

Response ID ANON-K57V-XYN6-2

Submitted to EPBC Act Review: Make a submission on the discussion paper

Submitted on 2020-04-17 16:38:40

1. About you

1 What is your name?

First name:

Last name:

2 Are you making this submission as an individual or on behalf of an organisation?

Organisation

Organisation name (if applicable):

Wildflower Society of Western Australia (WSWA)

What is the scope of your organisation? :

State

3 What sector best represents you or your organisation?

What sector best represents your organisation? :

Environment

If Other, please specify::

Flora

4 Which State or Territory are you from?

Which State or Territory are you from?:

Western Australia

5 Do you identify as Aboriginal or Torres Strait Islander?

No

6 What are your key areas of interest in the EPBC Act?

The objects of the Act, Threatened species, Matters of National Environmental Significance, Environmental Impact Assessments, Cumulative impacts, Compliance and enforcement, Decision making, Public participation in decision making, Biodiversity, Conservation, Commonwealth national parks

Other:

7 Can the EPBC Act Review Secretariat contact you about your submission?

Yes

If Yes, please enter your email :

kevin.thiele@science.org.au

2. About the EPBC Act

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?

have argued that past changes to the EPBC Act of adding 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 view of the Wildflower Society of Western Australia (WSWA) is that additions to MNES have not been accompanied by clear guidelines that direct applicants or assessing agencies on the evaluation of projects that affect these matters. Publicly available National Standards to direct assessing agencies on what is unacceptable and what is acceptable are needed. One reason why the reach of the Commonwealth has been extended in the past is due to a perception that the modus operandi of assessing agencies favoured project approval, rather than having a set of standards that identified what projects were unacceptable. The time taken to try to make projects acceptable, and the final decisions that they were acceptable, has led proponents and their agents to consider that regulatory reach has been extended; guidelines that allow proponents to identify projects as unacceptable in the first place would ameliorate this.

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?

How could the principle of Ecologically Sustainable Development (ESD) be better reflected in the EPBC Act?:

ESD should be reflected in the EPBC Act by including in the scope of issues to be addressed socio-economic and community health and their interactions with ecological factors including cultural heritage, ecosystem services, critical habitats, and ecological stressors. Bioregional planning, strategic impact assessment, and cumulative impact analysis must be used to inform what mitigations required to achieve ESD.

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

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

Yes. Terms used in the Objects are too relative, general and difficult to measure – e.g. 'promote', 'protect', 'assist'. They need to be positive, direct and measurable, such as:

- Maintain and enhance our environment, especially MNES
- Conserve and improve biodiversity in the Australia environment
- Manage the environment in co-operation with State and local governments
- Implement Australia's international environmental responsibilities
- Conserve and use resources sustainably to achieve ecologically sustainable development
- Maintain and enhance the Australian heritage and culture.

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

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

The MNES should be changed to include biodiversity as a whole, not just threatened species and communities. They should address matters including:

- International responsibilities including biodiversity, heritage, and culture
- Major water resources
- Commonwealth areas and other protected areas, such as IPAs.

MNES should be protected under supplementary Commonwealth and state legislation, such as has occurred with water in the Murray-Darling Basin. Such Acts should be supported by national standards and regulations, including clearly defined offences and penalties. The Acts should specify the role of the states in the cooperative management of MNES if required, and the standing of the Acts with respect to state legislation (such as land use planning and environmental legislation).

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?

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?:

A new Act is required that properly addresses the roles of State/Territory and Local Governments in the protection of the Australian environment, and that reflects the requirement for protection of the environment in the interests of the nation (rather than each state setting its own agenda on matters related to ESD), environmental protection and biological conservation. A new Act needs to include provisions for bioregional planning and strategic environmental assessment led by the Commonwealth. Assessments of projects deemed to not impact MNES, and carried out by the states and Territories, must conform to a national standard. Biodiversity conservation and widening of MNES should be given priority over assessment and approval processes; this is important because in addressing this issue the assessment and approval processes will also be addressed, whereas biodiversity conservation and MNES would not necessarily be addressed if just the assessment and approval processes were reformed. Action to preserve and enhance the environment is preferred over finding ways to not approve a project.

The WSWA is of the opinion that self-regulation has not proved successful in the past. Existing clearing regulations in WA and the response to the Strategic Assessment for the Perth-Peel Region have both demonstrated the inability of private and public landholders and the WA Government to take a proactive approach to biological conservation and to use of restoration and rehabilitation as a means to enhance biological diversity and extension of species populations and habitats.

