



WORLD ANIMAL PROTECTION AUSTRALIA

SUBMISSION to

Professor Graeme Samuel AC and the *EPBC Act* Review Panel

**Submission on the operation and effectiveness of the
*Environmental Protection and Biodiversity Conservation Act
1999 (Cth)***

February 2020

worldanimalprotection.org.au

GPO Box 3294, Sydney, NSW 2001

T: +61 (0)2 9902 8000 **F:** +61 (0)2 9906 1166 **E:** info@worldanimalprotection.org.au

World Animal Protection limited (formerly WSPA Australia Limited) ABN 19 083 297 027



Introduction

World Animal Protection welcomes the invitation to provide input to the Government on the effectiveness of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) ('*EPBC Act*').

World Animal Protection is a global organisation with more than 50 years' experience working to protect animals around the world. One core aspect of our work is helping animals in disasters. During the most recent Australian bushfire crisis during 2019/2020 which saw more than 1 billion animal lives lost, we had a disaster management team on the ground to help assess the impact. Our disaster team observed a devastating loss of habitat particularly on the South Coast of NSW. The sheer impact of these fires makes the protection of critical habitat and endangered or at risk species a higher priority than ever before. Although we are not a conservation organisation, we recognise there will be considerable animal welfare implications arising from a failure to ensure habitable spaces for wildlife. This will only worsen over time if the Government fails to act to protect biodiversity.

A changing climate will result in an increasing number of severe weather events like those seen over the last six months. These disasters will place additional strain on the natural environment and as such, we need environmental laws which will provide stronger protection to ensure that unfettered development and land clearing are not compounding these issues. We will outline a number of areas where the current *EPBC Act* has had limited effectiveness in meeting its objectives in this area. We will also suggest a number of potential improvements. Although the scope of this review is broad, our submission will focus primarily on the effectiveness of the legislation in protecting endangered or at risk species and their habitat. We have only answered those questions which we felt were relevant to our organisation's work.

Question One

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?

The role of the Commonwealth under the *EPBC Act* ought to be extended. In the wake of the bushfire crisis, a lack of a national approach to habitat and wildlife protection has created a lack of certainty and notable gaps in protection. The distribution of responsibilities among the different states has resulted in inconsistencies where some states have taken action by proposing amnesties on land clearing, native animal culling etc. However, other states have failed to act. When the impact of disasters are felt across state borders, we need a unified approach to mitigate any further loss of biodiversity.



In periods outside disasters, we need binding national standards and goals around biodiversity conservation. The accountability for ensuring compliance should also sit with the Commonwealth Government to ensure the regulatory regime is coordinated across the different jurisdictions.

Questions Two and Three

How could the principle of ecologically sustainable development (ESD) be better reflected in the *EPBC Act*? Should the objectives of the *EPBC Act* be more specific?

The principle of ESD should be more explicitly included in the legislation. The Act should include the following principles relating to ESD

1. The principle that people will take preventative measures against likely harm to the environment and animals
2. The principle that people will take precautionary actions against harm that would be serious or irreversible, notwithstanding that there may be a lack of scientific certainty around the potential harm. This should apply to serious or irreversible harm to habitat and to wildlife populations.
3. Explicitly incorporate the biodiversity principle by ensuring that biodiversity and ecological integrity are a fundamental consideration in decision making to help prevent and/or minimise any actions that could contribute to the risk of extinction. This will become increasingly relevant as the climate changes and more animals and habitats are placed at risk. This is more important than offsetting as far as wildlife is concerned, because not all offset options provide a viable habitat for the impacted wildlife. For this reason, the primary focus should be on repairing damage.
4. Finally, the legislation should emphasise that those responsible for habitat degradation/loss should be required to bear the costs of repairing the degradation. We would also like to see this extended to other harm done to wildlife. If a developer harms a wildlife population protected under the *EPBC Act*, there should be requirements for them to make reparations.

In terms of the broader objectives of the *EPBC Act*, World Animal Protection is broadly supportive of the objectives, however, we would recommend a few small additions and amendments.

