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Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

Discussion Paper – November 2019

Submission to Professor Graeme Samuel AC (Independent Reviewer) and the Expert Panel

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by member companies responsible for more than 85 per cent of the State's mineral and energy production and workforce employment.

In 2018-19, the Western Australia's (WA) mineral and petroleum industry reported a record value of $145 billion.[1] Iron ore is currently the State's most valuable commodity at $78 billion. Petroleum products (including crude oil, condensate, liquefied natural gas, liquefied petroleum gas and natural gas) followed at $38 billion, with gold third at $12 billion.

The value of royalties received from the sector totalled $6.8 billion in 2018-19, accounting for 21 per cent of general government revenue.[2,3] In addition to contributing 40 per cent of the State's total industry Gross Value Added,[4] the sector is a significant contributor to growth of the local, State and Australian economies.

The mineral and petroleum industry are key stakeholders of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), accounting for 32 per cent of total decisions made and 37 per cent of EPBC Act approvals required in 2018-19.[5]

Summary of recommendations

The original intent of the EPBC Act when it was introduced twenty years ago was to provide a framework for a more effective national environmental management system, which ensures resources at all levels of government are focussed on delivering better environmental outcomes, whilst delivering efficient and timely assessment for proponents and other interested stakeholders.

Industry experience of federal environmental assessments indicates a lack of intergovernmental cooperation and unnecessary duplication which results in drawn out approval timelines and uncertainty for proponents.

The case for reforming the EPBC Act and its decision-making processes is supported by:

- The findings of the 2009 Independent Review of the EPBC Act (Hawke Review);[6]
- The Australian Government response to the Hawke Review;[7]
- Council of Australian Governments (COAG) and the Western Australian Government accepting the need for reform; and
- The experience of WA's public and private sectors engaged in development projects that attract EPBC Act jurisdiction.

Findings from the recent Productivity Commission Draft Report on Resources Sector Regulation further support the need for regulatory reform, citing current processes as "unduly complex, duplicative, lengthy and uncertain".[8] Such complex and lengthy assessment and approvals processes can significantly impact industry's global competitiveness, with estimated costs between 7 and 18 per cent of a project's net present value for a one-year delay.[9]

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[1] Government of Western Australia, *Latest statistics release: Mineral sector highlights*, Department of Mines, Industry Regulation and Safety, September 2019: http://dmp.wa.gov.au/About-Us-Careers/Latest-Statistics-Release-4081.aspx

[2] Government of Western Australia, *Annual report 2018-19*, Department of Mines, Industry Regulation and Safety, 2019, p. 77.

[3] Government of Western Australia, *2018-19 Annual report on State finances*, Department of Treasury, 2019, p. 8.

[4] Duncan, A. and Kiely, D., *BCEC Briefing note: WA Economic update*, Bankwest Curtin Economics Centre, 2019, p. 4.

[5] Commonwealth of Australia, *Annual Report 2018-19*, Department of the Environment and Energy, 2019, p. 252.

[6] Hawke, A., *The Australian Environmental Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, Commonwealth of Australia, 2009.

[7] Commonwealth of Australia, *Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, Canberra, 2011.

[8] Commonwealth of Australia, *Resources Sector Regulation, Draft Report*, Productivity Commission, 2020, p. 2.

[9] Commonwealth of Australia, *Resources Sector Regulation, Draft Report*, Productivity Commission, 2020, p. 152.

Despite the complex environmental regulatory framework, Australia's biodiversity continues to decline.[10] Lack of "efficient, collaborative and complementary planning and decision-making processes, with clear lines of accountability", ineffective alignment on policy implementation, and inadequate data sharing to inform effective policy and management were highlighted in the 2016 Australia State of the Environment Report as contributing factors to this decline.[11]

An effective and efficient national environmental regulatory framework can deliver better outcomes for both business and the environment. CME supports the co-badged submission by the Minerals Council of Australia, CME and other State-based resource sector peak bodies, lodged 24 April 2020, and promotes the same reform objectives for the EPBC Act:

- Remove duplication and increase consistency between State and Commonwealth processes;
- Establish fit-for-purpose regulation supported by sound data;
- Improve timeliness of assessment and approval processes; and
- Enhance transparency to improve business certainty and community confidence.

This submission outlines recommendations to support improvements to environment and biodiversity outcomes through an efficient, coordinated and consistent assessment and approvals processes with defined roles and accountabilities. Supported by clear guidance and sound data, such processes can provide business certainty and community confidence while upholding high standards for environmental protection and management.

Recommendations addressing key concerns

The following recommendations address key concerns and priorities for reform of the EPBC Act.

Priorities for reform:

The strategic role of the Commonwealth

- Acknowledge the primacy of State in relation to environmental assessments and approvals on non-Commonwealth land and amend the EPBC Act to clarify the role of the Commonwealth.
- Develop national environmental standards for matters of national significance (MNES), where appropriate, to address relevant gaps in State and Territory legislation.
- Support Western Australia's pursuit of an environmental approvals bilateral agreement.

Rationalise matters of National Environmental Significance

- Remove the water trigger to eliminate duplication with existing State-based regulation.
- Remove section 22(1)(e), (f) and (g) or otherwise amended to exclude projects involving naturally occurring radioactive material (NORM).
- Remove section 22(1)(d) to eliminate unnecessary duplication of State-based environmental regulation of uranium mining and milling activities.
- Remove the prohibition on nuclear power from sections 37J, 140A and 146M.

Landscape-scale approach to biodiversity conservation and threat abatement

- Develop strategic, multi-species, regional recovery plans for threatened species and ecological communities which address proactive conservation and threat abatement measures.
- Implement a reporting framework for the monitoring of recovery plan progress and evaluation of conservation outcomes against expenditure.

Flexible offsets framework

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[10] Jackson, W.J., Argent, R.M., Bax, N.J., Clark, G.F., Coleman, S., Cresswell, I.D., Emmerson, K.M., Evans, K., Hibberd, M.F., Johnston, E.L., Keywood, M.D., Klekociuk, A., Mackay, R., Metcalfe, D., Murphy, H., Rankin, A., Smith, D.C., and Wienecke, B., *Australia state of the environment 2016: overview*, Australian Government Department of the Environment and Energy, 2017, p. xi.