The WSWA contends that regulations will always be needed to address the actions of sections of the community who fail to abide by the intent of laws and regulations. The substantial increase in clearing in NSW by self-assessment is also a damning indictment of self-regulation. Proactive mechanisms for those who do act to protect MNES, and regulations for those who fail to observe the requirement to protect MNES, are both needed.

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?

What high level concerns should the review focus on? For example, should there be greater focus on better guidance on 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 the view of WSWA, supported recently by both state and national State of the Environment (SoE) reports, that the EPBC Act has failed to achieve its statutory objectives to protect the environment and promote ESD and the conservation of biodiversity.

The EPBC Act needs statements of intent that are directed at actively protecting and enhancing environmental quality in Australia and slowing the loss of our

biodiversity and the loss and degradation of our natural resources and cultural heritage. The Act also needs to consider social, health and economic factors that contribute to ESD.

As stated earlier, the operation and administration of the EPBC Act need to begin from the premise that new and existing projects will not be approved unless they can satisfy the requirements of the Act – that is, the Act must support a decision process, not an approvals process. At present, the position taken by both proponents and bureaucrats is that projects should be approved, at most after modification to address the requirements of the Act. Often, however, projects are approved on the assumption, rather than a clear demonstration, that they will meet those requirements.

The WSWA is concerned that current administration and operations of the Act does not adequately address cumulative impacts, with approvals dealt with on a project-by-project basis leading to a “death by a thousand cuts” scenario where individual losses are considered insignificant but multiple projects lead to a reduction of biodiversity to the point where communities and species become threatened, endangered or extinct.

Review of the Act should lead to a more structured approach to the assessment of natural resources, heritage and biological conservation. The Act needs to provide for the provision of national standards within the scope of the Act. Bioregional plans should be developed at a broad scale to guide Strategic Environmental Assessments of development proposed (including urban development, mining, CSG extraction, primary production, agroforestry, and industrial development), including assessment of cumulative impacts. These Plans should establish region-specific objectives, areas, and conditions under which developments are unacceptable.

Assessment of cumulative impact needs to be included in all project assessments, to ascertain whether the projects are achieving the intent of the national standards and bioregional plans and the conditions therein. Development of the national standards, bioregional plans, and Strategic Environmental Assessments should be the responsibility of the Commonwealth. Project level environmental assessment and management, and land use planning should be the responsibility of the states. The states should also be required to demonstrate that individual projects would meet the national standards, achieve the objectives of the Bioregional Plan, and implement the strategies and targets proposed in those plans and the conditions identified in the Strategic Environmental Assessments.

The process needs to:

- Identify elements for protection
 - MNES list
 - Declared Commonwealth Reserves or reserved land of interest to the Commonwealth such as IPAs
 - Listed marine species
 - Critical habitats identified through a Critical Habitat Assessment
 - Identified biosphere reserves
 - Listed areas of Commonwealth and International heritage interest
 - Areas listed under international agreements, such as RAMSAR wetlands
 - Areas conserved as offsets under the Act
- Plan for and implement conservation strategies
 - Prepare bioregional plans
 - Develop Protected Area Management Plans
 - Plan for the management of threatened species and ecological communities
 - Conservation advice
 - Recovery plans
 - Threat abatement plans
 - Identify and monitor biodiversity
 - Cooperatively and with assistance from States
 - Assess the implementation and success of Recovery and Threat Abatement Plans
 - Prepare Wildlife Conservation Plans
 - Establish Conservation Agreements with States (for State lands) and private landholders (through State agencies)
- Assess
 - Strategic Environmental Assessment (including fisheries) by Commonwealth
 - Environmental impact assessment on Commonwealth lands or lands of interest to the Commonwealth (such as IPAs)
 - Permits to take species on Commonwealth lands
 - Permits for wildlife trade
 - CITES species
 - Import of exotics
 - Export of native species

MNES are currently sound in principle but need expansion and alignment with Commonwealth biodiversity and heritage environmental responsibilities. The recent bushfires on the east coast and Kangaroo Island highlight the need to extend the scope of MNES to cover all threatening events, and the need to use Commonwealth biodiversity and heritage responsibilities to intervene early to reduce the potential for loss of MNES.

