



# Anglican Church of Australia

## Public Affairs Commission

30 April 2020

Dear Professor Samuel and Independent Review Panel

### **Submission by the Public Affairs Commission of the Anglican Church of Australia to the Review of the *Environment Protection & Biodiversity Conservation Act 1999***

Thank you for this opportunity to contribute to the 2019-2020 Independent Review of Australia's key piece of national environmental law, the *Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act).

Thank you also for accepting late submissions. This is most welcome as it has given us the opportunity to outline some broad areas of concerns and important principles that should be reflected in the EPBC Act.

### **Introduction**

This submission is made by the Public Affairs Commission (PAC) of the Anglican Church of Australia (ACA). The PAC is a body set up, amongst other matters, to respond to aspects of public affairs as referred by the Primate, Standing Committee or General Synod of the ACA or initiated by the PAC. The views expressed in this submission are the views of the PAC only and should not be taken to reflect the opinion of the ACA, the Primate, the Standing Committee or any of the Dioceses.

We are not in the position to respond in detail to each of the questions in the Discussion Paper. Others are better placed to address technical and scientific issues. This submission selects a few questions and focuses on drawing attention to the need for the Review to consider issues that extend beyond scientific, environmental and economic issues: they include the deeply moral and ethical challenge we must face together.

### **Context**

The worldwide Anglican Communion has five Marks of Mission that express the Communion's common commitment to, and understanding of, God's holistic and integral mission.

Three Marks of Mission are particularly relevant to the PAC's contribution to this Review:

- 3 To respond to human need by loving service;
- 4 To transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation;
- 5 To strive to safeguard the integrity of creation and to sustain and renew the life of the earth.<sup>1</sup>

The PAC places a major emphasis on environmental issues. We recognise these as some of the most challenging issues to be faced in the modern world if we are to address the fifth

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<sup>1</sup> Anglican Communion. "Marks of Mission", <http://www.anglicancommunion.org/mission/marks-of-mission.aspx>.

mark of mission, caring for the creation and emphasising intergenerational equity. Related to this, PAC also recognises that, as the environment is heavily influenced by human societal pressures, that the fourth mark of mission dealing with the structures of society, also requires major emphasis.

This reflects the views of the broader Anglican Church. For example, over many years, the General Synod of the ACA has identified climate change to be a significant threat to humanity and the viability of our planet's biological systems. We are particularly concerned that the effects of climate change are being and will be felt disproportionately by the world's poor. For example, we are deeply concerned by the fact that the effects of climate change are already being felt by the people of the Torres Strait and by our Pacific neighbours. This concern is reflected in resolutions of General Synod. In 2017, for example, the General Synod resolved, amongst other things, to encourage the Federal government to act quickly to resolve perceived conflicts of interest between the wider community and commercial beneficiaries of fossil fuels (Resolution R62/17).

This fundamental teaching to care for our shared home and thus for each other is reflected in ancient wisdom and most faiths.

We are part of and dependent upon the earth's systems. All life as we know it can only flourish if our environment is healthy and suitable enough to be able to support it.

Our physical environment (especially a stable and hospitable climate, clean air, water and soil) and our biodiversity are also of intrinsic value and we have a moral duty to protect and care for them, particularly for future generations and other species with which we share the Earth.

We have been entrusted with the care of our world, the physical and biological environment that is the home we all share. We all need to discharge that responsibility seriously. Australia's national environmental law and its administration and governance needs to reflect that.

### **Concerns about the state of the environment and ineffectiveness of environmental protection laws**

Inadequate protection in law and practice is allowing damage to the earth. As a result, in recent decades we have witnessed a significant rise in damage to and destruction of physical and ecological systems that we depend on and enjoy. We have observed the results of failure to protect and care for our common home in our own experiences and those of the most vulnerable (including other species). The most recent Australia State of Environment Report of 2016<sup>2</sup> documents the increasing and pervasive pressures on the environment caused by climate change and a continuing deterioration in key environmental and ecological indicators. This continuing deterioration has also been documented in subsequent reports, such as Australia's Environment in 2019, which was released on 30 March 2020.<sup>3</sup> As the authors of that report say:

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<sup>2</sup> Australian Government, 'Australia State of Environment Report 2016', <http://soe.environment.gov.au>.

