



Environment Institute
of Australia and
New Zealand Inc.

EIANZ EPBC

Act Review Submission

April 2020

 @EIANZorg

 [linkedin.com/company/eianz](https://www.linkedin.com/company/eianz)

 @EIANZorg

 @EIANZorg

www.eianz.org



CONTENTS

03	Introduction
04	EIANZ recommendations
06	PART 1 – Key issues of concern to EIANZ
07	Matters of national environmental significance triggers
08	Implementation strategies
10	Governance arrangements
11	Implementation
12	PART 2 – Summary response to discussion paper questions
18	Part 3A – Social Impact Assessment Working Group
19	The Working Group
19	Introduction
20	Areas for Improvement
22	Conclusion
23	References
24	Part 3B – Strategic Environment Assessment Working Group
25	The Working Group
25	Context
26	Areas for improvement
30	EPBC Act Review questions 13, 15 & 16
31	Appendix 1
31	Appendix 2
32	Part 3C – The Role of Professional Certification
33	CEnvP Program Overview
33	Recommendation
34	Part 4 – EIANZ submission to the Hawke Review

INTRODUCTION

The Environment Institute of Australia and New Zealand (EIANZ) is the peak professional body for environmental practitioners across Australia and New Zealand. The Institute supports environmental practitioners and promotes independent and interdisciplinary discourse on environmental issues. We are an independent, membership-based organisation representing over 2100 practitioners at the forefront of the challenging and complex environmental issues we face today. Our members frequently interact with the EPBC Act and they have the technical expertise required to accurately comment on which areas of the Act need to be reformed and the direction that should take.

The Act is the Commonwealth's central piece of national environmental law, and in accordance with the Act an independent review is required at least every 10 years. The Institute welcomes the opportunity to make a submission to the panel of the independent review of the Act and to explore ways in which the existing regulatory framework can be made to work more effectively.

This review is the second 10-year review required under the Act. The first such review, conducted in 2009 (the Hawke review) provided a range of recommendations for improvements to the Act – most of them are unimplemented. The EIANZ provided a submission to the Hawke review, most of which remains relevant to this review (a copy of our 2009 submission is provided in Part 4).

This submission represents the views of members; it was developed by a working group of highly qualified members with extensive experience and endorsed by the Institute Board. Our submission is informed by an extensive member and public consultation process. This included a series of online interactive forums which provided environmental practitioners with an opportunity to discuss ideas and provide direct feedback on the review process. The responses address the question outlined in the discussion paper and the recommendations formed draw from case studies and expertise of highly qualified environmental practitioners.

The submission is in four parts:

PART 1 Issues of concern to EIANZ

discusses the key issues of concern to the EIANZ.

PART 2 Summary responses to the discussion paper

address each of the questions identified in the discussion paper.

PART 3A Social Impact Assessment Working Group

PART 3B Strategic Environmental Assessment Working Group

provides detailed submissions from two EIANZ Working Groups – the Strategic Environmental Assessment, and Social Impact Working Groups.

PART 3C The role of professional certification

provides recommendations from the CEnvP Scheme.

PART 4 EIANZ Submission to the Hawke Review

is the EIANZ submission to the 2009 Hawke Review.

EIANZ

RECOMMENDATIONS

The EIANZ provides 11 recommendations for improvements to the Act. These are summarised below, and further detail is provided in the body of the submission.

-
- 1** The objects of the EPBC Act should be retained.
-
- 2** The key priorities for reform need to be:
 - governance structure between the states, territories and Commonwealth
 - reform on the MNES
 - investment to ensure the Commonwealth Government is upholding its obligations internationally for current and future generations
 - biodiversity conservation
 - assessment and approval processes.
-
- 3** Duplication can be reduced by a strong active leadership role from the Commonwealth and a coordinated approach from all levels of government. The Act should define national standards and objectives instead of focusing on compliance with process. The Commonwealth should set these standards, with state and territory governments to develop frameworks to achieve these standards.
 - The Commonwealth should be a technical agency for assessment and approval of matters of national/international importance.
 - The Commonwealth should establish detailed long-term biodiversity goals, standards, indicators and reporting to inform policy and decision-making under the Act.
-
- 4** Suitably qualified environmental professionals should be appropriately recognised with qualifications and/or certification, such as through the Certified Environmental Practitioner Scheme (CEnvP).
-
- 5** It is recommended that matters of national environmental significance (MNES) should be retained and expanded; the approach is sound however it does not cover all relevant areas and does not influence all relevant aspects of the Act. Improvements can be made through linking the MNES to standards, objectives and targets, and the expansion of the matters. New or expanded MNES should be added for:
 - climate change, including emission of greenhouse gases, and climate change adaptation
 - National Reserve System inclusion of a trigger for activities within Conservation Estate
 - matters that cross state/territory boundaries
 - expansion of the 'water trigger' to cover all project types.
-
- 6** Appropriate resourcing of the implementation agency to develop national standards and resources to ensure all aspects of the Act are effectively implemented.
-
- 7** Fit-for-purpose geographic areas for planning and no-go zones should be established. Setting regional outcomes and objectives for these regions under the Act through a partnership between the Commonwealth and states, territories and/or corporations engaging with stakeholders will deliver better outcomes for the environment.
-
- 8** Cumulative impacts of projects at a landscape-scale should be considered through bilateral agreements with each state, allowing planning schemes to be referred to the Commonwealth for determination of potential to affect MNES.
-
- 9** The approvals scheme needs to be improved upon; it should be outcomes driven and risk-based, instead of process driven.
-
- 10** Mechanisms to better recognise and promote Indigenous environmental management should be introduced. Any changes relating to the role of Indigenous peoples under the EPBC Act must be subject to effective consultation with Indigenous people, communities and organisations.
-
- 11** Actual biodiversity benefits from existing offset market systems needs careful assessment, as does the financial efficacy of such systems. Resources need to be provided to the Administering Authority to facilitate an appropriate analysis of the effectiveness of existing offsets and offset markets, to establish environmental offset markets.
-

PART 1

KEY ISSUES OF CONCERN TO THE EIANZ

The Institute submission addresses four main issues identified in the discussion paper:

- the matters of national environment significance (MNES) triggers
- the strategies with which the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is implemented and suggestions for improvements
- changes to governance arrangements to support efficiency and effectiveness
- how implementation may be strengthened and made more accountable.

1 MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE TRIGGERS

All existing matters of national environmental significance (MNES) should be retained, and MNES should be broadened. New MNES should be included into the Act for:

- climate change, including emission of greenhouse gases, and climate change adaptation
- the National Reserve System (NRS)
- issues that cross state/territory boundaries
- the 'water trigger' should be expanded to cover all project types

MNES should include all matters of cross-jurisdictional importance and should also be used to incorporate other environmental responsibilities under international treaties to which the Commonwealth Government is a party. The MNES can be improved by linking them to standards, bioregional plans, objectives, targets and clear requirements of what to do if an action is deemed significant. Some adverse impacts should be prohibited, for example critical habitat, and requirements to consider cumulative impacts – in conjunction with good bioregional planning – should be set.

1.1 Climate change

While climate change is a matter of national significance, as identified in the Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment (1997), it is not included in EPBC Act Part 1 matters as a trigger for the provisions of the Act. A national approach for addressing climate change is needed, and climate change should be nominated as a matter of national environmental significance that can trigger the provisions of the Act as part of that national approach. This would assist in the cooperative implementation of Australia's international environmental responsibilities.

However, the implications of climate change are broader than environmental protection and biodiversity conservation and require a broader policy framework. Within this broader framework, the following recommendations for changes to the EPBC Act are relevant:

1. Provide a trigger for climate change so that both reduction of greenhouse gas emissions and adaptation to climate change can be addressed at the national level.
2. Include targets for greenhouse gas mitigation as well as energy efficiency and carbon intensity for the environmental assessment of development proposals.
3. Add the ability to undertake recovery assessments for vulnerable ecosystems threatened by climate change and other cumulative effects.

There is also a need to develop national strategies for issues such as climate change. Strategy development could be included in the Act but there are other options beyond the Act.

The future impacts of climate change such as drought and increased bushfire threat should be considered when determining whether an action will have a significant impact.

1.2 National Reserve System

The National Reserve System (NRS) is made up of Commonwealth, state and territory reserves, Indigenous lands and protected areas run by non-profit conservation organisations. The addition of the National Reserve System is needed to give equivalent protection to biodiversity irrespective of the state or territory in which it occurs. This will address the expanding private market in conservation which is subject to very different regulatory regimes. Actions likely to have a significant impact on part of the NRS must be referred for Commonwealth assessment and approval.

Actions affecting Indigenous Protected Areas, Traditional Owners, and/or Indigenous land managers could be prescribed as the approval authority if they wish to have this responsibility.

1.3 Cross-border issues

The Act should consider transboundary values and impacts to assist in the sharing of responsibilities between states and overseas. This would include bioregions which cross jurisdictional boundaries as well as catchments.

1.4 Water trigger

The current water trigger has a narrow application to coal seam gas and large coal mining projects. Water has critical key functions in the Australian environment, and this trigger should be expanded to include all material impacts on surface water and groundwater water quality and quantity from any relevant project.

The 2016 State of Environment Report recognised the ecological significance of Australia's above and below ground inland waters. Looking to the future, the report highlighted the risks associated with changing climatic conditions, the intensity of extreme rainfall events, and extended periods of drought conditions. Proposals for significant infrastructure development risk surface-water regime change, habitat destruction and ecological changes to rivers and wetlands.

2 IMPLEMENTATION STRATEGIES

The EPBC Act uses the broad term 'environment' which encompasses everything from air and water quality, to vegetation condition, and threatened species. By dealing with such a broad term, and then only parts of the environment that are in the purview of the Commonwealth, important environmental assets may be overlooked and not effectively protected. Cumulative impacts of projects at a landscape scale are a key concern. The EIANZ proposes the wider use of bioregional plans and strategic assessments to improve broader environment protection outcomes, together with setting standards for assessments.

2.1 Bioregional plans

Despite their great potential for managing key environmental values at the landscape scale, bioregional plans under the EPBC Act have not yet been applied to the terrestrial environment. Bioregional plans can streamline future environmental assessment by creating clarity for developers and decision-makers about what values should be protected and where they occur in the landscape. The Institute submits that the preparation of bioregional plans through a partnership between the Commonwealth, states, territories and/or corporations engaging with stakeholders will deliver better outcomes for the environment and the economy than are currently being achieved.

The Institute submits that the following issues should be addressed to establish effective bioregional plans:

- **Change the name of bioregional plans.** While the focus of these regional plans should always be on environmental values, the use of 'bio' does not adequately reflect the holistic, systems-based approach that is required. It is essential to understand the interactions between environmental, social and economic values to identify the threats to key environmental values, establish appropriate environmental outcomes and objectives, and establish a framework for informed decision-making.
- **Establish flexible 'fit-for-purpose' geographic areas for planning.** The Interim Biogeographic Regionalisation for Australia (IBRA) bioregions may not be appropriate planning 'regions.' Adopting a flexible approach to establishing regional boundaries will enable the planning regions to reflect meaningful natural and/ or human systems.
- **Make bioregional plans more strategic.** Define the system(s) relevant to the 'region' and focus on three to seven critical decision factors to underpin the analysis. Systems-thinking changes the assessment approach from a large Environmental Impact Assessment (EIA) to enable participants to think more strategically, focussing in on the issues that really matter in the region.
- **Use bioregional plans to define regional outcomes and objectives.** Specify parameters for avoidance and 'no-go' areas and identify thresholds or other standards for consideration in downstream project-based assessments.
- **Provide further guidance on the appropriate preparation of bioregional plans** and mechanisms for their enforcement of these plans.
- **Collaborate in plan development with relevant state, local government(s) and key stakeholders** with an interest in the plan's directions such as catchment authorities, regional development authorities, peak industry bodies, and major land holders.
- **Active participation of Indigenous people** in identification, assessment, management and reporting is integral to the effective protection of Indigenous heritage values in any regional plan.
- **Use a bioregional planning approach to assess cumulative impacts.** A direct reference in the Act to cumulative impacts would facilitate strategic and innovative approaches to addressing cumulative impacts and enable genuine consideration of cumulative impacts.

Bioregional planning and strategic assessments are more effective approaches to identify and manage cumulative impacts on protected values than site focused EIAs.

The Commonwealth's regulatory role should focus on habitat management at a landscape-scale rather than species-specific protections as long as other jurisdictions are effectively protecting species by adhering to established standards, considering cumulative impacts and ensuring robust implementation. The Commonwealth should specify objectives and outcomes for the 'region' and ensure the proponent's assessment demonstrates compliance.



2.2 Strategic assessments

The Institute urges the Australian Government to strengthen the strategic assessment provisions of the EPBC Act to enable more comprehensive and proactive assessments of plans, policies and programs, leading to better environmental and regulatory outcomes. Depending on the scope and level of available information, the strategic assessment may establish a decision framework for future, specific site-based assessments.

Strategic assessments can be designed and delivered in a way to reduce the need for case-by-case assessments. If Australia adopts strategic assessments more broadly it will lead to a range of endorsed plans, policies and programs. There could be an option for lower-risk projects to receive approval with standard conditions for protected matters, similar to the current Particular Manner specifications for Not Controlled Actions.

2.3 Setting performance standards

This submission is framed around a clear role for the Commonwealth to establish standards, considering cumulative impacts, nominating objectives and outcomes for regional plans, and ensuring robust implementation. States, territories, local governments, and/or corporations will have responsibilities as proponents or regulators for facilitated downstream actions.

There should be a greater role for environmental standards and more detailed descriptions of these standards, leaving the freedom for other agencies and proponents to innovate to achieve these outcomes. The standards could take the form of prescriptions in binding policy and strategies. The Institute suggests a three-tiered approach:

1. national policies, strategies and standards for Ecologically Sustainable Development, established by the Commonwealth in concert with the States and local authorities
2. bioregional plans, developed as outlined above, which reflect and comply with national policies/standards; together with Strategic Environmental Assessments (SEAs) of other policies, plans and programs, where the SEA also reflects the national policies/standards
3. project-level EIA conducted in the context of the higher-level policies etc. and assessed for compliance with regional outcomes.