All the processes described above need to:

- Be open and transparent
- Effectively engage with the public and stakeholders (including private landholders)
- Operate from a point of free, prior and informed consultation
- Establish a consent process that is not politically dependent (the Act revision needs to consider the formation of an independent environment commission that can take public advice and consider and recommend standards, findings of planning and assessment to Government).

In summary, the WSWA believes:

- There is a need to clarify the Objects of the Act as follows:
 - The goal of biological conservation should be to maintain and improve biodiversity and ecological function
 - Decisions need to start from the basic premise that a project is not going to proceed if it can be demonstrated that the project is of high social and/or economic importance, that there is no viable alternative to the proposal, its size/scale or its location, and that everything has been done to avoid and minimise detrimental environmental impact
 - Advice on decisions should be open and transparent and be informed by an independent body such as the Australian Environment Council
- The modes of assessment are still relevant
 - Resources are required to make them work in an integrated manner
 - Project impact assessment where matters outside the national interest are not impacted should be a state responsibility, but such assessments need to be

guided by national standards, bioregional plans and the objectives, plans, and limits identified therein, and by the conditions established in Strategic Environmental Assessments

■ Resources should be made available to review decisions and the performance of states in biodiversity conservation and project assessment, to ensure they include the intent of plans and conditions of strategic environmental assessments.

• A new Intergovernmental Agreement on the Environment is needed that is based on the principles of policy effectiveness, such as cooperation (e.g. in collation and sharing of environmental information) and subsidiarity (who is best placed to do what) rather than an allocation of roles and responsibilities debated from a point of exclusion of one another from the process. It is this process that currently results in much of the ineffectiveness of the EPBC Act.

3. What the future looks like

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

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

The current State of the Environment Reports for the Commonwealth and States which identify numerous downward trajectories in environmental metrics and identify limitations in the effectiveness of the current Act in achieving its goals.

Reports by state and Commonwealth auditors on the adequacy of resourcing and process effectiveness.

Annual reports of Commonwealth and state agencies in which the effectiveness of the processes used to implement the EPBC Act are described.

International best practice documents regarding biological conservation, heritage, ESD and strategic, cumulative and project environmental assessment.

International guidelines on environmental and sustainability performance, such as those used by the World Bank and International Finance Corporation (IFC), development banks and the finance sector (Equator Principles) which are applied globally for the purposes of environmental conservation and sustainability from a strategic and project level.

Studies on global threats to ESD and biological conservation, including population growth, climate change, bushfires, water and land resource conservation and management, cultural heritage, trade practices, and globalisation.

Threats of, or actual incidences of, exotic invasive species capable of impacting native flora and fauna, such as Myrtle Rust, camels, goats, foxes, cats, and deer, arriving and thriving in Australia.

4.A. The role of the EPBC Act

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

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

The WSWA believes the EPBC Act should regulate environmental and heritage outcomes from the perspective of the national interest through a series of top-down processes that result in the development of standards, bioregional objectives, and plans and strategic conditions of development and trade. The EPBC Act should guide the states on what is needed to conserve and enhance the environment and its biodiversity to deliver national outcomes. The current effectiveness of the EPBC Act has been subverted by actions of individual states who do not act in the national interest or the objectives of the Act. Often, we have seen these interests also impact on the objectives of environmental protection in other States. Examples include projects that impact the Great Artesian Basin, and features that are listed as protected in one jurisdiction but mined across the border in another (such as occurred with potash mining of lakes along the WA/NT border).

The conservation of biodiversity is an issue of national interest, as shown by broad public sentiment on the impacts of the 2019-20 fire. Conservation outcomes, however, are strongly influenced by state control of approval processes and responsibility for the management of MNES, through the application of bilateral processes with little or no guidance or oversight from the Commonwealth. Current bilateral agreements are designed mainly to reduce duplication of resources, through the application of loosely defined MNES, rather than to ensure national conservation of biodiversity. Processes vary from state to state and from officer to officer in their application.

The WSWA is of the view that the current Act has failed the conservation of biodiversity through its adoption of a premise that most projects are acceptable (hence the 'approvals process') and a lack of clear definitions of what constitutes a significant loss of individuals of a species, area of a threatened community, or fragmentation of vegetation in a landscape.

Because decisions are taken at a late stage after proponents have made significant expenditures on a project, there is an expectation that projects will be approved, often with minor to moderate conditions that are readily agreed to but hard to track and assess for compliance. This creates conditions where approval becomes a box-ticking exercise. Instead, acceptable and unacceptable impacts should be clarified at an early stage, preferably through national standard and bioregional plans, and projects that are unlikely to meet conservation criteria should not proceed from the outset.

