

17 April 2020

EPBC Act Review Secretariat
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Dear Prof. Graeme Samuel AC,

Submission: Independent Review of the Environment Protection and Biodiversity Conservation Act 1999

Healthy Land and Water appreciates the opportunity to provide input to the independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Our response is guided by the questions within the '*Independent review of the EPBC Act - discussion paper*'¹ and informed by our experiences, projects, science, research and community.

Healthy Land and Water (HLW) is an independent not-for-profit organisation and the natural resource management body for South-East Queensland (SEQ). HLW is dedicated to improving and protecting SEQ's environment and biodiversity. The SEQ region contains many natural features that are Matters of National Environmental Significance (MNES) and affected by administration of the EPBC Act, including the Gondwana Rainforests of Australia World Heritage Area, the Glass House Mountains National Park (a National Heritage Area), Moreton Bay Ramsar Site, several threatened ecological communities and hundreds of migratory and threatened species.

SEQ's natural environment sustains diverse ecosystems, holds significant cultural value and performs a variety of ecosystem services. The region's natural systems provide the foundation for SEQ's future sustainability, prosperity and liveability. Rapid population growth, economic activity and climate change are challenging these values.

HLW works in partnership with Traditional Owners, government, private industry, utilities and the community to deliver innovative and science-based solutions to the challenges affecting the environment.

HLW recommends investigation into the use of regional Natural Resource Management (NRM) Plans (currently being reviewed by Service Providers across Australia as a requirement of the National Landcare Program) to underpin bioregional planning.

Regional NRM organisations are existing resources with networks and connections in local and state government as well as industry, community and Traditional Owner networks; as such they are well placed to provide advice on MNES triggers (given appropriate resourcing).



HLW has developed and distributed MNES mapping to support regional investment and protection of environmental and cultural values in South East Queensland.

The EPBC Act is Australia's primary national environmental legislation and has a critical role in safeguarding natural assets of national and international value. Recent evaluations into the state of Australia's environment, e.g. *2016 State of The Environment Report*², *OECD Environmental Performance Review: Australia 2019*³, has found that all key environmental indicators have continued to decline since the EPBC Act came into force in 1999, for example:

- Despite over 1700 threatened species listed under the EPBC Act, Australia has one of the worst extinction rates of any nation
- Only 5 critical habitats have been listed in the last 20 years, despite the loss of over 7.7 million hectares of potential habitat
- 370,000 hectares of threatened ecological communities listed under the EPBC Act have been cleared ⁴
- Only 7% of vegetation clearing affecting MNES has been scrutinised under the EPBC Act⁴

HLW considers that substantial improvements are required to the EPBC Act, including its supporting governance and funding structures, to increase its effectiveness and capacity to protect MNES, including:

- determination of clear and measurable outcomes and targets,
- development of a nationally coordinated system of data acquisition, monitoring, mapping and reporting, with the goal of identifying variance to outcomes and targets and to inform actions to mitigate any variances,
- embedding the Precautionary Principle within decision-making and consideration of potential and future cumulative impacts
- adopting measures to incorporate the challenges of climate change and human population growth into decision making,
- acknowledging and integrating the knowledge and rights of the community, particularly First Nations people, in environmental protection and biodiversity conservation
- improving the administration and approval process to achieve locally relevant actions and decisions that contribute to regional and national matters.

Yours Sincerely

Julie McLellan
CEO Healthy Land and Water

1. Commonwealth of Australia. Independent review of the EPBC Act - discussion paper. (2019).
2. Australian Government Department of the Environment and Energy. Australia state of the environment 2016. (2016).
3. OECD. OECD Environmental Performance Reviews: Australia 2019. (2019).
4. Ward, M. S. et al. Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia. *Conservation Science and Practice* 1, (2019).

2. ABOUT THE EPBC ACT

ROLE OF THE COMMONWEALTH

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?”

Healthy Land and Water (HLW) believes there is a need to extend the suite of matters of national environmental significance (MNES) to overcome current shortfalls within the EPBC Act in the protection of natural assets of national and international value. Our response to Question 4 provides our suggested additions.

A clear and essential role for the Commonwealth Government is the coordination of a national framework that achieves environmental protection and restoration within Australia and meets our international responsibilities, for example;

- Convention on Biological Diversity (CBD),
- Convention on Wetlands of International Importance (the Ramsar Convention),
- World Heritage Convention
- Bonn Convention,
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES),
- United Nations Declaration on the Rights of Indigenous Peoples,
- United Nations Framework Convention on Climate Change (UNFCCC, as applicable to emissions reduction and carbon management under the Act),
- bilateral or multilateral conservation agreements (including agreements with Japan, China and the Republic of Korea to protect migratory birds in danger of extinction, such as JAMBA, CAMBA and RoKAMBA).

With regard to the regulatory reach of the Commonwealth, the EPBC Act currently distributes responsibility across the nation, with a lack of accountability and clarity regarding responsibilities.

HLW encourages the Commonwealth Government to take a greater role in regulating environmental protection, including:

- setting national standards that all states must comply with,
- increasing the range of matters that it directly regulates, and
- strengthening its regulation of the matters already within the EPBC Act.

Defining a clear governance structure and responsibility matrix is essential to integrating conservation goals and programs across all jurisdictions (national, state and local), ensuring adequate protection and compliance and coordinated natural resource management and reducing the opportunity for blame-shifting.

HLW suggests mechanisms are needed to achieve greater cooperation and integration between local, state and national governments and which include Traditional Owners.



Management of species, vulnerable ecosystems and land and sea needs to be holistic; it should not be constrained by political or jurisdictional boundaries and there must be acknowledgement that management actions in one location can influence the resilience and longevity of a population or ecosystem in other locations.

Examples of the lack of vertical and horizontal integration that HLW has witnessed include;

- several years delay in the release of the Draft Macadamia Species Recovery Plan 2019-2024⁵ due to debate between Queensland and Commonwealth governments regarding which should coordinate public consultation; and
- the large disparity in resourcing between New South Wales and Queensland for conservation of the northern population of Eastern Bristlebird. Over the last decade, funding for monitoring and habitat management in Queensland has dwindled, with most recent activities supported through constant action by Recovery Team members to source and link actions within small grants and donations. In contrast, in northern NSW, regular support from that State's government (via their Saving our Species program and the Environmental Conservation Trust) combined with recent Commonwealth Government support to North Coast Local Land Services, has enabled long-term, systematic biannual monitoring of birds, strategic and progressive habitat improvement and expansion and the re-instigation of a captive breeding program.

A lack of nationally consistent monitoring and reporting makes evidence-based decision-making difficult for governments and increases costs for businesses attempting to comply with often-changing regulatory regimes of eight state and territory governments.

HLW recommends that, to assist with overcoming current inefficiencies of the EPBC Act, the Commonwealth consider the following:

- Accountability for, and independent oversight of, improvements in environmental indicators and performance in biodiversity conservation and protection
- Development of national goals, standards and reporting
- Identification and protection of MNES
- Coordination across multiple jurisdictions and regulatory regimes
- A business model that enables efficient implementation and provides strong public and private economic incentives to protect the natural environment



WHAT THE EPBC ACT DOES

Question 2: “How could the principle of ecologically sustainable development (ESD) be better reflected in the EPBC Act?”