Standards should be set by the Commonwealth for defined MNES, particularly for areas where the Commonwealth has exclusive or significant jurisdiction. Outside of these areas, standards should be set in collaboration with the states and territories.

Lower-risk projects could potentially receive approval with standard conditions for protected matters – still requiring registration of the project with the Commonwealth and to demonstrate that the scope and impacts of the proposal were consistent with the bioregional plan. A National Environmental Database should be developed in Australia. The protected matters search tool is a start, but more data should be made publicly available including from EIAs and other information documents. Standardised data collection and management would be critical.

3 GOVERNANCE ARRANGEMENTS

A more collective approach between levels of government is required. State government processes where the state is both the proponent and the approval authority has resulted in the Commonwealth assuming a responsibility to assess the environment more generally. This has led to the assessment process being politicised. The Commonwealth should respond by scaling back its approach to being a technical assessor for specific national matters, with deferral to state governments for general environment assessment. This would mean strengthening the bilateral agreements between states and territories and the Commonwealth.

This would allow a greater scope to focus on biodiversity conservation, especially associated with actioning recovery plans for threatened species, setting up advanced offsets schemes and other mechanisms. This area appears to be neglected in favour of significant effort being placed into the assessment and approval process.

The Institute supports the response from the Environmental Defenders Office (EDO Community Guide 2020) on the establishment of a National Sustainability Commission. The Act should define clear outcomes, which should be further defined by the proposed Sustainability Commission. A set of linked goals, standards and indicators should be developed.

3.1 Role of professional certification

The EIANZ submits that the Act should be revised to require all technical reports and assessments undertaken for, or submitted to, the Commonwealth under the Act, to be prepared by suitably qualified and third-party certified professional specialists.

The EPBC Act, and related decision making relies on wide ranging environmental technical specialities to inform not only the reporting that is submitted for assessment and federal decision making, but ongoing management, mitigation and auditing of related project environmental performance requirements. The breadth of technical specialities in complex assessments cannot be underestimated and relies on professionals of suitable experience and calibre to ensure reporting is fit for purpose and quality.

Currently, unlike other professions, there are no minimum standards for an author of any referral documents. Professionals under the Institute's Certified Environmental Practitioners Scheme (CEnvP) are required to demonstrate capability and skills in their field and are held accountable for their work (documents and reports). The scheme is recognised widely in Australia by federal, state and local government, and is included in Queensland state planning legislation for all accredited experts, and New South Wales, Tasmanian, Victorian Environment Protection Authority (EPA) policies for contaminated land specialist accreditation.

Certification programs can enhance the quality of submission and support the reduction of regulator risk by providing a structured foundation against which to identify specialists and practitioners with the requisite technical skills, specialisations and experience for the tasks. Such programs can provide a drive/demand for ongoing professional upskilling and maintenance of contemporary knowledge, creating more robust professionals over time.

4 IMPLEMENTATION

In Section 136 b of the Act, the Minister is to consider economic and social matters when making a decision to approve an action, and yet the Minister can only consider a small subset of environmental issues, clearly precluding the kind of holistic, systems-based evaluation that is required. There is a clear opportunity to develop a robust regional planning framework to incorporate these matters upfront and consider ecological and sustainable development throughout the assessment and approval processes. This can be achieved through partnerships between the Commonwealth and states, territories or corporations as discussed above.

Approaches for improving the legislation and its implementation include:

1. adoption of outcome-based management rather than effects-based management
2. greater consideration of the landscape scale using bioregional management provisions for managing threatened species and their habitat
3. improved funding models for biodiversity conservation interventions and prioritisation of funding to improve cost-effectiveness
4. clarification of the approvals process for better coverage of clearance of threatened species habitat
5. improved enforcement mechanisms to develop more effective ways to hold developers accountable
6. improved interaction between the Commonwealth and the states/territories to ensure EPBC Act provisions are addressed when relying on state approval processes.



PART 2

**SUMMARY RESPONSES
TO DISCUSSION
PAPER QUESTIONS**

Question

EIANZ Response

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?

- EIANZ generally supports the increase in triggers provided that focus on nationally important matters, that are scientifically based, and applied consistently.
- A more collective approach between levels of government is required.

Question 2

How could the principle of ecologically sustainable development (ESD) be better reflected in the EPBC Act?

For example, could the consideration of environmental, social and economic factors, which are core components of ESD, be achieved through greater inclusion of cost benefit analysis in decision making?

- The Act should take a more holistic approach when considering biodiversity management, which could be realised through more over-arching biodiversity controls.
- Implementation of new and additional ecologically sustainable development (ESD) principles would help ensure that decision-making is consistent with maintaining and strengthening the environmental systems that operate on a local, regional, national or global level. This includes systems to support the diversity of life on Earth (Environmental Defenders Office Community Guide 2020).
- ESD is implied but not explicitly provided for by the controls under the Act.

Question 3

Should the objects of the EPBC Act be more specific?

- Changes to the objects of the EPBC Act are not required.
- Some objectives, such as State of the Environment reporting, should occur more frequently.

Question 4

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

- The matters of national environmental significance (MNES) should be changed to enhance the effectiveness of the Act:
 - The Act does not effectively integrate ESD principles into MNES.
 - The Act should include a 'greenhouse trigger'.
 - Consider transboundary impacts to help share responsibilities between states and overseas.
 - Include a trigger for activities with the National Reserve System.
 - Expand the water trigger.
 - Australia international obligations.
- EIANZ acknowledges that a bottom-up approach to greenhouse gas emissions is required to address the failures of top-down approaches. Top-down approaches are generally more difficult to implement without first developing a culture which gives serious regulatory consideration to the issue.
- The Act falls short in putting key matters on the agenda as recognised across many other countries.

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?

The key priorities areas for reform include:

- governance structure between the states, territories, and the Commonwealth
- reform of the MNES
- investment to ensure the Commonwealth Government is upholding its obligations internationally for current and future generations
- biodiversity conservation
- assessment and approval processes

Question 6

What high level concerns should the review focus on? For example, should there be greater focus on better guidance on the EPBC Act, including clear environmental standards? How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?

- The Act has two roles: to limit environmental impact associated with activities or nationally important matters, and to develop and roll out clear environmental standards that can be consistently adopted across Australia.
- The EPBC Act has not been effective in promoting ESD or biodiversity conservation as neither is a trigger for assessment, and there is not adequate national protection for reserves across Australia.

Question 7

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

- The review should be influenced by:
 - The outcome of the 2009 review as many of the recommendation and findings of that review have yet to be implemented.
 - The approach being adopted by other countries, such as Canada and New Zealand.
 - Cumulative impacts of projects at a landscape scale should be considered through bilateral agreements with each state, allowing planning schemes to be referred to the Department of Agriculture, Water and the Environment for determination of potential to affect MNES.
 - Suitably qualified environmental professionals should be appropriately recognised with qualifications and/or certification, such as through the Certified Environmental Practitioner Scheme (CEnvP 2020)
 - Greater consideration of social impact assessments and greater reference to all sustainable development pillars in strategic impact assessment can result in improved and more acceptable project outcomes.

Question 8

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

- The Act should focus on regulating environmental and heritage outcomes.
- There are often multiple ways to achieve an outcome. It is not in the best interests of government to limit how a good environmental outcome can be achieved.

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?

- Strong environmental outcomes require a greater emphasis on front-end goal setting and coordinated back-end information, monitoring and reporting systems.
- This outcome could be achieved by a new Sustainability Commission with advice from expert bodies, such as the Threatened Species Scientific Committee with expert advisory committees.
- Four key elements to oversee and ensure that outcomes are being achieved should be:
 1. independent State of the Environment and National Sustainability Outcomes reporting
 2. national Environmental Accounts
 3. an online monitoring and reporting hub for comparative reporting and easy public and professional access to data
 4. mandatory public inquiries into the extinction of threatened species.

Question 10

Should there be a greater role for national environmental standards in achieving the outcomes the EPBC Act seeks to achieve? In our federated system should they be prescribed through:

- Non-binding policy and strategies?
- Expansion of targeted standards, similar to the approach to site contamination under the National Environment Protection Council, or water quality in the Great Barrier Reef catchments?
- The development of broad environmental standards with the Commonwealth taking a monitoring and assurance role? Does the information exist to do this?
- EIANZ supports the greater use for national environmental standards and more detailed descriptions of these standards.
- Appropriate resourcing of the entity required to develop the standards is critical to the successful development and roll out of national standards.
- The Act should be used only to set standards associated with agreed MNES. Outside of these areas, any setting of standards should be done through collaboration with the states and territories.

Question 11

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

- Should the EPBC Act have a greater focus on restoration?
- Should the Act include incentives for proactive environmental protection?
- How will we know if we're successful?
- How should Indigenous land management practices be incorporated?
- Improvements must be made in the areas of monitoring, reporting, and environmental accounting.
- A Certification program, such as Certified Environmental Practitioners, will ensure the consistency and quality of technical information in monitoring, reporting, and environmental accounting.
- To achieve improvement in environmental restoration, a clear definition of the term 'restoration' must be established. EIANZ acknowledges that restoration may not always be the best outcome. In some situations, prevention may be the more appropriate outcome.
- Being proactive is a fundamental approach to ensure protection. Incentives should be applied with the goal of achieving long-term sustainable protection.
- Success should be measured by engagement with processes and the overall health of Australia's environment.
- By placing Traditional Owners at the forefront of land management practices, the wider Australian landscape would benefit, and the heritage would be safeguarded.

Question

EIANZ Response

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?

- Heritage Management Plans remain a key tool; their flexibility needs to be retained to adequately respond to different heritage management requirements and state/territory heritage frameworks.
- Associated listings to the EPBC Act do not always translate well with traditional Indigenous practices. Indigenous communities should be empowered to have more direct input in how Indigenous heritage is recognised and protected.

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?

- The demand for case-by-case assessments should decrease if Australia adopts strategic assessments more broadly and develops a range of endorsed plans, policies and programs.
- The requirement for case-by-case applications should remain and provisions for their assessment should be made.
- Appropriate tiering and assessment can enable more proportionate approaches.
- Lower risk projects could potentially receive approval with standard conditions for protected matters.
- The Commonwealth should establish standards, which consider cumulative impacts, and should nominate objectives and outcomes for regional plans.
- States, territories, local governments and/or corporations will have responsibilities downstream as proponents or regulators.

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?

- The Commonwealth should be a technical agency for assessment and approval of matters of national/international importance.
- Bilateral arrangements for assessment of these matters is appropriate.
- There is scope to streamline some matters, which include:
 1. Threatened species
 2. Heritage places
- Existing matters should be streamlined between state, territory, and the Commonwealth to prevent inconsistency and duplication.
- New matters should be introduced and managed by a national agency.

Question 15

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

- How could data help support this approach?
- Should a national environmental database be developed?
- Should all data from environmental impact assessments be made publically available?

- EIANZ supports an option for lower-risk projects to receive approval with standard conditions for protected matters
- A national environmental database should be developed in Australia:
 1. Protected matters search tool
 2. Data from Environmental Impact Assessments (EIAs) and other information documents
- Standardised data collection and management would be critical; associated guidelines should be established and specified in Terms of Reference for EIAs.
- Raw data to be submitted to the Australian Government for inclusion in the national environmental database.

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?

- EIANZ strongly supports a landscape-scale approach to species protection, as long as other jurisdictions are effectively protecting species by adhering to established standards, considering cumulative impacts and ensuring robust implementation.
- The concept of landscape-scale assessment – understanding the natural and human systems operable in a place through bioregional planning – will set the scene for future decision making.
- The Commonwealth should specify objectives and outcomes for the 'region' and ensure the proponent's assessment demonstrates compliance.

Question 17

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

- EIANZ believes that national leadership must be developed to ensure environmental outcomes are delivered consistently across the country.

Question

EIANZ Response

Question 18

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

- EIANZ does not support industry self-regulation.
- Self-regulation for industries adapted to undertake best practice and/or that already have best practice standards (e.g. oil and gas) is not achieving suitable outcomes and is unlikely to be suitable in the future.

Question 19

How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management?

- How can we best engage with Indigenous Australians to best understand their needs and potential contributions?
- What mechanisms should be added to the Act to support the role of Indigenous Australians?
- Establish a clear benchmark under the Act to make one system applicable to all state/territories. State/territory legislation should be recognised in the EPBC Act to establish a continuity of authority.
- Consultation with relevant state/territory bodies, such as Aboriginal Victoria, should be incorporated into the creation of the one system, to ensure that needs or contributions by the Traditional Owners are not overlooked.
- Approaches that allow Indigenous Australians to maintain the authority and agency over their country are vital.
- The Act should include mechanisms that support the creation or continuation of Indigenous Australian entities to allow them to engage with processes established under the Act, such as the user pay systems under the Victorian Aboriginal Heritage Act 2006.

Question 20

How should community involvement in decision-making under the EPBC Act be improved? For example, should community representation in environmental advisory and decision-making bodies be increased?

- The current balance of community involvement in Act processes appears to be adequate. As the Act is intended to deal with specific matters of national interest, it is typically not the appropriate place for community engagement on broader environmental issues. These are best addressed under state processes for environment protection.
- In the instances that community representatives are being considered for involvement in Act processes, their qualifications and expertise should be enlisted to ensure the decision-making is appropriate.
- To avoid community outrage around policy and project decision-making due to proponents disregarding community values, social impact assessments should be standardised within strategic impact assessments.

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?

- EIANZ agrees with the roles in effective governance listed in the discussion paper.
- Two new statutory environmental authorities should be established: a National Sustainability Commission and a National Environment Protection Authority.
- An independent decision-maker that is highly experienced should be established to improve transparency.
- The quality of advice could be specified through modifications in the Act to require certified assessors, such as CEnvPs in decision-making.

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?