[11] Jackson, W.J., Argent, R.M., Bax, N.J., Clark, G.F., Coleman, S., Cresswell, I.D., Emmerson, K.M., Evans, K., Hibberd, M.F., Johnston, E.L., Keywood, M.D., Klekociuk, A., Mackay, R., Metcalfe, D., Murphy, H., Rankin, A., Smith, D.C., and Wienecke, B., *Australia state of the environment 2016: overview*, Australian Government Department of the Environment and Energy, 2017, p. xiii.

- Align State and Commonwealth offset policies.
- Review and update the Commonwealth environmental offsets calculator, with greater flexibility for more sustainable environmental offsets beyond 'like-for-like' land-based options.

Best available data informing decision making

- Develop and implement a national environmental database that is publicly available to facilitate use of best available data to inform environmental assessments and decision making.

Other recommendations:

Assessment process

- Update guidance to more clearly define what constitutes 'significant impact' in regard to referral of proposed action.
- Implement a risk-based assessment process to focus environmental impact assessments (EIAs) on material issues.
- Adopt approval conditions which are outcomes-focussed and commensurate to the risks identified in the EIA process.
- Amend the EPBC Act to include provisions for 'particular manner' decisions to allow revision of a 'particular manner' where an alternative method with lower environmental risk may instead be applied.
- Amend the EPBC Act to include provisions for increased use of 'particular manner' provisions (i.e. in absence of a controlled action).
- Amend the EPBC Act to include provisions enabling proponents the right to refuse to respond to information requests in full or in part.
- Amend the EPBC Act to more clearly articulate what information is to be considered relevant to the EIA process.
- Implement a scoping document for assessments to specify the focus of EIAs and therefore relevant information requests.

Approvals

- Implement a process for legal review of proposed conditions for approvals, including review against existing and proposed conditions from State approvals.
- Publish guidance detailing the process for the close out of approval / agreement conditions.

Post-approvals

- Increase use of and adherence to statutory timeframes for secondary approvals.
- Improve transparency of the approval process through the implementation of a publicly available online application / approval tracking system.
- Publish guidance on the post-approval planning process, outlining accountabilities.
- Adopt outcomes-based approval conditions for the development of management plans.
- Publish guidelines to support proponents to prioritise addressing of key matters in the assessment phase.
- Implement a variation approval process to allow for amendments to approved controlled actions.
- Implement differentiated variation approval processes for major and minor changes to controlled actions.

Appeals

- Revise the EPBC Act to reduce the level of administrative prescription in order to reduce vulnerability to appeals on administrative technicalities.

EPBC Act guidance

- Review and update published guidance material to ensure currency.

- Implement a clear and logical document hierarchy, in collaboration with other levels of governments, to improve ease of navigation and information sourcing for proponents and other interested stakeholders.
- Implement and publish a defined document review process.

Strategic assessments

- Further investigate changes to strategic assessments to make them more practical and accessible for proponents.

Low-risk projects

- Implement an instrument for automated processing of 'not controlled action' decisions via an online tool.

Decision-making

- Maintain the current decision-making authorities under the EPBC Act, including the role of the Minister.

Context

CME welcomes the opportunity to provide a submission on the Independent Review of the EPBC Act Discussion Paper (the Discussion Paper) released 21 November 2019.

As part of the second 10-year statutory review of the EPBC Act, the Discussion Paper proposes questions and ideas regarding the role of the Commonwealth, the operation of the EPBC Act, and the extent to which the objects of the EPBC Act have been achieved.

CME has also contributed to the submission made by the Minerals Council of Australia along with other State Chambers.

Responses to the Discussion Paper

As previously highlighted in the Hawke Review, the EPBC Act is "too repetitive, unnecessarily complex and, in some areas, overly prescriptive. It needs restructuring to make it more accessible, easier to navigate and reduce the regulatory and resource burden on those impacted by the Act".[12] Process streamlining, removal of duplication, and the adoption of a strategic, risk-based approach to Commonwealth environmental regulation remains necessary to improve the efficacy of the EPBC Act and deliver sustainable environmental outcomes.

As the cornerstone environmental legislation for Australia, the EPBC Act plays an important role in the protection and sustainable management of Australia's environment. However, the increasing lack of clarity of Commonwealth and State roles and responsibilities, the unnecessary duplication of Commonwealth and State environmental assessments and approvals, and the absence of strategic, landscape-scale conservation significantly contributes to the growing regulatory burden, project cost, and uncertainty experienced by resources industry stakeholders.

CME has consulted extensively with its members to inform its submission in response to the Discussion Paper. This submission firstly provides high-level comments on key priorities for EPBC Act reform followed by specific, detailed responses on Discussion Paper questions in Appendix I.

1. The strategic role of the Commonwealth

The role of the Commonwealth in assessing and managing environmental matters has become increasingly unclear. Contrary to the intent of the EPBC Act,[13] duplication of State environmental assessment and approval processes by the Commonwealth is undermining State authority, prolonging approval timeframes, and increasing project costs without environmental benefit. Duplication and inconsistency in Commonwealth and State environmental assessment and approval processes include:

- Independent Commonwealth and State assessment and approval requirements and timeframes;
- Inconsistent information requirements; and
- Duplicative and/or contradictory approval conditions, including monitoring and reporting timeframes and requirements.

Due to this duplication, inconsistency and lack of coordination, proponents are required to liaise with multiple agencies often resulting in costly delays to projects and substantial compliance costs.[14] A contaminated sites remediation project on former disturbed lands in WA's southwest is one recent example of the unnecessary duplication of State and Commonwealth environmental assessments and approvals. The project area required one referral under the EPBC Act and two clearing permits under the *Environmental Protection Act 1986* (WA) (one assessed by the Department of Water and Environment Regulation (DWER), and one by the Department of Mines, Industry Regulation and Safety (DMIRS)). Offsets were required by both State and Commonwealth governments due to the clearing of Western Ringtail Possum habitat. The process of assessing project impacts and developing appropriate offsets was identical at both levels of government, nevertheless, several months of negotiation ensued to develop an offset package which would satisfy all three

[12] Hawke, A., *The Australian Environmental Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, Commonwealth of Australia, 2009, p. II.

[13] Commonwealth of Australia, *Environment Protection and Biodiversity Conservation Bill 1999: Second Reading Speech*, House of Representatives, 1999, p. 7770-7773.

