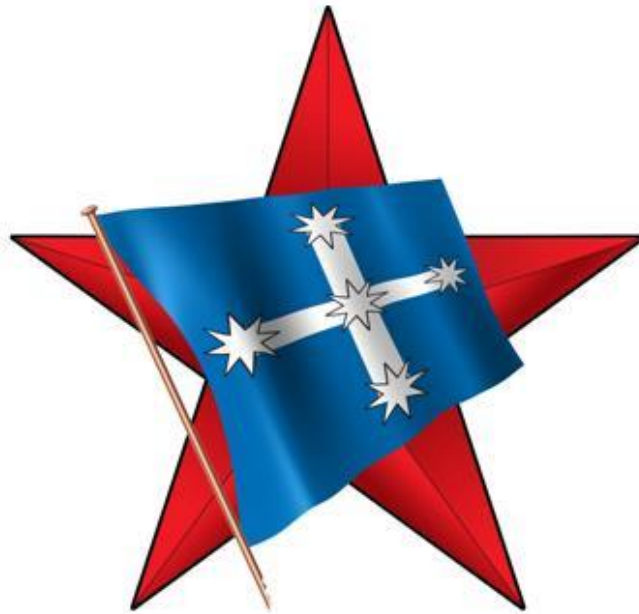


Submission of the
Communist Party of Australia (Marxist-Leninist)
to the
Review of the EPBC Act
March 2020



www.cpaml.org

Preamble: The CPA (M-L) and its commitment to the environment

The Communist Party of Australia is one of the oldest political parties in Australia. The original Party was founded on October 30, 1920. On March 15, 1964 the Party was reconstituted as the Communist Party of Australia (Marxist-Leninist). Membership of the Party is open to workers and their supporters who accept and agree with its Program and Rules.

In relation to the current Review of the EPBC Act, the relevant section of the Party Program¹ reads:

14. Climate Change and the Environmental Crisis

The only two sources of wealth are human labour power and nature. Capitalism attacks, devalues and destroys both. In the early stages of the 21st century, the damage to the environment as a result of capitalist plunder has reached potentially catastrophic proportions for humanity and the planet. Over ninety percent of the world's climate scientists agree that human induced climate change and global warming are approaching the point of no return.

Fighting climate change is important to the working class. Renewable energy must replace fossil fuels, and sooner rather than later. Water must be a common good and not a tradeable commodity. Pollution and waste must be reduced and eliminated. The dangers in uranium mining and the problem of nuclear waste make nuclear energy unviable.

Biodiversity matters to the working class. The planet is facing an alarming rate of species extinctions. Habitats of other species must be rehabilitated and expanded. Research into the biology of other species must be ramped up in order to create programs for the restoration of their numbers.

The united struggle of the people can force short term advances under capitalism to reduce pollution, move to renewable energy and protect the environment.

However, capitalism and its current form imperialism have given rise to the irreversible destruction of the environment and global warming in particular. Imperialism is based on growth at all costs and puts profits before the needs of people and the environment. It must be overthrown and a socialist society established. Only this will make it possible for humans to be able to live in an environment that is sustainable long-term.

The Party and the working class must exercise leadership in protecting the environment and ensure that a socialist society works not to "conquer" nature, but to co-exist with it, restoring the balance between humanity and nature.

The First Peoples of this continent and its islands survived at least 60,000 years prior to invasion. They have the answers to restoring balance and must be listened to.

The commitment to the environment and biodiversity expounded in Section 14 of the Party's Program informs our response to the EPBC Act Review.

¹ <http://cpaml.org/programme.php>

Introduction to the Review

The Commonwealth Government has a clearly announced agenda behind the Review. Announcing the Review, the Minister for the Environment, the Hon. Sussan Ley, MP stated that it would “tackle green tape and deliver greater certainty to business groups, farmers and environmental organisations.”² She added, “The one thing all sides of the environmental debate concede is that the complexities of the Act are leading to unnecessary delays in reaching decisions and to an increased focus on process rather than outcomes. Delays in EPBC decisions are estimated to cost the economy around \$300 million a year and frustrate both business and environmental groups.” Finally, she stated that the Morrison government was committed to “delivering improved efficiency and supporting business, investment and jobs, while maintaining high environmental standards.”

