

Submission: EPBC Act Review

This submission has been prepared by the Animal Protectors Alliance and the Australian Wildlife Protection Council, on behalf of our members. Signatory organisations are committed to the protection of the wellbeing of all animals as individual sentient beings, and therefore to the health and the sustainability of the ecological systems on which all living things depend. Additionally, many actions which damage the environment also damage animals directly (eg commercial and non-commercial killing of native animals).

The complete failure of the EPBC Act, as the only Commonwealth environmental legislation protect Australia's environment and to conserve its biodiversity, has resulted in the deaths of billions of wild animals, and thousands of ecosystems. If Australia's ongoing war against its natural environment is not checked by some form of strong national regulation, the devastation will ultimately extend from wild animals to both humans and all the other animals that are (theoretically) in human care.

The EPBC Act has failed to protect biodiversity from:

- the ongoing human onslaught on biodiversity habitat, terrestrial (eg land clearing, logging), freshwater (eg impoverishment of environmental freshwater resources) and marine (trawling, dredging);
- anthropogenic climate destabilisation (eg unprecedented droughts, bushfires, floods, dust storms, sea storms, hail storms);
- accelerating long-term anthropogenic climate change, including: (terrestrial) changes to sea level, snowline, frost-line, dew-point, rainfall, humidity, maximum, minimum and average temperatures; (marine) surface and deep water minimum, maximum and average temperatures, changes in acidity and salinity, coral bleaching, changing ocean currents; and the impact of changes in weight of polar ice on the Earth's axis and the seasons which depend on that axis;
- direct, intentional harm eg commercial (terrestrial, freshwater and marine) and 'management' slaughters of wildlife;
- direct unintentional harm (eg road deaths, ship collisions with marine animals, bycatch, abandoned nets);
- air, water (including marine) and soil pollution;
- water and soil depletion.

These failures reveal an urgent need for a far-reaching and very thorough amendment of the EPBC Act, to address these issues. The first part of this submission is an articulation of nine key issues, and our recommendations for each of them. These issues and recommendations do not appear in any order of priority. All are needed to properly protect biodiversity and ecological processes.

The second part of this submission addresses the questions the Reviewers asked submissions to address. Naturally some of the points made in our key issues will be repeated in these answers.

KEY ISSUES

Issue 1: The global biodiversity crisis

The entire planet is experiencing an unprecedented biodiversity crisis, resulting from many human actions and combinations of actions, and exacerbated by the climate crisis. Any further loss of biodiversity in Australia is, by definition, a matter of national, and international significance.

We recognise that, in 1999, when the EPBC Act was passed, it was the first and only Commonwealth environmental legislation, and its creators felt the Commonwealth's power to intervene in matters that had been traditionally handled by the States and Territories was limited. It therefore confined the Act's regulatory control to matters of national environmental significance, international agreements, marine species, and actions by Commonwealth agencies or on Commonwealth land.

It must now be obvious even to state and territory governments that all environmental issues transcend state boundaries. Air, oceans and freshwater systems do not recognise political boundaries; animals and plants do not recognise political boundaries. Climate change certainly does not recognise political boundaries.

Recommendations

- Recognise that all environmental matters occurring in Australia, or which have implications for other countries, are matters of national significance, and should be the responsibility of the Australian government.
- Recognise that the Commonwealth of Australia has a responsibility to prevent any further harm to biodiversity anywhere in Australia, irrespective of whether the individual plants or animals being harmed belong to a species or ecosystem that is currently listed as a matter of national environmental significance.
- Recognise that Australian biodiversity in its entirety should be listed as "a matter of national environmental significance" and, therefore, protected by the EPBC Act.

Issue 2: Protecting habitat is essential

Further to Issue 1, protecting all biodiversity habitat must now be considered an absolute priority of the Commonwealth government. Only if further destruction of native habitat is prohibited (with few, unambiguous and rigorously worded exemptions), will governments, the agricultural industries, the fossil fuel industries, road builders and developers be forced to develop ecologically sustainable ways of carrying out their business.

Recommendations

- The EPBC Act should prohibit all further destruction of biodiversity habitat for any reason (eg by agriculture, road building, urban expansion, logging or mining), with only a few, unambiguous and rigorously worded exemptions.
- The EPBC Act should mandate bushfire prevention measures (such as maintaining fire trails, and controlled slow-burns along the same lands formerly used by the Indigenous people to manage undergrowth prevent wild fires and crown fires).

- Where climate change driven droughts have rendered or revealed land currently used for grazing introduced farm animals as unable to sustain this use, the EPBC Act should mandate that any subsidies or drought relief paid to land owners and land managers will be contingent on the rededication of the land in question to regenerative or permaculture farming methods and crops, and/or as native habitat, and/or for solar or wind farms.

