

The Senate

---

Environment and  
Communications Legislation  
Committee

---

Environment Protection and Biodiversity  
Conservation Amendment (Streamlining  
Environmental Approvals) Bill 2020

November 2020

© Commonwealth of Australia 2020

ISBN 978-1-76093-162-9

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 4.0 International License.



The details of this licence are available on the Creative Commons website:  
<https://creativecommons.org/licenses/by-nc-nd/4.0/>.

Printed by the Senate Printing Unit, Parliament House, Canberra.

# Contents

Members .....	v
List of Recommendations .....	vii
Chapter 1 – Introduction .....	1
Chapter 2 – Issues raised .....	21
Labor Senators' dissenting report.....	41
Australian Greens' dissenting report.....	53
Crossbench dissenting report.....	63
Appendix 1 – Submissions and additional information .....	65
Appendix 2 – Public hearing and witnesses .....	71



# Members

## Chair

Senator the Hon David Fawcett LP, SA

## Deputy Chair

Senator Sarah Hanson-Young AG, SA

## Members

Senator Nita Green ALP, QLD

Senator Catryna Bilyk ALP, TAS

Senator Sam McMahon CLP, NT

Senator David Van LP, VIC

## Participating Members

Senator Stirling Griff CA, SA

Senator Jacqui Lambie JLN, TAS

Senator Rex Patrick IND, SA

## Secretariat

Mr Stephen Palethorpe, Committee Secretary

Mr Nicholas Craft, Principal Research Officer

Ms Monika Sheppard, Senior Research Officer

Ms Kate Campbell, Senior Research Officer

Ms Emma Wannell, Research Officer

Ms Sofia Moffett, Research Officer

Mr David Pappas, Administrative Officer

Ms Michaela Le Cheile, Administrative Officer

Ms Ella Ross, Administrative Officer

PO Box 6100  
Parliament House  
Canberra ACT 2600

Phone: 02 6277 3526  
Fax: 02 6277 5818  
Email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)



# List of Recommendations

## Recommendation 1

2.82 The committee recommends that the Explanatory Memorandum be amended to clarify that bilateral agreements made with jurisdictions under the provisions of the bill will be underpinned by strong Commonwealth-led National Environmental Standards.

## Recommendation 2

2.86 The committee recommends that the Senate pass the bill.



# Chapter 1

## Introduction

- 1.1 On 12 November 2020, the Senate referred the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 (the bill) to the Environment and Communications Legislation Committee (the committee) for inquiry and report.
- 1.2 In referring the bill, the Selection of Bills Committee was unable to agree to a recommended reporting date for the Senate to consider.<sup>1</sup> The Senate was subsequently unable to agree to a date for reporting.<sup>2</sup> On receiving the bill, the committee determined a reporting date of 27 November 2020.
- 1.3 The Selection of Bills Committee recommended that the bill be referred to the committee to consider its potential impact on the environment, and its relationship to the ongoing Samuel Review of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).<sup>3</sup>
- 1.4 This chapter sets out a number of matters, including:
  - the administrative details of the inquiry;
  - the background and purpose of the bill;
  - an overview of the EPBC Act, including bilateral agreements, and the ongoing review into its effectiveness and administration;
  - previous reports on relevant aspects of the EPBC Act; and
  - an outline of the bill's provisions.

### Structure of this report

- 1.5 This report comprises two chapters:
  - This chapter provides a background to the bill, an overview of its provisions, some contextual information on the EPBC Act, and relevant reviews or legislative reform, as well as setting out the administrative details of the inquiry; and
  - Chapter two considers the evidence received by the committee about the bill, and sets out the committee's views and recommendations.

---

<sup>1</sup> Senate Selection of Bills Committee, *Report No. 10 of 2020*, 12 November 2020, p. 3.

<sup>2</sup> *Journals of the Senate*, No. 73—12 November 2020, p. 2564.

<sup>3</sup> Senate Selection of Bills Committee, *Report No. 10 of 2020*, 12 November 2020, p. 3 and Appendix 4. The Samuel Review is discussed later in this chapter.

