



Environmental
Defenders Office

**Submission to the Inquiry into the Australian
Government's response to the COVID-19 pandemic**

28 May 2020

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Submitted to:

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Overview

Australia's response to the health risks of COVID-19 is overall to be commended in preventing the pandemic from reaching the extreme levels of infection seen in other countries. This submission centres on the decision making and governance processes around COVID-19 which may expose risks of decisions, particularly around economic stimulus, being made in a way that does not centre on supporting the public interest over private interests and which may risk principles of good governance being flouted.

EDO lawyers have produced a list of principles to guide how national and sub-national governments and decision-makers should act during this unique time to ensure good governance processes and decision making in the public interest. Two of these principles are particularly important to Federal Government operations during this time:

Principle 1: Laws passed for economic and social recovery must put us on a path to a safe and healthy climate and restore the natural environment

Principle 2: Ensure environment protection, transparency and accountability standards are maintained or improved in economic stimulus measures, including

These two principles have been provided in more detail below.

1. Laws passed for economic and social recovery must put us on a path to a safe and healthy climate and recover biodiversity

How we meet the economic challenge of COVID-19 will dictate the future of our environment and climate. The science tells us that the next 10 years are critical to ensure we have a safe climate and an environment that will provide for future generations. It is imperative that laws passed to stimulate the economy seize that opportunity.

The pathway to economic recovery is an opportunity to shift our economy toward a safe climate and better environmental future through well-designed regulation. Governments must resist the temptation to pass laws with long-term implications, or to entrench our economic recovery in industries without a long-term sustainable future.

Laws can provide investment certainty to renewable industries, stimulate local jobs in long-term industries such as regenerative agriculture and land management, and guarantee this generation and future generations a safe and healthy environment through sending signals to investors and removing perverse incentives.

Given the significant threat we face across all sectors from climate change, and the level of change needed to reduce this threat, any stimulus spending announced by government should include an assessment of the impacts of the spending on climate change. Stimulus spending should be required to either not exacerbate climate change at the least, and in the best case, should be required to mitigate climate change, in line with Australia's commitment under the Paris Agreement to keep global temperature rise below 1.5 degrees Celsius.

Normal environmental assessment and accountability processes around development decision making, providing for transparency in process, community input and legal rights to challenge inappropriate decisions, must not be removed to fast track development decision making during this time. In particular, at a federal level, any amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) must not be made to weaken this already substantially weak Act. The 10 year review of the EPBC Act currently on foot is the appropriate vehicle for any amendments to be made to this important legislation. Any interim

amendments must not pre-empt or undermine broader positive reform through the formal, robust review process.

Environmental regulatory processes, including accountability measures, are essential to reducing the risks of corrupt, inappropriate and poor quality decision making and outcomes for communities and the environment. This has been established by a number of legislative reviews, including through the:

- Independent Review of the EPBC Act by Dr Allan Hawke (2009);¹
- NSW Independent Commission Against Corruption (2012);² and
- Productivity Commission (2013).³

Positive incentives can be implemented for biodiversity conservation, including through accounting for the true value of environmental assets in decision-making, through National Environmental Accounts, and incentivising environmental restoration activities. Communities and sectors can be empowered and resourced across Australia to develop action plans to transition away from high greenhouse gas emitting processes to sustainable, healthy and prosperous pathways forward.

Any changes to laws must:

- a. Be consistent with the principles of ecologically sustainable development, including the precautionary principle and inter-generational equity, by ensuring that decisions made now maintain and enhance the health, productivity and diversity of the environment for the benefit of future generations.
- b. Facilitate economic reform to ensure a fair, safe and healthy climate for current and future generations, recognising that human health and ecosystem health are inextricably linked.
- c. Improve legal protections for nature, ensure the health of our ecosystems and species is stabilised, and invest in recovery and regeneration of nature.

2. Ensure environment protection, transparency and accountability standards are maintained or improved in economic stimulus measures, including access to justice

A key risk of short-term economic stimulus measures is that governments will introduce laws to facilitate development that weaken environmental protections, lock in long term environmental damage and weaken public rights in relation to development proposals.

Federal Environment Minister Sussan Ley has flagged changes to the national environmental law ahead of the completion of the EPBC Act Review. Bills in Tasmania and Western Australia linked to COVID recovery seek to establish new assessment processes for major development proposals. Governments in NSW, Queensland, Western Australia, Tasmania and the Northern Territory have signalled initiatives to fast-track major development proposals.

The [National COVID Coordination Commission](#) was established by the Federal Government on 25 March 2020 to 'coordinate advice to the Australian Government on actions to anticipate and mitigate the economic and social impacts of the global COVID-19 pandemic', including to

¹ Dr Allan Hawke, Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth of Australia, 2009).

² Independent Commission Against Corruption, Anti-corruption safeguards in the NSW planning system (2012).

³ Productivity Commission, Major Project Development Assessment Processes (2013), p 274.

'unlock resources, break through bottlenecks and fix problems'. [Serious questions](#) have been raised, including by former Victorian Court of Appeal [Judge Anthony Whealy](#), as to the real or perceived conflicts of interest held by members of the Commission, and lack of strong oversight mechanisms or legislative accountability.

Four State and Territory governments have established similar bodies:

- Northern Territory [Economic Reconstruction Commission](#)
- Tasmania – [Premier's Economic and Social Recovery Advisory Council](#)
- Victoria – [Building Victoria's Recovery Taskforce](#)

It is vital that economic responses to COVID-19:

- a. Adopt the principle of non-regression of environmental standards, laws, policies and protections.
- b. Guarantee meaningful public participation in environmental decisions including through merits review.
- c. Are guided by open and transparent processes, subject to rigorous oversight, which involves public scrutiny.

For the National COVID Coordination Commission and other stimulus related advisory and working groups, specific solutions to improve good governance and ensure unbiased decision making in the public interest include introducing accountability measures and diversifying membership, as detailed below.

Introducing requirements for accountability:

- Requiring as a matter of priority that members of commissions, working groups and advisory bodies members are subject to proper conflict of interest disclosure requirements, with a transparent register published.
- Members with advice or decision making powers with real or perceived conflicts of interest should recuse themselves from all relevant discussion and work, and should not be engaged as or continue as members where real or perceived conflicts may jeopardise their ability to make decisions in the public interest.
- Measures should be implemented to ensure the decision-making processes, criteria, operations, and advice of committees, advisory bodies and working groups is made transparent to the public, including its budget and spending, through public reporting regularly.
- Additional accountability measures could include a parliamentary oversight committee, review of the role and operations of the commission, working group or advisory body after the first year of operation, regular reporting including requiring publication of the Government response to recommendations.

Diversifying the membership of commissions, advisory bodies and working groups to ensure fair representation of a broad range of relevant representatives from society:

- This should include groups most impacted and at risk during the economic recovery, such as Aboriginal and Torres Strait Islander peoples, unions.

- Membership should also include a broad range of industries and sectors able to assist in addressing the most pressing needs of Australia, including particularly the need for a strong and prioritised move to reduce our greenhouse gas emissions across all sectors to avoid dangerous climate change.

In addition, the implementation of a National Anti-Corruption Commission is long overdue and should be prioritised by Federal Government; this Commission of oversight is needed now more than ever to ensure the integrity of government decision-making.