Public Health Association of Australia submission on Independent Review of the Environment Protection and Biodiversity Conservation Act 1999

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia.

The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.
Introduction

PHAA welcomes the opportunity to provide input to this important review of the Environment Protection and Biodiversity Conservation Act (EPBC Act). In this submission, we particularly concentrate on aspects where we consider the experience gained within public health has relevance.

In the time since the discussion paper was released, the national and global context has changed significantly, with the unprecedented bushfire season of 2019-20 and the global COVID-19 pandemic. These strengthen the need to act now to protect the environment and biodiversity in the face of numerous threats posed by the current climate and ecological emergencies. Our environment laws are meant to protect our animals, plants and nature. As we illustrate below, the Act is failing to do this, and the extent to which it is failing means that major overhaul is necessary.

The bulk of our submission is set out in two sections. In the first section we discuss the first two of the five overall questions identified for this review (1. Is the EPBC Act delivering what was intended in an efficient and effective manner? And 2. How well is the EPBC Act being administered?). In the second section we discuss the remaining three overall questions (3. Is the EPBC Act sufficient to address future challenges? Why? 4. What are the priority areas for reform? 5. What changes are needed to the EPBC Act? Why?).

PHAA Response to the discussion paper

The current Act and its performance

The objects of the Act include to provide for the protection of the environment, to promote ecologically sustainable development, to promote the conservation of biodiversity, to provide for the protection and conservation of heritage, to promote a co-operative approach, to recognise the role of Indigenous peoples, and to promote the use of Indigenous peoples’ knowledge.

There are numerous examples that illustrate that the current Act is failing these objectives:

- The 2016 State of the Environment report highlighted that the outlook for Australia’s biodiversity is “poor and worsening”(1)
- According to the 2018 World Wide Fund for Nature report, Australia is the only developed nation identified as a global deforestation hotspot. We note that this report preceded the disastrous bushfires of the summer of 2019-20.(2)
- Australia leads the world on mammal extinction. According to the 2019 Senate Committee report, Australia has experienced three animal extinctions since 2009 including the first made extinct by climate change (the Bramble Cay Melomys).(3)
- The April 2020 report on the analysis of aerial surveys of more than 1,000 individual reefs identified the third mass bleaching event in five years.(4)
The Australian Conservation Foundation has examined the administration and performance of the Act and the following are particularly important:

- Since the EPBC Act came into operation, 7.7 million hectares of threatened species’ habitat has been destroyed.(5)
- Only five critical habitats have been protected in the past 20 years of the EPBC Act.(6)
- The Commonwealth Department of the Environment and Energy has been hit heavily by budget cuts, leading to extended delays and poor decision making under the EPBC Act.(7)

While not representing a complete evaluation of the Act’s effectiveness, each of these indicates that the Act is not achieving its objectives.

One major problem is that the EPBC Act as it stands is prone to political interference which erodes the public’s trust in the legislation. This allows politicisation to benefit corporations over public concerns. One recent example, summarised in an ABC investigation, was the case of Toondah Harbour in Queensland, where ultimately a political decision was made to overturn repeated departmental advice.

A second example of environmental degradation is that of the extensive fish deaths in the Murray-Darling River system. This is worthy of detailed consideration since it illustrates an issue involving several states, where marketisation of water extraction from the system has led to undesirable consequences, failures in governance and management have occurred, and scientific evidence has been ignored. The Australian Academy of Science was commissioned to investigate the fish deaths and concluded that a failure to act resolutely and quickly on the fundamental cause – insufficient water flows – threatens the viability of the Darling, the fish, and the communities that depend on it for their livelihoods and wellbeing.(8) Figure 1 below, reproduced from their report (page 1) summarises the results of the analysis of the expert panel.

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**Figure 1:** Summary chain of causes leading to the fish kills. Red barriers refer to poor ratings for use of information.