4.B. Better environment and heritage outcomes

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?

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, provided that the Commonwealth's objectives and processes are at least as environmentally robust and stringent as the best of the state's objectives and processes.

These outcomes should be identified by the Commonwealth through the bioregional planning process following significant levels of consultation with relevant states (as some bioregions cross State boundaries under current definitions) and with the public directly or through groups such as WSWA.

All outcomes should be articulated by the Commonwealth through the State of the Environment reporting.

The Commonwealth should audit the performance of both the Commonwealth and the states in the implementation of bioregional plans and conditions described in the Strategic Environmental Assessment (SEA) of each bioregion. Audit reports should be made public annually.

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

Should there be a greater role for national environmental standards in achieving the outcomes the EPBC Act aims to deliver?:

Yes. National Environmental Standards, bioregional plans and the conditions of SEAs should be binding on states, as they are established in the national interest. States may wish to strengthen these requirements, but they should be regarded as minimum requirements to be achieved in the national interest. The Commonwealth should retain the right to monitor and audit environmental standards to assure the community that they are being observed nationally. Commonwealth support for States to implement the standards, plans, and conditions should be contingent on satisfactory achievement of the standards. Monitoring and assurance should be based on the best available information at the time, as should bioregional plans and SEAs. There should be a defined life for bioregional plans and SEAs, to allow new information to be used in their review and their management adapted to accommodate changes in knowledge, condition, threats or other circumstances that impact the environment.

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

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

The WSWA believes there needs to be a greater focus on restoration than is currently provided in the EPBC Act and in its implementation. Without a focus on restoring the ability to enhance MNES specifically, and biological conservation, in general, is limited. There is a need for incentives for proactive environmental protection. Incentives and integration of other actions to improve environmental quality will allow actions to go beyond simple compliance.

Incentives should not be restricted to the use of offsets, which we believe fail because they do not recognise restoration and simply focus on existing biodiversity which should be protected through other means. In other words, restoration either needs to be allowed as an offset or be required in addition to land acquisition. This is the only way that a no-net-loss or net-benefit in biodiversity can be achieved.

Other incentives, not related to any specific development projects, could include financial incentives, such as the following:

- compensation for not clearing areas containing MNES
- grants to undertake restoration or invasive species control
- reduction in rates for conservation covenanted properties
- direct grants to individual landowners who own conservation covenanted properties that do not produce an income.

Success should be measured by an increase in abundance, diversity, and resilience of native biodiversity, and this must be independently assessed and reported. This requires resourcing, but also requires standards to ensure it is completed in a consistent and repeatable manner. For example, the National Standards for Ecological Restoration need to be incorporated into any plans for restoration.

There is significant value in engaging with our indigenous communities to gather knowledge on natural and biological resources and identify protection and restoration techniques that can be used to protect and enhance those resources. Much has been said about the use of indigenous practices in relation to fire, but there are much wider discussions to be had in relation to the factors influencing the natural regeneration of our ecological communities and individual plant species, especially those used for ecosystem services which supported traditional indigenous communities before and after European settlement.

Indigenous groups could be funded, either by proponents or governments, to undertake environmental works including weed management, planting, feral animal control or breeding habitat provision.

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?

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?:

WSWA does not hold a view on this matter.

4.C. More efficient and effective regulation and administration

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?

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 WSWA strongly believes that strategic assessment should complement, not replace, case-by-case assessment. Strategic assessments should be used to identify the strategic controls required to manage the development and approval of case-by-case assessments, including 'no-go' areas and conditions that would apply in the specific bioregion and, more generally, across all bioregions to achieve national standards and maintain biodiversity to meet the national interest. Strategic assessments require comprehensive on-ground data, on biodiversity, for example, to be effective in delivering good environmental outcomes. This data that is not generally available, and often is only obtained by proponents for development assessments on a case-by-case basis unless the State is fortunate enough to be able to afford comprehensive regional surveys.

Strategic assessments should be led by the Commonwealth and enforced by the Commonwealth. Their development should involve the relevant state and local governments as well as Indigenous groups with IPAs overlying the area, managing agencies of Commonwealth land, representative NRM groups, industry bodies, and biodiversity interests, together with recognised academic and citizen scientists with knowledge in the area.