Principle 3: Inbuilt politicisation is unacceptable

An Act of Parliament should be able to operate independently of the executive government. Currently, under the EPBC Act, many matters (such as plans, policies, projects) are subject to approval by the Minister. While required to "consider" certain matters or "be satisfied" on a matter, the Minister is not required to make a decision which is in even remotely consistent with the objects or clauses of the EPBC Act.

Actions with potential to damage the environment are very rarely a matter of opinion. For example, clearing native habitat always damages the environment. Releasing certain pollutants into waterways always damages the environment. Producing coal, whether for domestic or overseas use, always damages the environment. A Minister of the Executive government should not have the power to override clear, legislative prohibitions on harming the environment.

Recommendations

- Amend the EPBC Act to ensure that actions that harm native species must not be permitted under any plan, program, policy or any other action.
- The provisions of the Act prohibiting harm should be clear enough to ensure that any authorised decision maker, including the Minister, will be in breach of the law if s/he approves any action or set of actions (eg a management plan) that might reasonably be expected to harm some aspect of biodiversity or the environment.
- To prevent any remaining chance of politicisation of decision-making under the Act, the final decision maker on any remaining discretionary matters should be an independent expert, not a member of the executive government.

Issue 4: Ecologically Sustainable Development must not be corrupted

Any action which undermines the sustainability of any aspect of the life support systems on which all life depends (ie any action which is ecologically unsustainable) is also, by definition, both socially and economically unsustainable. The principle of Ecologically Sustainable Development (ESD) was developed and articulated in the Australia's National Strategy for Ecologically Sustainable Development (NSES) in 1992 (following the World Summit on Sustainable Development in Rio de Janeiro in 1992), as a new foundation principle for all aspects of future government decision making. It was summarised as:

Using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.

The entire role of the EPBC Act is to maintain those ecological processes. It is the role of the executive government to develop social and economic policy that enhances life for all, at a cross-sectoral level.

A government that is committed to ESD will develop every aspect of this economic and social policy without trading off any component of ecological processes. A government that is not committed to ESD will develop policies that do trade off ecological processes. But, either way, the Act only role for the EPBC Act is to continue to protect the environment and conserve biodiversity.

Recommendations

- The EPBC Act should include a clause which quotes the above definition of Ecologically Sustainable Development from the NSESD. This will ensure that there is no chance that those administering the Act will labour under the misapprehension that environmental, social and economic values can be traded off against each other (sacrificing biodiversity because of the cost of protecting it, or the cost of canning an economically lucrative project).
- The only context in which social or economic issues, or reference to the principle of ESD, should appear in the EPBC Act, is in relation to approval of policies, plans and programs. Only in a case where all options provide full and equal protection for all aspects of the environment and biodiversity may the decision maker consider social and/or economic benefits in choosing which option to approve.
- Under no circumstances must the EPBC Act allow ecological sustainability to be traded off for social or economic outcomes.

Issue 5: Lack of data and conclusive evidence is a major issue

To date, the main story arising from Australian State of the Environment Reporting has been that the evidence needed for decision makers to make informed and wise decisions is simply not available.

Recommendations

- Just as the EPBC Act mandates a five-yearly State of the Environment Report, the Act should mandate the collection and analysis of data that are capable of informing wise environmental decision-making.
- Twenty years worth of State of the Environment Reports should be carefully read and analysed to identify and collate the issues where little or no indicative data were available, and any overlaps where the same data would inform on more than one issue.
- As far as possible, indicators of state, pressure and the effectiveness of response should be confined to matters of hard data at a national scale (such as: total area of land cleared, remaining and revegetated per unit of area; number of species and individuals of species counted per unit of area, at a smaller scale, across carefully selected sentinel areas; quantity of pollutants released into each freshwater and marine system by all locations of release; quantity of each pollutant per measure of volume of water checked in each freshwater system and at the outfall location of marine systems).

Issue 6: Offsets are misguided and unacceptable

The concept of environmental offsets (which, thankfully, does not appear in the current EPBC Act, and never should) is dangerous and ill-considered for two reasons: first, we are now in a position where no further sacrifice of biodiversity can be acceptable for any reason (see also Issue 1). Secondly, without considerably more data and evidence (see also Issue 5), it is impossible to assess whether, for example, two similar appearing patches of land are, in fact, of equal ecological value.

Further, the concept of offsets is unethical. Sparing ten thousand animal lives in the patch you offer to save, does not excuse killing (and probably killing inhumanely, by bulldozing etc) in the patch you are planning to sacrifice.