How can this Review have credibility as an “independent review” when its outcomes are so narrowly predetermined by the responsible Minister? With what authority can she declare that “all sides in the debate are worried about delays that are costing the economy \$300 million a year?” It is offensive to the many Australians who are committed to the environment and to biodiversity that the Minister derisively refers to legislative protections as “green tape”.

The composition of the Review Panel surely reflects the Minister’s (and government’s) determination to weaken “green tape” protections. One side of the “debate” is over-represented – the side that represents corporate influence against the environment and biodiversity.

Whilst not denying that there may be relevant transferable skills to a review of an environmental act, the Independent Reviewer’s expertise is in economic reform, the health industry and competition law. Such a person would need the support of an informed expert panel to advocate for those changes to the EPBC Act that genuinely advance the interests of environmental protection and biodiversity conservation.

The appointment of **Mr Bruce Martin** is a long-overdue acknowledgement of First People’s voice. We respect Mr Martin’s independence and advocacy, including his public condemnation of the widely discredited model of direct instruction in Cape York schools. However, First Peoples are not a single homogenous community. We believe that First People’s communities should have been empowered to select at least three representatives from different climate zones (eg tropical rainforest, savannah grasslands, temperate coastal, arid and semi-arid) so as to properly listen to and be informed by First People’s cultural knowledges.

The appointment of **Dr Erica Smyth AC** to the review panel can only be viewed as strengthening that side of the “debate” supported by the Minister and the government. Dr Smyth is Chair of the National Offshore Petroleum Safety and Environmental Management

² <https://minister.awe.gov.au/ley/media-releases/graeme-samuel-lead-environment-review>

Authority Advisory Board (NOPSEMA) which has acted against communities' and environmentalists' objections in granting an exploration license for the Norwegian company Equinor in the Great Australian Bight. That alone should have ruled her out of contention for a position on what purports to be an "independent review" panel. There can be fewer examples of complete disregard for environmental protection and biodiversity conservation than this go-ahead given to a foreign fossil fuel corporation. In addition to her role at NOPSEMA, she has been chairperson and director of oil and gas producers, and of uranium miner Toro Energy which has received federal and state government environmental approvals for mining uranium at its Wiluna Uranium Project. These approvals fly in the face of the EPBC Act's prohibition on "nuclear actions" which include (Section 22 (1) (d)) mining uranium.

Another of Dr Smyth's previous responsibilities include having been Deputy Chairperson at the Australian Nuclear Science and Technology Organisation (ANSTO). In addition to Section 22, referred to above, Section 140A of the EPBC Act prohibits the Minister from approving the construction and operation of certain types of nuclear installations. There are currently calls from some quarters for the removal of Section 140A from the Act. How can this be given dispassionate consideration by anyone previously connected with ANSTO?

Dr Wendy Craik is another member of the review panel. In March 2018 she was appointed by the government to review how the EPBC Act "intersected with the agricultural sector". Journalists Jommy Tee, Ronni Salt and Sandi Keane investigated conflicts of interest arising from her role³ in the wake of the Angus Taylor #Grassgate scandal and pressure from National Party politician who said that the EPBC Act treated farmers as "criminals" and was "excessive". The authors stated that "While in no way impugning the professional reputation of Dr Wendy Craik, the list of examples below of non-disclosures and serious conflicts of interest is nevertheless of concern."

The Craik Report failed to prioritise environmental concerns and gave undue emphasis to objections raised within the agricultural sector to the regulatory requirements of the EPBC Act. The review headed by Dr Craik identified concerns such as a need to reduce complexity and cost associated with the existing environmental impact assessment and threatened species and ecological communities listing processes, so they better address "the realities of agriculture" and incentivise farmers to engage with the EPBC Act. It sought to replace regulatory procedures for listing species or ecological communities with outcomes including:

- agricultural expert representation on the body responsible for listing, the Threatened Species Scientific Committee;
- consideration of the impacts of a proposed listing on the agriculture sector; and
- risk-based ground-truthing of conservation advices and recovery plans for listed species and ecological communities before those advices and plans are finalised.

³ <https://www.michaelwest.com.au/money-for-jam-land-enviro-review-not-as-independent-as-its-craiked-up-to-be/>

Such outcomes marginalise and trivialise the protection of threatened species.

