know what this question means.

Who should lead or participate in strategic assessments?

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?

Yes and Yes.

Question 15

Should low-risk projects receive automatic approval or be exempt in some way?

Yes.

- How could data help support this approach?

Through minimum triggers.

- Should a national environmental database be developed?

Incorporating what exactly?

- Should all data from environmental impact assessments be made publically[sic] available?

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?

Habitat of what?

Question 17

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

Accreditation to do what?

Question 18

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

Do not understand the question.

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?

No opinion.

- What mechanisms should be added to the Act to support the role of Indigenous Australians?

No opinion.

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?

No opinion.

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?

Who are the decision-makers and what is their current governance arrangements?

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?

If the matters involve the management of private land, pay for outcomes.

Question 23

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

Categorically yes. This, belatedly, is where the investment in environmental outcomes and legislative effort should focus.

Question 24

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

Take the emphasis away from the offsetting extortion and place it in the marketplace of contractible outcomes.

In summary, the CMPA looks forward to a more simplified and streamlined (and less costly to industry due to less red tape) EPBC Act to better enable a fair balance of social, economic and environmental needs.

I would be happy to discuss our submission further at your invitation.

Yours sincerely

A handwritten signature in black ink that reads "EM Gibson". The signature is written in a cursive style with a large 'E' and 'M'.

Dr Elizabeth Gibson

General Manager