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Friday 17 April 2020

EPBC Act Review Secretariat
Department of the Energy and Environment
GPO Box 787
CANBERRA ACT 2601

Re: Review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

To whom it may concern,

Thank you for the opportunity to comment on the statutory review of the EPBC Act.

The Sydney Coastal Councils Group (SCCG) is a regional organisation of Councils that advances sustainable management of Sydney's urban coastal and estuarine environment. We currently comprise nine member Councils who represent 1.3 million Sydneysiders.

Our goals include waterways and the foreshore being protected and healthier and marine biodiversity protected in the bioregion.

We note the timing of the review in accordance with section 522A of the EPBC Act which sets out the requirements to examine the operation of the Act and the extent to which the objects of the Act have been achieved. SCCG believes that the review is also timely, given the Commonwealth's most recent State of the Environment (SOE) Report confirms that many elements of Australia's environment are in decline. Below are SCCG responses to relevant questions posed in the Discussion Paper. Please note that this submission draws from commentary by the Environmental Defenders Office.

Question 1: Some have argued that past changes to the EPBC Act to add new matters of environmental significance do not go far enough. Others have argued it has extended the regulatory reach of the Commonwealth too far. What do you think?

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

In addition to retaining the existing matters of national environmental significance, the triggers should be expanded to address key threats and activities within a wider definition of components of the environment to be protected. We believe consideration should be given to including:

1. Ecosystems of National Importance
2. National Reserve System (NRS), including marine protected areas
3. Vulnerable ecological communities
4. Significant land-clearing and water resources (beyond coal and gas) activities
5. Climate change/sea level rise

Question 2: How could the principle of ecologically sustainable development (ESD) be better reflected in the EPBC Act? For example, could the consideration of



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environmental, social and economic factors, which are core components of ESD, be achieved through greater inclusion of cost benefit analysis in decision making

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

The definition of ESD should be retained, with consideration given to expanding the definition to include consideration of intra-generational equity, meaning that the present generation has an obligation to ensure that environmental costs, benefits and outcomes are borne equitably across society. This could be assisted through the application of a cost benefit analysis (CBA) but where appropriate may also be demonstrated qualitatively, rather than mandating through a CBA.

Consideration should also be given to adding the following to the definition of ESD:

1. *Environmental protection* - achieving high levels of environmental protection by requiring the use of best available scientific information, continuous improvement of environmental standards and the use of best available techniques for environmental management;
2. *Non-regression principle* - non-regression in environmental goals, standards, laws, policies and protections;
3. *Resilience principle* - strengthening the resilience of biodiversity and natural systems to climate change and other human-induced pressures on the environment; and
4. *Polluter pays principle* - those responsible for generating waste or causing environmental degradation should bear the costs of safely removing or disposing of that waste or repairing that degradation.

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

The SCCG supports the Hawke Independent Review (2009) which recommended that an additional object be included to improve the protection of biodiversity:

The primary object of this Act is to protect the environment, through the conservation of ecological integrity and nationally important biological diversity and heritage.

The objects of the Act could also be expanded by referencing the recovery and prevention of extinctions and increased resilience of species and to provide national leadership and partnership to achieve ESD.

Question 5: Which elements of the EPBC Act should be priorities for reform? For example, should future reforms focus on assessment and approval processes or on biodiversity conservation? Should the Act have proactive mechanisms to enable landholders to protect matters of national environmental significance and biodiversity, removing the need for regulation in the right circumstances?

The SCCG considers that the Act needs to be reviewed in its entirety due to the protection and management of significant matters and the processes and governance that underpin them are interrelated. A complete evidence-based review of the entire act is needed to identify the pros and cons to ensure the:

- Amendment or removal of provisions that are ineffective
- Retention and resourcing of provisions that are effective.

Question 6: What high level concerns should the review focus on? For example, should there be greater focus on better guidance on the EPBC Act, including clear environmental standards? How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?



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High level consideration should be given to how well the Act has been enabled, including the effectiveness of leadership, partnership and governance.

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

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

The review should reflect on how well Commonwealth and State processes have been coordinated and whether responsibilities for assessment and determination have been adequately resourced. The review should respond to issues raised about efficiency and duplication and there needs to be reduction in red tape.

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

The SCCG considers there would be benefit in reviewing the outcomes of the most recent State of the Environment report where shortcomings in the scope or implementation of the EPBC Act are implicated. The review should also conclude on any assessment gaps and further ecological assessments that are required to inform the status of matters of environmental significance. We suggest also drawing on relevant reports from the states including SoE reports and state-held wildlife databases,

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

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

- **Should the EPBC Act have a greater focus on restoration?**
- **Should the Act include incentives for proactive environmental protection?**
- **How will we know if we're successful?**
- **How should Indigenous land management practices be incorporated?**

The SCCG believes that the EPBC Act should both regulate outcomes and manage prescriptive processes as these are inseparable in achieving outcomes. Specific environmental and heritage outcomes should be made clear. These could include net gain of environmental values, recovery of threatened species, preventing extinction of native species and net zero emissions.