[14] Commonwealth of Australia, *Resources Sector Regulation, Draft Report*, Productivity Commission, 2020, p. 39.

approvals. Not only were the assessment and approval processes duplicated, compliance reporting conditions were also substantially replicated across both State and Commonwealth approvals. The total area in question was also less than 10 hectares of formerly disturbed land.

Significant scope creep away from obligations under the EPBC Act has also been evidenced in the Commonwealth's assessment of insignificant matters, including matters which are already managed by the State. For example, Commonwealth assessment of 4.42 hectares of clearing within the existing Muja Power Station facilities located in the Collie region of WA. This minor amount of clearing will automatically be assessed by the State's existing native vegetation clearing requirements under the *Environmental Protection Act 1986* (WA). It is therefore difficult to justify the strategic or national significance driving the need for the duplicated Commonwealth assessment process, particularly given the small amount of clearing required within an existing and long-established industrial site (one of WA's largest power stations). Further, the associated project delays and costs appear unwarranted on the basis the Commonwealth assessment processes do not result in a different environmental outcome.

Furthermore, species and ecological communities have been unnecessarily listed as threatened due to inconsistencies between eligibility criteria under the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) and those legislated under the EPBC Act.[15] In conjunction with very low trigger levels set in Referral Guidelines, a high number of projects have consequently been needlessly referred with 60 per cent of WA projects referred in 2018-19 determined not to be a 'Controlled Action'.[16] These unnecessary referrals incur significant costs and delays to WA projects and consume significant Commonwealth Government resources. Due to issues with guidance materials and implementation of the EPBC Act however, proponents are unable to avoid completing these unnecessary referrals as proponents must obtain a determination that they are not a controlled action.

This assessment of projects with insignificant environmental impacts is contrary to the intent of the EPBC Act as defined under the 1997 Heads of agreement on Commonwealth and State roles and responsibilities for the Environment,[17] the 1992 Intergovernmental Agreement on the Environment,[18] and the Explanatory Memorandum of the *Environment Protection and Biodiversity Conservation Bill 1998* (Cth) (EPBC Bill).[19]

To avoid scope creep and to clarify the role of the Commonwealth, the EPBC Act must be clear on what matters are excluded from the remit of the Act and must not duplicate existing State-based legislation. Reduction in duplication and inconsistency between Commonwealth and State assessment and approval processes would not only benefit government through reduced administrative costs, but also businesses with an estimated $426 million annual saving.[20] In effect, this should result in the Commonwealth filling critical gaps only, rather than unnecessarily duplicating existing processes. It should be noted that any amendments resulting from this review need to be appropriately resourced to support timely implementation of the EPBC Act.

CME support the primacy of State in relation to environmental assessments and approvals on non-Commonwealth land and recommend the EPBC Act be amended to clarify the role of the Commonwealth.

CME supports the Commonwealth taking a more strategic role through administration of the EPBC Act. Nationally consistent environmental standards can be effective tools for effectively achieving the objects of the EPBC Act, administered by States where relevant within their own regulatory frameworks via accredited processes. Such standards should be focussed on landscape-scale outcomes underpinned by consistent and robust environmental data, addressing matters of national interest and critical gaps in State environmental legislation.

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[15] Taylor, K., *Independent Review of the* Environmental Protection and Biodiversity Conservation Act 1999 *(EPBC Act) – 2020*, [submission to the epbcreview@environment.gov.au], < >, accessed 13 March 2020.

[16] Commonwealth of Australia, *Annual Report 2018-19*, Department of the Environment and Energy, 2019, p. 251.

[17] Council of Australian Governments, *Heads of agreement on Commonwealth and State roles and responsibilities for the Environment* [website], 1997, <https://www.environment.gov.au/resource/heads-agreement-commonwealth-and-state-roles-and-responsibilities-environment>, accessed 17 March 2020.

[18] Department of Agriculture, Water and the Environment, *Intergovernmental Agreement on the Environment* [website], 1992, <https://www.environment.gov.au/about-us/esd/publications/intergovernmental-agreement>, accessed 17 March 2020.

[19] The Parliament of the Commonwealth of Australia, *Environment Protection and Biodiversity Conservation Bill Explanatory Memorandum*, Senate, 1998, p. 2.

[20] Commonwealth of Australia, *Regulatory cost savings under the one-stop shop for environmental approvals*, Department of the Environment, Canberra, 2014, p. 1.

CME support the development of national environmental standards for MNES, where appropriate, to address relevant gaps in State and Territory legislation.

Mechanisms already exist to facilitate this change including approval bilateral agreements under the EPBC Act, Council of Australian Governments (COAG) agreements, and intergovernmental agreements.

Bilateral agreements for assessments and approvals are an existing and under-utilised mechanism provided for under the EPBC Act to achieve State and Commonwealth regulatory streamlining objectives and effective environmental outcomes. An approval bilateral agreement can facilitate a single environmental impact assessment process and a single resultant environmental approval that would address all relevant matters of National Environmental Significance requirements as well as State environmental requirements. In turn, this agreement would streamline the impact assessment process for industry, governments, and the community, and results in a more administratively efficient environmental management moving forward.

CME strongly support the Western Australian Government's announcement, made 27 November 2019, by the Premier Hon. Mark McGowan, advising of Western Australia's intent to pursue an environmental approvals bilateral agreement with the Commonwealth.

2. Rationalise matters of National Environmental Significance

Water trigger

The water trigger is counter-intuitive to State and Federal Government regulation reform initiatives. The water trigger duplicates State-based regulation, including but not limited to the *Environmental Protection Act 1986* (WA) and *Rights in Water and Irrigation Act 1914* (WA), and overlaps with State-based water reform. Furthermore, the water trigger works counter to other regulatory reform initiatives, including its explicit exclusion from delegation under approval bilateral agreements, adding layers of uncertainty, complexity and $46.8 million per annum to industry[21] for no demonstrable environmental benefit.

Current WA legislation requires thorough assessment of water resource risks and impacts through detailed environmental impact assessments, and robust water resource management through abstraction, discharge and reinjection licensing, compliance and enforcement.

CME strongly recommend removal of the water trigger to eliminate duplication with existing State-based regulation.

Nuclear trigger

The nuclear trigger is duplicative and inconsistent with State and Federal Government deregulation and streamlining objectives.