The Craik Review's recommendations for environmental impact assessments include such unscientific and commercially motivated issues as:

... allowing a proponent to request that the Commonwealth Minister revoke, vary or add conditions of an EPBC Act approval where an existing condition:

- is no longer relevant;
- is establishing a perverse outcome;
- cannot reasonably be undertaken due to changing circumstances or new information; or
- could be undertaken in a more cost-effective manner.

Finally, the Craik Review calls for a "market-based approach" to "protect and actively manage MNES outside of the legislative requirements."⁴

We are confident that the large mass of citizenry on the other side of the Minister Ley's "debate" would find the application of market-based approaches to matters of national environmental significance bizarre and offensive. That Dr Craik, with such a background of making recommendations for the weakening of environmental protections on behalf of the agricultural interests she has represented as a Director of the Australian Farm Institute, has been made one of the four members of the EPBC Act "independent" Review Panel, shows how seriously skewed in favour of the commercial and corporate "stakeholders" is that Panel.

The last member of the Panel is **Professor Andrew Macintosh**, chair of the Emissions Reduction Assurance Committee, part of the Abbott-era Emissions Reduction Fund (ERF), established in 2014 to replace Labor's so-called "carbon tax". The fund provides financial incentives to farmers who reduce carbon emissions or engage in mitigation projects such as land revegetation. In 2019 a panel of government-appointed experts claimed that there were "integrity issues" with several of the methods of revegetation, and that finance had been provided in advance to projects that had not, and possibly would not, produce the required results. Professor Macintosh confirmed the existence of this problem and said that changes had been made to make future projects more robust; however, he did not strongly advocate that the changes be retrospective, citing opposition from investors engaged in existing projects.⁵

In June 2019 it was revealed that the Emissions Reduction Fund was to consider using public funds to subsidise coal-fired power generators.⁶ Prof. Macintosh said a review into the ERF would not automatically disqualify fossil fuels like coal or gas. In his public comments, he revealed an irresolute attitude towards the possibility of ERF funds being used to prolong the life of existing coal-fired power stations, saying:

⁴ MNES are Matters of National Environmental Significance.

⁵ <https://www.smh.com.au/politics/federal/experts-find-integrity-issues-with-coalition-s-direct-action-policy-20190416-p51eoj.html>

⁶ <https://www.abc.net.au/news/2019-06-21/erf-could-hand-money-to-coal-fired-power-stations-idea-in-review/11230752c>

"From the top of my head, I can conceive a circumstance where activities in coal-fired power plants, or gas-fired power plants, or other generators, could be additional and have environmental integrity, and I can see hypotheticals for where they wouldn't be," he said.

"We've got to evaluate both those circumstances, where they would and they wouldn't, and make sure that the rules in the method ensure that we only capture the circumstances where the activities will result in real and genuine abatement."

It is greatly concerning that the head of the ERF has such a vacillating attitude towards the use of public funds to support coal-fired power plants, particularly given the gung-ho attitude of the federal government towards what it describes as "high efficiency, low emissions" projects. On February 8, 2020 Energy Minister Angus Taylor announced that \$4 million would be provided for a feasibility study into the proposed new coal plant at Collinsville in Queensland.⁷

Professor Macintosh is currently a member of an Angus Taylor-appointed "Expert Panel Examining Opportunities for Further Abatement". The panel, whose membership was only disclosed after freedom of information requests, is heavily stacked with representatives of fossil fuel industries and the biggest local and overseas corporations through the Business Council of Australia. Despite being charged with seeking further opportunities for carbon emission reductions, no environmental groups were invited to make a submission.⁸ Despite being aware of the bias in the panel towards fossil fuel industries, Professor Macintosh continues as a member.

We believe it is competent for any individual or organisation taking up the invitation to make a submission to the EPBC Act Review Panel to investigate the composition of the panel and hence assess the potential for the panel to act independently, not merely in a formal organisational sense, but more importantly, in an ideological and values-based sense.

We will make a submission to the panel despite viewing its composition as seriously flawed and its claims to independence as quite suspect. For the convenience of the panel, we will try to address the questions in the Discussion Paper although they frame and to a certain extent constrain the ground that submissions may cover.

