

Response ID ANON-K57V-XZ53-7

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

Submitted on **2020-04-17 09:44:57**

1. About you

1 What is your name?

First name:

Glenn

Last name:

Byres

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

Organisation

Organisation name (if applicable):

Urban Development Institute of Australia

What is the scope of your organisation? :

National

3 What sector best represents you or your organisation?

What sector best represents your organisation? :

Construction

If Other, please specify::

Housing development and construction

4 Which State or Territory are you from?

Which State or Territory are you from?:

New South Wales

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, Matters of National Environmental Significance, Decision making, Biodiversity

Other:

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

Yes

If Yes, please enter your email :

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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 process for listing of new species and Matters of National Environmental Significance requires review. There are many examples of species listings which have been based on questionable or insufficient science or the absence of comprehensive surveys – the cases of species having subsequently been “de-listed” are an unfortunate testament to the requirement for more rigor. The process around species listing should be more science and evidence-based, and less driven by emotive arguments and NGO advocacy.

For example, the consideration of any additional MNES should be accompanied by the publication of a Regulatory Impact Statement that appropriately canvasses the full economic, social and environmental impact of the proposed additional MNES. This would fortify the ability for Commonwealth agencies – as well as industry – to take a more informed view of the consequences and benefits of proposed additional MNES.

(This would ideally be reinforced by the objects of the Act more accurately reflecting full ESD principles – a matter we expand on further into the submission)

Likewise, too few MNES are canvassed in a manner that fully details the evidence and science in support of the proposed listing. For example, in August 2019, the Department of Environment and Energy released a proposed listing of potentially threatened floodplain eucalypt forests. The documentation released in support of the proposed listing was deficient in several ways, including:

- The draft maps being insufficient and vague, and made analysis of the potential overlap between existing urban development boundaries and the proposed application of the listing impossible;
- There was no evidence of consultation between the Department and state-based agencies with responsibility for strategic land use planning;
- The listing gave rise to potential inconsistencies and duplication between its referral requirements and those required under state legislative and regulatory frameworks; and
- Its sweeping nature potentially sterilising large tracts of land already identified for urban development – particularly in South-East Queensland but also elements of NSW and Victoria.

Another example was the recent listing of banksia woodlands in Western Australia as a Threatened Ecological Community (TEC) by the Commonwealth. This was despite the 'community' not being recognised as threatened at a state level, as well as being very broad in nature and huge in terms of its spatial reach. This has added substantially to the complication facing industry in WA.

There have also been examples of MNES being added, and then delisted due to the inadequacy of the original proposal. For example, the graceful sun moth in Western Australia – which was a relic listing from when the Act was first established. Midway through the past decade, developer faced substantial delays and requirements for extensive surveys in coastal areas following renewed interest by the Commonwealth. However, all the survey work effectively achieved was to establish it was so common that the species was subsequently delisted.

A similar problem emerged with the Golden Sun Moth in Victoria. The surveys required were expensive and specialised, as well as time-consuming. For example, the species can often be only researched for several days per year in a few locations, as it lives underground as a tiny grub and only comes out to mate every few years in moth form. Again, though, all the research established was it was present across a vast area of native grass lands that were well dispersed and poorly mapped.

Cases of this kind reinforce the need to overhaul the listing process, and how it should be informed by better science and protocols. Too often, listings are proposed or occur prematurely.

The Act should instead require that proper research into the original range of the species occurs, and it should identify the extent to which the species has either retreated and/or become threatened. At the moment, an assumption or precautionary approach prevails that sometimes regards a lack of records as evidence of risk. Instead, decisions need to be made after using correct techniques that include reliable information about the spatial distribution and density of distribution of species. More broadscale research would help identify the true state of species.

A further area UDIA National recommends as a priority for reform is the need for clear referral guidelines to be established for all MNES to reduce uncertainty around impact and the Commonwealth's expectations. These need to be developed and published at the time of listing. Unfortunately, the current practice often sees a substantial lag between the listing and guidelines, which leaves a policy vacuum for those seeking approvals.

In addition, while the significance of impact criteria currently vary it is submitted that vulnerable species (around 70-80% of all listed items) could be excluded from the development application process and dealt with more effectively by other strategic, broadscale, landscape based conservation measures rather than site by site.