Under sections 22(1)(e), (f) and (g), mineral sands and rare earths extraction projects (amongst others) are being inadvertently captured, requiring a whole-of-environment assessment due to, for example, the presence of naturally occurring radioactive material (NORM) in legacy dams to be remediated, product stockpiles and process waste.

A rare earths project in WA was recently required to be referred to the Commonwealth under the nuclear trigger due to the storage of mining process waste containing NORM (as per section 22(1)(e) of the EPBC Act). A thorough environmental impact assessment was conducted under an accredited State assessment process, during which the Department of Agriculture, Water and the Environment (DAWE) and DWER were consulted as decision-making authorities. The resultant EPBC Act approval conditions did not relate to the nuclear action trigger for assessment; duplicated existing water and fauna management conditions required under State approvals and licences; and imposed unnecessary and impractical requirements for additional studies and monitoring of groundwater aspects proven not to be impacted by the proposed activities. This duplicative assessment and approval process significantly delayed the project, increased costs and unnecessarily consumed resources to provide no additional environmental benefit.

Projects involving NORM should not be required to be referred under the nuclear trigger. Such referrals are inconsistent with the intent of the nuclear trigger as described in the EPBC Bill 1998 Explanatory

[21] Hunter, S., *Independent Review of the Water Trigger Legislation,* Commonwealth of Australia, 2017, p. 9.

Memorandum.[22] Furthermore, radiation safety is already heavily regulated under existing Commonwealth and State-based radiation legislation, both of which are based on the same national and international standards.

CME recommend section 22(1)(e), (f) and (g) be removed or otherwise amended to exclude projects involving NORM.

The assessment of uranium mining and milling activities, as captured under section 22(1)(d) of the EPBC Act, further duplicates State-based assessment and approval processes specific to uranium projects.

CME recommend section 22(1)(d) be removed to eliminate unnecessary duplication of State-based environmental regulation of uranium mining and milling activities.

CME do not support the prohibition on nuclear power. Nuclear energy currently supplies 10 per cent of the global electricity market with 24/7, low cost, zero emission power.[23] With 30 per cent of the world's known uranium reserves,[24] nuclear energy can play an important role in Australia's low carbon future.

Nuclear energy projects should be assessed on their merits as any other industry project.

CME recommend removal of the prohibition on nuclear power from sections 37J, 140A and 146M of the EPBC Act.

3. Landscape-scale approach to biodiversity conservation and threat abatement

Single-species recovery and threat abatement plans are ineffective tools for achieving sustainable biodiversity conservation. Recovery and threat abatement plans which focus on single, at-risk species do not account for landscape-scale risks and impacts, nor do they facilitate proactive conservation planning to mitigate the risk of species becoming threatened.

Furthermore, lack of a systematic and transparent framework for the prioritisation and reporting of recovery and threat abatement plans has resulted in a lack of tangible progress in the conservation of threatened species and ecological communities.

Since inception of the EPBC Act, 1,890 threatened species have been listed for which 425 species recovery plans have been made or adopted.[25] Of the 425 plans, only 35 are multi-species recovery plans (less than 8 per cent), including 8 regional or landscape-scale biodiversity management plans (less than 2 per cent).[26] 167 species have been removed from the threatened species list since 2001, of which 14 species were reclassified, and 2 species were subsequently relisted.[27] Notably, only 2 of the 167 species delisted had recovery plans in place and those 2 species were subsequently reclassified.[28]

Since 2001, 84 ecological communities have been listed under the EPBC Act,[29] with 24 recovery plans made or adopted for 27 of the 84 listed communities.[30] DAWE records indicate 6 ecological communities have since been 'removed' from the threatened list, however these communities were either redefined, reassessed and up-listed, or relisted. Notably, only 2 of the 'removed' communities have approved recovery plans.

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[22] The Parliament of the Commonwealth of Australia, *Environment Protection and Biodiversity Conservation Bill Explanatory Memorandum*, Senate, 1998, p. 31.

[23] International Energy Agency, *Nuclear Power in a Clean Energy System, Fuel Report – May 2019*, 2019, <https://www.iea.org/reports/nuclear-power-in-a-clean-energy-system>, accessed 14 April 2020.

[24] Minerals Council of Australia, *Untapped potential*, 2019, p. 4.

[25] Commonwealth of Australia, 'Recovery Plans made or adopted under the EPBC Act', *Species Profile and Threats Database* [website], Department of Agriculture, Water and the Environment, [no date], <http://www.environment.gov.au/cgi-bin/sprat/public/publicshowallrps.pl>, accessed 3 March 2020.

[26] Ibid.

[27] Commonwealth of Australia, 'Species and ecological communities removed from the EPBC Act threatened list', *Species Profile and Threats Database* [website], Department of Agriculture, Water and the Environment, [no date], <http://www.environment.gov.au/cgi-tmp/publiclistchanges.4ac65e577bbab09f693f.html>, accessed 27 February 2020.

[28] Ibid.

[29] Commonwealth of Australia, 'Listings since commencement of EPBC Act', *Species Profile and Threats Database* [website], Department of Agriculture, Water and the Environment, [no date], <https://www.environment.gov.au/cgi-tmp/publiclistchanges.44f55e5dceb3d63cb63d.html>, accessed 3 March 2020.

[30] Commonwealth of Australia, 'Recovery Plans made or adopted under the EPBC Act', *Species Profile and Threats Database* [website], Department of Agriculture, Water and the Environment, [no date], <http://www.environment.gov.au/cgi-bin/sprat/public/publicshowallrps.pl>, accessed 3 March 2020.

For the 21 key threatening processes listed under the EPBC Act since 2001, 13 threat abatement plans have been made or adopted[31], with a further 6 plans in draft dating back to 2015.[32] Despite plans in place, no key threatening processes have been delisted to date.[33]

These records indicate a need for a strategic, landscape-scale approach to biodiversity conservation and threat abatement to manage cumulative impacts and threats and bring about meaningful progress for conserving biodiversity. A landscape-scale approach also presents unique cost efficiencies for managing multiple species occurring within the same region, facing the same key threats.

CME support the development of strategic, multi-species, regional recovery plans for threatened species and ecological communities which address proactive conservation and threat abatement measures. CME recognise that a regional approach may not be appropriate for all species, and some will require single-species recovery plans.