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?

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. The duplication of responsibilities needs to be resolved. Case-by-case assessment should be the responsibility of the states conducted to a set of national standards, with consideration given to bioregional plans and findings of the Strategic Environmental Assessments (SEA) in the bioregion, except where the case involves matters of interest to the Commonwealth, such as MNES.

WSWA believes bioregional planning and SEAs should be used to guide the requirement for case-by-case assessment. They should be used to establish the items of national interest, at least, within each bioregion, the plans for addressing those needs and the conditions which would need to be satisfied. Decisions made with respect to each case assessment by the State would need to be supported by adequately documented and verifiable evidence from the proponent and

the state regulatory body to demonstrate the national interest has been satisfied and cumulative impacts addressed.

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?

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?:

Based on experience in Western Australia, WSWA believes the automatic approval or exemption of low risk projects cannot be supported until there is enough knowledge and information at a bioregional level to provide the certainty required for automatic approval. Our experience suggests that lack of information at a species and community level regarding our flora, fauna, their communities and habitat warrants the adoption of the precautionary principle. The high number of Threatened and Priority species in WA, the short-range and endemism of many species, and the high turn-over of species (ie rapid change in species composition within short distances) means that there are significant risk that even small projects may have considerable environmental impacts. Supposedly low-risk projects need to collect enough information to verify their low risk, including detailed flora and fauna surveys. When data levels in a region become sufficient to enable such decisions to be made, only then should such concessions be made.

Collection and public sharing of all data from public and private sources should form part of the bioregional planning process and, if necessary, a legislative requirement should be included in the Act to formally allow the Commonwealth to access data from these sources. A national database needs to be developed, and is long overdue, in the opinion of WSWA. It should be accessible to the public and require all data from EIAs and any other environmental data required for project planning, approvals, and compliance, and closure planning and monitoring to be added to the national database. The database should also include data collected for bioregional planning and strategic assessments.

Further, the public must be able to easily and freely access and review reports from proponents that form part of on-going implementation of approved projects.

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

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

The WSWA strongly believes that landscape-scale habitat management is important but must complement rather than replace species-based approaches. This should not be an either/or choice.

From a national perspective, species-specific protections for MNES listed species should remain and, once sufficient species/community-specific data is available, the focus can be extended to community and landscape scale. WSWA believes that management at a landscape scale cannot be achieved without a sufficient understanding of the species that make up that landscape and their place within it.

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

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

No. The WSWA is of the opinion that, historically, accreditation schemes do not give the public the level of assurance required that conservation and enhancement of biodiversity are being achieved. Within Western Australia, we have seen State assessment and approval processes diluted to the point where species are being endangered on a regular basis, often by those groups and processes that are charged with protecting them.

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

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

WSWA does not believe there are any incentives that will give the community confidence in self-regulation whilst the basic premise from which regulation occurs is that projects should be approved. Such confidence is not helped by the objectives to which governments aspire of "jobs and growth" and the pursuit of projects at the lowest economic costs. WSWA believes that a changed business premise is required which reverses the onus from one where approval is assumed to one where the proponent is required to justify approval. This requires a shift in approach that embraces the real pursuit of ESD and environmental conservation and enhancement before sufficient confidence will exist in the community that industry and business is sufficiently disciplined to warrant self-regulation.

4.D. Indigenous Australians' knowledge and experience

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

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

Indigenous Australians should be party to bioregional planning and biological conservation and restoration initiatives. Their understanding of the land goes much deeper than all cultures that have joined them to form the Australian community and comes from a different spiritual basis. Any changes to the Act should require the engagement of Indigenous Australians in consultations associated with the ESD and biological conservation.

The Act should also require the engagement, at all levels, of Indigenous Australians in management of biological conservation as it is part of their culture and due to their presence in many of the areas with the least decline in the biology and its ecological processes. WSWA sees this as a means of drawing on Indigenous knowledge for the benefit of all Australians.

4.E. Community inclusion, trust and transparency

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?

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?:

WSWA believes the EPBC Act could be improved by the formation of an independent Australian Environment Council that advises the government on objectives, standards, policies, and guidelines to deliver ESD and biological conservation. The members of this body should not be aligned politically or with agencies of any

jurisdiction, industry, professional, conservation or academic bodies. At least one community member from each state and territory should be represented on the Commission. The Act should provide for a second tier of similar bodies to be formed in each state/territory to provide oversight of activities in that jurisdiction. Community advisory groups (similar to NRM groups) should be formed within each bioregion to feed into their state/territory Council and be drawn from unaffiliated persons from within the bioregion.