Healthy Land and Water (HLW) suspects that the ESD principle, as it is currently applied within the EPBC Act, has enabled a trade-off between environmental, social and economic values. This fragmented assessment approach does not consider cumulative impact and the deep interconnection between long term environmental health and socio-economic outcomes².

HLW agrees with the Environmental Defenders Office view that ESD principles within the EPBC Act need to be underpinned by the following values⁶:

- **Prevention of harm** – take preventative actions to prevent harm to the environment and human health.
- **Precautionary approach** – take precautionary actions where scientific uncertainty remains.
- **Inter- and intra-generational equity** – costs, benefits and outcomes are borne equitably.
- **Ecological integrity and resilience** – prevent, avoid and minimise actions that contribute to the risk of extinction in the short, medium and longer term.
- **Environmental value** – the intrinsic, cultural and present and future ecosystem services values provided to humans by nature are comprehensively accounted, e.g., by adopting the principles ‘System of Environmental-Economic Accounts’ (SEEA)⁷ endorsed by the United Nations.
- **Polluter pays** - those responsible for environmental damage are financially responsible for the costs of managing to prevent damage, the costs of any damage caused and/or the costs of repair or restoration.
- **Non-regression** – environmental protection follows a path of continuous improvement in environmental standards (e.g., goals, laws, policies and protection) over time, with initial high standards established through use of available scientific and commercial information and techniques.
- Principle of **free, prior and informed consent** of Aboriginal and Torres Strait Islander peoples for relevant actions.

These values would better reflect the principles of ESD in the EPBC Act.

Question 3: “Should the objects of the Act be more specific?”

Healthy Land and Water (HLW) believes that the current eight objects of the EPBC Act are each reasonably clear. However, their equal status provides for some conflict, e.g., between the current ecologically sustainable development (ESD) principles and the requirement to provide for environment and heritage protection. Elevating environment and biodiversity protection as the primary object of the Act, with the remaining objects as secondary objects would provide greater clarity.

HLW agrees with the Environmental Defenders Office suggestion below, which is consistent with recommendations within Hawke’s 2009 *Independent Review of the EPBC Act 1999*⁸ :



“The primary aim of this Act is to conserve and protect Australia's environment, its natural heritage and biological diversity including genes, species and ecosystems, its land and waters, and the life-supporting functions they provide.”⁸

To ensure alignment with the suggested national environmental framework, HLW recommends the Act should also include a suite of new secondary objects to reinforce the objective of the Act, such as:

- National leadership and partnership;
- Recover, prevent extinction or further endangerment of Australian flora, fauna and ecological communities;
- Increase resilience of native species and ecosystems to threatening processes,
- Fair, efficient and transparent decision-making and assessment, accountability and community participation;
- Recognition of Aboriginal and Torres Strait Islander people's knowledge of country, stewardship of its land and sea countries and foster their involvement in land management;
- Meet international obligations e.g., Convention on Biological Diversity, Ramsar Convention, World Heritage Convention, Bonn Convention, CITES, United Nations Declaration on the Rights of Indigenous Peoples, UNFCCC, JAMBA, CAMBA and RoKAMBA;
- Recognise and promote the intrinsic importance and value of ecosystem services to human society, health and wellbeing; and
- Ensure the Minister and all agencies and persons involved in administration of the Act, perform their duties consistently with, and seek to further the primary object of, the Act.

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

Healthy Land and Water (HLW) considers that any EPBC Act revisions should maintain Commonwealth responsibility for the existing suite of matters of national environmental significance (MNES), however, to address current gaps in protection, HLW recommends that MNES are expanded to include the following⁶:

- **National Reserve System** of protected areas including national parks, reserves, covenanted private lands and Indigenous Protected Areas
- **Ecosystems of national importance** including high conservation value vegetation, nationally important wetlands, biodiversity hotspots, key biodiversity areas and climate refugia
- Regulating **significant impact activities**, as identified by scale, sensitivity, protected area prohibitions and/or potential cumulative impact, e.g., large-scale land-clearing
- Creation of a **‘watch list’ of near threatened species or ecosystems** for consideration in decision-making, with the purpose to avoid their potential future listing under EPBC Act
- A wider range of **significant water resources** that will expand the ‘water trigger’ to beyond coal and gas impacts, and assess significant impact on other water resources



(e.g., wetlands, floodplains, riverine ecosystems, headwater systems, groundwater), as well as ensuring environmental water is protected as it moves through the system⁹.

HLW suggests the Commonwealth establishes for each MNES matter an independent and appropriately qualified Science Committee to consider and nominate matters for inclusion under the EPBC Act (following the example of the existing Threatened Species Scientific Committee) and monitor and assess MNES status and recovery.

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?”

Healthy Land and Water (HLW) believes reform priorities should reflect the level of contribution each element has made to the current situation, i.e., the inadequate protection of national environmental values by the EPBC Act.

To this end, HLW considers the highest priority for reform is the redress of cumulative cross-jurisdictional impacts on MNES and the cumulative cross-realm impacts on terrestrial, marine and coastal environments to which they are inextricably linked¹⁰.

The *2017 Scientific Consensus Statement - Land Use Impacts on Great Barrier Reef Water Quality and Ecosystem Condition*¹¹, recommends that cumulative impact assessments and better policy integration are required for major projects. A clearer assessment and approval process will not only result in improved environmental outcomes but will also improve certainty to developers and investors.

An effective cross-jurisdictional response to environmental protection and biodiversity conservation is required, particularly in the face of increased pressures of development, habitat fragmentation and degradation, invasive species and pollution (e.g., litter) and climate change^{2,3}. Holistic management strategies that ameliorate these impacts within the primary realm/s impacted, whilst accounting for the transference of impacts across all realms and jurisdictional boundaries, are essential¹⁰.

Secondly, regional or bioregional planning that encompasses the previously discussed expanded list of MNES, considers state and local values and requires conservation connectivity across the short and long-term between jurisdictions and realms, would be a proactive step forward in achieving EPBC Act objects.

Thirdly, HLW suggests EPBC Act reform improve the effectiveness of assessment processes to protect MNES, tighten legislation to allow applications to be refused more readily and enable legislative ability to refuse based on potential cumulative impacts (rather than considering a single “significant” impact). Two critical areas for inclusion in the assessment of impact on MNES are:

- high-level proposal scoping, in order to improve avoidance of impact, rather than mitigation. For example, the Australian Government’s High-Speed Rail Study Phase 2¹²,



fails to identify several MNES matters (including World Heritage and numerous threatened species) that will be impacted if the project proceeds, however the project is identified in Infrastructure Australia's Priority List for 2020¹³.

- local government development assessments, to facilitate the inclusion of local level, finer scale information on MNES, to prevent or minimise individual and cumulative impact and to enable more accurate calculation of offsets. Currently local governments are not required to refer developments that have the potential to trigger MNES to the Commonwealth Government. Further, even if this requirement existed, local governments may not have the information, skills or expertise to determine whether a referral should be made.