The current monitoring and reporting framework for species recovery and threat abatement plans is lacking. The list of 'commenced' and 'not commenced' recovery plans does not appear to have been publicly updated since 2009.[34,35] Progress and outcomes of approved plans are not published and are not discernible through interrogation of the DAWE 'Species Profile and Threats Database' (SPRAT). Furthermore, due to the aggregated, high-level of Departmental financial reporting, it is difficult to clearly understand Government expenditure, prioritisation, and achievements from this expenditure in relation to environmental assessments and biodiversity conservation outcomes. More detailed reporting and analysis would provide clarity on progress and outcomes of conservation actions undertaken, and help inform a robust, strategic plan for effective biodiversity conservation across the country.

CME support the implementation of a reporting framework for the monitoring of recovery plan progress and evaluation of conservation outcomes against expenditure.

4. Flexible offsets framework

The application of the Commonwealth's environmental offset calculator lacks clear guidance resulting in a high level of inconsistency in the application of the Commonwealth offsets policy. Arbitrary metrics and a lack definitional clarity on offset calculation requirements in the EPBC Act and accompanying Environmental Offset Policy allows for significant individual interpretation.

Offsets should be based on significant residual impact, calculated using robust scientific methods, and incorporate diverse and sustainable offset options. Whilst the EPBC Act Environmental Offsets Policy outlines 'other compensatory measures' as appropriate offsets,[36] CME members' experience is that offsets are based on area cleared and constrained only to 'like-for-like' land conservation.

A mineral sands project in WA's southwest provides a common example of the complex and duplicative process for negotiating State and Commonwealth offsets. After undergoing a bilateral assessment, a WA Ministerial Statement was issued with the condition to undertake a 19-hectare offset whilst meeting several criteria included located within a specific region (the Whicher Scarp). Several months following this,

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[31] Commonwealth of Australia, 'List of approved threat abatement plans and date of approval', *Approved threat abatement plans* [website], Department of Agriculture, Water and the Environment, [no date], <https://www.environment.gov.au/biodiversity/threatened/threat-abatement-plans/approved>, accessed 27 February 2020.

[32] Commonwealth of Australia, 'Draft threat abatement plans - Closed for public comment', *Draft Threat abatement plans open for public comment* [website], Department of Agriculture, Water and the Environment, [no date], <https://www.environment.gov.au/biodiversity/threatened/threat-abatement-plans/drafts-open>, accessed 27 February 2020.

[33] Commonwealth of Australia, 'Species and ecological communities removed from the EPBC Act threatened list', *Species Profile and Threats Database* [website], Department of Agriculture, Water and the Environment, [no date], <http://www.environment.gov.au/cgi-tmp/publiclistchanges.4ac65e577bbab09f693f.html>, accessed 27 February 2020.

[34] Commonwealth of Australia, *Attachment B – Recovery planning action commenced list at the time of EPBC Act amendments, February 2007 (revised June 2009, corrected November 2009)*, Department of the Environment, Water, Heritage and the Arts, 2009, <https://www.environment.gov.au/system/files/pages/a3acc278-94f2-449c-b027-72b8f0d28688/files/recovery-plans-commenced.pdf>, accessed 27 February 2020.

[35] Commonwealth of Australia, *Attachment C – Recovery planning action not commenced list at the time of EPBC Act amendments, February 2007 (revised June 2009, corrected November 2009)*, Department of the Environment, Water, Heritage and the Arts, 2009, <https://www.environment.gov.au/system/files/pages/a3acc278-94f2-449c-b027-72b8f0d28688/files/recovery-plans-not-commenced.pdf>, accessed 27 February 2020.

[36] Commonwealth of Australia, *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy*, Department of Sustainability, Environment, Water, Population and Communities, 2012, p. 9.

Commonwealth approval was similarly granted however with the condition to undertake a 35-hectare offset similar to the established State criteria. The requirement for a like-for-like land-based offset was highly constrained by the predominance of surrounding conservation reserve and lack of freehold land within the Whicher Scarp region. Furthermore, substantial negotiation was required by the proponent to reach an offset proposal agreeable to both levels of government due to inconsistencies between State and Commonwealth offset calculators.

This approach highlights how application of the current offset policy is neither practical nor sustainable. In WA, land-based offsets are restricted due to tenure-related land acquisition issues. Approximately 93 per cent of land in WA is Crown land[37] and therefore unavailable for purchase. In addition, the expansion of conservation estate adopted under the WA State Government's Plan for our Parks program further reduces land available for Commonwealth offsets by a targeted 5 million hectares.[38] Pragmatism is required on the part of the Government to ensure offset policies do not disincentivise moving land into conservation estate. In some cases, other forms of offsets may in fact provide more enduring or landscape benefits and hence should be preferable given the ultimate objective for offsets should be to maximise the long-term environmental benefit of the investment in the offset.

Alignment of State and Commonwealth offset policies is critical to ensuring practicality and avoiding duplication. Proponents seeking alignment of State and Commonwealth offset proposals have experienced approval delays or have otherwise been unsuccessful and required to establish two separate or additional offsets for a single impact for a single project.

CME supports alignment of State and Commonwealth offset policies.

Financial-based offset models, such as the Pilbara Environmental Offsets Fund and the Great Victorian Desert Biodiversity Trust, can be effective and sustainable mechanisms for achieving better strategic environmental outcomes outside of the 'like-for-like' regime. Environmental offsets funds enable collaborative conservation action through strategic, large-scale approaches to researching, managing and improving biodiversity aspects.

CME recommends a review and update of the Commonwealth environmental offsets calculator, with greater flexibility for more sustainable environmental offsets beyond 'like-for-like' land-based options.

5. Best available data informing decision making

Best available data is not consistently being used to inform decision making on Commonwealth environmental assessments and approvals. Contemporary environmental data, including best available science and geological information, submitted in proponents' environmental impact assessments is often disputed by DAWE assessment officers based on outdated information in SPRAT, and further assessments and information are required without reasonable justification.