UDIA National also calls for a review of transitional provisions following a 'listing event'. An action that has not been referred is not afforded protection by Section 158A of the EPBC Act. If a project or action has to be varied, there are a range of circumstances where a variation of a proposal is not available – meaning there is little confidence of certainty as to whether a decision will be protection by a change of listing. A listing change of new listing, while a project is already well advanced in the approvals pathway, could render it unfeasible. Greater protections and certainty for 'committed development afforded by the Act.

There is also a strong case against the Commonwealth not listing MNES that are already dealt with under a state or territory-initiated Matter of State Environmental Significance. Dual listings result in duplication of approval requirements and processes which add to uncertainty and delays. For example, extensive planning controls already occur for koalas in both Queensland and NSW.

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?

UDIA National recommends that the principle of ESD – with a more balanced approach to environmental, social and economic factors – be embedded in the objects of the Act. As an environmental and land use-orientated legislation, it is rare (if not unique) in not including such a triple-bottom line approach.

There is also a need to embed full and proper cost-benefit analysis as part of the consideration of matters relating to MNES. Under current practice, the focus of assessment tends to fall on business – but rarely as to whether they can actually achieve better outcomes for MNES.

For example, in recent years in Western Australia, requirements tasked developers to strip off top soil that could potentially contain seeds that service black

cockatoo habitats and relocate them, as well as develop associated management plans. In theory, this sounds reasonable – but in practice, there was no demonstrable benefit given it might not accrue for decades – if at all.

Cost-benefit analysis needs to better focus on both sides of the equation – economic and environmental – and actually result in measurable, definable and substantial improvements for MNES as well, rather than reach for assumed outcomes.

The listings should also demonstrate that the key urban growth boundaries of our cities have been adequately considered before requiring action in those areas. This is important and relevant as any reduction in urban development opportunities in existing cities can have significant negative impacts on housing supply, efficiencies in infrastructure and development and compact urban growth policy. Protection of existing urban (or near urban) growth space will generally result in expansion of development further into rural or potentially environmentally significant areas.

We believe decisions such as listings would also benefit from greater inter-agency involvement. At the moment, it is largely consolidated into the functions of the Department of the Environment. For example, listing decisions can involve interaction and consultation between federal and state environmental agencies – but to the exclusion of state land use planning agencies or other relevant federal agencies. The inclusion of economists, urban and social planners would benefit the process – and we would urge the Commonwealth to elevate listing decisions to Cabinet, accompanied by an RIS, and mandate the involvement of other agencies in a coordination process.

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

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

Yes. As stated above (see Q2), the objects of the Act should be more explicit in referencing a full and balanced approach to ESD by citing environmental, social and economic considerations. This would be reinforced by better interagency collaboration, consideration of moving decisions away from agencies or divisions without a broader perspective, and Cabinet participation in listing decisions.

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?:

As outlined in response to Q1, UDIA National views the more important issue as the processes attached to the listing of new MNES, and believes the incorporation of a more balanced approach across environmental, social and economic factors – along with the requirement for a Regulatory Impact Statement to accompany proposed new listings – would be highly beneficial.

This would be matched by the proposed improvements to arrangements attached to listings outlined above.

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?:

As outlined in our cover submission, UDIA National has established a clear set of policy priorities that should also inform the review. As well as the need to better balance the Act's objectives as outlined above, the review should be seized upon as an opportunity to achieve one of the Act's original stated objectives - a singular point of strategic assessment that accounts for national and state factors in one round.

A disciplined approach would also see costs for complying with existing processes clearly benchmarked and the identification of step-by-step opportunities to reduce or eliminate them. Priorities for the review should include:

- Ensuring proposed listings of new Matters of National Environmental Significance (MoNES) are underpinned by clear science and evidence – and accompanied by a Regulatory Impact Statement canvassing potential economic costs or consequences
- Ensuring a greater level of integration across government is taken to the assessment of impacts – both environmental and economic
- Progressing towards the one-stop shop premise that underpins the EPBC Act and absorbs lessons from existing processes which work well
- Completing bilateral agreements and strategic assessments (as well as updating existing bilateral agreements) within a fixed timeline to strip out duplication and eliminate opportunities for different tiers of government to revisit earlier assessment outcomes
- Developing and applying statutory timeframes for responding to applicants and introduce the concept of 'deemed consent' when they are not met
- Provide a simpler and more effective regime for offsets that gives greater certainty earlier in the application process as to what the specific requirements are for a given environmental offset. This is particularly crucial given the current extended time periods attached to assessments are producing inconsistent and expensive changes in advice.
- Lifting the quality, consistency and transparency of guidance, particularly throughout the referral process – with a clear emphasis on more punctual and strict departmental timelines for assessing referrals
- Focusing the application of the Act on large scale projects that could have a truly 'significant' impact on MNES such as Mining, Renewable Energy/Wind Farms, Ports, Roads and other infrastructure Projects, rather than the majority of urban development projects aside from large scale urban release areas.