1. We would like to see the primary objective amended slightly to read; 'to provide for the conservation, protection and recovery of the environment including habitat, species and ecosystems, particularly those classified as Matters of National Environmental Significance
2. We also suggest including secondary objectives around the following;
 - a. Providing national leadership on the environment, species protection and broader sustainability
 - b. To prevent the extinction or further endangerment of animals and their habitat
 - c. To ensure government accountability for oversight and enforcement of requirements under this act



Question four

Should the Matters of National Environmental Significance (MNES) within the *EPBC Act* be changed? How?

Yes, World Animal Protection supports amending the MNES to include vulnerable species and habitats rather than only those that are endangered or critically endangered. We've seen extreme conditions across Australia which have greatly increased the speed at which animals and habitats may face extinction. Even those previously classed as vulnerable have now been brought to the brink of extinction with great speed.¹ Events like this are more likely in a changing climate and it is incumbent on the Commonwealth to ensure that all planning approvals are required to consider the risk to vulnerable species and habitats. This amendment would help address the issue whereby vulnerable species were seen to 'fall through the cracks' when it comes to planning approval processes.² Extending the MNES would address this concern.

Question five

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?

World Animal Protection strongly recommends that the focus of the reform be on strengthening the protection of biodiversity including animals, habitat and broader ecosystems. As part of this focus, we would like to see the following;

1. A requirement for the Commonwealth to develop a plan for Australia's environment including national priorities, goals and key metrics by which to measure success. This plan should take into consideration the impact of climate change on wildlife and their habitat.
2. A trigger mechanism whereby any MNES is subject to an Environmental Impact Statement (EIS) which the Commonwealth Government is responsible for overseeing. Any decisions under the EIS should be consistent with the national environment plan and with the objectives of the act as they relate to conservation and habitat protection.

¹ Graham Readfearn, 'Silent death: Australia's bushfires push countless species to extinction' (The Guardian, Online) January 2020, <<https://www.theguardian.com/environment/2020/jan/04/ecologists-warn-silent-death-australia-bushfires-endangered-species-extinction>>

² Jeremy Simmonds et al, 'Vulnerable species and ecosystems are falling through the cracks of environmental impact assessments' *Conservation Letters* 10 (November 2019) 1, 1.



3. We would also recommend including national targets and standards for biodiversity protection and restoration. These targets should be underpinned by the non-regression principle to ensure the targets and standards are not weakened in the future. This would greatly strengthen the EPBC's focus on conservation and would better enable the legislation to achieve its stated objectives.

We would not support a regime of self-regulation to protect MNES. The track record of self-regulatory regimes highlights the shortcomings of this approach. The protection of MNES needs consistent, Commonwealth oversight.

Question Six

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*?

As referenced above, World Animal Protection would support the inclusion of clear national environmental standards and goals. We would argue that currently, the *EPBC Act* has not been effective at providing protection for the environment, particularly MNES. The legislation does not currently enable sufficient oversight or regulatory monitoring. There are also too many complexities around 'offsets' which allow for habitat to be degraded or destroyed if the damage is 'offset' elsewhere. This is an insufficient way to protect habitat and should not be permitted to continue in the future.

Question Seven

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

The review should incorporate the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services PBES Global Assessment Report on Biodiversity and Ecosystem Services.

- The report from 2019 outlined that 1,000,000 species are threatened with extinction, many within only a few decades. The report was compiled by over 145 experts from 50 countries
- The assessment's authors have ranked, for the first time at this scale and based on a thorough analysis of the available evidence, the five direct drivers of change in nature with the largest relative global impacts so far. These drivers are, in descending order: (1) changes in land and sea use; (2) direct



exploitation of organisms; (3) climate change; (4) pollution and (5) invasive alien species.³

All these factors are relevant to the objectives and functional operation of the EPBC Act and should therefore be considered.

Questions nine and ten

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

This question was largely addressed earlier in our submission. We would again support the Commonwealth taking a stronger role in articulating, delivering and overseeing outcomes. These would be measured against the proposed national guidelines and standards and against the recommended National Environmental Plan. These guidelines and standards would help ensure the EPBC Act achieves its objectives.