A number of examples of the inaccuracy of data used to inform decision making have been identified by members, including:

- The foraging area for pygmy blue whales has been set on the basis of the observation of a single animal.
- One Marine Turtle Recovery Plan identifies 115 nesting sites, 31 of which were identified as being incorrect when compared to the National Conservation Values Atlas.
- The Biologically Important Area for inter-nesting turtles was set as a diameter from a nesting beach on the southern side of an island despite there never having been any observations of inter-nesting turtles seaward (only in the shallower landward waters).

The use of outdated, inaccurate and invalidated data and the constrained ability to update such data to reflect contemporary scientific evidence creates substantial and avertable issues in the proposal assessment process.

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[37] Environmental Defender's Office of Western Australia, 'Factsheet 12', *Crown Land Management*, 2010, <http://www.edowa.org.au/wp-content/uploads/sites/7/2016/11/factsheet_bhpl-crown-land-management.pdf>, accessed 6 March 2020.

[38] Government of Western Australia, *Plan for our Parks: Securing 5 million hectares over 5 years*, Department of Biodiversity, Conservation and Attractions, 2019, <https://www.dpaw.wa.gov.au/images/documents/parks/planforourparks/Plan%20for%20Parks%20State.pdf>, accessed 6 March 2020.

A current and comprehensive understanding of biodiversity is crucial for accurate environmental impact assessment and effective biodiversity management. With approximately 70 per cent of Australian fauna and flora species yet to be named,[39] this significant knowledge gap presents a risk to Australian biodiversity conservation. Furthermore, a lack of transparency of existing environmental survey data contributes to underinformed decision making.

CME welcomes and supports priority progress of the partnership between the Commonwealth and WA State Governments to develop a single digital environmental approvals process and biodiversity database, to be expanded to capture environmental survey data from across the country.[40] The Index of Biodiversity Surveys for Assessments and the Biodiversity Information Office (BIO), developed by the Western Australian Biodiversity Science Institute, respectively aggregate and analyse biodiversity data from across WA. Analytical data from BIO will enable best available data to inform project environmental assessment and approvals in WA.

Extending the WA framework to develop a national environmental database can:

- Provide better access to consistent environmental data for proponents;
- Assist decision-makers;
- Inform effective planning and policy development;
- Support self-assessment of proposed actions;
- Support an automated process for non-referrals via an online system; and
- Improve community confidence through transparency of environmental information.

CME support the development and implementation of a national environmental database to facilitate use of best available data to inform environmental assessments and decision making.

Conclusion

Streamlining Commonwealth and State environmental assessment and approvals processes can significantly improve environmental outcomes and confidence in associated government, business and community processes. Consistent, collaborative and coordinated environmental planning and decision-making processes supported by well-defined Commonwealth and State roles and accountabilities, clear guidance and robust environmental data can effectively reduce regulatory burden and improve administrative efficiency, generate certainty and confidence for all stakeholders, and most importantly deliver sustainable, landscape-scale biodiversity management.

CME thanks Professor Graeme Samuel AC for the opportunity to comment on the Discussion Paper and looks forward to further opportunities to engage in the Expert Panel's Act review process.

If you have any further queries regarding the above matters, please contact Kira Sorensen, Senior Policy Adviser – Environment.

Authorised by	Position	Date	Signed
Robert Carruthers	Director – Policy & Advocacy	01/05/2020	
Document reference	200501-EPBC Act Review Submission-Final.docx		

[39] Australian Academy of Science and Royal Society Te Apārangi, *Discovering Biodiversity: A decadal plan for taxonomy and biosystematics in Australia and New Zealand 2018-2027*, 2018, <https://www.science.org.au/files/userfiles/support/reports-and-plans/2018/taxonomy-decadal-plan-lo-res-v200618.pdf>, accessed 6 March 2020, p. 16.

[40] Morrison, S. (Prime Minister, Australia), *New Measures Delivering Deregulation for Australian Business*, media release, 20 November 2019, Parliament House, Canberra, <https://www.pm.gov.au/media/new-measures-delivering-deregulation-australian-business>, accessed 20 April 2020.

Appendix I: Detailed Responses to Discussion Paper Questions

Table 1: Responses to Discussion Paper questions

Question	Response
Section 2: ABOUT THE EPBC ACT	
The history of 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?	Refer to **sections 1 and 2** above.
What the EPBC Act does	
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?	The current wording of the principles of ESD under section 3 of the EPBC Act remains appropriate.
3. Should the objects of the EPBC Act be more specific?	Yes. Further clarity is required as to the definition of a 'cooperative' approach between State and Commonwealth governments. Lack of clarity of the role of the Commonwealth has resulted in significant scope creep away from obligations over time, and unnecessary duplication of State assessment and approval processes. Refer to **section 1** for further comments.
4. Should the matters of national environmental significance within the EPBC Act be changed? How?	Yes. Refer to **section 2** 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	Key priorities for reform are outlined under **Responses to the Discussion Paper** above. Other priorities for reform are outlined below.

Question	Response
proactive mechanisms to enable landholders to protect matters of national environmental significance and biodiversity, removing the need for regulation in the right circumstances?	***5.1 Assessment process*** *5.1.1 Clarity of 'significant impact'* What constitutes 'significant impact' is unclear making it difficult for proponents to self-assess whether a proposed action needs to be referred. Lack of adequate guidance and an inconsistent approach by DAWE has resulted in varying interpretations of what is and what is not considered 'significant impact'. CME recommend update of guidance to more clearly define what constitutes 'significant impact' in regard to referral of proposed action.
	5.1.2 Risk-based EIAs EIAs are not risk-based and focussed on material issues with conditions commensurate to the risk. Risk-based EIAs and outcome-focussed approval conditions present substantial streamlining opportunities to deliver sound environmental outcomes.[41] CME support the implementation of a risk-based assessment process to focus EIAs on material issues. CME strongly recommend approval conditions which are outcomes-focussed and commensurate to the risks identified in the EIA process.
	5.1.3 Effective use of 'particular manner' provisions Existing approval mechanisms, such as use of 'particular manner' provisions for variations, are under-utilised. Particular manner provisions provide a simple and effective means to streamline project approvals for low risk and well-understood controlled actions, negating the need for bespoke assessments and approvals. However, a 'particular manner' decision does not allow revision of the particular manners. Consequently, an operating facility receiving a 'particular manner' decision cannot implement an alternative method with a lower environmental risk. For example, for a long-term operation this could mean that instead of adding one or two wells to a facility that authorised production for a specific number of wells, a new facility would need to seek approval and be constructed.