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Responses to Discussion Paper 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?

⁷ <https://www.brisbanetimes.com.au/national/queensland/two-coal-fired-and-hydroelectric-power-projects-being-explored-for-qld-20200208-p53yy8.html>

⁸ <https://reneweconomy.com.au/angus-taylors-secret-consultation-on-emissions-cuts-stacked-towards-big-emitters-85443/>

We support the addition of new NMES to the purview of the EPBC Act. The catastrophic reach of global warming and its effect on both the environment and biodiversity will require the ability to add new NMES as they arise.

Concerns about the regulatory reach of the Commonwealth are misplaced. Limitations on that reach are embedded in the Australian Constitution. The Australian Constitution was a weak three-way compromise between the British imperialists, the colonial elites and the proponents of a single national government. It was ill-conceived and continues as a barrier to effective action around water resources and other matters of environmental significance. The appalling behaviour of the NSW government in relation to the Murray Darling Basin Authority, with Victoria cheerleading from the sidelines,⁹ is a continuing display of how unfit-for-purpose is the Australian Constitution. Whilst acknowledging that the Commonwealth has to be pushed and prodded in the direction of progressive environmental policy, the continued “sharing of responsibilities” between the two (three with local government) layers of government is an unnecessary obstacle to united action. We support measures to restrict “states’ rights” and to enlarge the regulatory reach of the Commonwealth.

Question 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?

Section 3A (a) places economic, environmental, social and equitable considerations on an equal basis. This is unacceptable in an Act, the focus of which should be the environment and biodiversity. The EPBC Act should follow the example of the Water Act 2007 which requires a scientifically based determination of the quantity of water required to restore the environmental health of Australia’s major waterway and prioritises this above economic and social factors. (Vested interests in water trading and irrigation mischievously place all three on an equal footing, as does the MDBA).¹⁰ It should be noted, again in relation to the Constitution’s limitations on the powers of the Commonwealth in relation to water (Constitution Chapter IV, Section 100) that the Water Act only exists because wetlands and migratory birds international treaties place obligations on the Commonwealth government to achieve external affairs outcomes. The federal government should better utilize the provisions of international environmental and carbon emission agreements to the same effect, i.e. prioritising the environment and biodiversity above all other considerations that comprise ESD. We reject the assumptions underlying the second question.

As a Communist party we need to point out (it is outside the framing of the question) that ESD will always been undermined by capitalism’s relentless search for the accumulation of

⁹ <https://www.abc.net.au/news/rural/2019-12-15/nsw-threatens-to-walk-away-from-murray-darling-basin-plan/11790502>

¹⁰ See Nick G., *On the Royal Commission into the Murray Darling Basin*, <http://cpaml.org/environment3.php?id=826>

capital. Parliamentary processes and legislation will never be able to rein in capitalism. Sustainability requires abandoning capitalism.

Question 3

Should the objects of the EPBC Act be more specific?

We suggest certain changes to the objects of the EPBC Act. We believe that (a) should end at “protection of the environment”. The phrase that follows about “national environmental significance” provides a loophole for developers to hide behind state rights and to argue that if an issue is of local significance, then it is not a priority for the EPBC Act. The environment and its biodiversity are an interconnected whole to which concepts such as “national” and “local” become labels for inactivity and indifference.

In (c) we believe that the EPBC Act provides insufficient protection for those engaged in the conservation of biodiversity. And it is not only conservation: it is estimated that around 70% of Australia’s biodiversity remains undiscovered, unnamed and undocumented”. Yet in May 2018, the federal government announced that it would cut its biodiversity and conservation staff by more than 60, or around one-third of the total.¹¹ Part (c) should have added to it the words (after “biodiversity”) “by requiring staffing and funding to meet Australia’s obligations under the 1992 International Convention on Biological Diversity”. Similarly, part (e) should read “to assist, monitor and require compliance in the implementation of Australia’s international environmental authorities”. Part (f) should go beyond “recognizing the role” of Indigenous people and read “to facilitate and encourage the active involvement of Indigenous people....”

