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

Yes. Currently, the objects are too vague and open to inconsistent interpretation. I concur with the objects, secondary objects and provisions drafted by the Environmental Defenders Office on page 22 of their Submission to the 10-year review of the EPBC Act.

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

Yes. MNES should be expanded to include:

- the release of substantial greenhouse gas emissions,
- major land clearing and deforestation,
- terrestrial and marine protected areas (the NRS), and
- significant water resources.

With regards to the NRS, it is remarkable that areas that Commonwealth, State and Territory governments have recognised as containing outstanding biodiversity values are not themselves protected under the EPBC Act.

Privately protected areas, where individual landholders invest their private resources to maintain biodiversity as a public good, contribute significantly to the NRS and to the Commonwealth's commitment to expand the protected area system in accordance with the international Convention on Biological Diversity. Governments routinely invest in recruiting more private landholders to voluntarily manage their properties sustainably in a way that protect biodiversity. Yet such areas are not protected from impacts such as coal and gas extraction, leading to a major disincentive for landholders to undertake such activities¹⁹.

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?

This question describes a false dichotomy. Assessment and approval processes are obviously linked to biodiversity conservation. Voluntary and incentive-based policy instruments must be underpinned by a strong regulatory basis in order to be effective (Figure 2)²⁰. A complementary mix of policy tools is

¹⁹ Adams, V.M., Moon, K., 2013. Security and equity of conservation covenants: Contradictions of private protected area policies in Australia. *Land Use Policy* 30, 114. 119. <https://doi.org/10.1016/j.landusepol.2012.03.009>

²⁰ Ayres, I., Braithwaite, J., 1992. *Responsive Regulation: Transcending the Deregulation Debate*: Transcending

frequently required to effectively deliver positive public policy outcomes²¹. This is fundamental concept of public administration²².

There may be circumstances where volunteerism and self-regulation can be effective. Given the EPBC Act's poor record in capturing all relevant impacts on MNES (in part due to its reliance on self-referrals)²³, and disproportionate incidence of referrals from the agricultural sector²⁴ despite the majority of historical and contemporary habitat loss resulting from agricultural clearing, it is highly likely that further deregulation of the EPBC Act would lead to detrimental environmental, social and health outcomes for the broader Australian community.

Deregulation of land clearing controls in Queensland and New South Wales provides further evidence of the need to maintain a fundamental basis in regulation. Regulatory controls are also necessary for environmental markets to operate effectively. There are important lessons from Australia's experience with carbon markets in this regard²⁵.

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?**

Clear, nationally consistent standards can be a useful tool to drive positive environmental outcomes and reduce regulatory burdens associated with lack of coordination and policy alignment. However, national standards and strategies for biodiversity conservation (e.g. ²⁶) typically lack any kind of regulatory or incentive-based teeth, and their goals are rarely, if ever, achieved²⁷. Further, an effective national standard must incentivise States and Territories to rise to meet the standard set by the Federal government, rather than the Federal government accrediting poorer quality State and Territory policies and standards, as has occurred with environmental offset policy.

- **How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation?**

It is clear that the EPBC Act has not been effective in achieving its statutory objectives to protect the environment and promote ESD and biodiversity conservation. The latest State of the Environment report²⁸

- The effects of climate extremes on human health (e.g smoke from bushfires, deaths from heatwaves), threats to built and green infrastructure, impacts on agriculture and food security;
- The need to rapidly decarbonise our economies, which will influence how power will be generated and used;
- Increasing private sector interest and investment in sustainable enterprise, biodiversity conservation and the Sustainable Development Goals²⁹

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

The question of whether proponents should be conditioned to deliver outcomes, versus being conditioned to follow procedural steps, is complex. In short, **there needs to be a balance of outcomes- and process-based conditions.**

Answering this question in detail is the subject of the next 3 years of my research (Figure 3).

Currently, environmental conditions under the EPBC Act are overwhelmingly process-based. An overreliance on process-based conditions can lead to inefficiencies, ~~box~~ ticking+, and does not guarantee environmental outcomes are being delivered. A clear example is the case of the Hume Highway development, where proponents were conditioned to install nest boxes to compensate for impacts to hollow-bearing trees. Subsequent re

significant investment in training for Department staff, education for proponents, and investment in information systems.

Figure 3. What is the appropriate mix of process and outcomes-based contracts to ensure environmental outcomes are delivered and transaction costs minimised? M Evans, own work.

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?

See response to Question 6.

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?

Improvements in the operation and effectiveness in the EPBC Act would likely lead to a greater fo/3(ov)]0d

accountability, and provide the Australian community confidence that environmental assets are being managed effectively³⁶.

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 independent Clean Energy Regulator, and
- The independent Emissions Reduction Assurance Committee.

I see no reason why a similar governance structure could be adopted for MNES under the EPBC Act . or integrated with the existing, highly regarded structure governing ACCUs.

Figure 4. Governance of Australian Carbon Credit Units (ACCUs) under the Emissions Reduction Fund in Australia. M Evans, own work.

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?

Typically, the term 'innovative approaches' is used to refer to private-sector investment or environmental markets. My view is that there is little need for innovative approaches to more efficiently and effectively deliver the intended outcomes of the EPBC Act. Primarily, there is a need for adequate resourcing and infrastructure. See responses to previous

Queensland and Western Australia) and a perception that the money would shift into consolidated revenue.

Interviewees expressed **support for an independent authority to administer such a fund**. Some respondents argued that an offset fund must be liquid if it is to be effective, which would require that the ~~the~~ approach may lead to additional risks as the connection between the impact and the promised compensation would be diminished, but such risks could be mitigated by effective oversight from an independent authority.

I strongly suggest that experience on the use of trust funds in other jurisdictions (e.g. highly variable success in the implementation of environmental offsets funds in Queensland and Western Australia) **should inform the Review's investigation into their possible use under the EPBC Act.**

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

See responses to Questions 1 and 2.

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?

This is a complex question, and I would be happy to offer suggestions based on ~~ond se 0 00a (ha)4(b122 00008871 0 59~~

Appendix 2: Research methods and interview participants

This research was conducted as part of a PhD thesis at the Australian National University. The ethical aspects of this research have been approved by the ANU Human Research Ethics Committee (Human Ethics Protocol 2015/274). The **aim of the research was to u**

Interviews lasted for up to one hour and were digitally recorded with the permission of the participant, or otherwise transcribed by hand during the interview. Handwritten notes were also taken during each interview. Digital recordings were professionally transcribed between May and July 2016. Interview transcripts were subsequently provided to all participants, who had the opportunity to check the transcript for inaccuracies or ambiguities and make any necessary revisions.

Box 1: Sample interview questions

1. Could you describe your current role, and contact with offsets in this role?
2. From your perspective, what do you see as the most significant offset outcome?
3. *Offsets must deliver an overall conservation outcome that improves biodiversity.*