- Greater reliance should be placed on certified industry professionals, such as Certified Environmental Practitioners (CEnvPs), as this would go a long way to ensuring that the quality of material produced and being assessed is appropriate.
- Develop a database of all projects that have been approved to date or a tool that can provide a list of projects within, for example, 5km of a site. This could be like the Protected Matters Search Tool, so proper literature reviews can be conducted during impact assessments and quantification of cumulative impacts can be made.

Question 23

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

- Before changes are made to the environmental offset approach, a review is required to determine the actual biodiversity benefits from existing offset approaches, and the financial efficacy of these.
- If changes are then warranted, resources must be provided to the administering authority to facilitate an appropriate analysis of the effectiveness of existing offsets and offset markets.
- Stipulated offset requirements for a development may be fully met, but the biodiversity outcomes may not necessarily meet the projected benefits. Evidence-based verification of offset success needs to be established.
- A trust fund model may work if a strategic plan for spending the fund is already in place. The overall net benefit of this approach needs a thorough review before the Commonwealth proceeds down the market-based and trust fund path. Performance indicators for a Commonwealth trust fund also would need to be incorporated into a market-based system to report on the system's progress.

Question

EIANZ Response

Question 24

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

- The following changes should be made to the environmental offsets:
 - o remove or substantially change the current offset system, with an emphasis on mitigation measures given a reduced weighting that relies on rehabilitation/restoration outcomes
 - o ensure Commonwealth and state approval agencies work collaboratively to identify which permitting system can achieve the best outcome
 - o the Commonwealth to work closer with proponents in designing offset proposals
 - o develop/update all Commonwealth Guidelines to ensure a consistent, scientifically robust approach for all offsetting matters
 - o demonstrate benefits or scientific trends before offset liability can be relinquished
 - o ensure auditing systems are in place for all offsets.

Question 25

How could private sector and philanthropic investment in the environment be best supported by the EPBC Act?

- Could public sector financing be used to increase these investments?
- What are the benefits, costs or risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?
- Establish a Capital Funds Conservation Program to receive capital contributions and generate stewardship payments to landholders.
- Reform the tax system to improve the financial advantages of environmentally responsible practices.

Question 26

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

- The principles to guide future reform are generally supported.
- Achieving efficiency and certainty in decision-making, and streamlining planning, need to be carefully applied so that the central objectives of the Act and the review for environmental and heritage protection are not compromised.

PART 3A

SOCIAL IMPACT

ASSESSMENT

WORKING GROUP

Environment Institute of Australia
and New Zealand

By Dr Sheridan Coakes & Jane Munday

1 The working group

The EIANZ Social Impact Working Group was developed in 2017 to provide a greater voice and network for social consultants working within the area of impact assessment and to highlight the role that social impact assessment (SIA) can play, as part of impact assessment processes to inform decision-making and project outcomes. To date, the group has approximately 30 members across Australia that have undertaken SIAs for both government and industry at Commonwealth, state and local government levels.

Since the group's inception, a number of key challenges have been identified and include:

- the need for greater regulation and standardisation of SIA practice across Australia
- the need for independence of social impact practitioners
- the need for greater recognition of the value that SIA can bring to impact assessment and project assessment and decision-making processes
- the need to improve the rigour of SIA practice nationally
- poor long-term management of social impacts.

2 Introduction

This working group paper has been structured to raise questions and provide some further context to the value of considering social aspects in a more central and integrated fashion within the EPBC Act. A key objective of the review process is to make recommendations to modernise the Act and its operation, and to address current and future challenges. In the context of the Terms of Reference (ToR) document for the independent review, greater consideration of social impacts may assist in more effectively meeting the principles defined in the ToR sections 3c, 3d and 3e.

There are examples at a Commonwealth level where social practice has been an integral component of impact assessment. The Australian Regional Forest Agreement (RFA) process saw one of the largest applications of SIA in Australia, and the first Social Impact Unit of its kind developed in the then Department of Primary Industries and Energy in the Australian Government.

The Social Impact Unit in the department was charged with assessing the social implications of changes in forest policy on key stakeholders and communities across Australia. This involved assessment of the implications of differing forest-use options on local and regional communities, such as demographics, social infrastructure, community wellbeing and livelihoods. This also included consideration of community perceptions and attitudes to proposed change and evaluation of measures to minimise social impacts of structural adjustment. An essential component of the RFA process was widespread community and key stakeholder consultation.

Following the forest process, a Social Sciences Centre was established in the Bureau of Resource Sciences (BRS) in Canberra, to continue applying social science thinking and expertise in broader resource management decision-making. The Social Sciences Centre is today located in the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) in the Commonwealth Department of Agriculture, Water and the Environment. The inclusion of SIA in the decision-making process for the RFA signified a considerable step toward a more participatory approach to project and policy development and demonstrated the value of SIA to decision-making processes.

The application of sound and rigorous SIA practice in impact assessment is not new in Australia. Such assessment has contributed significantly to improved policy and project outcomes for the Australian Government in the past, particularly in contentious and politically charged circumstances. Through a willingness and ability to listen, understand and work together with key stakeholders and communities, more appropriate projects and policy solutions can be developed.

Across Australia at a state level, good SIA practice is also apparent and is being undertaken and integrated in Environmental Impact Assessment (EIA) programs relating to state-significant developments across a number of states. However, policy and practice is far from uniform. Good practice has been driven largely by companies that have commissioned such work voluntarily to meet international sustainability reporting and industry guidelines. This has occurred as a result of the international scale of their respective businesses and international finance bank obligations, such as the International Finance Corporations (IFC) 2003 and 2012 performance standards and the World Bank's Environmental and Social Framework (2017). Individual company and industry sector guidance have adopted the narrative of 'social' in impact assessment with its importance openly acknowledged across the project lifecycle. Although the NSW and Qld governments have in 2017 and 2018 respectively introduced SIA guidelines for the application of SIA to the assessment of key resource projects, consistency is lacking across other jurisdictions.

The working group submits the following key issues for consideration by the EPBC Act Review Panel:

- Further expand the EPBC Act to incorporate integrated pillars of sustainable development, in line with Australia's international obligations.
- Increase prescription, in the form of SIA guidance, to afford greater consistency and alignment in SIA practice across Australian States and Territories.
- Improve development of trust in government and industry processes through effective community and stakeholder engagement, from the scoping stage of projects.
- Raise the social practice bar through appropriate acknowledgement of social science training and expertise, through certification schemes, as recommended in the 2009 Hawke Review.

3 Areas for improvement

Does the EPBC Act go far enough in addressing all relevant sustainable development principles?

The EPBC Act is the Australian Government's central piece of environmental legislation providing a legal framework to protect and manage nationally and internationally important natural resources including flora, fauna, ecological communities and also includes heritage places - defined in the EPBC Act as matters of national environmental significance. Key objects of the Act are to:

- provide for the protection of the environment, especially matters of national environmental significance
- conserve Australian biodiversity
- provide a streamlined national environmental assessment and approvals process
- enhance the protection and management of important natural and cultural places
- control the international movement of plants and animals (wildlife), wildlife specimens and products made or derived from wildlife
- promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources
- recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity
- promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.

It appears from a review of the national ecologically sustainable development (ESD) principles that the EPBC Act has selectively adopted the five principles of ESD that relate predominantly to environmental protection, from the Intergovernmental Agreement on the Environment (IGAE, 1992) and a limited selection of heritage aspects. The majority of these relate specifically to ensuring that environmental consequences are considered in decision-making. However, the EPBC Act omitted economic principles from the 1992 National Ecologically Sustainable Development Strategy and omits the principle that 'decision and actions should provide for broader community involvement on issues which affect them'.

Only five of the 1992 Rio Declaration's 24 principles have been adopted in the EPBC Act, and none of the 2015 Sustainable Development Goals, resulting in a narrow focus on only one pillar of sustainability (the environmental pillar). This is also reflected in the use of EIA terminology rather than 'impact assessment', which is generally seen as a more integrated and interdisciplinary approach. In contrast, Canada appears to have adopted a more sophisticated approach with its Impact Assessment Act 2019, Sustainability Principles and a strong focus on engagement and greater process control over decision-making for First Nations and other communities.

States and territories have also adopted their own principles and definitions. There is a lack of consistency and uniformity resulting in uncertainty for many proponents, whose projects span differing jurisdictions. For example, Western Australia defines social impacts only as those related to biophysical aspects of 'surroundings' with the Western Australian Environmental Protection Authority outlining that it is unable to assess social impacts.

In Queensland, more prescriptive social impact management planning requirements were instigated by the Queensland Government in response to the experience of the resources boom. Given community and government concern relating to cumulative project development impacts across a number of regions and the rate of change, the Queensland Government commissioned a Parliamentary Enquiry into fly-in-fly-out (FIFO) workforce arrangements and other long distance commuting practices to better understand the social, health and economic impacts of FIFO practices on regional communities. Following the enquiry and FIFO review, the Government developed the Strong and Sustainable Resource Communities Bill in consultation with key stakeholders, with the Bill becoming an Act on 31 August 2017. The Act addresses three main elements: 100 percent FIFO prohibition, anti-discrimination and mandates the need to undertake Social Impact Assessment. SIA guidance, linked to the Act, was subsequently released by the Office of the Coordinator General in early 2018.

New South Wales (NSW) has the most prescriptive guidance around social impacts of all the states and territories. The NSW Environmental Planning and Assessment Act has required consideration of environment, social and economic impacts in decision-making since 1979. It is only recently that more prescriptive guidance has been developed (SIA Guideline, 2017). Drivers for change in the NSW context have included community pressure and shifting expectations, industry desire for greater clarity and certainty, departmental leadership, a desire for a more collaborative approach to policy development, and the perceived legitimacy of the guideline itself.

Across the world many international declarations and best practice guidelines are placing a far greater focus on the key pillars of sustainable development – ecological sustainability, social sustainability, cultural sustainability and economic sustainability – and integration across these pillars. For example, Canada's new Federal Impact Assessment Act (2019) removes the word 'environment' from its title and places a greater emphasis on cultural sustainability and indigenous participation equally alongside the other sustainability pillars. Canadian impact assessments also include the provision of funding to ensure that affected indigenous communities may participate meaningfully in assessment processes and for independent First Nations review boards.

The working group believes that the EPBC Act needs to reflect and be more aligned with current United Nations policies that consider both the human and the natural environment and development goals. These policies include, for example, the 2015 Sustainable Development Goals, 1992 Rio Declaration on the Environment and Development, 2002 Johannesburg Declaration on Sustainable Development, 2013 Bali Communique. The working group believes there should be a greater level of consistency and uniformity in practice across states and territories. A critical review of the continued relevance of Australia's ESD principles, the guiding assumptions behind the Act, would in our view result in a more balanced approach to the concept of sustainability, and result in less of a contest between the environment and development.

Would better prescription around SIA practice improve assessment outcomes?

The answer to this question is clearly yes. Greater regulatory certainty provides benefits to all key stakeholders – government, industry and community. Within NSW, for example, where prescriptive SIA guidance (SIA Guideline, DPIE, September 2017) has been applied for state-significant development (SSD) projects in the petroleum production and extractive industries, industry bodies, such as the NSW Minerals Council, have largely welcomed the greater clarity provided in this guidance.

Much of the early SIA practice within Australia that reflects international best practice (i.e. International Association for Impact Assessment) has been driven by individual industry proponents themselves and their individual internal guidance, policies and procedures. This has occurred in the absence of government direction. Such guidance also notes the importance of the integration of SIA outputs with other technical assessments and studies, affording an improved understanding of project risks and impacts.

Within NSW, several recent project determinations have illustrated the need for a greater emphasis on social impacts. For example, the recent Rocky Hill judgement (Gloucester Resources Limited v Minister for Planning 2019 NSWLEC 7) clearly identifies the secondary social impacts that can flow from tangible amenity impacts, such as dust and noise. The judgement further identifies distinct social impacts on sense of community – cohesion, character, sense of place, mental health and wellbeing, fears and aspirations and distributive equity – that are not considered as part of any other technical assessment.

Social impact assessment can contribute effectively to strategic impact assessment in areas where land-use conflicts are evident. SIA in these contexts would assist in informing early decisions relating to proposed land-use change and would be particularly helpful in understanding the perceptions of stakeholders and communities concerning more controversial project development, for example, coal seam gas. As a result, it would be beneficial to see greater reference to all the sustainable development pillars in strategic impact assessment.

How can greater trust in decision-making be achieved?

Levels of community outrage around policy and project decision-making increasingly reflect a greater community intolerance of proponents who disregard community values. Through our experience in undertaking community engagement processes as part of project impact assessments, it is evident that many key stakeholders and communities are losing, or have lost, confidence in project development and government approval processes

Perhaps an additional trigger for Commonwealth intervention would be a social trigger, akin to the national water trigger, that may be relevant for projects with the potential to elicit community outrage or those with the potential to impact diverse social, cultural, economic, health and ecological values. The national water trigger has been a successful mechanism in identifying high value water resources potentially impacted by projects across Australia, that are valued by communities. However, even in the case of the water trigger mechanism, the impact on water resources is expected to be assessed with no clear guidance on how to include, analyse and assess the community's views, values and needs. For example, threats to groundwater are not just an environmental impact but may have social consequences on production and use of land and individual and community livelihood.

It is both intuitive, and proven through effective SIA practice, that involving people in matters that affect them can result in improved and more acceptable project outcomes. A plethora of literature on procedural justice and community engagement in planning and development contexts is available. For example, International Association for Impact Assessment (IAIA) and the International Association for Public Participation (IAP2) all have solid guidelines on principles, objectives and mechanisms for effective engagement. Dr Peter Sandman, a Professor of environmental journalism at Rutgers University, has also written numerous texts on how best to design engagement and outreach programs to reduce perceptions of social and environmental risk and to minimise community outrage.

A consistent theme across the guidance for good practice in social assessment is the need to scope issues early with stakeholder involvement to better identify project risks and focus assessment programs. Where project teams have engaged early, with a high degree of transparency in information provision and communication, improved project outcomes are clearly demonstrated. Such outcomes are evident in recognised research relating to attaining a Social Licence to Operate (CSIRO, 2017), where trust and procedural fairness have been highlighted consistently as key factors in developing greater community acceptance of the mining sector across the Australian community.