Question 11

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

These can be achieved together by ensuring both restoration and protection are explicitly prioritised in the objectives of the legislation. They should both be included as part of the national targets and standards, as well as in a national environmental plan. Any recovery work should extend to species recovery as well as habitat recovery. There should be clear frameworks included in recovery plans to ensure compliance and enforcement and to guarantee adequate funds are available for recovery work.

While we support the inclusion of environmental restoration guidelines, the focus should always be on protecting and mitigating against any initial damage.

Question 14

³ UN Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 'Global Assessment Report' April 2019, <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>



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 Government should be responsible for the protection and management of all MNES. We would not support delegating the delivery of the EPBC Act outcomes to the States. Even if national standards are applied, inconsistency in funding and oversight capabilities could result in inconsistent protection.

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?

World Animal Protection would only support larger scale strategic impact assessments if several protections were put in place;

1. Any decisions under these larger scale assessments should still be consistent with any national guidelines and environmental plans put in place
2. There need to be cumulative impact assessment requirements which ensure past, current and future activities are considered
3. There needs to be transparency around assessment and approval criteria and opportunities for community involvement
4. If specific animal species face extinction within an identified landscape, expert knowledge and scientific evidence should be used to make a final determination. While a decision can be made at a landscape-scale, individual species should be taken into account if they are endangered or at risk.

Question 18

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

As previously mentioned, self-regulation should not be permitted under the *EPBC Act*. It has failed to deliver adequate protection in the past and we would not support it.

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?

World Animal Protection supports the creation of an additional two Commonwealth institutions to help ensure independent regulatory oversight, decision-making and accountability. We would like to see a National Environment Commission established. This



Commission would be responsible for overseeing the delivery of national goals and standards for environmental protection and restoration. They would also be responsible for reporting to Parliament on the state of the environment including biodiversity conservation, habitat protection and threatened and vulnerable species protection. Information on progress for all goals and standards should be made publicly available to guarantee better transparency and accountability.

As suggested in an earlier point, we would also support the creation of a National Environment Protection Authority. This Authority would administer the Commonwealth EIS process for all MNES. It would be tasked with ensuring that all approvals contributed to the objects of the act and were compliant with stated goals and standards. Finally, it would be responsible for compliance and enforcement monitoring of all project approvals. This oversight would include all MNES including protected habitat, ecosystems and endangered species (with the proposed addition of vulnerable species and habitats to ensure more comprehensive protection).

Question 22 and 23

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

Firstly, World Animal Protection recognises the issues with offsetting mechanisms. There are considerable complexities associated with finding an appropriate 'offset' for habitat that may be lost. In fact, there are times when there is simply no way to 'offset' the loss of biodiversity in a way which meets the full objectives of biodiversity conservation. Particularly in the case of habitat protection, 'offsetting' one habitat for another with similar characteristics does not in any way guarantee that it will be a habitable spot for wildlife. Therefore, we would generally support the reduction in the use of 'offsetting' mechanisms.

In terms of an environmental trust, we would suggest that the Government should seek to impose a levy and or tax on polluters and developers (in accordance with the user pays principle) which would allow for future restoration and protection of critical habitats and species.

Question 26

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



We would like to see the first principle amended to include specific reference to endangered and vulnerable species protection, in addition to broader environmental protection. We do not support the principle of 'removing regulatory burdens.' It is incumbent on the Government and all stakeholders to ensure strong environmental protections both now and into the future. Regulatory requirements should be viewed as an essential part of that process and not something to be discarded.

Conclusion

World Animal Protection would again like to thank the Government for the opportunity to make a submission on the operation of the *EPBC Act*. This ten-yearly review is of vital importance if we are to ensure the survival of our unique wildlife and habitats in the future. We need to strengthen legal protection for biodiversity conservation. We also need to improve the consistency of oversight and compliance by facilitating greater Commonwealth Government involvement in the administration of the *EPBC Act*.

The devastation caused this bushfire season is cause for great concern. We must use this moment to critically re-evaluate our priorities around conservation if we want to avoid future mass extinction events and animal suffering.

Yours sincerely,

Simone Clarke
Executive Director, World Animal Protection Australia

A handwritten signature in black ink, appearing to read "Simone Clarke".