- Providing for a simple, streamlined and efficient appeal process that we reflect on further in the submission.
- In response to Q14, UDIA National has made more specific comments on the capacity for a better delineation of roles between the Commonwealth and states – with a focus on the Commonwealth setting clear environmental objectives, and the states being tasked with fulfilling them. This would help overcome the inefficiencies and inconsistencies engendered by the current approach.

There is also a compelling case that the Commonwealth Government could be more effective in protecting and improving outcomes for MNES by placing a greater effort into the preparation, funding and implementation of recovery plans for MNES. The current focus that relies on regulation and assessment is unbalanced, produces limited real benefits for MNES and creates significant costs for business.

The EPBC Act should also encourage protection of MNES by landholders through approaches including exclusion from controlled action referral triggers where the given MNES can be managed or enhanced by an such an activity. Similarly, self-assessable impact thresholds could be better specified to guide landholders around mitigating impacts to the extent necessary for self-regulation of MNES. (And as noted earlier, greater certainty around offset requirements may encourage more landholders to value MNES on their land as an asset.)

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?:

Issues to be prioritised include:

- Better technical guidelines (such as referral guidelines, mitigation measure specifications, offset calculator obligations and offset management obligations) that remove ambiguities around interpretation through the assessment process
- Adoption of a post-referral project review process which allows the Department to concisely map out the process ahead for a given action, including specified requirements around impact avoidance and reduction, detailed assessment and mitigation measures
- Introduce and enforce statutory assessment timeframes – with the concept of deemed consent to be adopted
- Work to harmonise federal and state requirements for MNES.

These all feed into the current economic costs being incurred through delays, uncertainty and inconsistencies across the system.

UDIA National offers more substantive and precise feedback on offsets below in response to specific questions focused on them but reinforce here this needs to be a primary issue dealt with via the review.

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?:

UDIA National's cover submission to the Review seeks to provide some context for the review, as well as recommendations for strengthening the process and outcomes that will need to be translated into legislative and regulatory reform.

These include:

Housing Supply

In UDIA National's cover submission we have provided an analysis of the current state of housing markets, including the long-term requirements to provide housing supply at a pace that meets accelerating population projections for Australia, its major cities and regions.

We will not duplicate the analysis here in full, but simply reinforce headline issues that mean inefficient and ineffective barriers to housing supply need to be targeted for regulatory reform.

These include:

- Infrastructure Australia forecasts the nation's population to grow by 23.7 percent by 2034 – reaching more than 31 million people
- The vast bulk of the growth will be concentrated in our four largest capital cities
- Australia already has a housing supply deficit estimated to be close to 200,000 homes – and right now, construction pipelines are thinning
- Australia has one of the least affordable housing markets in the world and without a significant injection of sustained supply, the imbalance in our markets will remain.

Benchmark regulatory costs

UDIA National recommends the Independent Panel commission independent analysis of the red tape costs attached to EPBC Act and its administration and application.

A disciplined approach would also see costs for complying with existing processes clearly benchmarked and the identification of step-by-step opportunities to reduce or eliminate them.

All costs currently imposed by the system and absorbed by proponents are ultimately embedded in the cost of new housing projects – and ultimately, borne by homebuyers. Assessing these costs via independent economic analysis would strengthen the case for reform.

Audit existing assessments and agreements

UDIA National seeks a commitment to independently audit the current range of strategic assessments and bilateral agreements. This will allow the Commonwealth and its review panel to test them for relevance (or in need of refreshment), as well as their effectiveness in both yielding good environmental outcomes and providing effective and efficient processes for proponents.

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?:

It is as much a function of the operation and administration of the Act as it is a function of design that it is neither delivering effective environmental outcomes nor providing an efficient pathway for proponents.

The current approach uses a heavy dependence on adherence to regulatory processes as the test of success – not the outcomes that result. Industry members observe that the duplicative or extended assessment processes do not result in better environmental outcomes; just additional compliance.