Recommendation

- Any mention of offsets should be omitted from the EPBC Act.

Issue 7: Animals are individual sentient beings

Individual animals (native, naturalised, and domesticated), are sentient beings, capable of suffering and deserving of consideration of how human actions affect them. There are already four clauses in the EPBC Act [197 (e), 212 (e), 231 (c), and 255 (e)] which recognise this principle by allowing exceptions for certain offenses of harming animals if the actions are conducted "in a humane manner for the purpose of relieving suffering".

Recommendations

- This principle of recognising our human obligation to behave humanely towards other sentient beings, already recognised in the EPBC Act, should be extended to ensure that any killing of native or naturalised animals is undertaken in a humane manner (ie one that causes the animal no pain or distress).
- The Act should require that it is an offence to issue a licence to kill an animal, either native or naturalised, unless the person can demonstrate that the killing will cause no pain nor distress to the animal. Both the killer and the issuer of the licence would have committed an offence if an act of killing an animal caused either pain or distress.
- These clauses of the Commonwealth EPBC Act should override all State and Territory animal welfare codes of practice which currently permit acts of appalling cruelty that would otherwise be prohibited under State and Territory animal welfare or prevention of cruelty to animals legislation.
- These amendments would immediately prohibit all use of poisons that cause pain (eg 1080, Pindone, Chloropicrin), all traps that cause pain or panic (eg leg-hold traps), any shooting that fails to kill each animal immediately and painlessly (eg aerial or unsupervised shooting), all intentional release of diseases (eg Myxomatosis, RHVD), and all killing that orphans baby animals to starvation, dehydration, exposure or other slow and painful death.

Issue 8: There are environmental risks in killing native animals

At present the EPBC Act does nothing to protect the environment from programs which kill native animals for commercial or 'management' reasons. No data whatsoever appears to be

required for licensing the killing native animals for 'managements reasons', while the data on which commercial 'harvesting' (for example of kangaroos) appear to be based, are derived using crude and implausible methodologies which extrapolate populations from a small area to a larger area without any consideration of the differing conditions within the larger area.

Large kangaroos, the most extensively hunted of native animals, are keystone species who, for millions of years, have engineered the Australian landscape as an ideal habitat for other native plant and animal species. Before European settlements, kangaroos lived in huge numbers across most of Australia. It is estimated by independent ecologists (ie those not employed or patronised by government) that their numbers have been reduced by an order of magnitude, not just from excessive hunting, but also from land clearing, livestock grazing, introduced pasture, and unprecedented droughts and bushfires, all of which have reduced their habitat to a fraction of its former extent and quality.

The environmental impacts of such vast reductions (or extinction) of these keystone species, either locally or nationally, have received virtually no consideration, and are incalculable. The current rate of killing them, given the flaws in the methodologies for counting them, is clearly unsustainable.

Recommendations

- The EPBC Act should prohibit the killing of any native animal for commercial or 'management' purposes.
- Humane translocation or fertility control of native animals in enclosed lands from which animals are unable to disperse should be permitted.
- Humane euthanasia of terminally ill and suffering individuals should be permitted.

Principle 9: There are environmental risks in killing naturalised animals

Under a number of State, Territory and Commonwealth policies and programs, naturalised animals (ie introduced animals that have escaped or been abandoned and survived to form sustainable populations in the wild) are subjected to lethal control programs (many of which involve excessively cruel killing methods – see also Issue 7, above). These lethal actions are undertaken on the presumption that the naturalised animal species poses a threat to native plants, animals or ecosystems. However, these killing programs may, in fact, pose threats to native plants, animals or ecosystems that are far worse than those posed by the presence of the naturalised animals.

In the first place, most of Australia's naturalised vertebrate animals evolved in their native environments to breed large numbers of replacements very quickly (large litters, several times a year), because so many of their young were culled by predators and competition for resources. By this means, their populations remained in dynamic equilibrium with other species in their native environment. Higher than normal death rates (due to disease, or a sudden increase in predation) resulted in a stronger, healthier, better fed (less competition for food) and generally younger (and therefore more fertile) population of the animals inheriting the niches of the killed animals. Thus, under natural conditions where the increased death rate was a temporary set-back, after a short crash, the population would quickly return to normal.

In Australia, a short term rise in death rate in fast-breeding animals has exactly the same result; after a short crash, the increased death rate results in a much higher birth rate, and a

younger, stronger, healthier and more fertile population. However, with sustained killing programs, the birth rate never returns to normal; it continues compensating for the abnormal death rate in perpetuity. Sustained killing therefore always maintains a higher, rather than a lower population of any fast-breeding animal species. This is obviously counterproductive if the aim of the lethal control program is to reduce, rather than increase the population of the naturalised animal species.