Question 4

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

The current definition of MNES should only be changed by the addition of three items: Indigenous Heritage, climate change/global warming, and the Great Australian Bight Marine Park. Sanctions on actions that threaten or violate MNES should be strengthened within the EPBC Act. Ministerial discretion for the approval of actions that impact on MNES should be removed lest we have more Toondah Harbour-style violations of MNES.¹²

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?

¹¹ See Nick G., *No cuts to biodiversity staff!*, <http://cpaml.org/environment3.php?id=647>

¹² See section headed “Toondah Harbour: Labor’s gift to the Walker Corporation” in Nick G., *Birds of a feather...flock together!* <http://cpaml.org/environment3.php?id=627>

The compliance and enforcement provisions of the Act must be strengthened. They must apply equally to local, state/territory and national environment and biodiversity protections. The latter, particularly, remains a weak link in elements of the EPBC Act so long as the greater part of our biodiversity is as yet unidentified. Support for ongoing efforts to identify our biodiversity should be a priority for reform. Regulation in support of the objectives of the Act must not be weakened or removed.

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?

We agree with the Discussion Paper that “In the main, during the life of the EPBC Act the health of the Australian environment and its biodiversity has continued to decline”. The fault lies partly with the Act and its weak compliance provisions and its susceptibility to being overridden at Ministerial discretion or in the development and resolution of contradictions between federal, state/territory and local governments. Fundamentally, however, the reason arises from the overall domination of Australia by big local and foreign multinationals and their need to place profits before the planet.¹³ This is stepping well outside the framework of the question, but the point needs to be made again, that capitalism requires continuous expansion and growth in the pursuit of endless accumulation of capital. It can only get that expansion and growth by improving labour productivity and by expanding its utilization of natural resources. Both human labour power and nature are sacrificed on the altar of profit. This should really be the major high-level concern underpinning the EPBC Act.

Question 7

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

All relevant international and domestic expert opinion on the environment and biodiversity should be drawn on to inform the review. There is definitely a global trend away from fossil fuels. According to the NGO-backed Global Energy Monitor:

The number of coal-fired power plants being developed around the world has collapsed in the last three years...The number of plants on which construction has begun each year has fallen by 84% since 2015, and 39% in 2018 alone, while the number of completed plants has dropped by more than half since 2015.¹⁴

¹³ See *Who Owns Australia? Exposing the Multinationals*

(<http://www.cpaml.org/web/uploads/Who+Owns+Australia+Booklet+A5+Final.pdf>) especially the sections on Mining, Energy and Resources (pp 7-9) and Agriculture and Water (pp 12-14)

¹⁴ <https://www.theguardian.com/environment/2019/mar/28/global-collapse-in-number-of-new-coal-fired-power-plants>

Australia is the world's largest exporter of fossil fuels, accounting for around 30% of the total. Much of the demand is driven from China and Japan, and the fossil fuel industry promotes reliance on these markets for jobs and growth in the Australian economy. The EPBC Act should acknowledge and require a commitment to closing fossil fuel industries and reducing and eliminating the export of Australian fossil fuel. This requires complementary legislation for the creation of a National Register of Fossil Fuel Employees to be given income support, retraining and fast-tracking into sustainable industry employment while their employers are closed down and stopped. Tax the corporations to pay for this! If the 30% of the largest local and foreign companies with a revenue base in Australia who pay no tax in Australia actually paid tax on those earnings, such a National Register could be funded and carbon emitting companies closed on the basis of reassurances about the future of the workers they employ. This is entirely relevant to a discussion of future trends under the review process.

This supporting evidence should include those international bodies that look at the global implications of climate change and global warming and are not apologists for or beholden to the fossil fuel industries. Such an institution is the Bank of International Settlements (BIS), sometimes described as the central bank to the world's central banks. It has recently released a paper warning of the phenomenon of "green swan" events. The descriptive term follows the adoption by financial analysts of the term "black swan" event in the wake of the financial crisis of 2007-8. The authors of the paper argue that green swans are different to black swans in three regards:

1. "there is certainty about the need for ambitious actions despite prevailing uncertainty regarding the timing and nature of impacts of climate change."
2. "climate catastrophes are even more serious than most systemic financial crises: they could pose an existential threat to humanity, as increasingly emphasized by climate scientists"
3. "the complexity related to climate change is of a higher order than for black swans: the complex chain reactions and cascade effects associated with both physical and transition risks could generate fundamentally unpredictable environmental, geopolitical, social and economic dynamics."