Consequently, high level proposals are not considered until they reach EPBC Act referral stage and development applications to local governments are either not being referred or are obtaining local government approval prior to their referral, e.g., by state government, the proponent or another external party. Both these circumstances can lead to a substantial impact on the time and resources of proponents and governments and an increased likelihood of impact on MNES through mitigation rather than avoidance. HLW suggests:

- Involvement of the Commonwealth's Assessments and Governance Branch in the review of high-level proposals; and
- a greater role for local governments in identifying MNES (e.g., within their planning schemes) and a requirement to refer development applications that impact MNES.

To effectively address the complex mix of drivers, pressures and risks to environmental degradation and shortfalls of the current EPBC Act, its review should reform meta governance processes to ensure the implementation and integrity of implementation of the legislation and, within any emerging new national environmental framework, improve outcomes for the following :

- **Protected areas and heritage** - expanded MNES discussed in Question 4
- **Biodiversity protection** - including mitigation, protect and recovery of biodiversity, including conservation agreements and threat abatements
- **Traditional Owner involvement** – Recognise and promote Traditional Owner environmental management and consensual knowledge sharing and recognition of Aboriginal and Torres Strait Islander (ATSI) cultural/heritage sites and cultural landscapes
- **Partnerships and advice** – increased community participation, transparency and nationally consistent processes
- **Compliance and enforcement** – diverse and flexible enforcement toolkit, penalties for strong deterrence and an expanded role for third parties as surrogate regulators
- **Resourcing implementation** – a business model that enables efficient implementation and provides strong public and private economic incentives to protect the natural environment, e.g. proactive conservation mechanisms

PERFORMANCE OF THE EPBC ACT

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?"

Healthy Land and Water (HLW) concurs with the Australian Panel of Experts on Environmental Law (APEEL) statement that the effectiveness of the EPBC Act must be founded on values of 'integrity, transparency and accountability, in both their formulation and enforcement'¹⁴. It is HLW's view that the current EPBC Act falls short of these standards and that to improve the high-level effectiveness of the Act, focus needs to be vested in¹⁵:

- Transparent, quality and nationally consistent data to:
 - monitor species and habitat health,
 - assess effectiveness of management plans and the Act, and
 - assess cumulative impacts over time and across jurisdictions and realms.
- Adaptive management through the inclusion of triggers/thresholds to amend laws, management programs and to review approvals should data reflect a decline in the environment or biodiversity, and lead to control actions resulting in on ground improvements.
- Clear, certain criteria behind decisions and remove of all broad discretion.
- Meaningful public input and critique of decisions.
- Independence and integrity in administering and enforcing the Act, particularly, a clear separation between the Government-of-the-day policies and effective and rigorous implementation of legislation.
- Currency of legislation so it continues to reflect our ever-changing environmental, social and political conditions.

Unfortunately, the Australian environment is suffering significant degradation and continual decline. This was made clear in the *2016 State of the Environment Report*^{2,16}, the *Australia's Environment in 2018* report¹⁷ and the *2019 OECD Environmental Performance Review*³ which identified persistent issues such as decline in biodiversity, the degradation of productive rural land, intensification of development along coastlines and in sprawling cities, and the emerging impacts of climate change. Some current problems are cumulative and complex, e.g., invasive and feral species, land degradation, depletion of water resources, plastic debris and, most difficult of all, climate change.

Three Australian vertebrates have become extinct in the last decade¹⁸ and land clearing continues to be an issue, with 7.7 million hectares of known or potential threatened species habitat and 370,000 hectares of known or potential threatened ecological communities (i.e., areas identified by the Commonwealth Government in the listing advice as "likely to occur" or "known to occur" habitat) cleared since the enactment of the EPBC Act⁴; further evidence that the EPBC Act is not meeting its objects.¹⁴

3. WHAT THE FUTURE LOOKS LIKE

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



In South East Queensland the greatest, and immediate threat to, biodiversity is the impact of current and projected population growth; Queensland Government estimates are for an additional two million people in the region by 2041¹⁹. This needs to be managed to firstly avoid, and then reduce, the immediate and cumulative impacts on MNES. EPBC Act considerations should be a key component of all regional planning, particularly statutory plans such as Shaping SEQ²⁰.

Healthy Land and Water (HLW) considers that the direct and indirect consequences of population growth on natural values and MNES require further investigation and modelling. For example, if public demand for increased fire hazard reduction by public land managers in response to the recent bushfires to improve protection of life and property is undertaken without consideration of the ecological impacts of changed burn frequencies or intensities, there will be significant immediate and long-term impacts on local environmental values and MNES.

Socio-economic trends also need investigation and careful consideration of their potential impact on the environment, particularly any changes to the roles and responsibilities of land managers and resource stewards¹⁴, e.g., increasing Aboriginal stewardship, decreasing family farm ownership.

Climate change impacts should form a key part of cross-jurisdictional and cross-realm monitoring and conservation of MNES. Climate change pressure on species, ecosystems and landscapes, will make them even more vulnerable and compound the impact of habitat loss through urban development and land use change. Climate change modelling exists for protected areas (e.g., CSIRO for Australian Marine Parks²¹) and species (e.g. *Macadamia integrifolia*²²). Revising the definition of 'significant' impact (as discussed in Question 15) and other relevant sections of the EPBC Act to consider climate change impacts could provide greater protection to existing habitats and ecosystems.

Revising the definition of 'significant' impact and other relevant sections of the EPBC Act to consider climate change impacts could provide greater protection to existing habitats and ecosystems. Further, HLW recommends that modelling of the projected impacts of climate change on MNES be incorporated into decision-making under the EPBC Act; examples of such modelling exist for protected areas (e.g. CSIRO for Australian Marine Parks²¹) and species⁵.



4. FOCUS AREAS: HOW CAN THE EPBC ACT BE IMPROVED?

4A. THE ROLE OF THE EPBC ACT

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

Healthy Land and Water (HLW) believes there should be a greater focus on regulating outcomes with the baseline data, metrics and controls in place to report them transparently and objectively, informing planning and actions. The actual outcomes that the EPBC Act delivers for the natural environment are of paramount importance; prescriptive processes need to be designed so as to support their achievement and to determine and address priorities.

Currently, the EPBC Act is not delivering a satisfactory result in either regulating outcomes or prescribing processes.

Changing the focus of the EPBC Act to either one of these could enable their greater achievement, however, both require substantial reform and allocation of sufficient resources to be effective.

HLW considers that the EPBC Act should provide the Commonwealth with the power it needs to fulfil a greater leadership role in the protection of Australia's environment, particularly the capacity to set clear targets for environment and heritage conservation outcomes and mechanisms to ensure their effective delivery. The latter here is critical; HLW has witnessed the development of numerous recovery, management and regional plans, e.g., Eastern Bristlebird Recovery Plan²³, Border Ranges Rainforest Biodiversity Management Plan²⁴, SEQ NRM Plan 2009, however, without dedicated implementation and resourcing, decline continues²⁵.