Yet sustained killing programs are permitted under environmental legislation with a complete disregard to the above mentioned biological facts. Given that the science of this is not what you would call "rocket science", we are forced to assume that there, in reality, vested interests in maintaining, rather than reducing, these allegedly unwanted populations of naturalised species (rabbit trappers, perhaps, or recreational hunters).

If or wherever eradication is, in fact, possible, a different set of concerns arises because a naturalised species has, by definition become naturalised as part of the ecosystem, especially in the highly modified ecosystems now present in Australia. Every naturalised species contributes the ecosystem into which it has been naturalised, at least to the extent of being either predator or prey or prey, and sometimes in more complex roles. Removing the naturalised population (where it is possible to do so) will always have consequences for native animals and plants. Some of these consequences may be considered desirable (eg relieving native plants of the pressure a foreign herbivore, or a native mammal or bird of the pressure of an introduced predator). Indeed this is precisely the hope that is in the minds of those authorising the eradication campaign.

However, other consequences will be completely undesirable, such as the documented crash in both rabbit-eating and non-rabbit-eating raptors (and consequential crash, though it was never monitored) in native prey animals after the mid-1990s release of RHVD into the rabbit population; or the disaster on Macquarie Island where cats were eradicated to protect nesting seabirds, causing the nesting seabird population to crash because rats the cats would otherwise have eaten were now eating the seabirds eggs. (We are still waiting for the next instalment in that saga, now the rats have gone: the return of the rats on sea storms; or the overpopulation of garden snails with no rats to eat them?)

Recommendations

- Lethal control programs against naturalised species, especially in situations where eradication might be feasible, should not be approved without sound, peer-reviewed research into the likely impacts on the ecosystem (as it is now) of removing the naturalised species (eg does the naturalised species now provide a critical role in the ecosystem as a predator or prey species, or some other function)?
- Lethal control programs against fast breeding naturalised species in situations where eradication is recognised as impossible should be prohibited because they always result in sustained higher breeding rates.
- If, following meaningful research showing that reducing or eradicating a population of naturalised animals is both ecologically desirable and feasible, programs against naturalised animals should be universally humane, non-lethal and effective (eg fertility control).
- Humane translocation or fertility control of naturalised animals in enclosed lands from which animals are unable to escape or disperse should be permitted.
- Humane euthanasia of terminally ill and suffering individuals should be permitted.

REVIEWERS' QUESTION SECTION

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?

See our comments under [Issue 1](#), above.

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?

See how comments on [Issue 4](#), above.

QUESTION 3: Should the objects of the EPBC Act be more specific?

We should like to see the objects of the Act limited to the five suggested below, and amended as follows:

- a) to protect all aspects of the environment; and
- b) to provide for decisions which ensure that all aspects of social and economic development, and all use of natural resources, are ecologically sustainable; and
- c) to protect and conserve all Australia's biodiversity; and
- d) to provide for the protection and conservation of heritage; and
- e) to deter and prevent actions that are destructive to biodiversity and/or the life support systems on which all life depend.

The purpose of legislation is not promotion but regulation; to make things happen by requiring some actions and prohibiting others. In the amendments suggested above, we propose firm language which is appropriate in legislation, in place of the current vague and hopeful objects which read more like a discussion paper.

We also propose broadening the EPBC Act's reach to all matters of national environmental significance, not just those currently included in an arbitrary list.

The other current 'objects' are, in fact, strategies for implementation. They distract attention from the actual purpose of the Act which is to protect the processes on which all other aspects of human (and other) life depend.

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?

See our [Key Issues](#) above for our priorities for reform.

We do not understand why this question is phrased as an either-or. Future reform should focus on all and any activities which have the potential to destroy biodiversity or harm the environment, with assessment processes, based on sound data, wherever they are necessary for making a decision consistent with the objects of the Act.

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?

After their performance over the last 200 years, and especially over the last 21 years since the EPBC Act was passed, under no circumstances can Australian landholders be trusted *en masse* to have either the ecological understanding, nor the will, to protect any aspect of the life support systems upon which all life depends.

Regulation of landholder activity is the only reason there are any native animals (or plants) or healthy ecosystems left in Australia. Strict regulation of landholder activity has never been more critical than right now, after so many recent environmental disasters, including the destruction of the Murray-Darling River system, and the recent Apocalyptic bushfires.

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 best guidance an Act of Parliament can provide is clear information on what actions are prohibited, which actions allowed under certain conditions, and what these might mean in different contexts.