[41] Commonwealth of Australia, *Resources Sector Regulation, Draft Report*, Productivity Commission, 2020, p. 13

Question	Response
	While presenting an effective means for streamlining project approvals for low risk controlled actions, the lack of flexibility in 'particular manner' decisions inherently undermines the objective to minimise environmental impact. CME recommend inclusion of provisions for 'particular manner' decisions to allow revision of a 'particular manner' where an alternative method with lower environmental risk may instead be applied. CME recommend inclusion of provisions in the EPBC Act for increased use of 'particular manner' provisions (i.e. in absence of a controlled action).
	5.1.4 Constrained use of 'stop the clock' mechanisms The unconstrained used of 'stop the clock' mechanisms, such as information requests, unfairly imposes additional cost and delays to project approvals. Member experience indicates these requests are often trivial (immaterial to the MNES and do not influence the environmental outcome or ultimate decision) and can be particularly problematic due to Departmental turnover as proponents are required to re-cover the same matters multiple times with 'stop the clock' imposed by the new assessing officer. CME recommend inclusion of provisions within the EPBC Act enabling proponents the right to refuse to respond to information requests in full or in part. DAWE are to make their assessment based on the information provided or otherwise declare the requested information to be critical.
	5.1.5 Scoping of EIAs Lack of clarity in the EPBC Act regarding what information is to be considered relevant to the assessment process has resulted in obscure papers being considered in DAWE's review of EIAs, and requests for information outside of the remit of the Act. The adoption of a risk-averse approach by the Commonwealth has further contributed to the proliferation of EIA requirements without environmental benefit. Companies have also been requested to provide environmental history of international companies, a consideration which is not within the remit of the EPBC Act.

Question	Response
	Findings from the Productivity Commission's recent study into resources sector regulation further demonstrate the need for the scoping of and risk-based approach to EIAs,[42] and clear guidance on regulators' expectations for EIA content and quality.[43] CME recommend amendments to the EPBC Act to more clearly articulate what information is to be considered relevant to the EIA process. CME recommend implementation of a scoping document for assessments to specify the focus of EIAs and therefore relevant information requests. The development of a scoping document for assessments has been successfully implemented under the *Environmental Protection Act 1986* (WA). As mentioned in 5.1.2, CME support the implementation of a risk-based assessment process to focus EIAs on material issues.
	5.2 Approvals *5.2.1 Consistent, risk-based and outcomes-focussed approval conditions* Since inception of the EPBC Act, the number of conditions required for mining and petroleum projects have increased, with inconsistencies between, and duplication of, conditions set by the Commonwealth and States. Inconsistent, overly prescriptive and non-risk-based conditions make it difficult for companies to implement project approvals. The lack of legal review of proposed conditions and inadequate communication between Commonwealth and State Governments have resulted in the imposition of inconsistent and impractical conditions on EPBC Act approvals. CME recommend implementation of a process for legal review of proposed conditions for approvals, including review against existing and proposed conditions from State approvals.
	5.2.2 Improved guidance for conditions close out Conditions under agreements / approvals of completed projects are unable to be closed out, resulting in unnecessarily prolonged compliance assessment and reporting. Without adequate guidance on the process for close out of conditions for

[42] Commonwealth of Australia, *Resources Sector Regulation, Draft Report*, Productivity Commission, 2020, p.39.

[43] Commonwealth of Australia, *Resources Sector Regulation, Draft Report*, Productivity Commission, 2020, p.40.

Question	Response
	agreements and approvals, proponents will continue to incur costs for superfluous project monitoring and reporting. CME recommend publication of guidance detailing the process for the close out of approval / agreement conditions.
	5.3 Post-approvals *5.3.1 Transparent post-approval planning process* The post-approval planning process lacks transparency, is increasingly burdensome, and is not supported by statutory timeframes. Statutory timeframes supported by well-defined process guidance and accountabilities provides all stakeholders with clear performance expectations. Furthermore, regular and open communication of approval progress by DAWE enables proactive engagement and effective planning by proponents, working to minimise impacts to project costs and resources. CME support increased use and adherence to statutory timeframes for secondary approvals. CME recommend improved transparency of the approval process through the implementation of a publicly available online application / approval tracking system, similar to that implemented by the WA Environmental Protection Authority.[44] CME recommend publication of guidance on the post-approval planning process, outlining accountabilities.
	5.3.2 Post-approval matters to be assessed in the primary approval stage The delivery of primary approvals conditional on secondary approvals (e.g. approved management plans) unduly exposes proponents to risk of further delay, additional cost and investment risk. Subject to an opaque post-approvals process, secondary approvals are handled by unacquainted assessment officers, with no assessment framework and no mechanism to break an approvals stalemate. Where matters deferred for future consideration are fundamental to the approval such matters should be included in the primary approval and subject to the same assessment rules, procedures and timeframes. Furthermore, approval conditions

[44] Refer to https://epa.wa.gov.au/pages/about-environmental-impact-assessment.

Question	Response
	should allow for management plans to be developed to meet specific outcomes, rather than prescribing the content of the plans. Primary and secondary approvals should be used as technically appropriate to the administration of the EPBC Act, with sufficient flexibility to allow proponents and assessment officers to pursue the most suitable approach. CME strongly support outcomes-based approval conditions for the development of management plans. CME recommend the publication of guidelines to support proponents to prioritise addressing of key matters in the assessment phase.
	5.3.3 Consistent management plans Time lags between the granting of Commonwealth and State approval of management plans leads to inconsistencies in plans covering the same subject matter. Further, proponents have experienced inconsistency in Commonwealth and State expectations for management plans. Management plans submitted to both Commonwealth and State regulators are often approved by the State while further revisions are required by the Commonwealth. Revised plans subsequently approved by the Commonwealth are then required to be re-submitted to the State for re-approval to ensure consistency. This exhaustive process unnecessarily consumes proponents' and regulators' time and resources. Bilateral approvals present an administratively and cost-efficient means for the effective delivery of consistent Commonwealth and State approvals and post-approvals. As mentioned in section 1 above, CME strongly support the Western Australian Government's announcement, made 27 November 2019, by the Premier Hon. Mark McGowan, advising of Western Australia's intent to pursue an environmental approvals bilateral agreement.
	5.3.4 Effective variations process The variation process does not support projects to adapt to evolving operations and changing operational conditions. The variation process takes too long (up to 18 months) with no differentiation between minor and major variations. Minor and major