Removing the capacity for the EPBC Act to prescribe processes for delivery, places greater reliance on the clear identification of cross jurisdictional roles and responsibilities, cooperation between national, state and local jurisdictions, improved transparency in decision-making, together with the removal of current overlaps and improved administrative efficiency. This would require a national system of accountability, independent oversight and a resourcing framework that supports feasible and fair implementation.

To strengthen the leadership role of the Commonwealth, HLW suggests that^{14,26,27}:

- The Act gives the Commonwealth power to set binding national standards and objectives that all states must adhere to, in order to bring all states and territories up to a higher and consistent national standard. This includes in new areas of national environmental significance where the Commonwealth would not directly regulate but wants to ensure a high consistent level of protection is achieved across Australia.
- Clear and measurable outcomes and targets for MNES are developed, supported by a nationally coordinated system of data acquisition, monitoring, mapping and reporting, that enables identification of any variance to goals and informs mitigation actions.
- The Commonwealth retains primary regulatory responsibility for an expanded list of MNES (as suggested in our response to Question 4).



- In order to avoid duplication of processes, the Act allows the Commonwealth to delegate environmental impact assessment functions under the Act to the states only in certain circumstances namely:
 - For assessment only of environmental impacts of projects (e.g., through state-Commonwealth bilateral agreements for environmental impact assessments), i.e., not a delegation of approval powers. All approval powers for nationally significant matters should be retained by the Commonwealth, as currently in the Act.
 - Any accreditation and delegation of assessment powers to the states must be done using independent auditors to ensure state laws meet Commonwealth standards.

4B. BETTER ENVIRONMENT AND HERITAGE OUTCOMES

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?”

Healthy Land and Water (HLW) believes the EPBC Act should ensure the Commonwealth has strong leadership, oversight, approval and co-ordination responsibilities.

Ongoing, nationally consistent monitoring and evaluation programs²⁶ are essential for adaptive management, identifying priority actions and realisation of successful outcomes. As an example, HLW coordinates annual waterway health monitoring for SEQ (the Ecosystem Health Monitoring Program, EHMP²⁸) which feeds into 5-yearly review of progress against targets in the SEQ NRM Plan²⁵. All regions across Australia are required to undertake and maintain regional NRM Plans (a condition of current Commonwealth Regional Land Partnerships funding); with some modification and additional resourcing, these could provide a mechanism for nationally consistent monitoring and evaluation.

HLW agrees with the Environmental Defenders Office and the Australian Panel of Experts on Environmental Law (APEEL) suggested division of Commonwealth responsibilities, over four levels^{6,14} (more detail is available in the individual EDO and APEEL reports), namely:

1. Constitutional Powers – widen Commonwealth responsibility in environmental matters
2. National integration - coordinate NRM planning and programs across all jurisdictions
3. Existing and expanded MNES responsibilities - see HLW response to Question 4
4. Responsibility for biodiversity protection

Additionally, we suggest national integration, including a requirement for local governments to refer developments that trigger MNES to the Commonwealth and to better reflect MNES in local planning schemes.

The Commonwealth would know if outcomes are being achieved if:

- the Commonwealth Government assumes responsibility and leadership for reversing the decline in Australia's environment
- Newly established targets are met, which may:



- End destruction of primary, remnant, old-growth or high-conservation value forests and bushland;
- Prevent the extinction of native fauna and flora;
- Protect and recover key biodiversity areas, threatened ecological communities and threatened species including strict protection for their critical habitats;
- Safeguard the health of freshwater ecosystems, including from extractive and industrial processes;
- Align with multilateral environmental agreements (MEAs) and the Sustainable Development Goals (Target 6.3, 14.1 and 3.9) to reduce air pollution, plastic pollution and chemical pollution across Australia²⁹.
- Safeguard the natural and Indigenous cultural values of Australia's protected areas, heritage places, and other conservation tenures;
- Prevent the introduction of, and reduce the current extent, spread and population size of, invasive species that are threatening biodiversity; and
- Effectively protect Australia's wildlife from commercial exploitation including illegal wildlife trade and unsustainable fishing.

Question 10: “Should there be a greater role for national environmental standards in achieving the outcomes the EPBC Act seeks to achieve?”

Healthy Land and Water (HLW) supports the development of increased national environmental standards and their implementation.

There is currently a lack of clear and consistent national environmental standards, goals, indicators and data; this is a major barrier to objective, data-driven, decision-making in environmental matters and is identified as such in the *State of the Environment 2016 report*¹⁶. A set of national plans, which encompass short and long-term environmental standards, goal, indicators and reporting, to inform policy and decision making is required. To enable this, a national integration of powers, data and monitoring needs to be accomplished.

The United Nation's Sustainable Development Goals³⁰ could be referenced in partnership with EPBC Act standards and targets to ensure alignment and further the international integration of the Act.

HLW encourages investigation of the contribution that existing national standards, particularly those able to be used at local and regional scales, e.g., the *Guidelines for Fresh and Marine Water Quality*³¹ (developed by the Australian and New Zealand Environment and Conservation Council to provide national guidance on how to achieve consistent management, planning and outcomes in aquatic ecosystems), can make to delivering the objects of the EPBC Act.

Question 11: “How can environmental protection and environmental restoration be best achieved together?”



Healthy Land and Water (HLW) believes achieving desired national environmental outcomes requires developed and actioning priority reform measures (refer our response to Question 5).

Australia's biodiversity is in decline, with more than 1700 species and ecological communities known to be threatened and at risk of extinction³²; the revised EPBC Act must reverse this trend.

The EPBC Act's primary aim is to conserve and protect Australia's environment, natural heritage and biological diversity, however, secondary aims are required to enable recovery, prevent the extinction or further endangerment of Australian plants, animals and their habitats, and to increase their resilience⁶. Rigorous and accessible listing processes for threatened species, ecological communities, local populations and key threatening processes are vital to identifying potential future extinctions, but preventing extinction is only possible if supported by systematic implementation of recovery actions, management, impact assessment and protection, threat abatement, monitoring and reporting.

Environmental protection can be improved through the modifications suggested previously for the EPBC Act, e.g., more inclusive suites of MNES, identification of desired national outcomes, transparent governance, coordinated cross-jurisdictional delivery.

Currently the EPBC Act only comes into effect through a substantive change in land use and thus responds reactively rather than proactively to known and potential impacts on MNES. Business as usual, ongoing, land management activities can lead to MNES decline without referral.

HLW considers this deficiency of the EPBC Act should be addressed through the introduction, augmentation and promotion of incentives for the proactive protection of terrestrial and aquatic species and environments, by individuals, organisations and governments. These are essential for growth in environmental protection and to maintain and support existing best practice management programs.

Environmental restoration is essential for recovery of threatened species and ecosystems and to mitigate decline in other MNES. Incentives for restoration must find a balance between driving good environmental practices with poorer-performing land managers whilst acknowledging (and not disincentivising) those land managers who have been actively undertaking good environmental practices. There are numerous examples of prioritising works funded on private land (to deliver public good) based on the extent of degradation (opportunity for improvement) rather than maintaining and supporting good land management, with funding programs driven by competitive processes that demand quantity over quality.