Because the EPBC Act wanders all over the place allowing the Minister to approve plans, policies and programs that are environmentally disastrous, instead of simply stating what is legal and what is not, the EPBC Act has failed catastrophically in achieving its statutory objectives, as evidenced by: the continuation of unregulated clearing of critical native habitat by farmers, loggers and developers; the mass biodiversity losses in the Murray-Darling and the Great Barrier Reef; the ongoing nationally authorised slaughter of millions of kangaroos; and the recent devastating bushfires.

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

As mentioned above there are numerous recent stories of environmental disaster which might serve as indicators of future trends in the condition of the Australian environment and the impact of human actions on that condition.

There is a moral imperative for the EPBC Review to recognise these failures, end enable the EPBC Act to regulate to prevent such disaster in the future.

One social trend that should also be considered by the Reviewers is the gathering recognition across the nation (and the world) that animals as sentient beings who suffer and wish to live and should be entitled to consideration similar to that which we humans enjoy. While every native animal contributes to biodiversity and to ecological systems, these animals are not just a depersonalised abstract noun of 'biodiversity', they are living, breathing beings very much like us.

We urge the Review to ensure that this principle which is of growing importance to so many people around the world, is more clearly recognised in the EPBC Act (see also our [Issue 7](#) above).

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

The EPBC Act should regulate all conduct that has the potential to impact on the environment or heritage, but it cannot regulate outcomes other than according to specified indicators which do not currently exist. Such indicators would require considerably more mechanisms for collecting the data before they could be created (see also [Issue 5](#) above).

The processes currently managed by the EPBC Act are very far from either prescriptive or proscriptive, since the Minister may approve actions on the basis of his own opinion rather than the law (see also [Issue 3](#) above). An excellent compromise would be for the EPBC Act to simply prohibit all environmentally destructive actions and prohibit the Minister (or alternative decision maker) from approving plans, policies or programs that include actions that could harm the environment.

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?

The EPBC Act should position the Commonwealth to take a stronger, in fact a dominant role in delivering environmental and heritage outcomes in our federated system, although the Commonwealth should not have power to weaken state or territory laws protecting the environment (such as they are).

Both desired and achieved outcomes should be articulated on the basis of factual physical indicators (see our [Issue 5](#) above). There are numerous areas where relevant data could be obtained, but few or no mechanisms are currently in place or mandated for compiling it. The suggestions provided below are those we regard as most urgently needed. These are all matters where hard data or plausible estimates should be possible to obtain.

Hard data should be collected and made readily available and intelligible on trends in:

- area (by physical measure of area) of land, wetland and riparian corridor intact, cleared, or revegetated;
- area (by physical measure of area) of marine or estuarine benthos intact trawled or dredged;
- richness and diversity of flora and fauna (derived by actually counting number of species and individuals by species in representative areas of land, benthos or volume of seawater);
- number of individual by species killed by habitat destruction, derived from above data of area of land (including wetland and riparian corridor) cleared by richness and diversity of species in representative areas of that habitat;
- number of species and individuals by species of land animals of all classes intentionally killed for "management" or commercial purposes;

- species and number of fish and other marine animals intentionally caught by commercial fisheries;
- species and number of fish and other marine animals unintentionally caught by commercial fisheries (eg bycatch, abandoned nets);
- quantity (by tonne) of nets lost during commercial fishing operations;
- estimated number and species of fish and other aquatic animals intentionally caught by recreational fishers;
- estimated quantity (by tonne and numbers) and composition of fishing line and hooks lost by recreational fishers;
- variations in climatic conditions (temperature, humidity, rainfall, snowfall etc);
- frequency, severity, duration and damage done to the natural environment and biodiversity (by number of species, and individuals by species, and area of measurement affected) by all climate-related disasters (droughts, bushfires, floods, hailstorms, dust storms, sea storms, sea level rise, etc), and similar data to measure relative success of any measures taken to minimise and mitigate damage;
- quantities of all chemical and biological pollutants released into the environment, the geographical locations of the releases; the area of volume of land, freshwater and/or marine environment contaminated by each pollutant or combinations of pollutants; estimates of the number of plants and animals killed by the pollutants; any available data on actual impacts (such as disappearing pollinators, or marine or freshwater fish kills).

At present, very few data are collected that are capable of providing indicators of outcomes.

Public announcements (either on release of the State of the Environment Report or in relation to particular indicators as they become known or relevant) should be made by a spokesperson/commissioner for the independent national agency we have proposed (see [Issue 3](#), above).

The only way anyone will know if the outcomes are being achieved is if collection of appropriate data is mandated under the Act and greater resources are expended on the collection of appropriate data.