There is also substantial scope for improving the capacity and opportunity for Aboriginal people to contribute to impact assessment processes through the application of culturally appropriate methods and mechanisms, and for such groups (Hunt, 2013) to maintain a level of autonomy in the assessment process by engaging their own consultants across relevant studies. Examples of best practice Aboriginal Social and cultural impact assessment and engagement programs are evident within Australia. These include the Kimberley Aboriginal Social Impact Assessment, a strategic assessment undertaken for the proposed James Price Point LNG precinct in WA (O’Faircheallaigh, 2010) and a resource development impact assessment with Aboriginal people in 2009 (O’Faircheallaigh, 2009).

The objects of the Act only recognise the role of Aboriginal people in conservation and sustainable use of biodiversity, with matters of national significance covering only cultural heritage. Aboriginal people’s interest in the environment goes far deeper than this, and includes interest in sustainable livelihoods, impacts on living culture, enhanced governance capacity and mechanisms for devolved decision-making, in relation to their land and seas. Canadian reforms have been highly progressive in acknowledging the knowledge base of First Nations and facilitating input of indigenous communities across a range of sustainable development issues. Such guidance is also reflected in IFC, World Bank and UN guidelines and standards.

Given that community engagement is firmly entrenched in many project development processes, and social licence is now commonly accepted among leading organisations seeking to facilitate greater community acceptance and approval of their activities, we question why a key ESD principle ‘decision and actions should provide for broader community involvement on issues which affect them’ is not explicitly referenced within the Act.

How can we ensure rigour in social assessment practice nationally?

In the absence of clear guidance, much SIA work has/is being undertaken by professionals with a limited understanding of the principles and practice of good social science, and by non-social scientists. This is contrary to appropriate qualifications and certification being required across other environmental assessment disciplines.

The NSW SIA guideline is the first across states acknowledging that the lead author of the SIA component of the EIS, should have suitable qualifications in a relevant social science discipline and/or proven experience (over multiple years), as well as competency in social science research methods and SIA theory and practices. The NSW Guidelines suggest the lead author also be a member of a recognised impact assessment professional organisation. This assumes that professional organisations agree to be bound by a code of ethics and professional conduct ensuring accountability for professional standards in the work undertaken.

The SIA working group of EIANZ has identified this as a key issue for the practice, and is progressing further discussion around the development of appropriate certification programs for SIA practitioners Australia-wide recognising relevant degree qualification and experience. This would facilitate improved SIA practice and evaluation of quality social, cultural and participative assessment in planning and development processes. The need for experience in such evaluation has also been identified by government departments as a key weakness in ensuring comprehensive and critical assessment of SIAs relating to environmental impact studies and appropriate regulation of project development processes.

4 Conclusion

In conclusion, we recommend that revisions of the Act include the following key points:

- ESD Principles need to be reviewed to reflect our international obligations and contemporary challenges to public confidence in our impact assessment system and to encourage integrated consideration of social, cultural, economic and ecological pillars.
- Afford alignment in approach across different states/territories in line with the above.
- Greater acknowledgement and recognition of the value of best practice SIA and community engagement in delivering more streamlined and productive assessment processes, improved project and policy outcomes and greater community acceptance.

In closing, as Parsons (2019) notes, climate change and extinction crises, the inexorable widening of inequalities, and the contemporary distrust of science, all pose substantial challenges for impact assessment generally. However, for social impact assessment they may offer an opportunity to reclaim core principles and work for greater community voice, equality, inclusion, social wellbeing and sustainable social development (Vanclay et al 2015; Aucamp and Lombard, 2018).

References

- Aucamp, I and Lombard, A. (2018). Can social impact assessment contribute to social development outcomes in an emerging economy? *Impact Assessment Project Appraisal*, 36(2). Doi:10.1080/14615517.3017.1390872.
- Coakes, S.J., & Fenton, D.M. (2001). Social assessment in the Australian forest sector. In A. Dale, N. Taylor & M. Lane (Eds.) *Social Assessment in Natural Resource Management Institutions*. Victoria: CSIRO Publishing.
- Coakes, S.J. (1999). *Social Impact Assessment: A policy maker's guide to developing social impact assessment programs*. Canberra: BRS.
- Moffat, K, Pert, P, McCrea, R, Boughen, N, Rodriguez, S and Lacey, J. (2018). *Australian attitudes towards mining*. CSIRO, Pullenvale.
- Hunt, J. (2013). *Engaging with Indigenous Australia - exploring the conditions for effective relationships with Aboriginal and Torres Strait Islander communities*, Canberra: Australian Government. <https://www.aihw.gov.au/getmedia/c3d74d39-0ded-4196-b221-cc4240d8ec90/ctgc-rs23.pdf.aspx?inline=true>
- O'Faircheallaigh, C. (2009). Effectiveness in social impact assessment: Aboriginal peoples and resource development in Australia. *Impact Assessment and Project Appraisal*, 27(2), pp. 95-110.
- O'Faircheallaigh, C. (2010). *Aboriginal Social Impact Assessment Report, Kimberley LNG Precinct Strategic Assessment*, Broome: Kimberley Land Council & Griffith University. https://www.socialimpactassessment.com/documents/Appendix_E-3.pdf
- Parsons, R. (2019). Forces for change in social impact assessment. *Impact Assessment and Project Appraisal*, DOI: 10.1080/14615517.2019.1692585.
- Vanclay, F, Esteves, AM, Aucamp, I, Franks, DM. (2015). *Social impact assessment: guidance for assessing and managing the social impacts of projects*. Fargo (ND): international Association for Impact Assessment. https://www.iaia.org/uploads/pdf/SIA_Guidance_Document_IAIA.pdf.
- Government of Canada (2017). *Environmental and Regulatory Reviews Discussion Paper*, Ottawa: Government of Canada. <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/environmental-assessment-processes/building-common-ground.html>
- Government of Canada (2018). *Better rules for major project reviews to protect Canada's environment and grow the economy*, Ottawa: Government of Canada. <https://www.canada.ca/en/impact-assessment-agency/news/2019/06/better-rules-to-protect-canadas-environment-and-grow-the-economybenefits-for-canadians.html>
- Government of Canada (2019). *Impact Assessment Act 2019*, Ottawa: Government of Canada. <https://laws-lois.justice.gc.ca/eng/acts/I-2.75/>
- Government of Canada (2019). *Federal Sustainable Development Strategy*. <https://www.canada.ca/en/services/environment/conservation/sustainability/federal-sustainable-development-strategy.html>
- Government of Canada (2019). *Interim Framework: Implementation of the Sustainability Guidance*. <https://www.canada.ca/content/dam/ceaa-acee/documents/policy-guidance/gba-ac/sustainability-framework-eng.pdf>
- Mackenzie Valley Environmental Impact Review Board, reference material on cultural impact assessment and traditional knowledge. http://reviewboard.ca/reference_material

PART 3B

**STRATEGIC
ENVIRONMENTAL
ASSESSMENT
WORKING GROUP**

Environment Institute of Australia
and New Zealand

1 The working group

Since 2016, the Environment Institute of Australia and New Zealand (EIANZ) has sponsored a Strategic Environmental Assessment (SEA) Working Group, under the auspices of its Special Interest Group on Impact Assessment. Convened by Carolyn Cameron, FEIANZ, the SEA Working Group has sponsored sessions and panels at the annual EIANZ Conferences, at the International Association for Impact Assessment Annual Conference in Brisbane last year, and a 'Thinking Strategically' forum in 2018. Good Practice Notes for SEA (2019) have been compiled and piloted on the concept of developing pumped hydro as a component of transitioning to more sustainable energy policy. A highlight of the group's activities was the 2019 international workshop on improving SEA in Australia, with 30 participants from around the country and working with five international experts to explore how Australia could best advance SEA.

2 Context

SEA, or 'strategic assessment' as it is termed under the EPBC Act, refers to the assessment of potential impacts of policies, plans and programs, as a distinct process from the more widely known project-level environmental impact assessment (EIA). The benefits of SEA are considerable both in terms of its potential to achieve environmental sustainability and facilitate more streamlined regulation.

Transparency about decision-making and clarity about where and what environmental values should be protected are products of a robust SEA process.

SEA was initiated and developed as a response to the shortcomings experienced with applying project-level EIA. For example, assessments at the level of individual projects are typically unable to sufficiently address the broader issues of cumulative impacts, regional losses of biodiversity and threatening processes. SEA is better placed to take a more holistic perspective, by acting much earlier in the planning process, leading to projects (individual actions) aligned with broader, more strategic initiatives. Assessing strategic initiatives such as policies, plans and programs also ensures environmental concerns are taken into consideration more proactively than when assessing specific development proposals. The same arguments apply to bioregional plans, an existing mechanism under the EPBC Act that has not been utilised except for a number of marine applications. The distinction between a SEA and a bioregional plan is that the latter does not require a proponent or a draft policy, plan or program to assess – it can be entirely proactive by Government.

The EPBC Act recognises the value of SEA as a mechanism for environmental sustainability by allowing actions taken under endorsed policies, plans or programs to be approved with no requirement for subsequent EIA (s146B). This results in streamlined approvals processes, which benefits both proponents and governments.

The previous 2009 statutory review of the EPBC Act carried out by Alan Hawke (the Hawke Review) made a number of recommendations related to the increased use of SEAs and bioregional plans.

Recommendation 6

1. The [Hawke] Review recommends that the Australian Government:

- a. expand the role of strategic assessments and bio-regional plans so that they are used more often; and
- b. strengthen the process for creating these plans and undertaking these assessments, so they are more substantial and robust;

2. The Review further recommends that the Act be amended to provide:

- a. for bio-regional plans to –
 1. change the terminology from 'bio-regional plans' to 'regional plans';
 2. allow the Commonwealth to unilaterally develop regional plans; and
 3. ensure that the process for delineating a region for the purpose of the Act is flexible.

The Australian Government's 2011 response to the Review was framed around four key themes:

- a shift from individual project approvals to strategic approaches including new regional environment plans
- streamlined assessment and approval processes
- better identification of national environmental assets, including through provision to list 'ecosystems of national significance' as a matter of national environmental significance under the EPBC Act
- cooperative national standards and guidelines to harmonise approaches between jurisdictions and foster cooperation with all stakeholders.

The amendments to the EPBC Act needed to implement the Government's response were never considered by the Australian Parliament.

Similarly, the 2018 Review of the interactions between the EPBC Act and the agriculture sector also noted the need for strategic approaches rather than case by case assessments:

The need for a more proactive approach to protecting MNES in regions where agricultural development does or will impact upon MNES health was a recurring theme in consultations undertaken for this Review. Reactive assessment and approval of multiple individual actions in a single area is unlikely to be an appropriate strategy to ensure the long-term viability of agriculture in that region, nor will it necessarily result in the conservation outcomes sought through the EPBC Act (p 63-64)

Of particular concern is that the Act itself, and hence the approach to its implementation, cannot adequately account for the cumulative impacts of multiple individual projects, and so is driving isolated decision making rather than landscape-scale decision making (p64).

3 Areas for improvement

This section of the submission incorporates insights raised in our SEA forums combined with our extensive knowledge and professional experience on six topics:

1. Bio]regional planning
2. Strengthening strategic assessments
3. Cumulative impacts
4. Matters of national environmental significance
5. Standards for assessment
6. Implementation

The SEA Working Group is keen to assist the EPBC Act Review Team in any way and is open to further conversations. We are willing to host or participate in workshops about how Australia could advance SEA and achieve more sustainable environmental outcomes.

3.1 [Bio]Regional Plans

Despite their great potential for managing key environmental values at the landscape scale, bioregional plans under the EPBC Act have not yet been applied to the terrestrial environment. The Working Group fully supports these recommendations of the Hawke Review with respect to the application of bioregional plans.

Bioregional plans and their content are outlined in detail in s171(2) of the EPBC Act. They are mechanisms for:

- identifying key environmental values within a defined region that warrant protection and/or restoration;
- determining environmental outcomes and objectives that should be achieved;
- assessing current and likely future threats to environmental values;
- determining measures needed to ensure environmental outcomes can be met; and
- providing a framework for future development in the region.

Like SEA, bioregional plans can also streamline future environmental assessment by creating clarity for developers and decision-makers about what values should be protected and where they occur in the landscape.

The EPBC Act currently allows the minister to co-operate with 'any person' for the purpose of developing bioregional plans (s171(1)). The Working Group believes the preparation of bioregional plans through a partnership between the Commonwealth and states, territories and/or corporations engaging with stakeholders will deliver better outcomes for the environment and the economy than are currently being achieved. The Working Group agrees with points made in the Environmental Defenders Office (EDO) Independent Review of the EPBC Act of February 2020:

- A clearer legal framework for bioregional planning – in both procedure and desired outcomes – will improve certainty for Ecologically Sustainable Development and economic growth, address cumulative impacts upfront, and reduce future site-by-site land-use conflicts.
- The Act should set out key elements for the bioregional

planning process, including a legislated purpose tied to achieving positive biodiversity outcomes in the region (such as a maintain or improve requirement), community engagement, integrating with infrastructure planning and monitoring and reporting requirements.

The Working Group believes that the following issues need to be addressed to establish effective [bio]regional plans:

- **Change the name of [bio]regional plans.** While the focus of these regional plans should always be environmental values, the use of 'bio' does not adequately reflect the holistic, systems-based approach that is required. It is essential to understand the interactions between environmental, social and economic values in order to identify the threats to key environmental values, establish appropriate environmental outcomes and objectives, and establish a framework for informed decision-making.

- **Establish flexible 'fit-for-purpose' geographic areas for planning.**

The Interim Biogeographic Regionalisation for Australia (IBRA) bioregions may not be appropriate planning 'regions.' Adopting a flexible approach to establishing regional boundaries will enable the planning regions to reflect meaningful natural and/ or human systems.