HLW considers that environmental protection and restoration requires a regional or bioregional approach that incorporates national, state and local values and conservation connectivity, and which are supported through a suite of mechanisms, including market-based incentives and stewardship programs, as illustrated through the following examples:

- the SEQ Land for Wildlife program, possibly Australia's largest and most successful ongoing stewardship program, with over 4500 members managing over 63,782 hectares of wildlife habitat³³. The 22-year old program grows by 5% per annum and distributes over \$600,000³⁴ in grant funding and many other incentives (e.g., training, plants, nest boxes, rate relief) to its members. Participation is voluntary and the program is coordinated regionally and delivered through local governments, at an annual cost estimated at several million dollars.

- the Commonwealth Government's environmental stewardship program, initiated in 2009, focused on threatened ecological communities in New South Wales, South Australia and Queensland and delivered through competitive funding bids (reverse tender). After five years of implementation, 297 land managers were approved to implement (up to) 15-year conservation management plans over 56,527 ha of private land, at a cost of approximately \$152.3 million³⁵.

It is acknowledged, that to maximise the likelihood of success for market-based incentives or stewardship programs, there is a need to commit substantial, long-term and consistent resourcing which includes co-ordinated monitoring across jurisdictions.

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?”

Healthy Land and Water (HLW) believes that cultural heritage management plans should be values based, however we are uncertain whether the EPBC Act is the most appropriate mechanism for protection. HLW suggest seeking the advice of Traditional Owners to determine whether more specific legislation is required to achieve the level of focus required at a national level.

Since European settlement, places of significance to Traditional Owners have been disrupted, degraded, desecrated and in some instances destroyed. Legislation purporting to protect these places has often been limited to Eurocentric concepts of heritage and place. The Act is biased towards tangible archaeological sites and things which can be objectively identified³⁶. Non-archaeological sites which are significant to Traditional Owners, and sites which can only be identified through Traditional Owner knowledge, are not adequately provided for under the Act.

To overcome this shortcoming, HLW recommends that cultural heritage protection needs to incorporate the values of Traditional Owners whilst ensuring that the physical geographical location of these sites is recognised and protected under the Act. To assist in these protections, mapping of significant sites, led by Traditional Owner knowledge frameworks, and overseen by Statutory Traditional Owner entities with support of the Indigenous Advisory Council (refer our response to Question 19) can be generated and utilised in decision making.

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?”

Healthy Land and Water (HLW) supports the concept of strategic regional assessments, however, considers that amendments to their design to include state, regional and local values and the opportunity for adaptive review following receipt of new information, are critical revisions. Strategic assessments should be led by the Commonwealth.

Strategic assessments have been reported ³⁷ to deliver a better outcome for MNES than case-by-case assessments, however, substantial losses of key environmental (and cultural) values are still experienced. Whilst strategic assessments enable consideration of cumulative impact within



the target areas, their focus solely on MNES also fails to consider state and local values and has no capacity to avoid impacts on species not yet listed but which may become so following the cumulative impacts of development approval and climate change.

A further concern is the potential for future reviews of and/or amendments to strategic assessments, or even political interference, to undermine any initial conservation outcomes; legislative protection and planning security of outcomes is essential.

Strategic assessments also need to allow for future localised assessments and not override the requirement for them.

Strategic assessments should be founded on the same information that underpins regional NRM plans (required through Commonwealth Government Regional Land Partnerships Services Agreements to consider MNES and the location and condition of natural resources, and to involve community, ATSI peoples and industry in their development and implementation) and the independent guidance of scientists.

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?”

Healthy Land and Water (HLW) supports the removal of duplication of government responsibilities and believes that the Commonwealth should retain ultimate responsibility for all MNES.

The revised EPBC Act should provide the Commonwealth with the power it needs to fulfil a greater leadership role in the protection of Australia's environment, including the capacity to set clear targets for environment and heritage conservation and to define cross jurisdictional roles and responsibilities, remove current overlaps and improve administrative efficiency.

Cooperation between national, state and local jurisdictions is required, together with a national system of accountability, independent oversight and a resourcing framework that supports feasible and fair implementation. Collaborative assessments, which allows for a prescribed lead agency managing the administrative process whilst allowing joint initiatives between Commonwealth, state and local governments, for implementation could strengthen cross jurisdictional accountability and integration and deliver higher quality outcomes.

HLW supports recommendations to strengthen the leadership role of the Commonwealth including ^{14,26,27} :

- The Act should give the Commonwealth power to set binding national standards and objectives that all States must adhere to, in order to bring all States and Territories up to a higher and consistent national standard. This includes in new areas of national environmental significance where the Commonwealth would not directly regulate but wants to ensure a high consistent level of protection is achieved across Australia.
- The Commonwealth retains primary regulatory responsibility for an expanded list of MNES, as suggested in Question 4.

- In order to avoid duplication of processes, the Act should allow the Commonwealth to delegate environmental impact assessment functions under the Act to the states only in certain circumstances namely:
 - For assessment only of environmental impacts of projects (under bilateral agreements for environmental impact assessments), i.e., not a delegation of approval powers. All approval powers for nationally significant matters should be retained by the Commonwealth, as currently in the Act.
 - Any accreditation and delegation of assessment powers to the states must be done so using independent auditors to ensure state laws meet Commonwealth standards

4C MORE EFFICIENT AND EFFECTIVE REGULATION AND ADMINISTRATION

Question 15: “Should low-risk projects receive automatic approval or be exempt in some way?”

Healthy Land and Water (HLW) does not currently support the concept of automatic approval for any project. Automatic approval is likely to encourage and facilitate the circumvention of protection requirements and bypass scrutiny of impacts and cumulative impacts to the environment across jurisdictions and realms. HLW believes there is a high risk that automatic approval will have unintended adverse consequences for the environment and biodiversity.

Whilst there are economic efficiencies to be gained from fast-tracking low risk proposals, given that, without this ability currently, the EPBC Act is not delivering its intended national environment outcomes, HLW does not have the confidence to support this concept. ‘Low-risk’ projects must be first be clearly, robustly and scientifically defined, with essential stages of their assessment required to include screening (to decide which level of review is required) and scoping (to identify the key information and decision needs for the assessment); this targeted need for information could potentially reduce costs associated with assessments and lead to an increase in the number of voluntary referrals, i.e., compliance with the EPBC Act.

There is an immediate need to provide a clearer definition of the ‘significant impact’ threshold. This review should address the lack of confidence and uncertain discretion in current impact assessment thresholds and referrals. A clearer test for Commonwealth oversight could be achieved by making the ‘significant impact’ threshold more robust, objective, quantitative and accountable; or by removing the word ‘significant’. Having ‘significant impact’ as a threshold does not consider the cumulative impact that many smaller impacts have over time. For example, progressive clearing of multiple patches of a threatened species’ habitat or a threatened ecological community, each individually small enough to be exempt from EPBC, over time is likely to have an eventual large impact on the species/ecosystem. Existing monitoring mechanisms are rarely sensitive enough to identify small-scale, incremental impact until it has become irreversible, for example the local extinction of a threatened species population. Significant improvement in the timeliness and adequacy of monitoring and measuring both extent and condition of MNES is required.