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

Any national environmental standards would have to relate directly to properly populated indicators of physical condition and/or threats to physical condition (see question 9 and [Issue 5](#), above) and/or effectiveness of responses. For example, for the indicator relating to trends in total area of habitat removed by farmers, loggers, developers, etc, the standard might require a 100% reduction in clearing (ie to zero km²) over a period of, say, five years.

In our federated system should they be prescribed through:

- Non-binding policy and strategies?

Clearly this approach has never worked. We recommend it be abandoned with full documentation of the reasons why.

- 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?

We would support expansion of standards to every activity with the potential to cause environmental harm, along the lines we have described above, but only when hard data and evidence (see Issue 5 and above) are available for assessing whether such standards have been met.

- The development of broad environmental standards with the Commonwealth taking a monitoring and assurance role?

Since the Commonwealth's role should be to ensure compliance with the EPBC Act and to prosecute non-compliance, it would certainly be the Commonwealth's role to monitor both compliance and outcomes, to ensure that compliance with requirements is achieving outcomes as articulated in standards, and to strengthen requirements if it is not.

Does the information exist to do this?

No. But information (indicators that would do assist on doing this are suggested above in Question 9. The EPBC Act could mandate collection of these data by Commonwealth, State and territory agencies.

QUESTION 11: How can environmental protection and environmental restoration be best achieved together?

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

Restoration is pointless while destruction continues. On the other hand, preventing further damage, on its own, will not save what remains of Australian biodiversity nor the ecosystems upon which all life depends, because there is not enough of it left. Therefore while protection of what is left is the more urgent priority, restoration (where possible) of environments already destroyed should also be mandated by the EPBC.

Under no circumstances must promises of future restoration be used as an excuse for future destruction.

- Should the Act include incentives for proactive environmental protection?

It is not the role of an Act of Parliament to provide incentives. That is role for government policy, not legislation.

- How will we know if we're successful?

As mentioned above, the indicators suggested under Question 9, when properly populated, would go a very long way to indicating whether we are successful.

- How should Indigenous land management practices be incorporated?

At the time of European settlement, just being Indigenous probably implied a degree of expertise in land management but, unfortunately, no-one bothered to ask them back then. Now, being Indigenous provides no innate expertise in land management.

Indigenous land managers whose environment protection and restoration activities have demonstrated desirable outcomes (according to similar indicators to those suggested in question 9) could be asked, on an ad hoc basis, to provide advice (eg particularly on bushfire management).

A requirement to this effect could be included in the Act, but the capacity for land managers to comply with it would depend on the availability of such Indigenous experts, and their willingness to participate.

QUESTION 12: Are heritage management plans and associated incentives sensible mechanisms to improve?

Management plans in all areas of the EPBC Act, to date, have been a singularly unsuccessful mechanism for protecting the environment. More specific and rigorous requirements in the EPBC Act, more dedicated Commonwealth assessment of plans and oversight of implementation and compliance, independent review of decisions, prosecution of offences, and vastly improved data collection to populate outcome indicators, will be needed to improve the performance of all management plans, and other activities permitted at the minister's discretion.

How can the EPBC Act adequately represent Indigenous culturally important places? Should protection and management be place-based instead of values based?

Place-based or value-based should not be an either-or question. Place is a value like any other value. Place is an important value not only to Indigenous people but also to non-Indigenous, particularly sites of significant historical events. Additionally, place is not the only cultural value important to Indigenous people.

Place should be one of several values that are represented in heritage management plans, and both Indigenous and newcomer values should be considered and, where appropriate, consulted (see Question 11 above).

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?

No. If anything, much more intensive case-by case oversight is required. However, a more precise articulation of strategic objectives, and suggested actions to achieve those objectives, along with both performance indicators and environmental outcome indicators would certainly be helpful.

QUESTION 14: Should the matters of national significance be refined to remove duplication of responsibilities between different levels of government? Should states be delegated to deliver EPBC Act outcomes subject to national standards?

Yes and yes, but only if the Commonwealth has broadened its responsibility to protect and conserve all matters of actual national, environmental significance (see our Issues 1 and 2, rather than those appearing in a meaningless arbitrary list, and only if mechanisms are in place for checking that those outcomes are being achieved (see Issue 5 questions and 9).

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

No project can be assumed to be low risk until it is assessed, and no project should be approved unless assertions of its low-risk nature have been thoroughly checked, according to meaningful data (see Issue 5 and Question 9, above).

- How could data help support this approach?

Meaningful data could certainly help determine whether an allegedly low-risk project is, in fact, low risk, but the Commonwealth would need to have approved the data collection used as providing meaningful data (ie data that populates meaningful indicators) and be in a position to assess the accuracy of the data.

- Should a national environmental database be developed?