- **Make [bio]regional plans more strategic.** Define the system(s) relevant to the 'region' and focus in on three to seven critical decision factors to underpin the analysis. For example, there may only be a couple of specific pressures in a bioregion, affecting just a few environmental values, which should be the scope of the [bio]regional plan. Alternatively, it may be a complex system with multiple variables, where focusing the [bio]regional plan on specific parameters within the broader system is required. Systems-thinking changes the assessment approach from a large EIA to enable participants to think more strategically, focusing in on the issues that really matter in the region.

- **Use [bio]regional plans to define regional outcomes and objectives, to specify parameters for avoidance and 'no-go' areas, and to identify thresholds or other standards for consideration in downstream project-based assessments.** This could reflect conventional urban planning approaches, which specify permitted and prohibited activities and establish clear objectives and performance measures to assess possible 'permissible' developments.

- **Provide further guidance** on the appropriate preparation of [bio] regional plans and mechanisms for their enforcement of these plans (see 'Implementation' below).

- **Collaborate in plan development** with relevant state, local government and key stakeholders with an interest in the plan's directions such as catchment authorities, Regional Development Authorities, peak industry bodies and major land holders.

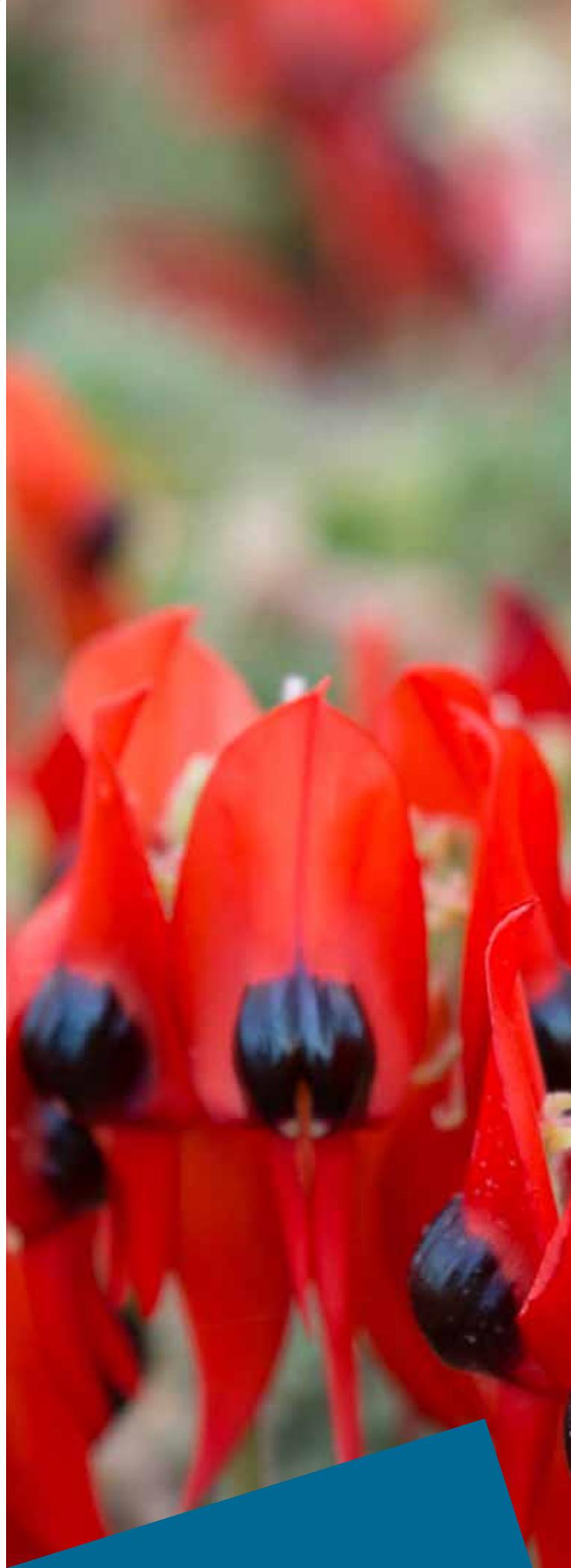
- **The active participation of Indigenous people** in identification, assessment, management and reporting is integral to the effective protection of Indigenous heritage values in any regional plan.

Plans would have objectives, milestones, monitoring programs etc. so that states/territories are accountable for achieving the milestones and objectives. Projects could only be approved if they can be demonstrated to be consistent with the regional plan. The Commonwealth would have an assurance framework in place, and assessment and/or approval bilateral agreements could be withdrawn if states/territories were found to be approving projects that were inconsistent with the plan.

Ideally, significant Commonwealth money would be attached and be performance-based. States/territories would lose funding if they were failing to achieve milestones.

The Environmental Management Frameworks (EMF) in South Africa are a useful example of such an effective regional planning approach internationally. Here the EMF are included in all planning schemes and enshrined national law as part of the planning framework at national, provincial (state) and local level. As one paper puts it:

Environmental management frameworks (EMFs) are environmental sensitivity mapping instruments developed in South Africa as tactical management aids which can inform planning and provide strategic input into the EIA process. Their intended benefits are to direct new development to preferred development regions and minimise undesired developments in sensitive environments; they also potentially contribute to minimising unnecessary project level environmental impact assessments (EIA) in targeted development areas. – (M. Marais, F.P. Retief, L.A. Sandham & D.P. Cilliers)
https://www.researchgate.net/publication/263275789_Environmental_management_frameworks_Results_and_inferences_of_report_quality_performance_in_South_Africa



3.2 Strengthening strategic assessments

The Working Group urges the Australian Government to strengthen the strategic assessment provisions of the EPBC Act to enable more comprehensive and proactive assessments of plans, policies, and programs, leading to better environmental and regulatory outcomes. Depending on the scope and level of available information, the strategic assessment may establish a decision framework for future, specific site-based assessments.

We support the Environmental Defenders Office (2020) recommendations for SEA, The Independent Review of the EPBC Act: Response to Discussion Paper: A summary for the community; February 2020 (p19):

The Act should embed best practice strategic assessment by specifying:

- strong legislated standards, decision-making criteria and science-based methods, including 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 at the relevant scale;
- guidelines to support integration of federal strategic assessment with state and local planning processes at the earliest possible stage;
- 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;
- ground-truthing of landscape-scale assessment via [targeted] local studies and input;
- adaptive management and review once a PPP is accredited to respond to new discoveries, correct unsuccessful trajectories or implement best available technology.

3.3 Cumulative impacts

There is a clear opportunity to revise the EPBC Act to incorporate cumulative impact considerations into decision-making. Other jurisdictions such as Canada and the EU have had comprehensive provisions for cumulative impact assessment and management for over 20 years. Although consideration is not required under the Act, the Minerals Council of Australia recognised the challenges of cumulative impact assessment and management with their 2015 publication Cumulative Environmental Impact Assessment Industry Guide. The protection of threatened MNES, such as the Great Barrier Reef from cumulative impacts is detailed in the Reef 2050 Cumulative Impact Management Policy.

The explicit inclusion of cumulative impacts, along with direct, indirect and facilitated impacts, into the Act would provide a robust legal foundation for assessing and managing cumulative impacts. Past legal challenges under the Act have highlighted gaps in explicit recognition of cumulative impacts in the legislation as part of key legal decision-making process.

[Bio]Regional planning and strategic assessments are more effective approaches to identify and manage cumulative impacts on protected values than are site focused EIAs. A direct reference in the Act to cumulative impacts would facilitate strategic and innovative approaches to addressing cumulative impacts and enable genuine consideration of cumulative impacts.

3.4 Matters of national environmental significance

The tight focus of the EPBC Act on matters of national environmental significance (MNES) may not foster effective SEA or [bio]regional planning. As an example, the initial focus of the Perth Peel Strategic Assessment on MNES highlights the perverse outcomes that may be associated with restricting considerations to MNES. When the Western Australian Government grappled with the bigger underlying issues associated with growth and development of Perth, such as groundwater and habitat interactions, the vulnerabilities of coastal systems became apparent.

In Section 136 b of the EPBC Act the Minister is to consider economic and social matters when making a decision to approve an action. Yet the Minister can only consider a small subset of environmental issues, clearly precluding the kind of holistic, systems-based evaluation that is required. There is a clear opportunity to develop a robust regional planning framework to incorporate these matters upfront and consider ecological and sustainable development throughout the assessment and approval processes. This can be achieved through partnerships between the Commonwealth and states, territories or corporations as discussed above.

Dr Peter Burnett's PhD thesis discusses this issue quoting Justice Preston (Justice Brian J Preston, 'Adapting to the impacts of climate change: The limits and opportunities of law in conserving biodiversity', (2013) 30 Environment and Planning Law Journal 376):

First, the conservation of biological diversity and ecological integrity, or other desired ecocentric considerations need to be expressly and specifically identified as objects and relevant matters that must be taken into account in the exercise of powers and functions under the statute.

Secondly, if there is potential for conflict within or between objects or relevant matters, the priority or relevant weight to be accorded to each object or relevant matter needs to be stated.

Thirdly, if the object or relevant matter involves an outcome or standard to be achieved, then the statute needs to be drafted so as to require the decision-maker to exercise the relevant power or function so as to achieve that result and not merely to consider the matter ...

Dr Burnett notes the EPBC Act does the first, but not the second or third. He goes onto to advocate for either environmental plans or a comprehensive environmental information system to provide appropriate context for individual EIAs. The Working Group supports these suggestions.

3.5 Standards for assessment

The SEA Working Group advocates for national environmental standards that could be reflected in high level objectives within [bio] regional plans to provide the basis for downstream EIA assessments. Given our federal system, a more effective split of Commonwealth/ state roles would be for the Commonwealth to focus on setting national standards, objectives and policies for environmental protection and the states/territories to administer project impact assessment. We suggest a three-tiered approach along the lines of:

1. National policies, strategies and standards for ESD, established by the Commonwealth in concert with the states and local authorities
2. [Bio]regional plans, developed as outlined above, which reflect and comply with national policies/standards; together with SEAs of other policies, plans and programs, where the SEA also reflects the national policies/standards
3. Project-level EIA conducted in the context of the higher-level policies etc. and assessed for compliance with regional outcomes.

This approach is similar in concept to that used by the Australian Government when it sought to develop bilateral agreements between the Commonwealth and the states for environmental approvals. However, the Standards for Accreditation of agreements developed at the time (<http://www.environment.gov.au/resource/standards-accreditation-environmental-approvals-under-environment-protection-and>) were constructed at too high a level to provide a sufficiently rigorous assurance framework or be applicable in [bio]regional planning practice.

We are seeking principles which can be applied and tested in a region to identify specific objectives, best approaches and 'levers' to deliver conservation and sustainable outcomes. To what extent are we now able, in certain environments, to set thresholds for environmental protection? For example, what exactly is critical habitat and what are the parameters for assessment and protection associated with it?

An example of a useful approach are the Western Australian Environmental Protection Authority environmental principles, factors and objectives: (http://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/Statement%20of%20Environmental%20Principles%2C%20factors%20and%20objectives.pdf)

3.5 Implementation issues

By 'implementation' here we refer to both the process of undertaking strategic assessments and developing [bio]regional plans, and the process of ensuring the desired outcomes and objectives are ultimately achieved.

To date, most strategic assessments under Part 10 of the EPBC Act have struggled in implementation phases. This is partly due to the difficulties of securing and delivering meaningful offsets over the long-term and partly due to minimal direction being provided in s146 about how they should be undertaken. There is similarly little guidance in the Act on the preparation of [bio]regional plans. Such guidance should clarify the adequacy of information required for these strategic mechanisms – it will be less detailed than for project-level EIA. Appendix 1 lists considerations and procedures applicable for [bio]regional planning while Appendix 2 suggests guidelines for robust strategic assessments.

Adequate resourcing for strategic assessment and [bio]regional planning is also vital as is appropriate funding to implement the specified conservation measures in endorsed policies, plans and programs. Staff capacity building and training with clear documentation is important, especially as many of the Part 10 strategic assessments have been associated with turnover of critical staff at both the Commonwealth and state levels.

Both strategic assessment and [bio]regional plans require strong links to subsequent project-level EIAs falling within their scope. This ensures that streamlining opportunities are realised and environmental outcomes and objectives are achieved. Robust integration of Commonwealth processes with state and local planning processes at the earliest possible stage is also required.

Using the strategic assessment or [bio]regional plan to identify and structure an appropriate framework for monitoring and reporting against the specified regional objectives is fundamental to ensuring that these mechanisms deliver against the desired environmental outcomes and objectives. Accepting information will not be perfect at the time of the assessment, understanding what data is required to inform future adaptive management will structure management efforts.

4 EPBC Act Review questions (13, 15 & 16)

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?*

In many instances strategic assessments can be designed and delivered in a way to reduce the need for case-by-case assessments. If Australia adopts strategic assessments more broadly it will lead to a range of endorsed plans, policies and programs. As actions taken in accordance with them may be approved, the demand for case-by-case assessments should decrease.

However, there will always be a requirement for case-by-case applications. This may be because the proposed action was not envisaged, further mitigating information is available or someone wants to do something in a place or manner not covered by the approved plans, policies and programs. This does not mean these actions should be approved but provisions for their assessment will need to be made. This means that appropriate tiering and assessment can facilitate efficiencies in practice, enabling more proportionate approaches at respective levels of assessment.

There could be an option for lower risk projects (to be clearly described in the [bio]regional plan or other process) to receive approval with standard conditions for protected matters, similar to the current 'Particular Manner' specifications for Non-Controlled Actions.

As to who should lead and who should participate in strategic assessments, this submission is framed around a clear role for the Australian Government in establishing standards, considering cumulative impacts, nominating objectives and outcomes for regional plans and ensuring robust implementation. States, territories, local governments and/or corporations will have responsibilities as proponents or regulators for facilitated downstream actions.

