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## **The independent review of the Environment Protection and Biodiversity Conservation Act 1999**

I am writing to you on behalf of the Central West Environment Council (CWEC), which is an umbrella organisation representing conservation groups and individuals in Central Western New South Wales, working to protect the environment for future generations.

I am pleased to have the opportunity to provide input into this review. We are using selected questions in the discussion paper as the framework for our 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?

CWEC considers that the EPBC Act additions did not go far enough. In particular the Act could be used to reduce our carbon emissions in the light of the Paris agreement by banning developments such as excessive land clearing or new or extensions to coal mines, both of which contribute significantly to our emissions total.

### **Question 2**

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

One could argue that the idea of almost any major development being ecological sustainable is not rational. ESD needs to be modernised to include higher standards and resilience to threats.

However, that might be outside the terms of reference of this review. Assuming, therefore, that we have to live with the ESD principles as they are, the main issue is political

interference of which there are many examples. In other words, the Act itself needs to have more teeth, so that the environment outcomes (currently appalling) can be achieved.

### Question 3

Should the objects of the EPBC Act be more specific?

CWEC supports the idea of more specific objects that can be better monitored. They should include the following:

- Strong protection of habitats for threatened species
- Strong rules regarding developments contributing to carbon emissions, including land clearing. This will require cooperation from the States, but is a really important area to address. Australia is the only developed nation identified as global deforestation hotspot.
- While not weakening species-specific legislation, there should be an expansion into landscape protection in areas of national significance such as Important Bird Areas, climate refuge areas etc.
- National standards for pollution should be stipulated.
- Stronger federal protection of national parks estate.

### Question 4

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

The Commonwealth should retain powers over matters of national environmental significance. It should be expanded to include networks of currently poorly protected, but highly biodiverse lands such as the Travelling Stock Reserves and Network of NSW.

### 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?

Future reforms should not focus on either assessment and approval processes OR proactive mechanism, but have features of both.

Priorities for reform should include

- better identification and protection for critical habitats. Only five have been protected in the past 20 years of the EPBC Act (Australian Conservation Foundation, c2019) and 7.7 million hectares of threatened species' habitat has been destroyed (Australian Conservation Foundation, 2018). This is failure of the Act at an outstanding level.
- stronger protection of World Heritage properties and values

It is quite apparent after the weakening of land clearing legislation in 2016 in NSW, that the environment is not appropriate area for self-regulation. Land clearing increased by a factor of 13 with huge consequences for biodiversity.

### 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?

It is very clear that the EPBC Act has been a failure. Australia leads the world on mammal extinction (Parliament of Australia, 2019). We have experienced three animal extinctions since 2009, including the first made extinct by climate change (the Bramble Cay Melomys - *Melomys rubicola*) (University of Queensland, 2019). When the economic and social costs or benefits are weighed against the environment costs (there are rarely benefits), the environment almost always loses.

This Act should look to ways to fix that, otherwise the downward trajectory in biodiversity decline will continue. Not only should it be re-written, however, it should be better resourced. One of the reasons for its failure has been the continual cost-cutting by successive governments, leading to delays and poor decisions.

Standards are critical to any future success eg national air pollution standards mentioned above and clearer national biodiversity standards.

### Question 7

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

There are huge resources available to support conservation legislation. I suggest that an up-to-date State of the Environment report be prepared based on current data and peer-reviewed science to inform this review. The Australian Conservation Foundation, in conjunction with the University of Queensland, has produced some excellent reports (see References), particularly the ACF's *Fast-tracking extinction Australia's national environmental law*.

### Question 8

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

The Commonwealth legislation needs to regulate that the outcomes are monitored to ensure that objectives are being met, but will need some prescriptive processes to achieve that. It should also ensure that matters of national significance are being managed at state level in a coordinated and effective way via coordinating committees e.g. the Great Artesian Basin Coordinating Committee and state bodies like NSW Catchment Management Authorities that

don't disappear or become weaker instruments such as the Local Land Services through political manipulation.

### 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?

Yes, stronger leadership is needed at the Commonwealth level. We have fairly good State of the Environment reports. These could be fine-tuned and made more consistent in each region. More importantly, however, the results should be used to ensure faster changes in legislation as it would appear now, that the reports are not being read, nor are there adequate linkages to ensure state compliance with national objectives. The 2016 Australia State of Environment report highlighted that the outlook for Australia's biodiversity is "poor and worsening". So, if our EPBC Act was doing its job, why is this happening?

### Question 10

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

Yes, we would support broader environmental standards, and these should be binding, and subject to regular reviews. In particular, we need standards for environmental flows and water quality in our large rivers.

### Question 11

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

CWEC has some concerns that, through this Act, the federal government has been handing-out tax-payer money to landowners to restore the land. This in itself would be laudable, but the states that have been allowing broad-acre land-clearing have completely negated the benefits both to biodiversity and climate change mitigation efforts. Furthermore, the conditions have not been strict enough. Restored land, if paid for by the government, should be *permanently* under conservation agreements.

### 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?

If matters are of national significance, it is essential that they are assessed case-by-case. Strategic assessments are similar to self-regulation unlikely to effect good environmental outcomes.

### 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?

CWEC believes that the environmental outcomes would be better if the federal government legislation replaced state legislation, providing there is provision for strong and effective community consultation. As things are currently, at least in NSW, we wouldn't be handing any more powers to the states. However, we also think that the Act needs a stronger bioregional focus and improved linkages at State and local level eg through the Local Land Services and National Parks and Wildlife Service.