Strategic impact assessments allow Commonwealth and state governments to conduct environmental impact assessments at a broad scale. A big risk to the environment, however, from strategic assessments is that individual projects that meet the conditions of the strategic assessment do not have to be individually assessed and approved, even if the project occurs



many years later and environmental conditions have changed significantly. It also means detailed assessments are often not conducted at a fine scale, which could result in species not being recorded and therefore not protected. Whilst not at strategic assessment stage, neither the Phase 1³⁸ or Phase 2¹² reports for the proposed High Speed Rail project, managed by the Commonwealth, are comprehensive in their assessment of impact on MNES, with World Heritage and several threatened species not mentioned in either report, despite mapping clearly indicating impact.

HLW prefers the concept of proactive strategic assessments, which provide a dynamic plan for an area (e.g., a region or catchment) and include 'stop' triggers that enable consideration of cumulative impacts and new information, i.e., to identify when activities become high risk. Further, strategic assessments should not remove the requirement for more detailed assessments to be undertaken at a later stage. For example, some large-scale developments may take years or decades to complete, over which time on-ground environmental conditions and species listings under the EPBC Act could change.

HLW would support the use of strategic assessment in combination with strict rules, most importantly;⁶

- strong legislated standards, decision-making criteria and science-based methods, including a 'maintain or improve' environmental outcomes test (such as for biodiversity, water quality, vegetation, carbon storage) and requirements to be consistent with recovery plans and threat abatement plans;
- cumulative impact assessment requirements, taking account of past, present and likely (approved) future activities and climate change at the relevant scale;
- comprehensive and accurate mapping and baseline environmental data;
- mandating transparency and public participation at all phases of the process, including to verify post-approval compliance, to ensure community confidence and acceptable outcomes;
- requiring alternative scenarios to be considered, including for climate change adaptation, to enable long-term planning for realistic worst-case scenarios (i.e. plan against failure);
- adaptive management and review once a program is accredited, to respond to new discoveries, correct unsuccessful trajectories or implement best available technology;

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?"

Healthy Land and Water (HLW) believes that the Commonwealth's regulatory role should focus on both habitat management at a landscape-scale *and* species-specific protections, if the aim of the Act is to have resilient species and healthy ecosystems. Establishment of a cross-realm, ecosystem-based planning and management framework for terrestrial and aquatic environments will be a key part of this.

HLW recommends a dual focus on resilient species and healthy ecosystems should be adopted. Bioregional or regional planning should be the centre of the Commonwealth's strategic environmental focus and leadership. Bioregional plans make sense from an environmental



perspective; however, regional plans already exist through regional NRM organisations. The Commonwealth's regulatory role should focus on bioregional or regional plans, giving Commonwealth, state and local governments the opportunity to map areas of environmental significance (such as critical habitat) across bioregions and make decisions about the need for protection of those areas.

The Commonwealth has the power to make bioregional plans under the EPBC Act, but it has not been used for land assessments. A greater use of bioregional planning to proactively identify nationally significant areas such as critical habitat, Ramsar wetlands, and National Heritage should be undertaken. However bioregional planning provisions should be strengthened to allow the Commonwealth to identify 'no-go zones' where development cannot ever occur, such as critical habitat (e.g. Koala habitat), and a requirement that decision-makers make decisions that give effect to bioregional plans.

HLW recommends investigation into the use of regional Natural Resource Management (NRM) Plans (currently being reviewed by Service Providers across Australia as a requirement of the National Landcare Program), to underpin bioregional planning.

Regional NRM organisations are existing resources with networks and connections in local and state government as well as industry, community and Traditional Owner networks; as such they are well placed to provide advice on MNES triggers (given appropriate resourcing).

HLW has developed and distributed MNES mapping to support regional investment and protection of environmental and cultural values in South East Queensland.

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

No comment.

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

Healthy Land and Water (HLW) does not believe there are adequate incentives to give the community confidence in self-regulation.

Evidence suggests that the self-referral requirement within the EPBC Act is failing⁴³⁹; this requires redress. Further, there should not be any additional provision in the Act to allow for self-regulation of industry or state or local governments; as perhaps could happen through the existing (i.e., not proactive) strategic assessment process. Environmental protection and review require robust, transparent and independent scrutiny and can only be achieved at a national level with clearly defined decision-making guidelines.

Public participation, transparency and access to justice are essential elements to ensuring community confidence in decision-making for biodiversity outcomes. Thus, public participation procedures need to be early, and inclusive⁴⁰.



4D INDIGENOUS ENGAGEMENT, KNOWLEDGE AND LEADERSHIP

Question 19: “How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management?”

Healthy Land and Water (HLW) supports reforms that improve outcomes for Aboriginal and Torres Strait Islander (ATSI) peoples.

At present the EPBC Act does not adequately safeguard the natural values or ATSI cultural values of Australia's protected areas, heritage places, and other conservation tenures; and it does not specifically recognise Traditional Owner knowledge or enshrine the principle of free, prior and informed consent of First Nations people. HLW supports changes to the Act which will promote the strategic engagement of ATSI groups and communities in environmental management.

ATSI groups and communities, particularly Traditional Owners, should be specifically consulted on the reforms they require to the EPBC Act and/or any new Commonwealth law.

HLW is committed to working with and building capacity and relationships within ATSI communities and supports the use of the 'Participation Principles of Practice' developed by the NRM Regions Queensland⁴¹.

ATSI interests must be recognised and commitment to benefit sharing and engagement genuinely implemented. Further the practical socio-economic impediments to good stewardship practices must also be addressed.

HLW supports reforms that improve outcomes for ATSI peoples; we recommend they must be consulted on^{6,26}:

- An ATSI advisory council to advise when making instruments such as bioregional plans and recovery plans.
- Recognition and increased protection of Indigenous Protected Areas (IPAs) as MNES (as per our response to Question 4).
- A requirement that ATSI heritage places are primarily identified, assessed and/or mapped by Traditional Owners and/or other designated ATSI land managers (acknowledging that any recording or mapping requires approval and may not be made publicly available to ensure sacred sites are protected).
- Actions external to but likely to affect IPAs, should require referral to Traditional Owners and/or other designated ATSI land managers. Within IPAs, opportunity should exist for Traditional Owners and/or other designated ATSI land managers to be prescribed as the approval authority (if they wish to have this responsibility).
- Acknowledgement of culturally significant species and opportunity for their nomination by ATSI groups for protection under the Act. An example is the cultural significance of the Dugong to many ATSI people, including the Quandamooka people of Moreton Bay.
- Acknowledgement of culturally significant landscapes and opportunity for their nomination by ATSI groups for protection under the Act.