Question 15: *Should low-risk projects receive automatic approval or be exempt in some way? How could data help support this approach? Should a national environmental database be developed? Should all data from environmental impact assessments be made publicly available?*

Several members of EIANZ agree there could be an option for lower risk projects (to be clearly described in, and consistent with, a regional plan or other clear process and standards) to receive approval with standard conditions for protected matters. This would still require registration of the project with the Australian Government and demonstration that the scope and impacts of the proposal were consistent with the [bio]regional plan.

Yes, a national environmental database should be developed in Australia. The protected matters search tool is a start, but more data should be made publicly available including from EIAs and other information documents. Standardised data collection and management would be critical. However, this could be controlled by establishing associated guidelines and specifying these in terms of reference for EIAs. The terms of reference should also state that this raw data will be handed over to the Australian Government for inclusion in the national environmental database. Currently there is a trial of this approach being led by the Western Australian Government, which should provide useful insights for future adoption nationwide.

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?*

Yes, as long as other jurisdictions are effectively protecting species by adhering to established standards, considering cumulative impacts and ensuring robust implementation.

The concept of landscape-scale assessment, understanding the natural and human systems operable in a place through [bio]regional planning, will set the scene for future decision-making. Essentially [bio]regional plans are mechanisms for identifying key environmental values within a defined region that warrant protection and/or restoration; determining environmental outcomes and objectives that should be achieved; assessing current and likely future threats to environmental values; determining measures needed to ensure environmental outcomes can be met; and providing a framework for future development and management in the region. The Commonwealth should specify objectives and outcomes for the 'region' and ensure the proponent's assessment demonstrates compliance.

APPENDIX 1**Proposed considerations and procedures for regional planning**

A regional plan should, at a minimum require:

(a) collation of reasonably available information, and should identify and fill critical knowledge gaps:

- information should include the spatial extent of threatened species, ecological communities or heritage areas
- the assessment should present maps of habitat for listed threatened species, ecological communities, heritage areas and other important environmental components, and
- the process should include a call for relevant, existing data from researchers, consultants and others.

(b) identification of matters of NES and establishment of outcome objectives for the plan

- the assessment should state the minimum acceptable conservation outcomes for each of the environment and heritage values that the plan considers.

(c) examination of development and land use options with the aim of minimising impacts on protected matters and retaining ecological integrity

(d) an analysis of the consequences of the different options including:

- estimates of impacts;
- how the plan avoids, offsets and mitigates impacts on protected matters; and
- a measure of the uncertainty associated with the analysis.

(e) a description of mitigation measures, and quantification of expected benefits including:

- how future conservation 'gains' will be funded, measured and enforced; and
- analysis of the adequacy of the extent of habitat that will exist following the implementation of the plan, policy or program; and

(f) a description of adaptive management approaches in the plan. These should:

- indicate what actions will follow, should planned conservation actions not be implemented, or should expected outcomes from conservation actions not be achieved (that is, contingency plans should be clearly documented to account for environmental uncertainties); and
- allow for the unexpected, including new discoveries of species, habitats and/or communities of conservation concern in areas to be impacted by the proposed development.

APPENDIX 2**Proposed guidelines for undertaking a strategic assessment**

The strategic assessment should:

- include the extent to which a plan, policy or program:
 - o protects the environment (focusing on protected matters)
 - o promotes ESD
 - o promotes the conservation of biodiversity
 - o provides for the protection of heritage.
- set out minimum standards of acceptable environmental impacts, and
- provide a set of higher-level considerations. These criteria influence development of the plan, policy or program by outlining the basic decision making for any subsequent strategic approval. In addition to the existing endorsement criteria, the guidelines could specify the following requirements:

(a) The area considered for strategic assessment should make ecological sense (i.e. comprise an ecoregion or a catchment) or provide meaningful protection of heritage values.

(b) The strategic assessment should indicate how much data and knowledge is required to make a good decision – that is, it should clearly describe and justify the minimum adequate data and knowledge set. Considerations should include the quality of data and current, remotely acquired data (especially in rapidly changing areas).

(c) Critical gaps in the data should be identified and filled with targeted field surveys at appropriate times of the year, following best available survey guidelines, so that the conditions for the minimum adequate data set are achieved. Sufficient time should be given to arrange access to private land, where required.

(d) Wherever possible and relevant, strategic assessments should include models of species persistence (particularly those that are informed by process models and community composition models). This is because perfect information on populations and species can never be obtained and so modelling is essential for conservation planning, particularly across private land and in peri urban areas.

(e) The strategic assessment should employ accepted existing information and best practice conservation planning tools and protocols to maximize the effectiveness of conservation actions.

(f) All stages of the strategic impact assessment process should be documented in a clear and transparent manner.

(g) The strategic assessment should include precise recommendations for measurement endpoints that can be used in subsequent audits to verify predictions and assumptions of the effectiveness of conservation actions and the value of conservation outcomes.



PART 3C

**THE ROLE OF
PROFESSIONAL
CERTIFICATION**

CEnvP Program Overview

The Certified Environmental Practitioner Scheme (CEnvP) was established in 2004 by the Environmental Institute of Australia & New Zealand to recognise environmental professionals who meet strict standards of competency against experience, training, conduct and ethics, as assessed by their peers. CEnvP now has over 900 certified environmental practitioners working in all fields of the environment.

Recommendation

It is recommended that the Act be revised to require all technical reports and assessments undertaken for, or submitted to, the Commonwealth under the Act, to be prepared by suitably qualified and third-party certified professional specialists.

The role of professional certification, that is a form of third-party accreditation, has long been recognised as a professional requirement for engineers and accountants, and is becoming more widely called on for broader environmental and social technical specialties. Professional certification, as a risk mitigation tool is increasingly important, as communities, industry and government seek to ensure technical quality, decisions and design are suitable to manage regulatory, insurance, and environmental hazards and risk, as well as social responsibility expectations.

The capacity of regulators, as well as private industry and businesses, to make suitably informed risk based decisions, relies upon the provision of sound and quality scientific and qualitative data, information and interpretation. Poor quality or inappropriate education, experience or ethical conduct of professionals can materially impact sound decision making and create unforeseen and known risks to a range of stakeholders.

The EPBC Act, and related decision making relies on wide ranging environmental technical specialties to inform not only the reporting that is submitted for assessment and federal decision making, but ongoing management, mitigation and auditing of related project environmental performance requirements. The breadth of environmental factors in complex projects extends beyond ecology to other specialties, for example, groundwater, surface water, soils, geochemistry and others, to fully consider and assess the potential environmental impacts of projects referred under the EPBC Act. The breadth of technical specialties in complex assessments cannot be underestimated and relies on professionals of suitable experience and calibre to ensure reporting is fit for purpose and quality.

Certification programs can support the reduction of regulator risk by providing a structured foundation against which to identify specialists and practitioners with the requisite technical skills, specialisations and experience for the tasks. In addition, such programs can provide a drive/demand for ongoing professional upskilling and maintenance of contemporary knowledge, creating more robust professionals over time.

Within Australia, increasingly industries and Government regulators are starting to request assessment and designs be submitted by suitably qualified and experienced practitioners, that can provide suitable professional certification as a demonstration of appropriate

education, skills and experience, to ensure quality and reduce their risk exposure. This individual professional certification can be provided by a range of bodies such as the Certified Environmental Practitioner Scheme (CEnvP), Engineers Australia, Planning Australia, Australian Institute of Mining and Metallurgy etc.

Currently there are at least nine Federal and State references, see below, requiring or recommending the use of certified environmental practitioners when selecting a suitably qualified and experienced practitioner. Certification schemes ensure professionals managing a range of environmental concerns, from contaminated land through to flora and fauna surveys hold the specialist knowledge, experience, skills and competencies required for those roles.

Certification schemes create a driver for ongoing training, can assess experience, review professional conduct and ethical behaviour and provide a driver for continued professional development (CPD) to retain certification. In addition, such schemes can provide recognition for senior peer review level specialists, while creating pathways for young professionals to demonstrate broader and then increasingly specialised skill sets and knowledge.

CEnvP, abide by international conformity assessment standards under ISO 17024: 2012, and conform with this standard, and conforms to the principle guidelines for certification schemes endorsed by the Heads of EPA Working Group, April 2017. Currently the following agencies recognise CEnvP for specialist contaminated land professionals, namely the Environment Protection Authority's of South Australia, Tasmania and New South Wales. One recommendation of the independent review of the EPBC Act in 2009 was to develop a Code of Conduct for consultants; the Government responded that it recognises CEnvP as an industry-based certification scheme, however the requirement for reporting to be submitted to the Commonwealth under the EPBC Act, by a professional demonstrating appropriate skills or experience, is not currently required.

In addition to general environmental management certification CEnvP currently offers the following specialty certifications: environmental impact assessment; contaminated land; contaminated land (auditor); landscape rehabilitation; ecology; geomorphology; heritage and climate change. The fields of social impact assessment, consultation, noise, and water are also under discussion and review, noting an increasing demand based on both regulator and specialist feedback.

¹ Government Response to the Report on independent review of the EPBC Act 1999 (Recommendation 24), Cwth 2011

² Review of interactions between EPBC Act and the Agriculture centre, Cwth 2018

³ Schedule 8 of the Environmental Protection Regulation 2008, QLD 2011

⁴ Engaging a consultant - NSW EPA, NSW 2019

⁵ Schedule 2 of State Environmental Planning Policy, NSW 2014

⁶ EPA SA Site Contamination Policy: certification of practitioners, SA 2018

⁷ Environmental Protection Authority, TAS 2015

⁸ Environmental Management and Pollution Control (Underground Petroleum Storage Systems) Regulations, TAS 2020

⁹ HEPA Principles to guide schemes for the certification of Environmental Practitioners in Australia and New Zealand, WA 2017

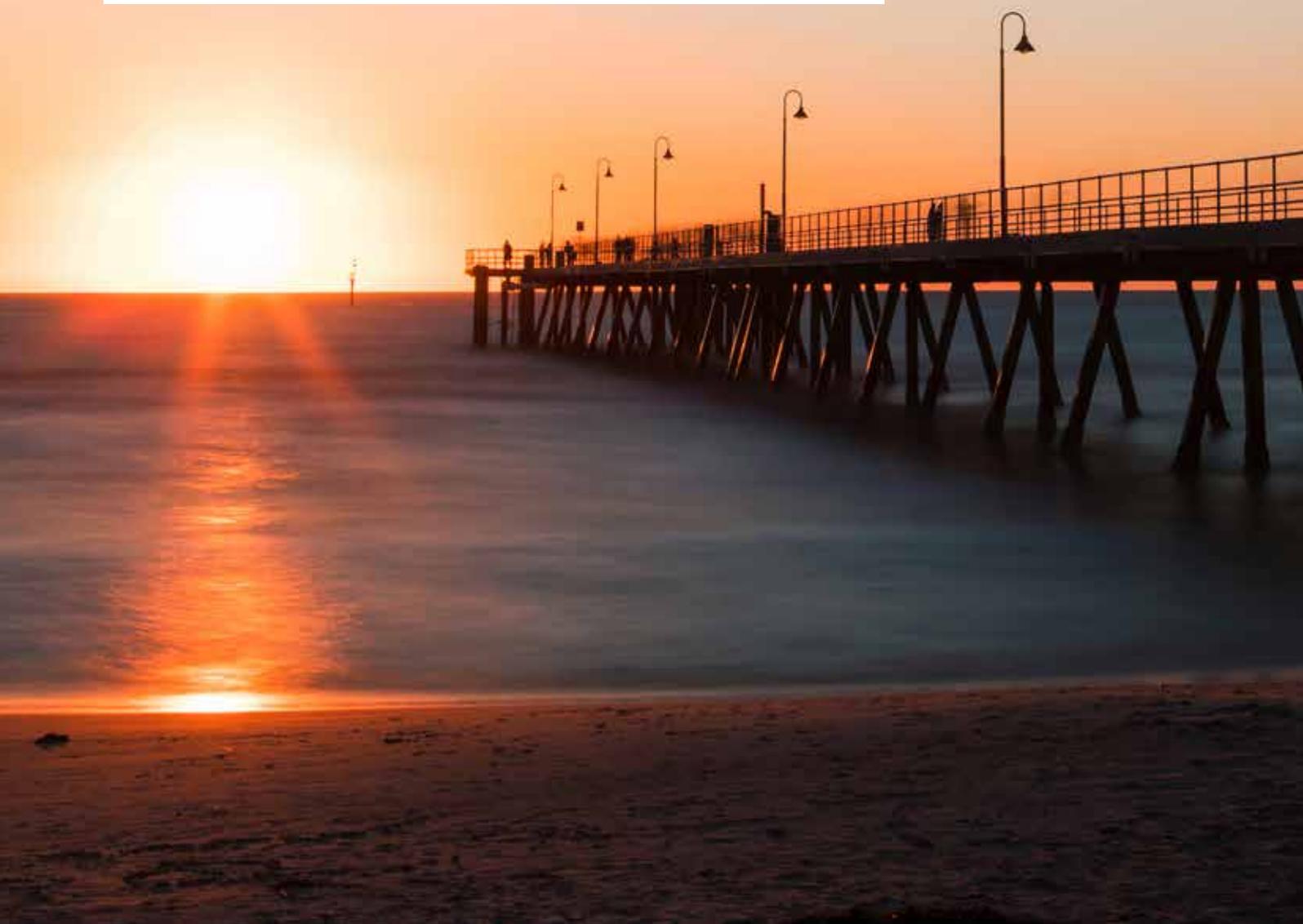
PART 4

EIANZ

SUBMISSION

TO THE HAWKE

REVIEW



19 December 2008
 Secretariat to the Independent Review of the EPBC Act
 GPO Box 787
 CANBERRA ACT 2601



RE: Submission in response to Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 Discussion Paper

Dear Sir/Madam

This submission is from the Environment Institute of Australia and New Zealand (EIANZ). The Institute is the peak professional body for environmental practitioners in Australasia, and promotes independent and interdisciplinary discourse on environmental issues. EIANZ advocates that best environmental practice be delivered by competent and ethical environmental practitioners. The Institute has previously submitted its views to the Senate Inquiry into the operation of the EPBC Act and welcomes further opportunity to contribute to the current Independent Review of the Act for which a Discussion Paper has been released.