<sup>3</sup> Australian National University, Centre for Water and Landscape Dynamics, "Australia's Environment 2019", <https://www.wenfo.org/aer/>.

We do not survive without [healthy] air to breathe, water to drink, soil to grow food and weather we can cope with... In the long term, we must find a more balanced relationship with the natural world, understanding that our own survival will depend on it.<sup>4</sup>

The consequences of continuing and cumulative damage to our climate and other aspects of our common home are hurting the most vulnerable people and species, now and in the future.

A major problem in the light of the concerns outlined above is that the EPBC Act does not currently take a holistic view of the environment and our heritage. In particular, the Act addresses neither the cumulative effect of developments nor the escalating problem of damage to our climate and the consequences of that damage.

The balance in the EPBC Act and its administration also currently seem to favour development proponents over the rights and capacity of citizens and communities to be able to participate in decision-making processes that help them to discharge their responsibilities to care for the earth.

Given the current state of our environment and the ongoing and increasing pressure to damage it further, it is critically important that changes are made so that we have truly national environmental laws that genuinely protect it, including Australia's natural and cultural heritage. Without such reforms, the overarching effects of both climate change and the cumulative effects of developments effectively renders the EPBC Act impotent.

We believe the EPBC Act and its administration needs to be significantly improved to address these serious concerns. We set out some recommendations in response to some of the questions.

### **Response to some discussion questions**

***Question 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?***

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

We support retaining and strengthening the existing matters of national environmental significance. We also urge inclusion of climate change factors as both triggers for assessment processes and a matter that must be taken into consideration both in assessing any proposal and in strategic assessments and bioregional planning. Such specific triggers should include thresholds for significant levels of greenhouse gas emissions, water and air pollutants, damage to vulnerable ecosystems and species and land clearing and also cumulative damage such as reduction to areas of habitat or loss of water or pollution.

There should also be powers to enable the Minister to designate additional areas or projects of concern even if not caught by the specific triggers or thresholds.

***Question 2: How could the principle of ESD be better reflected in the EPBC Act? For example, could the consideration of environmental, social and economic factors,***

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<sup>4</sup> Van Dijk, A., Renzullo, L., Yebra, M., & Rapley, S. 2020. 'A major scorecard gives the health of Australia's environment less than 1 out of 10', *The Conversation*, 30 March 2020, <https://theconversation.com/a-major-scorecard-gives-the-health-of-australias-environment-less-than-1-out-of-10-133444>

***which are core components of ESD, be achieved through greater inclusion of cost benefit analysis in decision-making?***

It is vital that the principle of Ecologically Sustainable Development integrate long and short term environmental, social and economic factors. These will require that any cost-benefit analysis must include environmental and community costs, including cumulative effects, and not reduce everything to a monetary value. The benefits of healthy environments and ecosystems and services associated with these must also be considered. As outlined above, there appears to be an inappropriate favouring of development proposals over protection of the environment which needs to be rectified.

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

An overarching object of protecting the environment, heritage and biodiversity could help focus attention on the primary aim of the Act. This could also help reduce the cumulative effects of 'development'. However, specific objects are still needed for guidance and clarity.

Mitigation and prevention of climate change should be included as specific object of the EPBC Act.

We also call for specific mention of recognising and facilitating the First Nations Peoples' knowledge, custodianship, cultural ownership and connection to Country and its ecosystems.

Powers exercised under the EPBC Act should be required to be exercised to achieve the objects.