MDBA – Murray-Darling Basin Authority; CW – Commonwealth; CEWH – Commonwealth Environmental Water Holder.
Their conclusions (report page 2) that “The root cause of the fish kills is that there is not enough water in the Darling system to avoid catastrophic decline of conditions through dry periods. This is despite a substantial body of scientific research that points to the need for appropriate flow regimes. Similarly, engagement with local residents, Indigenous and non-Indigenous, has been cursory at best, resulting in inefficient use of their knowledge and engagement around how the system is best managed….the findings summarised above and detailed in the following sections point to serious deficiencies in governance and management, which collectively had eroded the intent of the Water Act 2007 and implementation of the Murray-Darling Basin Plan (2012) framework”.

The challenge for the review of the EPBC Act, is to ensure that a robust framework of environmental protection results which is not prone to failures in government and management, does not allow commodification of environmental resources to over-ride environmental goals, harnesses scientific knowledge and expertise in support of environmental goals, and includes the participation of affected communities.

The challenges of the future and reforms necessary to meet these

The current situation is that our emissions continue to rise, and we are failing to take sufficient action on climate change to meet our Paris targets.(9) The summary indicators from the ANU’s 2019 environmental report on Australia revealed that the overall environmental condition was the poorest since at least 2000 and below average in all states and territories.(10) Looking towards the future, there are even more challenges to meet (question 7). The review discussion paper identifies that in the future, pressure on the environment will increase. The full extent of this pressure has been graphically illustrated by events occurring since the paper was issued, in particular by the 2019-20 bushfires and their horrendous consequences in terms of habitat destruction as well as loss of wildlife.(11)

The bushfires also exerted a considerable effect on human health. Between 1 October 2019 and 10 February 2020, exposure to bushfire smoke resulted in an estimated:(12)

- 417 excess deaths;
- 1124 hospitalisations for cardiovascular problems;
- 2027 for respiratory problems; and
- 1305 presentations to emergency departments with asthma.

The Australia Institute report on the changing nature of the seasons in Australia also needs to be considered.(13) The Climate Change Authority’s recent report on ‘Prospering in a low-emissions world: An updated climate policy toolkit for Australia’ presents detailed recommendations.(14) The implications of these for the determination of standards within a revised EPBC Act need to be taken into account in this review.

The review should also consider the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services 2019 Global Assessment Report.(15) This report was compiled by over 145 experts from 50 countries and outlined that 1 million species are threatened with extinction, many within only a few decades.

The review discussion paper quotes CSIRO’s analysis that the economy will continue to grow. This prediction has been thrown into doubt in the light of the current global COVID-19 pandemic and the dramatic effect this has already had on economies worldwide.(16, 17) Epidemiologists have been warning about the emergence of new pandemics for a number of years, as summarised recently in the first report of the Global Preparedness Monitoring Board,(18) and it is expected that in future this is going to be repeated, at unknown intervals. The rise of such pandemics is directly linked to environmental degradation.(19, 20)
The review discussion paper points out that businesses will adapt to remain competitive, and we can observe trends towards withdrawal from investment and support for fossil fuel industries. It is very important that public money is no longer used to subsidise such industries in the face of the increasingly widespread public and scientific support of the importance of moving away from fossil fuel exploitation as fast as possible. A requirement for the scrutiny of Federal of State Government initiatives which undercut environmental goals would be helpful (question 3). One example of where this is desirable, is the Underwriting New Generation Investment program currently being run by the Department of the Environment and Energy.(21)

The review should also take into consideration the work already underway to consider how our economy should be re-started once a suitable point in the COVID-19 pandemic is reached. The discussion has already moved beyond a view that it can simply revert to business as usual, and instead, consideration of how to ‘build back better’ is starting to emerge. For example, the report by Environment Victoria which examines ‘Post-COVID-19 economic recovery measures that support emissions reductions and improve environmental outcomes’. (22)

PHAA believes that in terms of review of the Act, a significant overhaul is needed, and is seems unlikely that this can be achieved by a simple set of amendments to the current Act. Instead, a new generation of strong environmental laws and institutions are required that genuinely protect our rivers, reefs, forests and wildlife, increase biodiversity and regulate pollution. The application of consistent standards and goals across states and territories is important, as is the application of consistent, transparent regulatory processes.