### 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?

I think the problem here lies in the debate about what is a 'low risk project'.

A national database is critical. Currently the state of the various state databases is a mess, with incompatibilities rife, so that would be a very welcome improvement.

All EIS data, especially submissions and reports on these, should be publicly available, unless there are areas of national security. It should not be necessary for community groups to have to use freedom of information legislation to access documents affecting potential damage to the environment.

### 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?

Whilst CWEC supports the need for landscape-scale protection, our group would be concerned if this comes at the expensive of species-specific protection. We should be able to do both, as well provide protection for genetic diversity, for which local and national assessment are necessary.

Perhaps this whole polemic needs rethinking. Some administrations now are trying to build in some rights for nature into their legislation. Blue Mountains City Council has recently agreed to investigate this approach. This would put humans within the legislative framework, rather than at the top of it. For more information on this aspect, please refer to the Australian Earth Laws Alliance (2020) website.

### Question 17

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

Not if this leads to increased self-regulation as this will inevitably lead to worse environmental outcomes.

### Question 18

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

The simple answer to that is no. The path of self-regulation is doomed to failure.

### 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?

CWEC considers community committees a critical part of decision-making and Aboriginal representation should be essential (which partly answers Question 19 as well). So citizens' tribunals are needed. Scientific advice is also critical. Community consultation needs to be much more than box-ticking. Community concerns are real and should not be dismissed so lightly as currently is the case.

### 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?

A new national environment act should ensure that the federal government retains primary regulatory responsibility for an expanded list of matters of national environmental significance. It should set objectives that the states *must* adhere to. Transparency of decision-making should be radically improved and this is easy to do via well-designed websites etc.

This Act should provide for a new institution: an **independent National Environmental Protection Authority** to administer national environmental law well away from political interference. This should lead to more transparency of decision-making and overall better environmental outcomes.

### Question 24

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

Offsets should be avoided wherever possible as they are rarely truly equivalent. If offsets are essential, they should clearly be *improvements* on the existing condition. Destroying a threatened ecosystem for a new plantation, for example, even if larger, is not equivalent. Trees planted today will provide habitat for common species fairly quickly (Kinross, 2019), but will provide little suitable habitat for threatened species for decades, if not centuries.

Sometimes one has to say ‘no’ and make provision for ‘red lights’ to developments where threatened habitats are proposed for destruction as there are simply no suitable offsets.

## Conclusions

As you can see from the above, CWEC would support a major overhaul of the Act. To really protect the environment, making minor adjustments is not going to be adequate. Australia needs strong legislation to ensure the future conservation of our wildlife, rivers and landscapes, not just on Commonwealth land, but throughout the country. Nature has a right to exist, so it’s important that our legislation reflects this.

## References

- Australian Conservation Foundation (2018) ‘Australia’s Extinction Crisis Protecting critical habitat’ Accessed 17/4/20. Available at:  
[https://d3n8a8pro7vhm.cloudfront.net/auscon/pages/5477/attachments/original/1521584042/190\\_ACF\\_2018\\_critical\\_habitat\\_report\\_AW%28screen%29.pdf?1521584042](https://d3n8a8pro7vhm.cloudfront.net/auscon/pages/5477/attachments/original/1521584042/190_ACF_2018_critical_habitat_report_AW%28screen%29.pdf?1521584042)
- Australian Conservation Foundation (c2019) Fast-tracking extinction Australia's national environmental. Access 14/4/20. Available at:  
[https://d3n8a8pro7vhm.cloudfront.net/auscon/pages/6451/attachments/original/1536271571/08-2018\\_16pp\\_ACF\\_Fast-tracking\\_Extinction\\_report\\_final\\_WEB.PDF?1536271571](https://d3n8a8pro7vhm.cloudfront.net/auscon/pages/6451/attachments/original/1536271571/08-2018_16pp_ACF_Fast-tracking_Extinction_report_final_WEB.PDF?1536271571)
- Australian Earth Laws Alliance (2020) ‘Rights of Nature’ accessed 17/4/2020. Available at  
<https://www.earthlaws.org.au/what-is-earth-jurisprudence/rights-of-nature/>
- Australia’s State of the Environment Report 2016, accessed 16<sup>th</sup> April 2020, available at  
<https://soe.environment.gov.au/>
- Kinross, C. 2019 ‘Not-so-silent spring: Strategies for enhancing wildlife habitat in agricultural areas through establishment of windbreaks. In *Biodiversity Dreaming: Sustaining Nature and Agriculture after 200 Years of European Settlement in the Central Western Region of New South Wales* (eds. C. Kinross, D. Goldney, A. Kerle and B. Mactaggert). Greening Bathurst.
- Parliament of Australia (2019). Australia’s Faunal Extinction Crisis Inquiry Interim Report. Accessed 14/4/20. Available at:  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Faunalextinction/Interim\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Faunalextinction/Interim_report)
- University of Queensland "Barrier Reef rodent is first mammal declared extinct due to climate change". University of Queensland. Accessed 16<sup>th</sup> April 2020. Available at:  
<https://www.uq.edu.au/news/article/2016/06/barrier-reef-rodent-first-mammal-declared-extinct-due-climate-change>

Thank you for the opportunity to have input into this review.

A rectangular area containing a handwritten signature in black ink on a light grey background. The signature is written in a cursive style and reads "Cilla Kinross".

Cilla Kinross  
Chair  
Central West Environment Council.