***Question 5: Which elements of the EPBC Act should be prioritised 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?***

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

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

History has shown us that it is necessary for prescriptive processes to be implemented in order to achieve better environmental and heritage outcomes. Processes and outcomes should not be viewed as alternative choices.

Outcomes should also be measured and regulated as well and proactive mechanisms to enable landholders to protect the environment should also be supported, but not at the expense of removing regulatory assessment and approvals and other processes. All of these matters are important and intrinsically related. Self-regulation has not been shown to be adequate and it would not take into account the danger of cumulative or incremental developments.

All matters and mechanisms should be considered to best achieve the objects of the EPBC Act. The prescriptive processes can be assessed to ensure that they are effective in achieving the objects.

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

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

The review should focus on ensuring a holistic and long-term approach to protecting the integrity of our shared environment, including the physical and biological systems that enable life to flourish and our heritage. We recommend creating new, more holistic legislation rather than amend the current EPBC Act.

Reducing climate change and the cumulative effects of 'development' are vital for allowing life as we know it to continue. As such, they are key challenges for our nation and the whole world and need to be a major area of focus of our national legislation and its implementation.

In addition to the matters set out above, there needs to be a requirement to consider the **cumulative** effect of development and proposals.

The concerns about the state of the environment set out above show that the EPBC Act has not been sufficiently effective to protect the environment or promote ecologically sustainable development and biodiversity conservation. All the evidence points to the fact that unless drastic changes are made, the situation will only deteriorate rapidly.

**Question 9: Should the EPBC Act position the Commonwealth to take a stronger role in delivering environmental and heritage outcomes in our federated system? Who should articulate outcomes? Who should provide oversight of the outcomes? How do we know if outcomes are being achieved?**

**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?**

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

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

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

**Question 21: What is the priority for reform to governance arrangements? The decision-making structures or the transparency of decisions? Should the decision makers under the EPBC Act be supported by different governance arrangements?**

**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?**

We call for urgently improved governance to ensure **strong national oversight** and the integrity of the legislation and its implementation with a clear primary goal of taking a holistic and long-term approach to caring for our environment and protecting its integrity. The Commonwealth as signatory to international instruments must carry ultimate responsibility for compliance with our obligations.

This requires Commonwealth responsibility and national oversight to be strengthened. It should not be abdicated/delegated to the States and Territories, Local Government or proponents because, where this has happened, their adoption and exercise of the responsibilities has at best been uncoordinated, uneven and half-hearted, as was predicted. In the case of Heritage, for example, the EPBC Act represented a winding back of Commonwealth leadership and responsibility to a remnant small, limited and misleading concern with 'national' heritage. Accompanying the EPBC Act was the abolition of the Australian Heritage Commission and its replacement with the much less significant Australian Heritage Council, and the abandonment of the Register of the National Estate in favour of a very proscribed 'National Heritage List'. These represent an unfortunate abdication of Heritage responsibilities by the Commonwealth.

The legislation may need a complete re-working to ensure that Commonwealth, Commonwealth bodies and decision-makers can take a stronger role in such oversight and to ensure that the intended outcomes of the legislation are achieved. National oversight must be expanded to land clearing, biodiversity and ecosystems and biodiversity, water resources, climate change, air pollution and protected areas. This is particularly required in situations where the States and Territories are often the proponents of projects and thus have a conflict of interest. Bilateral agreements with States must be reconsidered as States will often fail to taken into account the national interest in assessing proposals.

The recent bushfire crisis has demonstrated the need for a consistent national approach and the ability for the Commonwealth to take urgent action.

To improve certainty, there needs to be **clear guidance** on assessment requirements and clear, objective, legislated decision-making criteria focussed on protecting and caring for our environment. The Commonwealth must set binding national standards to which States and Territories must comply. An expert Commission should be established to set such standards, do strategic assessments and report regularly.

The strategic assessments and standards must not replace the need to assess projects on a case by case basis as well.

Effective implementation of the EPBC Act also requires **adequate resourcing** which must be substantially increased over current levels.

