

Attachment A: Comments on Key Questions

Chapter 1 - Scope of the Act

Q1: What are your views on the following aspects of the Act?

- (a) Are the objects of the Act appropriate to the Commonwealth's role in environment protection and management?
- (b) Are the principles of ESD appropriate to the Commonwealth's role in environment protection and management? Does the legislation provide an adequate framework to guide ESD decisions made under the Act?
- (c) Are the existing matters of NES appropriate? Do you think that there should be any additional matters of NES, and if so, how should such matters be framed?
- (d) Is the definition of an 'action' in the Act appropriate?
- (e) What kind of impacts should be considered under the Act? Does the Act adequately encompass not just direct but also indirect impacts?
- (f) Does the test of significance, in the context of actions having a 'significant' impact on a matter of NES, operate effectively in practice? If you think that there should be another test, what should it be?

On definition of 'Significant Impact': As currently described, the definition of Significant Impact is very broad and gives considerable Ministerial discretion. In our view, this should be more clearly defined.

On matters of National Environmental Significance: In general, these seem appropriate. However, the term 'Nuclear Actions' may benefit from a more focused definition that excludes less complex related activities such as the development of supporting infrastructure that can be better addressed through State regulation.

Chapter 2 - Assessment and Approvals

Q2: Does the public understand its responsibilities under the Act to refer proposed actions to the Minister?

On the issue of when a referral is required, the Review should encourage a simple and streamlined approach. In our view, proposals which occur in other jurisdictions should not require referral to the Commonwealth Minister or DEWHA. However, the Commonwealth Minister or DEWHA should be identified as Decision Making Authorities under State legislation, so that a proposal cannot be implemented without their comment.

Q3: Are appropriate projects being referred for approval? Does the referral process meet the objects of the Act?

In some instances, referrals are made which may be inappropriate. For example, a referral is required if a migratory species traverses a project boundary.

Q4: Do you think that the Act contains an effective hierarchy of environmental assessment approaches, ranging from assessment on referral information to assessment by public inquiry? Are the methods of assessment providing the required information for informed approval decisions?

In our view, there is currently too much scope for duplication of assessment approvals.

Q5: Does the Act provide appropriate scope for public participation and transparency in the assessment and approval process under the Act?

In the absence of a merit-based appeal right for either proponents or the public, we conclude that there is insufficient scope for public participation and transparency.

Q6: Does the Act operate effectively in conjunction with State and Territory planning and environmental impact legislation? Are existing bilateral agreements achieving the objects of the Act?

We suggest far greater delegation of approvals authority under the EPBC Act from Commonwealth to State. The EPBC Act assessment provisions should be used to undertake strategic assessments and matters of significance (within the confines of the process detailed in the Act). This will allow clear identification of the important parameters that State processes must then consider when undertaking their assessments with delegated authority. This will also reduce the number of assessments the Commonwealth is required to undertake.

Chapter 3 – Biodiversity

Q14: Are there opportunities to reduce duplication between the Commonwealth and State and Territory listing regimes or do overlaps between the regimes provide additional protection for threatened species and ecological communities?

In general, we support efforts to reduce duplication and can see no benefit in overlaps between regimes.

Q19: Does the Act provide an appropriate and responsive legislative framework for addressing climate change and other emerging pressures in the context of environmental protection and biodiversity conservation? If not, how can such matters be considered when making decisions under the Act?

With the introduction of the Carbon Pollution Reduction Scheme, it is not clear why additional measures to address climate change are required in the Act. By introducing a price on carbon through the CPRS, a project proponent must address the issue of greenhouse gas emissions and decide how to manage their liability as part of their business case. Additional legislative frameworks through the Act are therefore not required.

Chapter 8 - Decisions Under the Act

Q38: As the primary decision maker under the Act, is the level of discretion provided to the Minister for the Environment, Heritage and Arts appropriate?

There is considerable discretion built into the current Act, with limited accountability. The Act would benefit from the introduction of independent advisory bodies across the spectrum of decision-making, including assessment. For example, this independent body could provide impartial recommendations to the Minister who is then able to make political decisions with the best publicly available data. This process occurs in most other Australian jurisdictions.

Q42: Should there be more scope for merits review under the Act? Would the disadvantages of this process – in terms of costs and delays – be outweighed by the advantages?

We support the right to a merits-based appeal. Currently, there is no right to appeal and the decision-making process is far from transparent. The introduction of an independent advisory body as highlighted above would also serve to improve transparency.