Monitoring and reporting on the achievement of outcomes needs to be improved. For example, the achievements of recovery plans do not appear to be monitored or have any responsive mechanisms where plans have not been effective.

This deficiency may relate to inadequate resourcing to undertake monitoring and reporting. We note successive State of the Environment reports have found that effective implementation of biodiversity protections requires significantly increased resources. All species listed as protected on the EPBC Act should have a fully funded plan for the species' recovery.

The SCCG supports the suggestion in the Discussion Paper that it may be possible to achieve better, more robust environmental outcomes by increasing the regulatory focus of the EPBC Act to incorporate environmental restoration. In this regard, we note that some member councils have received Commonwealth grants in relation to local MNES and this has improved protections through implementation of conservation management actions.

Question 9: Should the EPBC Act position the Commonwealth to take a stronger role in delivering environmental and heritage outcomes in our federated system? Who



should articulate outcomes? Who should provide oversight of the outcomes? How do we know if outcomes are being achieved?

The SCCG agrees that the Commonwealth should take a stronger role because biodiversity is deteriorating and national leadership is needed. The Commonwealth should articulate outcomes, provide oversight and ensure that an appropriate monitoring and evaluation framework is in place so that it is clear what outcomes are being achieved.

Question 20: How should community involvement in decision-making under the EPBC Act be improved? For example, should community representation in environmental advisory and decision-making bodies be increased?

The SCCG agrees that community representation in advisory and decision-making be included.

Question 10: Should there be a greater role for national environmental standards in achieving the outcomes the EPBC Act seeks to achieve? In our federated system should they be prescribed through:

- ***Non-binding policy and strategies?***
- ***Expansion of targeted standards, similar to the approach to site contamination under the National Environment Protection Council, or water quality in the Great Barrier Reef catchments?***
- ***The development of broad environmental standards with the Commonwealth taking a monitoring and assurance role? Does the information exist to do this?***

SCCG supports the suggestion in the Discussion Paper that the Act be amended to move towards a national standard setting approach, based on the best available science and more closely linked to outcomes.

Question 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?

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

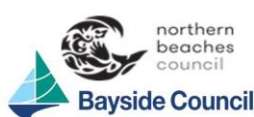
- ***How can we best engage with Indigenous Australians to best understand their needs and potential contributions?***
- ***What mechanisms should be added to the Act to support the role of Indigenous Australians?***

The SCCG supports appropriate and transparent engagement of Indigenous Australians in the review of the Act and full consideration of Aboriginal heritage protection and management requirements.

Question 13: Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments? Who should lead or participate in strategic assessments?

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

The SCCG supports landscape-scale approaches to plan holistically for ecosystem health, resilience, connectivity and climate change readiness. However, project assessments that consider site-based conditions are also important.



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

- **How could data help support this approach?**
- **Should a national environmental database be developed?**
- **Should all data from environmental impact assessments be made publicly available?**

The current process of considering whether an activity is a 'controlled action' requiring assessment and determination under the Act seems to be appropriate for identifying a low-risk project and as such, is not unreasonably prohibitive on that project proceeding.

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

Given the outcomes of the most recent State of the Environment report presenting evidence of species decline and environmental degradation more broadly, there appears to be no justification for self-regulation mechanisms.

Question 22: What innovative approaches could the review consider that could efficiently and effectively deliver the intended outcomes of the EPBC Act? What safeguards would be needed?

The SCCG supports the suggestion in the Discussion Paper that the review provides an opportunity to consider increasing the role of environmental accounting, incentives and ecosystem services markets to complement the right environment protection rules.

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

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

- **Could public sector financing be used to increase these investments?**
- **What are the benefits, costs or risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?**

The SCCG considers that funding of environmental protection and restoration works under the Act should be guided by an investment strategy that coordinates public and private sector investment.

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

The SCCG supports the view that the Act should not permit biodiversity offsetting of impacts on critical habitat, endangered or critically endangered species and ecological communities. This recognises that some assets are too significant (or outcomes too uncertain) to offset. This approach also reinforces incentives to conserve species at a landscape scale. Generally, greater efforts need to be made to avoid or minimise impacts, in order to prevent further environmental degradation and species loss.

If you have any queries, please contact me by email at executiveofficer@sydneycoastalcouncils.com.au or by phone (M.0407 733 075).

Yours sincerely,



Sarah Joyce
Executive Officer



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