The EPBC Act should also be subject to **more regular reviews**, such as every 5 years, given the urgent need to deal with climate change.

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

Community involvement and participation is essential in protecting the environment, especially local environments where the community is often the body that will be impacted most severely and is well placed to notice environmental hazards and damage. Processes need to be reformed to enable citizens and communities to be involved in environmental decision-making through representation on advisory and decision-making bodies as well as through public reviews and other mechanisms.

Enabling **accessible participation** by the public at every level would help assessment and decision-making processes. This participation would also assist the national oversight into the operation of the legislation and its administration.

Transparency and accountability measures will greatly facilitate public confidence in the process.

We therefore believe that it is essential that the extended standing provided for in s487 of the EPBC Act should be retained or widened to enable concerned citizens and community organisations to challenge decisions in court. There is a clear public interest in ensuring that public officials comply with the law.

***Question 12: Are heritage management plans and associated incentives sensible mechanisms to improve? How can the EPBC Act adequately represent Indigenous culturally important places? Should protection and management be place-based instead of values based?***

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

***- How can we best engage with Indigenous Australians to best understand their needs and potential contributions?***

***- What mechanisms should be added to the Act to support the role of Indigenous Australians?***

The EPBC Act needs to recognise and facilitate First Nations Peoples' cultural stewardship and management of their own places of significance. The principles of self-determination and informed consent set out in Article 19 of the UN Declaration on the Rights of Indigenous Peoples, to which Australia is a signatory, must be reflected in the EPBC Act and other legislation. It is vital that First Nations Peoples are recognised as the traditional owners of their cultural heritage and properly consulted and engaged with in a manner culturally appropriate for the relevant Peoples. The heritage of First Nations Peoples should be protected for the cultural significance to those particular Peoples and damage assessed according to their values.

Heritage management plans prepared with and agreed to by the relevant First Nations Peoples should be encouraged and incentives, as well as regulatory requirements, should be created to encourage these and early engagement with the First Nations Peoples. Funding needs to be provided to resource First Nations Peoples to engage with such processes and obtain any required professional services.

Given that places of significance can rarely be separated from their values, protection and management needs to be dealt with in a holistic way appropriate to the relevant First Nations Peoples. It would be usually be appropriate to maximise protection by protecting both places and values.

Indigenous Protected Areas and ranger programmes should be prioritised, extended and the relevant First Nations Peoples should be properly funded to care for these areas.

We urge that your review should specifically seek out and engage with First Nations Peoples and organisations in relation to these matters and the design of any provisions relating to their heritage and their Country.

### **Summary of Key Recommendations**

We need to construct a proper, healthy relationship with our shared environment and home. When we do, our world is restored to its natural abundance, flourishing and beauty and our heritage is protected. When we make these changes our world also becomes fairer, the vulnerable are better cared for and we fulfil our duty to those who came before us and will come after us.

We want national environmental law and its administration to be reformed urgently so that it takes a holistic and long-term approach to caring for our common home. We seek to ensure that our natural and physical environment, which sustains flourishing life and has intrinsic value, is cared for and continues to be enjoyed by generations to come.

We call for the EPBC Act and its administration to be upgraded as a matter of urgency, before there is further irreparable damage. In particular we seek changes to:

1. Include climate change both as a trigger and during consideration of proposals;
2. Include consideration of cumulative effects of development and proposals;
3. Improve governance, to ensure there is national oversight and integrity of the legislation and its implementation;
4. Enable easily accessible participation by citizens and communities in environmental decision-making at every level, including retaining the provisions for citizens and community organisations to be able to challenge decisions in court;
5. Ensure that First Nations Peoples are enabled to manage their own Country, ecosystems and cultural knowledge.

We would welcome opportunity to expand on this submission and further contribute to the Review.

Yours faithfully



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Chairperson  
on behalf of the Public Affairs Commission*