UDIA National believes there are several concepts that could produce a more balanced and strategic approach that encourages good environmental outcomes, as well as a more simplified process for proponents.

This includes:

- The Commonwealth investing more in the protection and improvement of MNES outcomes through the preparation, funding and implementation of recovery plans for MNES
- Having stronger and clearer environmental objectives established by the Commonwealth, but giving the states more discretion and license to achieve them (ie: the standard-setting approach flagged in the Discussion Paper)
- Reverting to the original intentions of the Act – which was a robust and complete regime of strategic assessments and bilateral agreements to ensure a consistency of environmental outcomes
- Recognising that the Commonwealth has override or veto powers under the Act, so it should have the comfort to delegate matters to the states knowing it has reserve capacity to deal with substantial non-compliance or variation from achieving environmental objectives.

Ultimately, an outcomes-based approach may lead to a greater level of creativity and landholder ownership around solutions that balance human impacts on MNES.

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?:

UDIA National recognises the obvious role the Commonwealth has meeting its obligations to protect and preserve matters of national or international significance. The articulation of these objectives, the development and application of a framework for achieving them and the ongoing evaluation of progress against them should remain within the remit of the Commonwealth.

However, this is not in conflict with other concepts contemplated in the discussion paper and/or promoted by UDIA National in its submission. Australia can still fulfil its environmental objectives and support good economic development through a regime that sees the Commonwealth establish clear environmental goals, task the states with using their assessment regimes to achieve them and in doing so reduce excessive duplication and inefficiencies in the current system.

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?:

National environmental standards and guidelines could lead to a more consistent, transparent and predictable assessment process for project proponents. Such standards could serve to harmonise assessment discrepancies between state and federal assessment processes that address common themes.

The Commonwealth could engage with certified practitioners where audits of compliance are required. This method would help sustain self-regulation of monitoring and assurance.

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

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

UDIA National has made substantial commentary and recommendations on improvements that will improve environmental protection outcomes and the operation of the offsets regime in response to questions 23 and 24 below.

These comments primarily relate to:

- Inefficiencies and inconsistencies in the processes of assessing and calculating offset requirements
- Exploring the concept of an 'offset bank' that assists in both achieving strategic conservation outcomes as well as greater industry certainty
- Reducing the risk of inconsistent interpretation and application of the rules between the assessment and post-approvals compliance phases
- The methodology that underpins the offset calculations and how it allocates value to conservation outcomes.

UDIA National also believes the introduction of calculator attribution guidelines for specific MNES would help reduce the wide variation in calculator values that are currently prescribed to similar projects.

However, there also needs to be caution around the continued application of long-dated solutions emerging from the assessments that follow from the declaration of a controlled action.

For example, one proponent cited the case where they were required to set up a fund in perpetuity to manage ongoing biodiversity assets. Under the arrangement, they are held responsible for any failure to the management and operation of the fund – even though they had since sold the relevant land as part of the titling of the broader project.

A better solution which sees the state or local council assume responsibility for the asset should be developed.

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?:

No response

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?:

UDIA National believes there is an opportunity to ensure the focus of the operation of the EPBC Act is on strategic responses to key MNES issues – rather than the current case-by-case approach that in most cases duplicates existing processes already run by the states.

This would allow the Commonwealth to designate key environmental outcomes it is seeking to achieve but avoid duplication by tasking the states with responsibility for achieving them in their assessments.

We are aware that the Commonwealth may be reluctant to cede its functional role in this space; but given it has override or step-in powers, it can safely reserve the right to exercise its authority should it believe a state jurisdiction is not adequately addressing key MNES issues.

Another matter relating to strategic assessments is the delays which infect the review process that underpins them. They can run for several years and the extended timeframe for completion makes them disruptive to industry and its desire for certainty. There needs to be stricter adherence to deadlines for completion.

A good example lies in the Melbourne Strategic Assessment (MSA), which has been successful. Indeed, without it, Melbourne's growth would have stalled. The MSA has allowed Melbourne to grow into patchy grasslands in the west and north that would not have been possible in a case-by-case Part 9 approval.