Question	Response
	variations are subject to the same process, same timeframes, and are assessed with the same rigour. As an example, a member company is currently seeking to transfer port facility-related project approval conditions to the Port Authority as the Port Authority now owns and controls the port-related facilities. The activities previously approved (and hence the key associated environmental impacts) are not being altered (i.e. non-significant change). While there is a process under the *Environmental Protection Act 1986* (WA) by which this transfer can be facilitated, the EPBC Act does not provide a mechanism for transfer of particular conditions of an approval to another party. There is a need to allow for changes to controlled actions, rather than becoming a 'new action', with assessment and public consultation requirements commensurate to the risk. Where activities approved previously (and hence the key associated environmental and biodiversity impacts) are not being altered (i.e. minor variation), the variation should not be subject to public consultation. Conversely, where activities approved previously are being altered (i.e. major variation) and were subject to public consultation as part of the original approval, the change to activities should also be subject to public consultation as part of the variation process. CME recommend implementation of a variation approval process to allow for amendments to approved controlled actions, similar to section 45C of the *Environmental Protection Act 1986* (WA). CME support the differentiation of variation approval processes for major and minor changes to controlled actions.
	5.4 Appeals *5.4.1 Limitation of administrative appeals* Industry opponents, often removed from the local community, are increasingly using the appeals process to halt or delay projects based on administrative error. Negative public perceptions arising from a lack of transparency of the approvals processes are encouraging evocation of appeals provisions for administrative errors. Appeals should be limited to aspects of the referral / approval likely to have a material effect and should only be available to those with a specific interest in the activities. Appeals and legal challenges resulting from administrative issues do not add value or result in better environmental outcomes. Such appeals simply drain Government and Court resources and create uncertainty and delay for industry.

Question	Response
	CME recommend revision of the EPBC Act to reduce the level of administrative prescription in order to reduce vulnerability to appeals on administrative technicalities.
The performance of the EPBC Act	
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 conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?	Yes, there should be greater focus on better guidance on the EPBC Act. Current guidance documents are not fit for purpose and do not support efficient or effective referral assessment and approval processes, or consistent environmental standards across Commonwealth and State Governments. Lack of accurate and up-to-date guidance undermines the efficient administration of the EPBC Act for all stakeholders. Of the hundreds of published guidance material, many are out of date or still in draft and there exists no clear document hierarchy or document review process. The awkward and inconvenient structure of the DAWE website further compounds the issue, making it difficult for proponents to locate relevant documents. CME strongly recommend a review and update of published guidance material to ensure currency. CME recommend implementation of a clear and logical document hierarchy, in collaboration with other levels of governments, to improve ease of navigation and information sourcing for proponents and other interested stakeholders. CME recommend implementation and publication of a defined document review process.
Section 4: FOCUS AREAS: HOW CAN THE EPBC ACT BE IMPROVED?	
A. The role of the EPBC Act	
8. Should the EPBC Act regulate environmental and heritage outcomes instead of managing prescriptive processes?	Refer to **section 1** above.
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	Refer to **section 1** above.

Question	Response
provide oversight of the outcomes? How do we know if outcomes are being achieved?	
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?	Refer to **section 1** above.
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?	Refer to **section 3** above.
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?	Yes, CME support greater use of strategic assessments under the EPBC Act in a more practical way that improves their accessibility. Strategic assessments are good in theory, however difficult in practice. Inherently more complex, strategic assessments take longer and require greater care in their application to avoid inaccuracies. Supported by robust, effective and collaborative administrative processes, well-implemented strategic assessments present an opportunity for more cost-effective and efficient project approvals. Furthermore, strategic assessments and approvals

Question	Response
	can provide an effective platform for the long-term management of landscape-scale environmental values. Insufficient guidance, ineffective collaboration between regulators, lack of clarity on the effect of newly listed species on approved programs, and lack of provisions in the EPBC Act to amend a program, all contribute to the unwieldy, high-risk and expensive strategic assessment process currently unfavoured by proponents. CME support further investigation into making strategic assessments more practical and accessible for proponents.
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?	Refer to **sections 1 and 2** above.
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?	Yes. Precautionary referrals of low-risk actions are unnecessarily congesting the EPBC Act approvals system, causing delay in assessment and approval of known controlled actions. Lack of clarity of the definition of 'significant impact' and an ineffective process for self-assessment for non-referral encourages precautionary referral of low-risk actions. Clarification of what constitutes 'significant impact' and an automated process for non-referral is required to streamline assessment of low-risk actions and provide a defence for non-referral. CME recommend implementation of an instrument for automated processing of 'not controlled action' decisions via an online tool. As iterated under 5.1.1, CME also recommend update of guidance to more clearly define what constitutes 'significant impact' in regard to referral of proposed action. With regard to environmental data, refer to **section 5** above.
16. Should the Commonwealth's regulatory role under the EPBC Act focus on habitat management at a landscape-scale rather than species-specific protections?	Refer to **section 3** above.
17. Should the EPBC Act be amended to enable broader accreditation of state and territory, local and other processes?	Yes. Bilateral agreements for assessments and approval are under-utilised, and currently do not permit assessment of the water trigger, limiting Commonwealth regulation streamlining and efficiency objectives.

Question	Response
	Refer to **section 1** above for further comments.
E. Community inclusion, trust and transparency	
21. What is the priority for reform to governance arrangements? The decision-making structures or the transparency of decisions? Should the decisions makers under the EPBC Act be supported by different governance arrangements?	The Minister for the Environment should maintain responsibility for approvals. Furthermore, if assessment bilateral agreements are in place and operating effectively, a separate Commonwealth assessment body would not serve any meaningful purpose. CME supports the current decision-making authorities under the EPBC Act, including the role of the Minister.
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?	CME support the redrafting of the EPBC Act to adopt a more strategic approach to environmental management through a focus on national environmental standards and a landscape-scale approach to biodiversity conservation and threat abatement. Refer to **sections 1 and 3** above for further comments.
24. What do you see are the key opportunities to improve the current system of environmental offsetting under the EPBC Act?	Refer to **section 4** above.