This submission has been prepared primarily in response to key questions raised by the Discussion Paper of relevance to the aims of the Institute however comments regarding other aspects of the Act and its operation have been included consistent with the Terms of Reference of the review. This submission is made by practitioners who are experienced in working with the provisions of the Act to achieve its objectives on management of matters of National Environmental Significance.. It is made with the intention of highlighting those areas where the Act could be strengthened to improve its effectiveness.

This submission includes data from two surveys of Members of the Institute conducted on 11-12 August and 2-5 December 2008 respectively. The first survey represents the views of 172 qualified environmental practitioners, most of whom are ecologists with affiliations to professional associations including EIANZ, in regard to the protection of biodiversity and threatened species under the EPBC Act. The second survey of Institute Members included selected questions from the Discussion Paper and had 77 respondents, of which 62% have more than 10 years experience in the environmental field and 75% with moderate to high experience with referrals and assessments under the Act.

The EIANZ has addressed many of the key questions of the discussion paper on an individual basis in the following pages but the Institute's primary points of submission in regard to the operation of the EPBC Act are as follows:

- A core message of the Institute is promoting the message "Good Environmental Policy and Good Environmental Practice equals Good Environmental Outcomes" In general the ACT provides some good policy, however it is silent on practice, particularly professional practice of those persons who need to administer the ACT and those that undertake studies, investigations and reports in respect of ACT referrals.
- Unfortunately poor professional standards within the consulting trade and the lack of skills in the public sector both can contribute to inconsistent, uninformed and poorly based decisions. The success of environmental legislation like the EPBC Act (policy) also relies on those that are involved in the assessment process (practice), as much as it does on the government for the final decision. The EIANZ would like to consider how minimum qualifications / experience, as reflected through Full and Association membership of Institutes like EIANZ and the Certified Environmental Practitioner (CEnvP) process, could be better recognised.
- Referrals and key assessment documentation should be required to be signed off by environmental professionals with appropriately recognised qualifications and/or certification. Assessing officers at the Department of Environment, Water, Heritage and Arts (DEWHA) should ideally be appropriately qualified and preferably certified as Impact Administrators or Certified environmental practitioners. Members of the EIANZ are required to conform to a Code of Ethics and Certified Environmental Practitioners must meet minimum capability and proven experience criteria in their profession.
- The standards of referral and assessment documentation submitted under the Act vary substantially and many are prepared by people with no technical background in the area of impact assessment and not subject to any professional standards. Currently, unlike other professions, there are no minimum standards for an author of any referral/IAS documents Professionals under the Institute Certified Environmental Practitioners Program (CEnvP) are required to demonstrate capability and skills in their field and are held accountable for their work (documents and reports).
- The term 'Ecological Sustainable Development (ESD)' as defined in the Act, and as referred to in this submission, is somewhat dated and is captured by and more appropriately referred to as 'Sustainable Development'. The Act should be updated to reflect this terminology.
- The current controls under the Act do not necessarily ensure or provide the appropriate framework for decisions on Ecological Sustainable Development (ESD), as it is not conducive to overall conservation of biological diversity and ecological integrity, one of the principles of ESD as defined under section 3A of the Act. This is because the scope is limited to threatened species, whilst biodiversity management is more holistic and requires attention to ecological systems and processes.

- The Institute agrees that the current Matters of NES are appropriate but suggests the scope of assessment once triggered should be broad enough to address impacts on all related components of the ecosystem in which the action takes place or effects. ESD also requires consideration of cumulative impacts of individual projects and urban planning.
- There is a need for improved streamlining and linkage between State and Federal approval processes to reduce duplication in assessment and public consultation. Existing bilateral agreements between some States and the Australian Government have been effective at decreasing duplication for such assessments however they are not established in every State and they do not accredit decisions “not to assess” (equivalent to Non-controlled Action) or the lower levels of assessment offered under State environmental protection acts.
- A clearer mechanism for consideration of State, regional and local planning schemes and increase in cumulative impact assessment at a regional scale, as opposed to a project by project basis, under the EPBC Act is warranted. Currently the Act includes two key mechanisms for such assessments; bioregional plans and strategic assessments. There is opportunity to increase the use of these mechanisms to allow a more pro-active approach to protection of Matters of NES and streamline approvals of individual actions in the areas subject to such assessments. There is also an opportunity to strengthen the provisions around the use and approval implications of these mechanisms under the Act. Develop a clearer mechanism for consideration of the impact of greenhouse gas emissions, whether this be as a specific trigger relating to thresholds of emission volume or as it may relate as a contributor to the long term impacts of global warming on Matters of NES
- Strengthen monitoring and compliance reporting requirements under the Act for those projects approved under the Act and also those determined to be Non-Controlled Actions under a Particular Manner to ensure they are being undertaken as described in referral documentation. This would include evaluation of adherence to set management plans or standards submitted to the DEWHA during referral and assessment processes. Members have identified a need for an increase in follow-up of these matters and the monitoring and auditing of actions approved under the Act. Audits should be undertaken by suitably qualified environmental auditors and/or practitioners certified under the RABQSA environmental auditor scheme and EIANZ CEnvP schemes respectively.
- All data collected for the purpose of assessing the significance of impacts to Matters of NES should be retained and managed through a central database or registry. Currently all EIA projects for developments are undertaken throughout Australia as independent studies. The data in these documents is a National Resource, which is currently lost to all. EIA documents can easily be reformatted and submitted to a National data base. The Bilateral agreements should require the data in such a format.

The following comments are offered by the EIANZ in response to key questions of the discussion paper relevant to the Institute. Not all questions were necessarily commented on and hence not all question numbers are shown below. In some cases, the Institute has opted not to address whole chapters of the Discussion Paper due to it not being of primary concern or members do not necessarily possess the relevant experience or roles to comment.

CHAPTER 1 SCOPE OF THE ACT

Q1 (b) Ecological Sustainable Development (ESD)

One of the Objects of the Act is to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources. Of the 77 respondents to an Institute survey, 60% thought the legislation does not provide an adequate framework to guide Ecologically Sustainable Development decisions made under the Act. ESD is implied but not explicitly provided for by the controls under the Act. There is a view that the current controls under the Act may not be an appropriate framework to guide ESD decisions as it is not conducive to overall conservation of biological diversity and ecological integrity, one of the principles of ESD as defined by Section 3A of the Act. Assessments are generally restricted to direct or immediate indirect impacts to Matters of NES.

Note, the term ‘Ecological Sustainable Development (ESD)’ as defined in the Act, and as referred to in this submission, is somewhat dated and is captured by and more appropriately referred to as ‘Sustainable Development’. The Act should be updated to reflect this terminology.

The Institute believe the Act fails in regard to ESD because the scope is limited to threatened species, whilst biodiversity management is more holistic and requires attention to ecological systems and processes. The scope of Australia’s commitments to the Convention on Biological Diversity (CBD) could be realised through more over-arching biodiversity controls. In accordance with Part 3 and Part 3A of the Act, it exists to maintain and enhance biodiversity as a whole, consistent with Australia’s obligations to the CBD. If a threatened species is relevant, then it survives due to its relationship with whole-site ecology (all species are linked together in the landscape). In order to protect threatened species, the EPBC Act cannot only apply to them alone – even though they may be triggers to decide at which locations the Act should apply. Perhaps once triggered, the regulations and policy should apply to the landscape in question, not simply the controlling provisions.

In implementation, cumulative impacts to ecological systems are not addressed pro-actively and the incremental effect of individual projects is of relevance to ESD. There however is a basic framework for such considerations through strategic assessments, conservation agreements and bioregion plans however they are currently done somewhat on an ad-hoc basis.

Q1 (f) Test of significance

The current test of significance is sound but is not understood well by many proponents. Often projects are not being referred because, for example, there is no immediate proof that a threatened species is present, or the proponent's consultant believes for example a migratory species to be relatively common and therefore tolerant of impacts. The main problem is that these types of decisions do not address the need to maintain / improve biodiversity but they are made in the absence of regional information on key habitat requirements or threatening processes.

The current formal referral process represents a barrier to rapid consideration of significance and proponents may be reluctant to seek a determination given the requirements for substantial information to be included in documentation and the mandatory public comment period for referrals. Conversely, many projects that have little potential to have an impact on a Matter of NES are referred because of the lack of such information and therefore uncertainty in any predictions of potential impact. The ability of members of the public with interest to enquire with the Minister to request a proponent represents a risk to project delivery. Therefore, larger projects with significant investment at stake and numerous financial stakeholders often refer the action as part of due diligence without consideration of actual potential for impacts, which means resources are being used for referrals that are not necessary. A simplified screening process ahead of formally referring, using regional information regarding key requirements for Matters of NES, would be of use.

This could be established as part of establishing Biodiversity Action Plans for regions. Such plans could address local, regional, state and Federal matters and integrate measures of value, importance etc., so there is a document able to be referenced for assessing significance. It is noted there is substantial Court precedence for the threshold of significance to be set extremely low (assessments are triggered if it is not within the realms of speculation).

Note, the propensity to assume value without reference to independent knowledge is one of the more serious failings of ecological impact assessment done as part of EIA. By assuming value, the consultant undermines the process. Because determinations of importance become based on individual opinion, this results in inconsistent advice and decision-making. There is a body of professional opinion on this matter but it is not currently recognised as a problem in Australian EIA.

Because of the absence of regional information on key requirements and threatening processes for Matters of NES, consultants are often called to make these judgements. The failing permeates much of the process of EIA and leads to costly problems. This can be addressed by a) developing guidelines for Ecological Impact Assessment (EIANZ are currently in the process of developing such guidelines); b) ensuring those making determinations of importance are suitably qualified and preferably certified by environmental professional bodies and c) rolling out an integrated Biodiversity Action Plan across regions of Australia.

ASSESSMENTS AND APPROVALS**Q2 Public role in referrals**

Only 21% of respondents to the Institute survey agreed with a statement that the public understands its responsibilities under the Act to refer proposed actions to the Minister. 48% disagreed and 20% strongly disagreed with this statement indicating the general view of Institute members is that the responsibility to refer a proposed action to the Minister is not widely understood by the public.

The Institute's view is that the process of making the decision to refer a project should be made clearer and requires professional consultation. For the most part, the referral of a large project is a condition of financial approval and projects are referred to address a perceived greater risk. There is potential to improve this situation by providing evidence to demonstrate a referral is not required and meet the due diligence requirements for financial approval. A list of organisations and professionals who can advise on whether or not a referral under the EPBC Act is required would be effective.

There is also a gap between the tools available and the ability to correctly refer a proposed action. Specifically the protected matters search needs to be upgraded to better define where there may be significant impacts. In addition to this the definitions of "likely" and "significant" are unclear and should be further defined.

Q3 Referral of appropriate projects

The majority of the time appropriate projects are being referred for approval. However, the referral of large projects is generally a condition of financial approval and for the purpose of legal due diligence as opposed to being referred because they are significant projects. Projects are also referred to reduce the risk of an appeal. Both of these motives for referral appear to overload the Department.

There is some concern that projects that could have an impact on Matters of NES are not being referred and there is not a good framework under which to monitor as such. Approximately 49 % of the respondents to the Institute survey felt that many projects likely to have a significant impact to Matters of NES are not being referred for approval. Approximately 26% disagreed with that view with 25% having no opinion or didn't have the relevant experience to comment.

The referral process meets the following Objects of the Act:

- to provide for the protection of the environment, especially those aspects of the environment that are matters of NES;
- to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- to promote the conservation of biodiversity; and
- to assist in the co-operative implementation of Australia's international environmental responsibilities.

The referral process does not necessarily meet the following Objects of the Act:

- promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous people;
- to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
- to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.

Q4 Hierarchy of environmental assessment approaches

The Institute has no strong views on the effectiveness of the current hierarchy of environmental assessment approaches other than every opportunity should be made to modify the approaches such that bilateral agreements for assessment methods are possible with all States and Territories. Current bilateral agreements in QLD and WA are effective in offering compatible hierarchy of environmental assessment approaches; albeit the mechanism for consideration of Matters of NES at the State level could be improved and there is a need to recognise the more expedited (lower) levels of assessment and decisions not to assess. Issues do arise when there is a difference of opinion between State and Federal in regard to the level of significance and therefore assessment approach. It is currently difficult to run parallel processes in Victoria and ACT, which currently do not have bilateral agreements in place.

Q5 Public participation

In regards to the question of the Act providing an appropriate scope for public participation and transparency in the assessment and approval process, respondents to the Institute survey were generally split with 44 % agreeing or strongly agreeing and 39% disagreeing or strongly disagreeing that the Act does provide such scope.

There is certainly opportunity to optimise the scope for public participation and transparency in current processes. For example, there is no obligation under the Act for DEWHA to do any consultation other than Public Notification. It is not a very proactive process and DEWHA should be encouraged to consult wider when it makes decisions particularly Controlled Action decisions. There is also opportunity for proponents to respond directly to comments generated during the public notification period as currently the comments go directly to the Department and in the referral process, the proponent does not have opportunity to dispute assertions. Equally, a lack of response during public notification does not mean the project is considered acceptable and wider consultation is encouraged when making decisions.

There is a reasonable degree of transparency in the assessment and approval process for example with EPBC Referrals and the referral decision being available online. A requirement for DEWHA assessment reports to be available on line would increase overall transparency of the process.

Q6 and Q7 Operation with State and Territory planning and environmental legislation

There is substantial opportunity for improved streamlining and linkage between State and Federal approval processes to reduce duplication in assessment and public consultation. Approximately 46% of survey respondents felt or strongly felt that the Act doesn't work effectively with State and Territory planning and environmental impact legislation, with 32% of the opinion that it already does work effectively. Notably, 82% of respondents agreed that there are further opportunities to harmonise the Act with other State and Territory legislation, planning and approval processes.