Instead, the State is purchasing thousands of hectares of native grassland ad creating a massive new conservation area outside Melbourne as well as some smaller conservation areas within the urban footprint. Better results have been achieved for the growling Grass Frogs and other species. The large-scale nature of strategic assessments also means that other arms of Government like land use planners, and economic and social issues surface and are gradually considered and the original proposals were transformed over 3 or 4 years – to get better outcomes. Strategic Assessments will deliver far better results. There is a case for more strategic assessments to occur around and within Melbourne to unlock urban development in exchange for the payment of levies to secure new conservation areas.

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?:

In short, yes. Strategic assessments may be the answer where State and Commonwealth approvals are combined into a single approval with long-term effect.

As noted above, UDIA National believes there is potential for the Commonwealth Government to better define the environmental outcomes it is seeking to achieve but delegate more responsibility to the states for achieving them. This would eliminate needless duplication and the Commonwealth has reserve powers

regardless if it believes a state is not acting in accordance with its objectives. It would also be consistent with the regulatory toolkit available under the Act on establishing strategic assessments that define clearly rules that can operate broadly.

Likewise, there is an opportunity to encourage a greater role for proponents to self-assess the significance of their development against MNES. However, this will require better and clearer guidance to avoid proponents being consistently second-guessed, as currently occurs.

UDIA National recommends that the Commonwealth prescribe the criteria – subject to full and transparent consultation – which will allow proponents to self-assess the significance of their development against MNES. This will encourage a transparent, consistent and dependable system.

In relation to questions on public consultation, applications, publication, management plans and the issuing of permits raised by the Discussion Paper, UDIA National has made recommendations elsewhere in this questionnaire for areas needing improvement. But to summarise again, these include:

- The quality of documentation relating to the proposed listing of new MNES – including the need for an accompanying Regulatory Impact Statement
- Better governance and fairer processes being made available to proponents seeking a review of decisions to refer matters deemed controlled actions
- Introduction of statutory timeframes for decisions, including the concept of 'deemed consent' when they are not met
- An overhaul of the offsets regime, as further outlined in particular in response to questions 23 and 24 below
- Greater consistency in the interpretation of guidance material – which is currently subject to the whims of individual case officers and produces variable (and therefore) unreliable results.

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?:

UDIA National supports the development of a regime that allows low-risk projects to receive automatic approval, or an exemption. This could be achieved by developing guidelines that are either specific to particular MoNES or geographic situations and enable exemptions or automatic approvals.

It could, for example, be achieved through an approach anchored in scale. That is, the guidelines could recommend the clearing of less than a defined quantum of land for a particular habitat is subject to exemption or automatic approval. So, the clearing of five hectares of land of a particular habitat may be suitable, but for other habitats, it would incorporate a different scale.

Such an approach would allow for more consistency in decision-making and more clarity for proponents.

UDIA National also recommends that if a project is deemed 'low-risk' by the Commonwealth and receives automatic approval or exemption, it renders void the capacity for state or local governments to assess the same matter again.

The Melbourne Strategic Assessment provides a simple development pathway. It is clear at due diligence stage the extent of land that can be developed, what the cost of development is, how that money will be spent and payment of offsets is done through a simple payment system. The Government then takes the money and spends it to best effect.

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? :

Yes – delivered via strategic assessments.

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?:

UDIA National has combined its answer to Qs 17 and 18 in here.

As noted earlier in response to the questions, UDIA National supports a clearer delineation between the roles of the Commonwealth and state jurisdictions in the administration and application of the EPBC Act.

This will allow the Commonwealth to better focus on defining the environmental outcomes it is seeking to achieve, tasking the states with giving better effect to them and removing needless duplication for proponents seeking to navigate the system.

However, UDIA National is cautious about expanding the role of local government in the process. As flagged elsewhere, one major risk for proponents in the system is the ongoing re-interpretation of decisions from one tier of government by the next tier. The challenge of producing a more streamlined and seamless approach between the Commonwealth and states should be the priority of reform, not expanding the role of local government. In fact, there is a strong case for reducing the capacity of local government to second-guess decisions already taken by the Commonwealth and states.

Another flaw in the approach by local government is it often seeks to impose an absolute view towards the provision of offsets – requiring an offset to be discharged within the same local government boundary. Species do not recognise local government administrative boundaries, of course, and a giving local government an expanded role in the offsets regime is problematic.

In relation to self-assessment, we have noted in relation to Q15 on exemptions or automatic approvals for low-risk projects, the development and application of scientifically-based, published standards and guidance would give governments, proponents and the community confidence in their consistent application.