Yes. See suggested hard indicators in Question 9, and our Issue 5. A database was developed as part of the 2006 State of the Environment Report but seems have disappeared in subsequent reports. At that time, that database identified numerous environmental indicators that could not be properly populated because data were not available. Given the absence of a database from subsequent reports, we assume routine data collection processes have not been implemented since.

- Should all data from environmental impact assessments be made publicly available?

Yes.

QUESTION 16: Should the Commonwealth's regulatory role under the EPBC Act focus on habitat management at a landscape-scale rather than species-specific protections?

For the reasons mentioned under our Issues 1 and 2, and Question 1 (and elsewhere above), the Commonwealth's regulatory role under the EPBC Act should focus on habitat protection, rather than species-specific protections because that will help protect both listed threatened species and threatened species not yet listed as threatened.

However, 'management' (in environmental contexts) has become a euphemism for large-scale slaughter and abuse; we therefore totally reject any role for any government in habitat 'management'. We certainly support habitat protection.

Regarding the term 'landscape-scale', without a clearer definition of this term and what it would mean in terms of offering protection to biodiversity, we can only respond that we do not support protection at a scale which does not consider variations in biodiversity across a large assessment area. In terms of the data needed as a basis for decision making, and for assessment against standards, the landscape scale (eg land vegetated, land cleared and land

revegetated) are important and powerful indicators. However, in terms of species richness and diversity, it will be critical to look much more closely, for example, at a series of much smaller but representative areas (some may be as small as 1 m²) across an intact or revegetated landscape that is being measured (for trends) at the landscape scale.

Additionally, protecting wildlife habitat in scraps of remnant vegetation, narrow corridors of habitat between such fragments, or narrow riparian corridors, is just as important to biodiversity conservation as protecting large landscapes.

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

Accreditation of state and territory processes should occur only where:

- the objectives of the process are consistent with or stronger (in terms of protecting the environment) than those articulated by the Commonwealth;
- there is a clear system of monitoring and enforcement in place;
- there is a legislated Commonwealth data collection system in place to enable independently reviewed assessment of whether the process is likely to achieve, and/or is achieving the outcomes.

Local processes could be accredited under the same conditions but under a slightly different system since local decisions may be overruled by state governments at any time.

QUESTION 18: Are there adequate incentives to give the community confidence in self regulation?

There is nothing to give the community confidence in self regulation. Self-regulation allows those who profit from destroying the environment to go right on doing it.

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

See question 11, part 3.

- How can we best engage with Indigenous Australians to best understand their needs and potential contributions?

Regarding contributions (see also question 11, part 3), demonstrated success using Indigenous practices to achieve desirable environmental outcomes should be the criterion for selecting appropriate Indigenous experts to advise land managers.

Indigenous needs may be relevant to environmental objectives in ways that go beyond the needs of other Australians. For example, Indigenous people may have spiritual connections to particular species or places, or preferred ways of behaving in certain situations.

Indigenous needs should be addressed by direct consultation, on a case by case basis, and assessed in the light of whether they are consistent with: protecting the environment; conserving biodiversity; more widely held Indigenous values; and other broad values of the Australian community (such as the well-being and protection of animals as individual sentient beings).

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

See question 11, part 3.

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 value of broader representation in decision making would depend on how that representation is determined, and how decisions are reached by these representatives.

More representation by members of the community with a vested interest in destroying the environment or preventing its restoration (eg farmers, developers, professional animal killers) is clearly (based on current outcomes) not remotely useful, but such bodies might benefit from increased Indigenous representation (where representatives have demonstrated environmental expertise or experience).

In view of the vast number of sentient beings (animals) who have no say at all in the impact on them of human activities, government policies and legal decisions, these bodies would obviously also benefit from some representation by persons or community groups advocating animal protection and well-being. Some of these could be Indigenous wildlife carers.

The effectiveness of community consultation and the usefulness of the expertise provided by such consultation could be reviewed in the light of outcomes, as shown by hard data as suggested in Question 9.

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?

Both the reform of governance arrangements (see our [Issue 2](#) above), and the transparency of decisions, are essential, along with the other matters raised in our issues section of this document.

All decision making processes under the Act, particularly the data on which they are based, should be entirely transparent.

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?

As mentioned above, and in our key issues, the Act should be sufficiently rigorous and precise in its requirements, that it is possible for decisions to be made by an appointed independent agency, with only a few clearly stipulated exceptions and very limited discretion.

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

It is not clear what this question has to do with the Review of the EPBC Act, other than it might have a role in regulating such markets.

In terms of Commonwealth policy, markets for new programs and technologies that protect or restore the environment would certainly be useful (and about fifty years overdue).