Currently, there are a number of bilateral agreements between some States and the Australian Government that allow the accreditation of selected State assessment processes under the EPBC Act. These agreements have been effective at decreasing duplication for such assessments however they are not established in every State and they do not accredit decisions "not to assess" (equivalent to Non-controlled Action) or the lower levels of assessment offered under State environmental protection acts.

There is opportunity for Federal involvement in State decisions on whether to formally assess. A mechanism could be formally established with each State environmental approval authority/department where a decision to not assess can only be made if there is no potential for a significant impact to a Matter of NES. There is also opportunity for bilateral agreements to be expanded to accredit State assessments equivalent to the EPBC Act Assessment on Referral Information or Preliminary Documentation approaches.

However, even where bilateral agreements exist, duplicate approvals are still required under each act if Matters of NES are potentially significantly affected. For example, in Queensland, approval is required under both the Nature Conservation Act 1992 (NCA) and the EPBC Act and in WA under both the Environmental Protection Act 1986 and the EPBC Act. The potential to accredit the approval as well as the assessment for certain projects, perhaps of relatively lower risk to the Matters of NES, could reduce DEWHA workload and resource strains. Currently, DEWHA must prepare its own assessment report to the Minister after the State has given its approval. Accreditation of the approval would negate this need as no signed statement of approval would hence be required under the Act.

In States such as WA, many proposals are effectively assessed at the stage of regional planning scheme, for which to date there has not been substantial involvement of the Federal Government in assessment. Also, in many states, most planning decisions are driven by local Councils. Local Councils however, do not see Federal matters as their problem and they are not constitutionally recognised. They often do not provide advice to proponents and do not refer matters to the Australian Government. So for example, housing developments on the edge of Ramsar sites, but not within them, may not be recognised by the key government authority as something that needs further consideration under national regulations.

A clearer mechanism for consideration of State, regional and local planning schemes and an increase in cumulative impact assessment at a regional scale, as opposed to a project by project basis, under the EPBC Act is warranted.

Q8 Strategic assessments and cumulative impact assessment

Approximately 73% of respondents to the Institute survey felt there is potential for strategic assessments and bioregional plans to provide opportunities for streamlining Federal involvement in environmental issues. The outcomes of strategic assessments however currently need to feed into a relevant planning scheme to be effective. Once strategic objectives are set, an independently enforced planning regime e.g. through a tribunal system or a regional planning scheme is ideally required to guarantee outcomes. Many parts of Australia lack such robust planning frameworks.

Currently the Act includes two key mechanisms for cumulative impact assessments; bioregional plans and strategic assessments. Approximately 55% of respondents to the Institute survey felt these mechanisms provide an appropriate means for dealing with cumulative impacts, with 26% stating they do not. There is opportunity to increase the use of these mechanisms under the Act to allow a more pro-active approach to protection of Matters of NES. An example of this could be to develop bilateral agreements with each State allowing planning schemes to be referred to DEWHA for determination of potential to affect Matters of NES and to be subject to a strategic assessment under the EPBC Act if deemed as such.

If assessed, a Bioregion plan could be a requirement of each assessment prior to finalisation of the scheme. The controls under the Act could be increased as such to 'approve' planning schemes with an associated bioregion plan and, similar to how the current Conservation Agreement mechanism works under the Act, streamlining or providing some security on actions taken within the affected region providing they are consistent with the conditions of the planning scheme and the bioregion plan that was established as a result.

BIODIVERSITY

Q9 Framework for biodiversity conservation

In terms of protection of overall biodiversity, there are concerns that the Act is too narrowly focussed. The EPBC Act is a strong framework for the protection of listed threatened species and ecological communities on a project by project basis however biodiversity is broader in nature and needs to be addressed holistically and in context. Impacts to overall landscapes and ecological systems, which can cause currently common species to become threatened, are not well addressed. There are issues in the application of Act and difficulties in examining cumulative impacts, although this is beginning to be addressed through bioregion plans and strategic assessments.

An institute survey asked respondents how well they thought the EPBC Act was protecting biodiversity and threatened species.

- 59% of respondents thought that the EPBC Act was failing to protect biodiversity and threatened species
- 41% of respondents did not think that the EPBC Act was failing to protect biodiversity and threatened species.

The implication from the survey is that respondents are split on whether the EPBC Act was actually failing to protect biodiversity. The Institute interpreted the results of this survey through analysis of comments made with the responses to the above question to suggest the Act is potentially an effective legislation but is being poorly applied in some cases, thereby failing to protect biodiversity and threatened species. Therefore, there may not be a strong need to necessarily reform the Act but realise its objectives through better and stronger policy and enhanced implementation.

Respondents of the survey who believed the Act is failing to protect biodiversity were asked to list what they believed were the main reasons for this failure. Of the 59% who thought the EPBC Act was not working, the reason most commonly cited was the over-emphasis on protected species rather than biodiversity (structure, function, composition).

In regards to Australian Government involvement in assessment of projects, it is reasonable to base the screening process (i.e. referrals) on biodiversity components that the Australian Government is required to act on through international conventions, commitments etc. such that for example, if a threatened species is present and potentially affected, then the EPBC Act is triggered. There is a need however to ensure, once triggered, the scope of assessment is broad enough to ensure a biodiversity outcome consistent with objectives of the Act. Even if species, or other components of biodiversity, are reasonably triggers, they are not reliable indicators of biodiversity when it comes to managing loss or creating a net gain.

A strongly held belief is that the scope of the EPBC Act is being interpreted too narrowly to address Australia's obligations for biodiversity conservation. Threatened species do not exist in isolation, they are components of its ecology. Any part of the landscape that would trigger the Act due to presence of a threatened species is important and notable. The only way the Act can hope to reverse or manage loss of biodiversity is to protect the landscape structure, function and composition of any place that supports threatened species or communities.

Federal control should not apply to a species or ecological community in isolation from the immediate landscape in which an action is being taken. For example, consideration should not only be given to avoiding construction within the nesting season of a threatened bird but also to ensuring habitat integrity is maintained (structure, function, connectivity etc). The Act must apply reliable biodiversity principles at the project-level to address cumulative impacts of development.

When the impacts of numerous developments are all added together, the net result is a reduction in habitat integrity, which causes species loss. In short, to manage cumulative impacts of all developments in Australia the regulations and policy applying to approval must be properly biodiversity-oriented. This means using Federal control to create an overall net positive outcome of actions as a whole. The Institutes response to Q6 and Q7 under Assessments and Approvals above discusses use and enhancement of existing tools under the Act to address cumulative impact.

In addition, to achieve the Act's objectives, high standards of assessment and biodiversity management should apply holistically to any site that triggers the Act. Consulting and assessing ecologists should be suitably qualified and recognised as experts in their field. The EIANZ is currently developing a specific Ecology stream to certify capable professional ecologists under the Institute CEnvP.

In summary, species or other components (communities, Ramsar sites etc) can be used as triggers and ultimately as measures of national success / failure. However, an effective regulatory framework for conservation of biodiversity depends on the Australian Government being able to guarantee projects are in accordance with the principles of biodiversity management and implementing high standards of best practice for ecological impact assessment, including through use of professional certification schemes and professional body standards.

Q10 Process for listing nominations

In regard to the process to list species and ecological under the Act, the IUCN criteria are often too coarse to recognise very rapid change and can be open to a great deal of disagreement between experts. Nevertheless, any alternative will have similar strengths and weaknesses. The Institute notes they are designed for listing at the global level. The process for nominating threatened species may result in too few triggers being recognised.

Q11 Emergency nominations

An accessible process for emergency listing of species and ecological communities that may be threatened would be of benefit given the time involvement for regular listing. In terms of species and communities, the nomination process for the IUCN takes one year but it can take several more to gazette domestically. The same authorities who review data for the IUCN inform the Australian Government so the material and expertise is the same.

Q12 Considerations when listing

In regards to matters to be considered by the Minister when deciding whether to list a species or ecological community, for domestic biodiversity management the most important thing of all is the rate of decline. In some cases, absolute scarcity is arbitrary. A species may be rare but at the edge of its range, or it may be a rare with naturally restricted range and has not declined for decades. Most of Australia's common bird species are declining very fast according to Birds Australia, which is indicative of major habitat shifts and large costs from loss of biodiversity. The most rapidly declining species in notably important habitats (e.g. habitats with a measurably important ecosystem service role such as wetlands) are the most relevant for biodiversity management.

Q13 Categories of threat

The existing categories of threat under the EPBC Act are appropriate but more effort is needed to ensure that decision-makers consider the information on merit, in biodiversity terms.. A species that is considered Vulnerable is not necessarily less important than one that is listed as Endangered. Further, even communities not threatened at a Federal level may be important components of landscape function for a range of other Matters of National Environmental Significance.

Q14 Duplication of listing regimes

Any duplication of listings is not necessarily a negative issue providing State lists reflect the status of federally listed species such that proponents become aware of Matters of National Environmental Significance when they enter local assessment processes. The duplication is not a symptom of a complex Act and does not necessarily result in duplication of effort.

Q15 Priorities for recovery planning

The species that need to be prioritised are arguably those with the greatest value, either intrinsically, ecologically or socio-economically. Each case would have to be considered on merit.

Q18 Provisions for protection and recovery of species and ecological communities

The Act is not overly effective in protecting species and ecological communities in the long term because of the narrow scope of application and the lack of regard in many cases for the principles of 'avoid-minimise-offset'. Because of inherent failings to understand biodiversity in an ecological context, criteria for 'avoid' and 'minimise' are commonly not met. As there is no formally nationally recognised basis for measuring offsets to maintain or enhance biodiversity (such as what exists in NSW), although the DEHWA Draft Offsets Policy Statement does go somewhat towards this. The lack of measurement of effectiveness of offsets means little or no measurement of outcomes post-approval, huge uncertainty for developers and causes problems in measuring Australia's commitment to the Convention on Biological Diversity.

Q19 Climate change and other emerging pressures

Several members of the Institute have submitted that there is a need to develop a clearer mechanism for consideration of the impact of greenhouse gas emissions under the EPBC Act.

International Movement of Wildlife

The EIANZ does not intend to make a submission addressing the individual questions (Q20 to 24) in Chapter 4: International Movement of Wildlife.

Protected Areas

The EIANZ does not intend to make a submission addressing the individual questions (Q25 to 30) in Chapter 5: Protected Areas but reiterates the importance of ensuring the protection of existing and potential World, National and Commonwealth Heritage Places, Commonwealth Reserves and Ramsar wetlands.

Indigenous Involvement

The EIANZ does not intend to make a submission addressing the individual questions (Q31 to 34) in Chapter 6: Indigenous Involvement, but encourages the Australian Government to support indigenous involvement in conserving biodiversity."

COMPLIANCE AND ENFORCEMENT**Q35 Follow-up of approval decisions**

Of the 77 respondents to the Institute questionnaire, almost half (49%) disagreed or strongly disagreed with the statement that "the Act provides for the appropriate follow-up of environmental assessment and approval decisions, including the monitoring, evaluation and auditing of actions". Just fewer than 25% agreed or strongly agreed with this statement, with the remaining 26% indifferent or not possessing the relevant experience to answer.

Several respondents raised the need to strengthen monitoring and compliance reporting requirements under the Act for those projects approved under the Act and also those determined to be Non-Controlled Actions under a Specified Manner to ensure they are being undertaken as described in referral documentation. This would include evaluation of adherence to set management plans submitted to the DEWHA during referral and assessment processes. Members have identified a need for an increase in follow-up of these matters and the monitoring and auditing of actions approved under the Act. Audits should be undertaken by suitably qualified environmental auditors and/or practitioners certified under the RABQSA environmental auditor scheme and EIANZ CEnvP schemes respectively.

Periodic independent audit programs, taking a sample of projects and subjecting them to a third party audit, may also be of use. Statistical analysis of such audit results could examine correlation between non-compliance and follow-up of environmental assessment and approval activities.

A high number of non-compliances may indicate the current methods of monitoring, evaluation and auditing are not as effective as they could be.

Q36 Offence and civil penalty provisions

Of the 77 respondents to the Institute questionnaire, 39% disagreed or strongly disagreed with the statement that “the offence and civil penalty provisions of the EPBC Act are robust enough to encourage compliance with the Act”. Just fewer than 25% agreed or strongly agreed with this statement, with the remaining 36% indifferent or not possessing the relevant experience to answer. There were no significant trends in comments made regarding offence and civil penalty provisions.

Q37 Enforcement mechanisms

The Act contains sufficiently comprehensive and appropriate range of enforcement mechanisms as there is civil and criminal action and the authority to demand remedy from the party in contravention.

No comment can be made regarding the capability of the enforcement mechanisms in deterring and responding to contraventions of the Act because there may be a lot of contraventions of the Act but it is unclear how many of them are actually reported.

DECISION-MAKING UNDER THE ACT

The EIANZ does not intend to make a submission addressing the individual questions (Q38 to 44) in Chapter 7: Decision-Making Under the Act.

In closing, I would like to reiterate the following recommendations for improved environmental outcomes, made by the Institute in its submission to the Senate Inquiry into the Operation of the EPBC Act. They concern:

- The need for a better understanding of the relationship between threatened species and overall biodiversity management.
- The need for more over-arching and holistic controls on biodiversity, going beyond endangered species, and more in tune with Australia's obligations under the Convention on Biological Diversity.
- The need for better policy and guidelines for the conduct of professional environmental work, including for example, the development of professional standards for lead impact assessors and impact administrators along with the development of national guidelines for ecological impact assessment.
- The desirability of giving greater recognition in the conduct of professional environmental work to the possession of appropriate qualifications and experience as evidenced by membership of professional institutes such as the EIANZ and certification under the Certified Environmental Practitioner Program or similar programs.
- The desirability of cross-pollination of experience and ideas between public administrators and the private sector.

We thank the Review Secretariat for the opportunity to provide our views on this important matter and would welcome the chance to discuss any of this submission in greater detail if required. I have included general information regarding the Institute and our CEnvP program to this submission.

Yours sincerely,



William Haylock, President,
Environment Institute of Australia and New Zealand