Equally, UDIA National has also noted there is a strong and compelling case to generally improve the quality, transparency and consistent application of broader guidance material that proponents depend on.

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?:

As noted above, we have consolidated our answer to Qs 17 and 18, and provided that answer within the portal for Q17.

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?:

Most states already have Aboriginal heritage protection legislation and regulations that work well. There is no need for the Commonwealth to extend its role.

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?:

Strategic assessments provide opportunities for community and landowner input into decisions over several years, which help deliver generally robust and sensible outcomes.

We expand on the virtue of strategic assessments in response to earlier questions.

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?:

There are several governance issues UDIA National believes require attention.

MNES listing process

We have noted earlier in our responses to other questions there are issues relating to the transparency and quality of decision-making in relation to the MNES listing process and would again reference them here.

Rights of review

Another issue to note is the transparency and governance of decisions relating to the discretion given to departmental officers on matters delegated under ministerial powers. For example, decisions on whether significant impacts are considered likely and the action is deemed to be a controlled action – which sees a referral proceed to the next stage.

Given the matter under delegation remains a ministerial decision, there is no capacity for merit-based reconsideration. The effects are exaggerated by the fact the original decision and subsequent assessment is currently cryptic, lacks meaningful opportunities for direct engagement with the relevant departmental officers and is a closed loop.

At the moment, for example, a proponent seeking review largely needs to seek it from the departmental officer who made the original decision – and they in turn, assesses the request for a review against their own original decision.

This is inconsistent with good governance and requires an alternative pathway for disaffected proponents that balances the need for open, consistent and merit-based decisions while respecting the constraints imposed by the powers of ministerial decisions.

Timeframes

Investors and developers also suffer from the absence of statutory timeframes for responding to applications. The effect is magnified by high staff turnover among assessment teams. With projects regularly forced to ensure more than 24 months in assessment, they can be subjected to different interpretations as personnel within teams change.

This could also be improved by developing and applying statutory timeframes for responding to applicants and introduce the concept of 'deemed consent' when they are not met. As outlined in our cover submission (and in UDIA National's 2020-21 Pre-Budget Submission and Helping Australia Bounce Back Submission) there is an opportunity to trial this on existing projects in the system.

Better mapping

At the moment, the use of high-quality mapping (and by extension data underpinning them) is poor and/or inconsistent.

For example, in response to Q1, we cite the inadequacy of the mapping used by the Department of Environment and Energy to support a proposed listing of potentially threatened floodplain eucalypt forests. This is emblematic of our concerns around the quality of mapping used during the listing phase, as well as mapping which support ongoing applications and assessments.

A more refined and nuanced approach would be achieved if there was an accelerated investment in the use of a geographic information system (GIS) and more sophisticated interactive maps.

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?:

No response

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? :
We have consolidated our response to Qs 23 and 24 in this answer.

Substantial issues regarding the provisions relating to offsets remain. They act as an administrative burden and barrier to investment certainty and should be central to the review.

For example, in many instances, there would be benefit for offsets to be calculated before the project is assessed. This means investors and developers aren't forced to proceed to an approval before being able to price offset requirements into project feasibilities.

This is exaggerated by the 'like for like' requirement and need to independently secure offsets. This is becoming more difficult noting the extent of clearing occurring. Many major projects proceed using bonding arrangements as it is not possible to secure offsets within a reasonable timeframe.

We believe the Commonwealth and State Governments should investigate the concept of an 'offset bank'. This would involve the states investigate nominating strategic priority land, working with landowners, and acting as "offset bankers", which would enable more strategic conservation outcomes as well as simplifying the system and reducing time delays.

An offset bank would allow developers to make a contribution but leave the task of securing and managing sites to government.

There are also many examples of projects side by side in growth areas with different assessment officers who have assigned (in writing) vastly different values for the same metric (e.g. risk of loss value for category X). This provides little certainty and needs to be resolved through better training. Reducing these unpredictable elements would make it easier to calculate what the offset burden will be during the feasibility stage.

UDIA suggests that there should be a mechanism to agree on the offset scoring early in the referral process to give certainty, rather than the scoring (and confirmation of offset suitability) not being communicated until after the formal assessment phase which is often several years after referral and nomination of an offset site.