The advice from global financial experts that climate catastrophes are even more serious than most systemic financial crises should be drawn on to inform the review.

Question 8

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

There are several observations and assumptions behind this question. The Discussion Paper observes that "Some stakeholders have proposed that they could be further altered to remove nuclear actions and the water trigger, while others have suggested adding land clearing and climate change triggers." It assumes that "regulation is resulting in unnecessary uncertainty and delays with flow on impacts to industry, governments and the community." It also assumes that "impacts on plants and animals that live exclusively within the boundary of one state or territory could be dealt with under that jurisdiction's regulatory process."

We are completely opposed to the substitution of outcomes for processes. The assumption that outcomes can be achieved without compliance mechanisms backing up required processes is the same flawed “logic” that has seen self-regulation in various industries and services result in declines in standards.¹⁵ If regulation is resulting in uncertainty and delays for industry, then the answer is to make the regulations more, rather than less, proscriptive so that the boundaries for acceptable and unacceptable impacts on the environment and biodiversity are clearer from the start. Confusion arises from competing federal and state/territory responsibilities for environmental protection and biodiversity conservation. The answer is not to search for those very few examples of the environment and biodiversity agreeing to abide by lines drawn on colonial maps, but to accept that the interconnectedness of all things in the environment requires a single national authority to enforce compliance with protection and conservation.

We strongly oppose any calls for the removal of nuclear actions and the water trigger from the Act but agree that land clearing and climate change triggers should be included.

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?

The Discussion Paper acknowledges that “many parts of Australia’s environment and heritage continue to decline”. Our Constitutional model of “cooperative federalism” is anything but cooperative. It was a failed model even before the ink was dry on the signatures of those who adopted it. Its weak compromises have never served the Australian people. They continue to frustrate what many Australians want to achieve through legislation such as the EPBC Act. We are proponents of a stronger, not a weaker, Commonwealth role, but the problems inherited from our Constitution will continue to bedevil and frustrate such outcomes until we finally win genuine anti-imperialist national independence and socialism and craft a new Constitution that is fit for the purpose of the Australian people exercising power.

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?**

¹⁵ See for example S. Jones, *The decline of ethics or the failure of self-regulation? The case of alcohol advertising* (2000) here: <https://ro.uow.edu.au/cgi/viewcontent.cgi?article=1095&context=hbspapers>

We reject each of these three options. Non-binding policy has failed in other areas of the “cooperative federalism” approach. Standards-setting has certainly failed in the case of NOPSEMA’s approval of Equinor’s request to conduct exploratory drilling in the Great Australian Bight. The Commonwealth government is said to be the elected representative of the Australian people: it must not surrender authority to state/territory levels of representation. This is a recipe for confusion and delay and for loopholes and escapes from the requirements of the Act.

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?

Environmental restoration should not be the subject of a different Act as is now the case. The EPBC Act should be strengthened by the inclusion of regulations governing environmental restoration. Protection and restoration should be seen as a complete package. This is particularly relevant to the current bushfire season which has seen the duration, scope and intensity of bushfires rise to catastrophic levels and as a result of which there must be careful oversight of measures taken under the umbrella of environmental restoration.

The answer to the question of how Indigenous land management practices should be incorporated lies within Indigenous communities. It is time for government authorities to get out of the way of the First Peoples and actually listen to and be guided by them.

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?

The Commonwealth must retain oversight and regulatory and compliance authority over heritage protection. Other jurisdictions may have delegated responsibility but not at the expense of the Commonwealth’s role and authority. Privately-owned heritage sites should be subject to the same regulatory and compliance requirements.

We have already indicated that Indigenous Heritage should be an additional MNES. As per the response to the previous question, First Peoples must be looked to for guidance and leadership for the representation of Indigenous culturally important places within the Act.

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?

We believe that case-by-case assessment is the best guarantee of environmental protection and biodiversity conservation under the Act. If the delays and costs involved are impacting on this then it is a matter for more resourcing by the federal government of processes required under the Act.

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?

