



## THE INDEPENDENT REVIEW OF THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

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Ports Australia is pleased to provide comments on the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to Professor Graeme Samuel AC, independent reviewer of the EPBC Act and the related Expert Panel. Ports Australia acknowledges the significant role of the EPBC Act in the protection and management of the Australian environment and of this review to examine the operation of the EPBC Act and the extent to which the EPBC Act is achieving its objects.

Ports Australia is the peak industry body representing port authorities and corporations, both publicly and privately owned, at the national level. Ports Australia is governed by a Board of Directors comprising the Chief Executive Officers of 14 port corporations from across Australia.

This submission seeks to assist the review by providing a national perspective from ports in Australia on the EPBC Act, and accordingly Ports Australia Member feedback has been incorporated into this paper. It should be noted that responses have only been provided to questions that are particularly pertinent to ports.

### **Responses to Questions**

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?

At present, the EPBC Act sets out the matters of national environmental significance, although does not provide an overarching guide on matters that are of national environmental significance. Ports Australia supports the addition of a guide to clarify the scope of the EPBC Act to assist with determinations of whether a matter should be included or excluded.

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?

Ports Australia requests that greater clarity be provided to practitioners on the applicability of ESD. Section 3A(e) of the Act details the ESD principles which are to be promoted – improved valuation, pricing and incentive mechanisms. However, the use of the terminology ‘promote’ within Section 3 provides limited certainty as to the specific application of ESD.

Of particular note is the object related to ESD, ‘to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources’. Further explanation on the action of promotion would provide clarity on how ESD should be applied.

Ports Australia supports the use of a cost benefit analysis if long-term and short-term economic, environmental, social and equitable considerations are taken into account as this would directly align with the first principle of ESD. Cost benefit analyses would provide a standard method of addressing a key aspect of ESD.

As part of decision making, Ports Australia recommends that government departments and agencies increase collaboration to ensure that environmental impact assessments related to a similar issue and/or area are examined in light of one another.

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

Ports Australia considers that if the objects of the EPBC Act were more specific, the EPBC Act would become too prescriptive.

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

As stated in the response to question 1, Ports Australia recommends that a guide on matters of national environmental significance be included within the EPBC Act. From this, it could be more readily determined whether matters need to be amended.

Ports Australia recognises the importance of Great Barrier Reef protection and conservation, and also recognises that there is significant overlap as the Great Barrier Reef falls under the following three matters of national environmental significance: world heritage, national heritage and the Great Barrier Reef Marine Park. The values and significant impact criteria for each of these are either exactly the same or highly similar, and therefore effort to reduce these replications is required. North Queensland Bulk Ports have identified that the above causes substantial additional effort for the assessment process.

For example, the Great Barrier Reef Marine Park does not have its own set of values, and the values of national heritage link back to the values of world heritage. In addition, the significant impact criteria are similar across all three of the stated matters of national environmental significance.

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?

Ports Australia considers that the priority of the reform should be to ensure that the EPBC Act is effectively meeting its set objectives in an efficient manner. Thus, Ports Australia agrees that where possible, processes should be streamlined.

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?

Ports Australia supports the removal of duplication of responsibilities for each of the matters of national environmental significance and strongly recommends delegation of these responsibilities to the States. As it stands, there is duplication between levels of government and across different government departments and agencies. This results in unnecessary additional costs to all parties including government and unnecessarily long timeframes for appraisals. In addition, as different government departments are responsible for evaluating different environmental impact assessments, applications that might impact one another or the related environment are not always considered in light of one another. The duplication of responsibilities is evident throughout the EPBC Act. Examples of this include the Great Barrier Reef Marine Park and listed threatened species and communities.

In regard to the Great Barrier Reef Marine Park, a number of agencies are required to undertake assessments as it relates to three matters of national environmental significance. These agencies are: the Department of Agriculture, Water and the Environment; the Great Barrier Reef Marine Park Authority, and the Queensland Government. Moreover, assessments by these government departments and agencies are still required even if a bilateral agreement is in place. This results in a replication of assessments and efforts by all parties.

For listed threatened species and communities, Ports Australia recommends a sole national standardised list of threatened species and an associated national standardised assessment process. Lists and assessment processes unique to jurisdictions cause unnecessary resource expenditure in terms of time, cost and effort.

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

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

Ports Australia supports the inclusion of a low-risk project category and recommends a clear definition of low-risk be provided. As uncertainty often exists on whether a project is low-risk or not, it would be optimal to have certified assessors evaluate projects.

In terms of assessors, the Department of Agriculture, Water and the Environment could establish certified third-party assessors to assist with the determination of low-risk projects, and allow for the Department of Agriculture, Water and the Environment to focus on the assessment of higher risk projects. Implementing checks and a cross-comparison process of assessors could assist in ensuring consistent quality assessments are undertaken. If an accredited assessor process is developed, it would be worthwhile to refer to the contaminated land assessment processes used in New South Wales and South Australia. As part of these processes, a certified consultant must be engaged to prepare, or review and approve contaminated land reports submitted to the relevant Environmental Protection Authority, and accredited site auditors can be engaged to independently review the certified consultant's reports for quality assurance purposes. For accreditation of assessors, it would be opportune to link to the Certified Environmental Practitioner Scheme administered by the Environment Institute of Australia and New Zealand.

Should a certified assessor approach not be adopted, Ports Australia perceives that an online assessment process could be an appropriate alternate option. If an online assessment process is developed, it would be worthwhile to refer to Queensland's 'accepted development with requirements' self-assessment process which has been in place for a number of years and appears to be working well.

A national environmental database that houses environmental impact assessment information from both national and jurisdictional levels is welcomed. Ports Australia encourages the public availability of environmental impact assessments. This should include monitoring data associated with environment impact assessment preparation as well as any monitoring data required to be collected as part of the conditions of approval or commitments made in the environmental impact assessment. Data, aside from this, should only be publically accessible with formal consent from the data owners.

A national environmental database could remove the discrepancies that exist between the federal and jurisdictional databases i.e. the national database is probability based whereas jurisdictional databases generally use record data. It will allow for greater transparency to the public and be highly beneficial for numerous purposes including to inform future comparable applications, cumulative impact assessments,

environmental impact assessment conditions required by government, and strategic development and assessments by governments.

By having applicants populate the database, the processes of data validation, quality assurance and maintaining data currency would rest with the data owners. This would reduce government resources that would be required to maintain such a sizeable database.

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

Ports Australia is supportive of enhanced coordination between federal, state and territory, and local processes. As such it agrees with the proposal to form general duties applicable to all environment and heritage actions.

For low-risk projects, guidelines or codes would further increase the efficiency of applications and approvals. To ensure compliance, reporting against these codes by a certified individual could be required. Such processes exist at the state level for example with the *Planning Act 2016* (Qld).

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?

Ports Australia supports the role of Indigenous Australians in environment protection and management. As such, it supports Indigenous Australian engagement in the review of the EPBC Act through the Indigenous Advisory Committee and by Indigenous Australians more broadly.

Ports in Australia engage with Indigenous Australians regarding environmental protection and management where relevant and appropriate, using methods that are suitable to the local Indigenous Australian population, for example with Reconciliation Action Plans and Indigenous Land Use Agreements. Ports Australia supports these continued efforts by ports to determine and implement an appropriate approach to meaningfully engage with the local Aboriginal and Torres Strait Islander peoples in their areas.