There are several issues associated with the current calculator which should be reviewed. While the calculator is supposed to act as a guide to the policy, the determination of an offset is almost universally decided by the attributes assigned in the calculator. The calculator currently provides little value for items which have clear conservation benefits. For example, the policy states that the closer the offset is to the impact, the better; however, the calculator values land adjacent to an impact the same as land 100km away. In addition, no value is assigned to the value of land. For example, if land was purchased on the Gold Coast for an offset, close to the area of impact, the calculator would not provide any value, despite the fact that the price of land is ten times that of the Scenic Rim.

The operation and uncertainty of the calculator also leads to difficulties in securing an offset provider. Given the assessment of attributes is ever changing, the offset providers are unable to have any confidence in the assets they have secured and the value that will be assigned. This is despite the same land already being used as an offset in other portions. The flow on effect is that contracts between providers and proponents are ambiguous with multiple escalation options on costs. The uncertainty on costs is a significant issue to developers and results in an additional layer of uncertainty.

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?:

As noted in response to Q23, we have consolidated our response to Qs 23 and 24 into our answer to Q23.

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?:

No response

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?:

UDIA National recognises the value and simplicity of the principles of reform outlined in the Discussion Paper. These represent a good assessment of policy principles which should inform the review and legislative changes that should follow.

However, we do believe – as stated elsewhere in this questionnaire - that there also needs to be strong weight given to the need to balance economic, social and environmental objectives.

It could be argued this is implied in the principles related to 'Making Decisions Simpler' and 'Integrated Planning' but the review would be better served through a more explicit statement relating to the economic benefits derived from environmental laws that operate efficiently.

That is why UDIA National recommends the creation of a seventh principle of reform headlined 'Balancing Economic, Social and Environmental Goals', with supportive text that reads:

"Creating a balanced regulatory framework that aligns world-class environmental protections with robust economic and social outcomes.'

This would in turn manifest itself in the objects of any new Act to emerge from the review process – and by doing so, acknowledge that a balanced consideration of environmental, social and economic factors are core components of Ecologically Sustainable Development. UDIA National expands further on this in response to Q3 in the Discussion Paper.

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?:

The EPBC Act has been consistently identified by the new housing development industry as the single most important piece of federal legislation.

There is clear value in a well-designed legislative and regulatory framework to give effect to the preservation of nationally significant flora and fauna and honour Australia's international treaty obligations.

The goal is compatible with the Government's red tape reduction agenda and UDIA National's objective of having environmental assessment conducted as early as possible in the development cycle to provide certainty to all stakeholders.

However, the EPBC Act is inconsistent, complex and often acts as a substantial barrier to residential land release and housing development, as well as delivering sub-optimal conservation outcomes.

28 How well is the EPBC Act being administered?

How well is the EPBC Act being administered?:

The application and practice of the Act has strayed far from its original goals in establishing a simple, streamlined system for preserving critical flora and fauna.

It is now complex and duplicative, marred by a patchwork of inadequate bilateral assessments and strategic agreements that fail to sufficiently balance environmental outcomes with legitimate and appropriate urban development.

Our response to earlier questions in the submission detail specific examples of administrative practice that need remedy.

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

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

Please refer to our cover submission, and response to Q7.

30 What are the priority areas for reform?

What are the priority areas for reform?:

Priorities for the review should include:

- Ensuring proposed listings of new Matters of National Environmental Significance (MoNES) are underpinned by clear science and evidence – and accompanied by a Regulatory Impact Statement canvassing potential economic costs or consequences
- Embedding greater interagency and inter-governmental collaboration and decision-making in the function of the EPBC to better ensure balanced outcomes
- Progressing towards the one-stop shop premise that underpins the EPBC Act and absorbs lessons from existing processes which work well
- Completing bilateral agreements and strategic assessments (as well as updating existing bilateral agreements) within a fixed timeline to strip out duplication and eliminate opportunities for different tiers of government to revisit earlier assessment outcomes
- Developing and applying statutory timeframes for responding to applicants and introduce the concept of 'deemed consent' when they are not met

- Focusing the application of the Act on large scale projects that could have a truly 'significant' impact on MNES
- Provide a simpler and more effective regime for offsets – replacing the current inefficiencies and inconsistencies that neither deliver good environmental outcomes or certainty for proponents.
- Lifting the quality, consistency and transparency of guidance, particularly throughout the referral process.

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

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

These are reflected in our response to Q30.

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?:

Please refer to our attached cover submission.

7. Add an attachment

Add attachment

Add attachment:

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8. Publication permission

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

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