The removal of duplication is a sensible move provided that it results in the enhanced authority of the Commonwealth. States/territories can be delegated to deliver outcomes but should not exercise responsibilities that conflict with those of the Commonwealth.

Question 15

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

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

Low-risk is not no-risk. There should not be automatic approval or exemptions “in some way”. Again, it is a question of adequately resourcing the implementation of the Act, not weakening it and expanding loopholes within it. A national environmental database could be used to expedite processes and all data from environmental impact assessments should be publicly available.

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?

No. Species-specific protections should be the basis of the EPBC’s focus, with management at a landscape scale providing a supporting condition for biodiversity conservation. A shift towards landscape-scale management is an invitation for state/territory and local governments to take responsibility away from the Commonwealth. The EPBC Act is already inadequate in its protections; it should not be further weakened.

The Discussion Paper cites Regional Forestry Agreements (RFAs) as an example of landscape-scale (regional) approaches. This alone should condemn the approach. RFAs under state/territory administration have allowed commercial (including state/territory government) destruction of critical forest habitat and placed additional pressures on species preservation. It seems to many as though the logging industry is in effective control of the RFAs. They must be taken back from the states/territories and directly administered under the EPBC Act.

Question 17

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

No.

Question 18

Are there adequate incentives to give the community confidence in self-regulation?

No.

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?

Our Party supports the right of First Peoples to actively assert their sovereignty, choosing their own strategies, tactics and demands. It is important to recognise that there is no single community of First Peoples, and that the cultural diversity that exists within the oldest continuous culture in the world should be reflected in the sovereign decision-making capacity of First Peoples under the Act.

It is also a fact that businesses and corporations have been engaged in a deliberate focus on Indigenous “engagement” to involve First Peoples in the further dispossession of their lands and resources. The Business Council of Australia, in particular, has vigorously pursued this strategy.¹⁶ The incredible announcement¹⁷, in view of the public response to the global warming-induced catastrophic 2019-20 bushfire crisis, that the federal government would fund a \$4 million feasibility study for the proposed Collinsville coal-fired power plant relies heavily on the Indigenous connection of Biri man Ashley Dodd. Hence the ABC opened a June 2019 report on the matter:

A proposed \$2 billion Indigenous-led coal-fired power station in Collinsville in North Queensland — developed by Brisbane-based Indigenous company Shine Energy and headed by traditional Biri man Ashley Dodd — is set to revive one of the country's oldest coal towns.¹⁸

After investigating the ownership structure of Shine Energy and the political connections of others associated with it, independent journalist Michael West, concluded:

¹⁶ See Lindy Nolan, *Driving Disunity: The Business Council Against Aboriginal Community*, Spirit of Eureka Publications, 2017

¹⁷ <https://www.afr.com/companies/energy/climate-wars-flare-over-coal-Ing-20200209-p53z4i>

¹⁸ <https://www.abc.net.au/news/2019-06-18/billion-dollar-indigenous-led-power-station-revive-qld-coal-town/11194306>

It is disgraceful that the pro-coal lobby is exploiting indigenous disadvantage to prosecute its culture wars against its political adversaries.

It is equally disgraceful that, on Adani's behalf, they are claiming it is some kind of Good Samaritan act to export coal to India – to help the poor children and so forth – when people are dropping dead because of air pollution.¹⁹

We have previously said (Question 11) that “It is time for government authorities to get out of the way of the First Peoples and actually listen to and be guided by them.” That guidance must be within the intent and purpose of the Act. Incorporation of First People's cultural diversity must preclude political diversity of the Collinsville coal-fired project type which is clearly against the spirit of the Act.

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?

It is somewhat ironic that a Discussion Paper for a review panel that is so stacked towards one side of the “debate” raises this question. If potential expert panelists in the areas of biodiversity, ecology, ocean life and so on are not represented, then we are entitled to query what is really meant by “community representation” and who will make the selections to carry through that representation. It would appear from much of the language in the Discussion Paper that “community representation” might be an open-door for the involvement of those stakeholder groups currently complaining about the complexity of the Act, of delays in procedures under the Act, and seeking to weaken the role of the Commonwealth and expand that of other layers of government.