A new, adequately resourced, legal framework would guarantee environmental decisions are transparent and that governments and vested interests could be held to account when they fail to meet their obligations. A major role in this new framework would be the formulation of a suitable set of standards (questions 6, 9, 10). The framework and resources need to ensure that scientific evidence is synthesised and presented so that it can lie at the heart of decision-making. Underpinning this should be independent health and environmental impact assessment of proposals that require consideration under the Act, which will include full analysis of costs and benefits to society, including to future generations (as required by the Act’s principle of ecologically sustainable development, paragraph 3A).

Sustainable development must account for pandemic risk, and socioeconomic scenario analysis, as widely used in sustainability, biodiversity and agricultural research may be helpful. (23) This approach entails projecting the response of biological and socioeconomic systems to changing environmental conditions, and could be built into environmental and social safeguard frameworks.

Consideration should also be given to a rights-based approach which has been adopted in some jurisdictions (question 22). For example, in New Zealand, “all the rights, powers, duties and liabilities of a legal person” have been enshrined to the Te Urewera National Park, and in Ecuador, a charter of ‘The Rights of Nature’ has been adopted into the Constitution. (24)

The Principles set out in Section 5 of the discussion paper are to be welcomed (question 26) and will be useful in guiding the review. We suggest a further addition that the review should seek to ensure that decision making fully utilises the expertise of relevant science. We note how crucial the use of medical science and epidemic modelling is proving currently in the management of COVID-19 and submit that scientific and technical expertise in health and environmental impact assessment, with full assessments of costs and benefits is vital to the successful operation of a revised/reformulated EPBC Act.
Besides the challenges set out in the discussion paper, we also consider that pandemics need consideration. As the current COVID-19 pandemic indicates, these can have enormous short, medium and long term impacts on societies. The discussion paper also implicitly assumes that climate change will continue. PHAA notes that the next 5-10 years are crucial, and that considerable mitigation is possible. Central to this is a move towards 100% renewable sources of energy as fast as possible.

**Conclusion**

A strengthened role for the Commonwealth is required to deliver stronger environmental and heritage outcomes in our federated system for a number of reasons (questions 1, 2, 21):

- To simplify the current complex system;
- To enable a consistent approach to environmental and biodiversity protection across all states and territories;
- To reap economies of scale in the provision of appropriate scientific and technical support to the administration of the Act, for example relevant scientific expertise, as well as expertise in health and environmental impact assessment;
- To enable an enhanced level of transparency;
- Given the interconnected nature of environment within Australia, consideration at federal level is necessary to ensure the system is looked at as a whole.

PHAA recommends specifically:

- To extend the definition of ‘Matters of National Environmental Significance’ (MNES) to include vulnerable species. Currently, only endangered and highly endangered animals are captured by the legislation and this leaves vulnerable species without proper protection. The bushfires of 2019-20 demonstrated how quickly vulnerable animals’ habitats and status can change (questions 3, 4)
- Introduce a requirement that any proposal that may impact MNES (including vulnerable species) needs an independent Health and Environmental Impact Assessment. We consider that all such assessments should be carried out by the same body, funded for this purpose, and that such assessments and their scientific basis are fully published for open scrutiny (question 2)
- Ensure that meaningful community participation is a part of decision-making within the new Framework. Citizen’s juries and citizen’s assemblies are particular forms that should be considered by the review (question 22). The Framework should support the engagement of Aboriginal and Torres Strait Islander people in environment and heritage management in the ways that they consider appropriate, and this should be fully resourced. The voice envisaged in the Uluru Statement from the Heart could be an appropriate starting point for consideration. It is vital that the invaluable knowledge of Indigenous Australians is brought to bear in both environmental and heritage management.
- PHAA opposes the use of self-regulation from industry. To ensure strong protection there needs to be consistent independent assessment, oversight and regulation (questions 13, 14).
- PHAA proposes the use of offsetting be scaled back or removed entirely as it often fails to provide the necessary protection to wildlife and their critical habitats (question 24).
The PHAA appreciates the opportunity to make this submission and the opportunity to contribute to improving environmental protection legislation in Australia.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

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References


