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Secretariat  
Independent review of the EPBC Act 1999  
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Australia

## **Submission to the Independent Review of the EPBC Act**

This is a joint submission from Peter Hemphill and Tom Kaveney. We have both worked as Directors within the Approvals and Wildlife Division of DEWHA and now work for Eco Logical Australia, an environmental consulting firm with a national focus. Our comments are focused on the impact assessment provisions in Chapter 4 of the EPBC Act.

From our experience working on EPBC Act issues both within and outside government, we believe that there are a range of opportunities to improve the environmental outcomes that the Act is aiming to achieve. These improvements would also assist business move forward with certainty in delivering developments.

### **The issues**

The issues that limit the ability of the Act to delivery biodiversity outcomes are two fold:

1. the lack of integration and alignment between the EPBC Act and the planning frameworks of the states; and
2. clearly defined and published conservation outcomes for matters of NES (particularly threatened species and ecological communities) at a regional and landscape scale.

State and local governments spend significant time and resources developing plans to deliver multiple objectives for communities (social, economic and environmental). Unfortunately, these plans are often developed without sufficient consideration of matters of national environmental significance (NES) and developers can find themselves in a situation where their development is in direct conflict with the requirements of the EPBC Act. The Commonwealth finds itself in a difficult position of assessing developments in a site-by-site fashion within the context of an approved state or local government plan.

These difficulties can mean:

- significant delays for developers;
- conflict and confusion between state and Commonwealth objectives for protection of the environment; and
- uncertainty for the Commonwealth about the environmental outcomes that can be achieved at a landscape scale because of the focus on site-by-site impact assessment.

### **Options for improving the Act**

#### ***1. Increasing the strategic engagement of the Commonwealth in planning***

While the Act incorporates strategic assessment provisions that can assess and approve actions under state and local plans, these provisions have not yet delivered any outcomes. We believe that in order to do so the following options should be considered:

- a) Amending the strategic assessment provisions to include clear timeframes for both proponents and the Commonwealth. Timeframes would provide greater certainty for proponents coming forward with plans for strategic assessment.
- b) Amending the strategic assessment provisions (perhaps through the Regulations) to provide greater clarity about the information and data requirements for strategic assessment. Currently one of the barriers to strategic assessment is the scale of information required to determine landscape scale outcomes. Greater clarity about the 'amount' and 'type' of information required would be beneficial.
- c) Providing greater incentives for state and local government to work with the Commonwealth in developing plans and having them strategically assessed under the EPBC Act. Currently there is a real lack of perceived need by state and local government to engage strategically with the Commonwealth. They are of the view that the process will only further delay projects without adding to improved outcomes. This has resulted in individual sub-divisions and land release projects being assessed separately, without a regional context. Projects are often delayed accordingly.

The Commonwealth needs to provide incentives for early engagement in the process. These could include: clear benefits for approved plans removing the need for further Commonwealth referral, assessment and approval of individual actions; links to funding; and faster and timely decision making.

- d) Changing the focus of the Commonwealth from reactive environmental regulator to strategic planner. Greater engagement in planning requires a cultural change of the Commonwealth from reactive regulator to strategic planner. This would mean the Commonwealth being involved in both the development and assessment of plans, rather than just assessment. This approach is much more likely to lead to outcomes that are suitable to the Commonwealth in the long term.

## **2. Increasing the focus on achieving environmental outcomes**

In line with the principles of ESD embodied in the Act and government policies to promote sustainable economic growth, the focus of EPBC Act environmental assessments (both strategic and case-by-case) should be on landscape level outcomes. Impact assessment of individual actions at a site level has major limitations in delivering long term conservation and improvement.

Evaluating the conservation outcome and landscape objectives related to a project or planning regime will allow the Commonwealth to understand, modify and regulate actions to achieve outcomes for matters of NES. If the desired landscape outcomes can be achieved then development that is complementary or contributes to those should be able to proceed.

To guide the public, the Commonwealth should clearly define and publish conservation outcomes for matters of NES (particularly threatened species and ecological communities) at a regional and landscape scale.

### **3. Improving and expanding the use of bilateral agreements**

The bilateral agreements between states and the Commonwealth should be expanded to promote alignment on a broader range of assessment and approval mechanisms, including:

- the full range of approval mechanisms within a state;
- accreditation of local environment plans (LEPs) and urban development structure plans;
- strategic assessments; and
- offsetting and Biobanking arrangements.

This will reduce duplication and promote the state and Commonwealth agencies to work in partnership.

### **4. Considering ESD outcomes upfront in the referrals process**

Currently, the Commonwealth cannot consider the social, economic or environmental benefits of an action at the referrals stage. These are considered at the approvals stage following a full assessment of a project and it is only the environmental impacts of an action that are considered in the referral.

With a greater focus on environmental outcomes, the incorporation of the social, economic or environmental benefits of an action at the referrals stage would reduce the number of developments being assessed that had already met the principles of ESD. For example, where a developer had proposed an offset that provided appropriate outcomes for the Commonwealth then further assessment would not be required.

### **5. Capacity building and awareness raising within the community**

Our experience of dealing with private sector clients, state agencies officials and the public has revealed a significant lack of knowledge and confusion about the Act. People do not understand how it functions, its objectives or how it relates to the other levels of government in Australia.

An ongoing program of awareness and capacity building for the public, industry, state and Commonwealth officials should be instigated.

## **Conclusion**

We believe that both biodiversity and business outcomes can be improved by:

1. Increasing the strategic engagement of the Commonwealth in planning.
2. Increasing the focus on achieving environmental outcomes.
3. Improving and expanding the use of bilateral agreements.
4. Considering ESD outcomes upfront in the referrals process.
5. Capacity building and awareness raising within the community.

If the Panel is holding meetings to discuss submissions, we would appreciate the opportunity to discuss our views. We can be contacted on: (w) 02 6103 1045; or (email) Peter Hemphill – [peterh@ecoaus.com.au](mailto:peterh@ecoaus.com.au), Tom Kaveney: – [tomk@ecoaus.com.au](mailto:tomk@ecoaus.com.au).

Yours sincerely

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