The federal government does not enjoy the trust of many of those in the community whose concerns and representations led to the EPBC Act in the first place. It is a government of the giant local and foreign-owned corporations. It has not vested the ATO with the powers to force those big corporations to pay tax²⁰. Included amongst them are big fossil fuel energy, mining and resource corporations who are happy to receive tax-payer subsidies on their non-tax paying operations.

Part of the lack of trust in the federal government is its commitment to secrecy, to not commenting on “operational matters”, to not tabling reports, to persecuting whistleblowers. Not for nothing has the *New York Times* labelled Australia as possibly the world's “most secretive democracy”²¹, observing that “even among its peers, Australia stands out. No other developed democracy holds as tight to its secrets...”

And it is not only its secrecy, its obstruction of transparency. It is one of the most punitive and restrictive in the capitalist world with its draconian powers against unions about to be out-draconiated by promised retributions against climate change/global warming activists. PM Morrison told a Queensland Resources Council last November that he was working with

¹⁹ <https://www.michaelwest.com.au/shine-energy-behind-the-push-for-a-new-coal-fired-power-station/>

²⁰ See Nick G., *Big multinationals still not paying tax*, <http://cpaml.org/articles3.php?id=1019>

²¹ <https://www.nytimes.com/2019/06/05/world/australia/journalist-raids.html>

the Attorney-General to “apply penalties to those targeting businesses who provide services to the resources industry.”²²

So whilst we would in general agree that greater community involvement and representation in decision-making under the Act is desirable, and that there should be greater transparency about this, we condemn the secrecy of the government and its intimidation of environmental activists who are the main defenders in the community of the intents and purposes of the Act.

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?

The Commonwealth Minister for the Environment should not be the primary decision-maker under the Act. Nor should there be an advisory body to inform decisions that ultimately rest with the Minister. Decision-making should be divorced from party political oversight and control. An independent National Environment Commission should be created to ensure implementation of and compliance with the Act.

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 are opposed to market-based approaches to the solution of environmental problems. We do not support reliance on private capital (including that embedded in public-private partnerships or social investment bonds). Full control over the regulations and compliance provisions of the Act must be retained by the public authority administering the Act.

Question 23

Should the Commonwealth establish new environmental markets? Should the Commonwealth implement a trust fund for environmental outcomes?

Question 24

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

We do not support the environmental offsets policy nor the offsets market that has arisen from it. International studies have suggested that trading biodiversity credits “is most commonly based on the cost of management measures rather than the ‘value’ of biodiversity”²³ and that such markets are in fact largely government created and driven and thus shaped by the political culture of that government (“governments considering adopting

²² <https://www.theguardian.com/australia-news/2019/nov/01/scott-morrison-threatens-crackdown-on-secondary-boycotts-of-mining-companies>

²³ <https://www.sciencedirect.com/science/article/pii/S0301479718313458>

such biodiversity policies can design them with a high or low market involvement to match its own “political-economic culture”).²⁴ Although there is no one type of offset policy internationally, experts conclude that “With a high degree of commodification where the price of biodiversity credits is negotiated, there are incentives to both buyers and sellers to compromise the biodiversity quality that is traded”.²⁵ The environmental offsets policy, where one area of biodiversity is modified or destroyed in a swap arrangement with another piece of biodiversity for which promises of improvement and protection are made, is simply a license for environmental destruction. It should be abolished.

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?

Private sector capital can be of assistance to environmental protection and biodiversity conservation, but only if it collected as government revenue through a system that actually works. No sector of the environment should be commodified or given over to speculation in a market system. The creation of the water market has been a disaster for the Murray-Darling Rivers system. Private sector investment in it has been driven by self-interest revolving around the accumulation of capital as profit.

Public sector financing of environmental protection and biodiversity conservation should be enhanced by vigorously taxing corporations. A good start would be the reemployment of the 60 sacked government biodiversity staff, and then another 60 after that.

We are determined to pursue the objectives of our Party Program on Climate Change and the Environmental Crisis, quoted in the Preamble to this submission.

We hope the Panel will strengthen environmental protection and biodiversity conservation in its review of the EPBC Act.

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²⁴ <https://www.stockholmresilience.org/research/research-news/2019-02-13-no-market-without-the-state.html>

²⁵ <https://www.sciencedirect.com/science/article/pii/S0301479718313458?via=ihub>