- Ensuring that any third-party benefits arising from the formalising of Australia's natural genetic resources are shared in a fair and equitable way with Traditional Owners and ATSI communities, based on mutually agreed terms, consistent with the Nagoya Protocol on access and benefit sharing under the UN Convention on Biological Diversity.
- A requirement of free, prior and informed consent from Traditional Owner groups for actions impacting cultural heritage.
- Strong recognition of Native Title rights and interests and formalising Traditional Owner assessment within any applications under the Act. This should be correspondingly resourced by the Commonwealth Government.

4E PUBLIC PARTICIPATION

Question 20: “How should community involvement in decision making under the EPBC Act be improved?”

Healthy Land and Water (HLW) encourages greater community involvement in decision making.

Public participation, transparency, inclusion and access to justice are essential elements to ensuring community confidence and ensuring accountability for biodiversity outcomes. HLW recommends:

- Encourage strong public participation through early engagement and providing opportunities for involvement at all key stages of decision-making. Ensure opportunities for participation are inclusive and approached in ways that suit different sectors of society, especially ATSI peoples and less advantaged communities.
- Extend interested community member's legal standing/rights to allow merits review of key decisions.
- Improve the accessibility and timeliness of information on actions, assessments and decisions
- Enable open standing for members of the public to seek review decisions
- Instigate protective costs orders for legal actions brought in public interest and limit upfront cost orders that deter the community from exercising legal rights.

The introduction of mechanisms (discussed in our response to Question 21) that provide for clear and transparent assessment of community involvement in decision-making will improve public confidence in EPBC Act.

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?”

Healthy Land and Water (HLW) believes the EPBC Act must be upheld by fully transparent governance arrangements that ensure accountability, independent decision making and regulations. To assist in the delivery of this objective HLW supports the Environmental Defenders



Office, Australian Panel of Experts on Environmental Law and Place You Love Alliance^{6,14,26} recommendations for the establishment of the following new institutions or committees, with ATSI representation on each wherever possible:

- A **National Environment Commission**: a body independent of departmental or ministerial direction reporting annually to parliament on the state of the environment. The Commission would co-ordinate national plans and actions, set national standards and provide high level oversight to ministers, agencies and the community.
- A **National Environment Protection Authority**: to assess, approve or refuse projects, monitor project-level and broader government, industry and community compliance and take enforcement action.
- An **Independent Scientific and Heritage Committee**: to assess and list nationally threatened species and/or populations, ecological communities, ecosystems, heritage places and sites, and to provide independent advice to decision-makers.

4F INNOVATIVE APPROACHES

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?”

Healthy Land and Water (HLW) believes there is potential for innovative approaches in delivering EPBC Act outcomes.

Australia has a history of innovative solutions to environmental and cultural heritage requirements, such as co-management of protected areas, the Indigenous Protected Areas, and Traditional Use of Marine Resource Agreements⁴².

Beneficial investment in biodiversity conservation requires greater public education and recognition of ecosystem services and their role in supporting humans. Ecosystem services and their intrinsic value need to be integrated into strategic planning, national goals and government policies. Education programs to the broader community should also be considered.

Understanding the value of natural assets and the ecosystem services they provide, by creating environmental-economic accounts for environmental assets allows for quantitative analysis of assets and the risks facing them. In other jurisdictions (UK⁴³, USA⁴⁴, Canada⁴⁵ and elsewhere), governments and their agencies are integrating ecosystem services into their strategic planning, assessment and land management programs. Work by the Australian Bureau of Statistics to build and expand estimates of environmental-economic accounts, is an important contribution towards inclusion of the intrinsic value of the environment into planning and policy³. It is recommended that the Commonwealth Government investigate the expansion of trial environmental-economic accounts used on the Great Barrier Reef⁴⁶ and apply the principles of the United Nations' endorsed 'System of Environmental-Economic Accounts'⁷ to reflect the true value of ecosystem services into decision making.

HLW suggests including the following in the Commonwealth's suite of tools to drive conservation and sustainability:

- **National standards and targets;** The lack of clear and consistent national environmental goals, standards, indicators and data is a barrier to effective environmental decision making. This has been acknowledged in the OECD *Environment Performance Review* and in the *2016 State of the Environmental Report*^{2,3}. State and local laws and permits for planning, mining, water, native vegetation and similar discretions must not override or undermine these national biodiversity standards. Incentives must be implemented to ensure a highest common denominator across jurisdictions. Interstate competition and industry will be driven by innovation and there will be a “race” to achieving high level biodiversity outcomes.
- **Data gathering and reporting;** To support planning and decision-making under the Act, a system of National Environment Accounts should be developed, administered by the National Environment Commission (refer Question 21), which would track key environmental indicators and their extent, condition and threat status over time. The Commission should report to parliament against the goals and metrics identified in the National Environment Plan annually. Commonwealth support and expansion of national monitoring programs such as Atlas of Living Australia and Bush Blitz must be considered.
- **National Environmental-Economic Accounting (AEEA);** To enable a nationally consistent approach to the environmental-economic accounting that will help address current information gaps and bring together environmental and economic information in a coherent way which allows for like accounts to be compared and aggregated across state and territory borders. AEEA will also support Australia in achieving Aichi Biodiversity Target 2, which calls for biodiversity values to be integrated into national accounting⁴⁷.

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

Healthy Land and Water (HLW) believes market establishment may be a tool at the Commonwealth’s disposal, however, critical to this is a clear understanding of the risk to be addressed by a market-based approach.

A feasible business model is required for environmental protection and restoration that does not rely solely on government funding. This is a much more complex issue than the establishment of a government trust fund and the mitigation of loss through offsets; it requires the pooling of environmental, economic and social intelligence and the creation of a national environmental business model that includes public and private options and stakeholders. Critically, the flaws identified previously (Question 2) regarding the definition of ESD must be addressed. This is a role that could be undertaken by the National Environment Commission proposed in our response to Question 21.

Commonwealth funding to support regional NRM (currently through the National Landcare Program, and previously through mechanisms such as the Natural Heritage Trust, National Action Plan for Salinity and Water Quality and Caring for our Country) includes key measures that address many practical elements of protecting and sustainably managing biodiversity. Unfortunately, these measures are often only applied to regional NRM organisations, rather than holistically through all funding mechanisms. Changes in national priorities, targets and monitoring methods combined with short-term funding arrangements, have also led to



inconsistency on reporting and tracking only of local environmental outputs rather than monitoring of regional or national environmental outcomes^{48,49}.

As has been reported in successive State of the Environment Reports, effective implementation of biodiversity protections requires a significant boost in resources for the listing and conservation of threatened species, ecological communities and heritage places, landscape-scale planning, NRM and conservation programs, ecological mapping, monitoring and enforcement.

In addition to increasing resources for environmental protections, any new funding mechanism/s must enable long-term investment in order that outcomes rather than outputs are delivered. The expectation that projects and programs of six months to four years duration⁴⁸⁻⁵⁰ (as experienced by HLW through recent and past Commonwealth Government initiatives) will result in significant change to the long-term status of MNES is highly unrealistic.