In addition, the EPBC Act should require face-to-face (real or virtual) consultation regarding strategic and case-by-case assessments within the affected bioregions to allow for 360° discussions on assessments. Current processes of submissions and comments do not provide enough understanding of the context and make no allowance for the degree of awareness and knowledge in the community, which inhibits the involvement and development of a meaningful contribution.

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?

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?:

From a community perspective, WSWA believes the current lack of trust in outcomes under the EPBC Act arises from the lack of transparency in decisions made, the high degree of separation between the community and the decision-makers, and the lack of separation between decision-makers and government. For any changes to the EPBC act to be successful, the community must learn to trust the process, but this can only happen if the process is clearly trustworthy. One aspect of this is community inclusion and freedom to communicate with regulators in a meaningful way about regulatory outcomes

4.F. Innovative approaches

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?

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?:

The concept of 'system stewardship' has some interest amongst members of WSWA. It uses citizen science and provides community representatives an opportunity to review the performance of, and compliance with, legislation and approvals to establish the effectiveness of legislation, regulation, standards, and conditions.

The use of remote sensing to determine condition and structural changes of communities has proven effective on small scale studies, such as mine sites. Consideration could be given to the use of remote sensing and geographic information systems to carry out bioregional planning by inserting known field studies into remotely sensed data to establish likely presence of MNES and identify poorly represented communities within a bioregion.

Any innovative approaches would need to be tested against existing technologies and methods to establish their ability to deliver results to the standard required in outcome delivery.

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

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

Yes. The WSWA considers that a trust fund with independent trustees that operates to hold offset funds and distribute them based on the development activity in each bioregion would be an improvement.

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

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

WSWA does not consider environmental offsetting through the purchase of good quality existing assets to be a sound investment. If these are important they should be protected anyway by other means.

Environmental offsetting to restore partially degraded environments to enhance the overall national asset is a better application of environment offsets and this application should be pursued.

In any event, undertaking either direct land acquisition or land restoration under the EPBC Act should be open, transparent, scientifically based, and independently reviewed. To the maximum extent possible, offsets should be based on like-for-like, and as close to the region of the impact as possible. If that is not possible, the land acquired or restored should be based on the best strategic outcome.

Further, if the land is to be restored, restoration should be undertaken in line with the national standards for ecological restoration, and seek to achieve as high a locally native species diversity as possible in line with successful ecological functionality, taking climate change into consideration.

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

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

WSWA does not believe public funds should be used to attract private or philanthropic investment. The core business of government should be funded by the government, and conservation of biodiversity and the environment is core business. There is a strong risk that private and philanthropic funding would offset and replace rather than augment government investment.

WSWA considers that a public investment vehicle developed by the Commonwealth would be an inefficient way to operate. The multipliers achieved by such a vehicle is unlikely to be as efficient as multipliers achieved through engagement of a focused NGO to manage such investment. Such an NGO is also likely to attract private investment to supplement the public investment. The risk with such an investment vehicle is to attract unencumbered private investment.

In WSWA's opinion, suitable vehicles could be through proponents supporting large-scale, strategic restoration efforts being undertaken by groups such as Kosciusko to Coast, and Gondwanalink.

5. Principles to guide future reform

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

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

The principles need to be precise and unconditional. They should be active rather than passive statements (refer to answer to Q3).

6. General questions

27 Is the EPBC Act delivering what was intended in an efficient and effective manner?

Is the EPBC Act delivering what was intended in an efficient and effective manner?:

No. It is cumbersome, politically manipulated and not focussed on the real issues. Hence, under the current system, the WSWA sees MNES not improving in status, and species and ecological communities continuously being lost when the intent of the Act is to protect them. Currently, decisions at both Commonwealth and State levels are too discretionary and political and are made with a preference for development over environmental protection.

The involvement of the states in determinations associated with MNES results in inconsistency between states and between decisions. Strategic assessments completed in conjunction with the states gather dust on shelves through the conflicting interests at a State level (e.g. the Perth Peel Strategic Assessment).

28 How well is the EPBC Act being administered?

How well is the EPBC Act being administered?:

The EPBC Act is poorly managed because too much authority is delegated to the states and it lacks regulations, standards, and guidelines that can drive good outcomes. It needs to be driven by an independent commission and serviced by a specifically tasked environmental agency.