Regarding a trust fund for environmental outcomes, again it is not clear what role the EPBC Act might have in this, but perhaps such a trust fund could be partially funded by the imposition of heavy fines on those who make money out of destroying the environment.

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

See our [Issue 6](#). Offsetting is a flawed and dangerous concept.

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

If decisions under the Act were made by an independent authority, and if greater transparency in decision making was regulated under the Act, the EPBC Act might become a useful regulatory mechanism for ensuring that private sector and philanthropic investments are on the level.

- Could public sector financing be used to increase these investments?

Not under the EPBC Act, other than if funds raised from fines imposed for convictions for offences against the Act are fed into such investments.

- What are the benefits, costs or risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?

The meaning of this question is not clear, and somewhat alarming. The only role the EPBC Act could ethically and usefully have in raising funds is from fines for offences. Since the ecological processes upon which life depends are, in all their forms and at every level, both essential and non-negotiable, no environmental or biodiversity value can be sensibly evaluated in monetary terms. The concept of "offset funds" in this question is unexplained and inexplicable.

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

Effective Protection of Australia's environment

Protecting Australia's unique environment and heritage through effective, clear and focussed protections for the benefit of current and future generations.

Protecting the environment and its biodiversity is not just about protecting something unique and wondrous (important as that is), it is about protecting processes that are necessary for the continuation of life. We suggest "Protecting Australia's ecological life support systems and contribution to global life support systems, including its unique animals, plants and heritage".

Making decisions simpler

Achieving efficiency and certainty in decision making, including by reducing unnecessary regulatory burdens for Australians, businesses and governments.

The entire point of an Act of Parliament is to regulate human behaviour, in this case to prevent environmental damage. Amending the EPBC Act to unambiguously do so would deliver total clarity, certainty and efficiency to decision making.

In order to protect the ecological systems upon which all life depends, **the regulatory burden must be increased** sufficiently to create an overwhelming disincentive against destroying the environment and its biodiversity. That is the only logical reason for the existence of any law: to stop people doing the wrong thing.

To make the requirements under the Act much more rigorous and precise, and put decision making on proposed activities in the hands of an independent agency which is required to make decisions according to those clear and unambiguous requirements under the Act, based on the mandated collection of relevant data, would be both possible and highly effective.

What you seem to be proposing is to pretend to still have an Act of Parliament when all you really have is blanket permission to continue the destructive free-for-all of the last two hundred years.

Indigenous knowledge and experience

Ensuring the role of Indigenous Australians' knowledge and experience in managing Australia's environment and heritage.

As mentioned above, we support this, provided that demonstrated Indigenous experts are available to provide advice.

Improving inclusion, trust and transparency

Improving inclusion, trust and transparency through better access to information and decision making, and improved governance and accountability arrangements.

It is unlikely anyone will trust any government on matters of the environment; but improving inclusion, transparency (especially the data on which decisions are based) and, most importantly, the decision-making structure, would go some way to improving trust in EPBC Act processes.

Supporting partnerships and economic opportunity

Support partnerships to deliver for the environment, supporting investment and creating new jobs.

This would depend entirely on what types of groups are engaged as partners. Partnerships with those whose business currently involves destroying the environment and killing biodiversity are unlikely to be useful partners.

Partnerships, investment and new jobs in areas that support alternative technologies and programs that aim to protect the environment - its biodiversity, its individual animals, its heritage, and the ecological processes upon which all life depends - are an excellent idea. However, once again this is a job for the executive government not for the EPBC Act.

Integrating planning

Streamlining and integrating planning to support ecologically sustainable development.

It is not clear what is meant by 'planning' here. If it means integrating the planning processes for the purpose of the executive government's decision-making, these are a matter for government policy and should be completely independent of the EPBC Act. Currently environmental issues receive virtually no consideration in government policy, so any move to make government planning decisions across all sectors slightly more ecologically sustainable would be welcome, but it is not clear how the EPBC Act could contribute to making this happen.

If you are talking about a more integrated approach to plans that are subject to approval under the EPBC Act, it would be easy to do this if plans were required to comply with the environmental protection and biodiversity conservation provisions of the Act, rather than excused from doing by a Ministerial decision.

As mentioned in our Issue 4 above, Ecologically Sustainable Development is an excellent common principle to bring to all government planning, as long as it clearly understood (and quoted in the EPBC Act as it was conceived, not as having the meaning into which it has sometimes been perverted) that: to be consistent with ESD, any activity must be, by definition, ecologically sustainable. ESD is not about weighing up economic, social and environmental factors and trading them off against each other. The non-negotiable aspect of ESD is ecological sustainability because any compromise of that principle for social or economic reasons will render social and economic well-being impossible in the long-term.