Long-term investment must also consider the socio-political landscape and the need for community involvement in MNES and broader conservation of environmental values. This is exemplified in SEQ where over 70% of the region is in private ownership; baseline community engagement needs to be ongoing in order to achieve long-term outcomes, rather than intense periods of engagement followed by significant gaps in communication that is the consequence of short-term funding arrangements.

The new Act must enact and stimulate innovative, long-term, inter-government and multi-sector funding.

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

Biodiversity offsets are currently hugely problematic. It is not scientifically or practically possible to truly offset the destruction of, for example, critical vegetation or the loss of threatened species; especially considering the time-lags between an impact and the offset achieving equivalent status to what is agreed to be impacted.

Healthy Land and Water (HLW) believes that if offsetting is to continue to be allowed, strict rules should be consistently applied, rather than provided only as guidance as is the case with the current offset policy. Opportunities for improvement should include:

- Biodiversity offsetting of impacts on critical habitat, endangered or critically endangered species and ecological communities should not be allowed in any situation. This recognises that some assets are too significant (or outcomes too uncertain) to 'offset'. This approach also reinforces incentives to conserve species at a landscape scale to avoid extinction risk in the first place.
- Use of biodiversity offsets should be minimised and require a precautionary approach given the long timeframes and current uncertainty about successful outcomes derived from offsetting.
- Any offsetting for vulnerable, near-threatened or non-threatened biodiversity and ecological communities should require a scientifically robust National Offsets Policy and consistent standards.



- Policy and standards should emphasise that offsets are a last resort, after all efforts are made to avoid and minimise impacts; meet strict scientific net increase biodiversity principles; adopt a 'maintain or improve' standard to measure outcomes (or 'no net loss and preferably net gain'); and ensure offsets are protected in perpetuity (e.g. offsets cannot be offset).
- Offset calculations should be consistent with a precautionary approach, and no offsets would be available for activities where there is a lack of research and evidence of the offset being successful / delivering on prescribed recovery. e.g. mining remediation Furthermore, any offsetting must be consistent with recovery goals in recovery plans.
- Projects that will have a significant impact should not be approved until a suitable offset has been identified and secured. Strict timeframes and compliance with offset obligations should be enforced.
- Offsets need to be adequately costed and calculated to account not only for installation, but also ongoing maintenance and management. The true cost of replicating and raising an ecosystem needs to be realised and accounted for in decision making. The responsibility of offsets should not be allowed to be on-sold but should remain with the person undertaking the controlled action.

A publicly accessible offsets register should be established to improve transparency and accountability.

HLW suggests review of the recent work by Simmonds et.al.⁵¹, who recommend a shift away from biodiversity offset models to a target- based approach for ecological compensation. This is an innovative framework which potentially addresses current issues with offsetting. HLW suggests that the Commonwealth thoroughly investigate this framework for potential implementation at a national level.

Question 25: “How could private sector and philanthropic investment in the environment be best supported by the EPBC Act?”

Healthy Land and Water (HLW) considers that the private sector has a valuable role in Australia's environmental management and conservation. The business community is both a major user of natural resources and a source of technological innovation and financial resources to address environmental challenges. HLW supports the suite of law reforms recommended by the Australian Panel of Experts on Environmental Law to harness and facilitate private sector and philanthropic investment, namely²⁷:

- Corporations Law – general duty to report on environmental performance
- Tax Systems (business, property and income) – to reward proactive beneficial environmental practices and investment, for example removing land tax/Council rates from land protected under private conservation agreements.
- Trust Law – financial investors mandated to consider long term environmental risks to their investments.

Substantial data collection by citizen science organisations underpins much of Australia's understanding of the natural environment. For example, the Queensland Wader Study Group has collected almost all data in existence on the numbers and species of shorebirds in Moreton



Bay Ramsar Site; enabling monitoring of ecological character (Ramsar Convention) and international shorebird agreements, e.g., JAMBA, CAMBA, RoKAMBA.

Citizen science is rapidly expanding and advances in smart phone applications (apps) enable contribution to national databases, e.g., Atlas of Living Australia. Successful citizen science, however, requires adequate consideration of community capacity and allocation of resources required for training, data quality assurance and communication.

Some data collection by private landholders receiving land restoration, conservation management grants and funding, is a requirement of HLW projects, with more detailed data collection required by funders undertaken by HLW or contractors. This data can contribute to biodiversity assessments, however, there is currently no nationally agreed framework to which data can be contributed that ensures local data contributes to measuring performance against regional, state and national targets. Further, funding for monitoring is usually project-based and short-term.

Regional monitoring frameworks, such as HLW's EHMP program and methodology developed by NRM Regions Queensland to monitor the impact of the Queensland Government Natural Resource Investment Program, provide a means for incorporating simple data subsets into more complex data sets collected by NRM bodies or other organisations. This concept could also be expanded into Rural Research and Development Corporations (RDCs) which allow for co-investment with the Commonwealth Government, into research and development. If landholders and private industry can be motivated into collecting data, it will be essential that a framework is in place to integrate these datasets with the traditional biodiversity data, nationally. If a National Environmental Commission, or some other similar independent body, is established they could be given funding used to leverage additional funding from the private sector or other philanthropic organisations. The Great Barrier Reef Foundation does this successfully and there may be potential to do something similar in other regions and/or environments.

5. PRINCIPLES TO GUIDE FUTURE REFORM

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

No comment.

6. GENERAL QUESTIONS

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

The EPBC Act is failing to deliver on its intended purposes and to uphold Australia's international obligations. Considerable cross-jurisdictional confusion is leading to inefficiencies and ineffectiveness in what is delivered. Improvements in meta governance and resourcing and integrity in implementation are required.



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

As identified in earlier responses, substantial improvements are required.

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

As identified in earlier responses, substantial improvements are required.

Question 30: What are the priority areas for reform?

HLW suggests the priority areas for EPBC Act reform are:

- Revise the objects of the EPBC Act,
- Expand MNES and consider bioregional and regional values and cumulative impacts,
- Improve the horizontal and vertical integration of governance bodies to efficiently and effectively deliver the objects of the Act
- Acknowledge and integrate the knowledge and rights of the community, particularly ATSI people, in environmental protection and biodiversity conservation
- Embed the Precautionary Principle within decision-making and consider potential and future cumulative impacts at a cross-jurisdictional and cross-realm scale
- Adaptive governance frameworks which incorporates nationally consistent targets, monitoring and evaluation
- Resourcing to ensure effective implementation, enforce penalties and create incentives,
- Recognise and promote Traditional Owner environmental management and consensual knowledge sharing and recognition of Aboriginal and Torres Strait Islander cultural/heritage sites and cultural landscapes

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

Refer previous responses.

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

HLW suggests that the recommendations of previous reviews and inquiries, and significant publications regarding the operation of the Act and its potential reform, are combined with the outcomes of consultation and investigation during this current review, through a thorough root-cause analysis that identifies the key shortfalls in the current EPBC Act and prioritises opportunities for improvement based on delivering the Act's revised objects.

8. Publication permission



Question 33: Do you give permission for your submission to be published?

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

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