There does not appear to be a regular internal review of the Act's effectiveness with respect to delivering environmental protection and enhancement outcomes, or of the impacts of previously approved projects so that there is a continual loss of threatened species and ecological communities.

29 Is the EPBC Act sufficient to address future challenges? Why?

Is the EPBC Act sufficient to address future challenges? Why?:

No, it needs to be a top-down driven Act that provides oversight of the environmental protection and biodiversity management required to protect the national interest and its natural and cultural resources. It needs to expand its vision to include socio-economic matters that aid ecologically sustainable development (such as ecosystem services).

30 What are the priority areas for reform?

What are the priority areas for reform?:

Expansion and enforcement of the MNES followed by the development of the bioregional plans.

Changing the presumption of the process from finding ways to approve projects, to protecting and improving the environment.

Assisting proponents whose projects aim to protect and improve the environment.

31 What changes are needed to the EPBC Act? Why?

What changes are needed to the EPBC Act? Why?:

The scope of the Act needs to be widened to include protection and improvement of the following:

- Ecosystems of National Importance
- Vulnerable ecological communities (not just endangered and critical)
- Australia's national reserve system
- Critical habitats and climate refugia
- Land clearing
- Areas of outstanding ecological or scientific significance (e.g the Helena-Aurora Ranges and the Greater Western Woodlands along the eastern edge of the Wheatbelt in WA and the Hamersley and Chichester Ranges in the Pilbara)
- High concentrations of biodiversity, such as Key Biodiversity Areas and biodiversity hotspots
- High Conservation Value vegetation
- Significant wildlife corridors
- Wild rivers
- Indigenous Protected Areas

The scope of the Act also needs to be widened to include the following:

- Protection against invasive species
- Establishment of an Australian Environment Council.

32 Is there anything else of importance to you that you would like the review to consider?

Is there anything else of importance to you that you would like the review to consider?:

MNES should be linked to regulations, standards, bioregional plans, targets and guidelines set in or under the Act. They should be linked to measurable standards of significance, much the same as required by the IFC in determining critical habitats, with transparent reasoning and clear requirements of whether and how to proceed if an action is deemed significant.

For example, the following quantitative criteria could be used to determine significance:

- Clearing or removal of Threatened and Priority Flora or Ecosystems is significant when the numbers of entities or area to be impacted, cleared or removed exceed 0.5% (as per World Bank Standards for removal of critical habitat or species) of the total number of individuals of Threatened or Priority Flora or the total area of Threatened or Priority Ecological Communities.

There should be clear standards on what adverse impacts are prohibited and must not be approved, such as critical habitat, presence of endangered and critically endangered species and ecological communities.

The requirement to consider cumulative impacts should be mandatory.

Decisions on whether MNES are triggered should be determined by a national environmental commission.

Clearing of land containing flora MNES must stop as:

- State-based land clearing laws are patchwork and constantly changing in their scope, regulation, and application
- The lack of such MNES undermines the Commonwealth's ability to manage greenhouse gas reductions, landscape-scale conservation, and national biodiversity
- Triggers of scale, sensitivity, and high conservation value, any one of which, should flag a significant issue
- Provision for outright prohibition where warranted, e.g. high conservation value vegetation, low levels of remnant vegetation (e.g. WA Wheatbelt), is not available

The EPBC Act needs to expand national oversight of deforestation, biodiversity, ecosystems and protected areas.

Bilateral agreements should be removed or they need to be far more rigorous and be intensively audited for compliance and performance (when was the last time the WA DWER and EPA was audited?)

States should not be approving actions that interfere with MNES.

The EPBC Act should guarantee community rights and participation in environmental decision making following the principles of free, prior and informed consent including:

- Open standing provisions
- Open access to information
- Merits review of decisions
- Third-party enforcement
- Protection of costs in the public interest

The WSWA does not believe the provisions in the EPBC Act for compliance and enforcement are adequate. When was the last time any prosecution was undertaken? In Western Australia, we regularly see instances of listed threatened species being cleared without approval but not enforcement or prosecution for those acts. We believe many proponents are prepared to carry out these acts because the penalties are not appropriate, given that for business it might be more cost-effective to pay the fine, and not delay their project than to not undertake an unlawful action.

8. Publication permission

33 Do you give permission for your submission to be published?

Yes - with my name and/or organisation (if included)