## Conduct of the inquiry

- 1.6 The committee advertised the inquiry on its website, and wrote to some relevant organisations inviting submissions by 18 November 2020.
- 1.7 The committee received 127 submissions, which are listed at Appendix 1 of this report. The committee held a public hearing in Canberra on 23 November 2020. A list of witnesses that appeared at the hearing can be found at Appendix 2.
- 1.8 The committee has received 22 234 form letters from members of the public opposing the bill. Many of those that signed a form letter added individual statements. The committee has published a representative selection of these letters on its website, which came in six different forms:
- Type A: 374 received;
  - Type B: 4361 received;
  - Type C: 1931 received;
  - Type D: 7049 received;
  - Type E: 88 received; and
  - Type F: 8431 received.
- 1.9 All submissions and the *Hansard* transcript of evidence from the hearing are available in full at the committee's website.<sup>4</sup>

## Background and purpose of the bill

- 1.10 The bill would expand and amend existing EPBC Act provisions that allow the Commonwealth to make bilateral agreements with jurisdictions, so that environmental approvals are delegated to states and territories.
- 1.11 The purpose of the bill is to implement the recommendation of the Interim Report of the Samuel Review of the EPBC Act that:
- Immediate steps to start reform should be taken. In the first instance, amendments should be made to:
- fix duplication, inconsistencies, gaps and conflicts...
  - improve the durability of the settings for devolved decision-making.<sup>5</sup>
- 1.12 The EPBC Act is the Commonwealth's key legislation that provides a framework for environmental and heritage protection, and biodiversity conservation, in partnership with the states and territories. It entered into force

---

<sup>4</sup> Found at: [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications)

<sup>5</sup> The Independent Review undertaken by Professor Graeme Samuel AC is discussed later in this report. The full recommendations of the Interim Report can be found at *Interim Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* (Interim Report), p. 16.

on 16 July 2000 and is administered by the Department of Agriculture, Water and the Environment (the department).<sup>6</sup>

1.13 The EPBC Act contains provisions for the Commonwealth to assess actions that are likely to have a significant impact on a ‘matter of national environmental significance’ (MNES) in Australia.<sup>7</sup>

1.14 The Explanatory Memorandum states that the bill would amend the EPBC Act to:

...(facilitate) the legally robust devolution of environmental approvals to the States and Territories.

The Act already provides for devolution of environmental assessments and approvals through bilateral agreements with the States and Territories.<sup>8</sup>

1.15 The arrangements for bilateral agreements in the EPBC Act provide that certain environmental assessments are undertaken by jurisdictions. The Explanatory Memorandum states:

Bilateral agreements avoid regulatory duplication by creating a single environmental assessment and approval process for nationally protected matters.

The two types of bilateral agreements provided for under the Act are:

- Assessment bilateral agreements – a State or Territory is accredited to assess the environmental impacts of project proposals on behalf of the Commonwealth, which is then used by the Commonwealth to decide whether or not to approve a project.
- Approval bilateral agreements – a State or Territory is accredited to assess and approve or refuse to approve project proposals.

The Bill will make technical amendments to the existing provisions of the Act relating to bilateral agreements to support the efficient, effective and enduring operation of bilateral agreements.<sup>9</sup>

### *Purpose of the bill*

1.16 In introducing the bill the Minister for the Environment (Minister), the Hon Sussan Ley MP, suggested the bill was the ‘first tranche’ of reform to the EPBC Act and shows that the government is:

...committed to modernising Australia’s environmental law so that it is fit to address future incremental and economic challenges. The EPBC Act is

---

<sup>6</sup> DAWE, ‘About the EPBC Act’, [www.environment.gov.au/epbc/about](http://www.environment.gov.au/epbc/about) (accessed 17 November 2020).

<sup>7</sup> See below for an outline of the EPBC Act, including MNES, frameworks for decision making, and bilateral agreements with the states and territories.

<sup>8</sup> Explanatory Memorandum, p. 1.

<sup>9</sup> Explanatory Memorandum, p. 1. Current Commonwealth bilateral agreements are outlined later in this chapter.

now 20 years old and it has never been more important to ensure it provides the right protection for our environment while also supporting our economy and the livelihoods of everyday Australians.

This bill is the first tranche of EPBC Act reforms linked to the independent statutory review of the act, which is only the second 10-yearly review since the act commenced in 1999.<sup>10</sup>

- 1.17 The Minister stated that the bill's amendments would drive employment and economic outcomes, and that it would implement an approach to EPBC decisions already agreed in principle with states and territories:

The [bill] demonstrates the government's commitment to lead in terms of jobs, investment growth and certainty and transparency when it comes to environmental assessments and approvals.

The bill streamlines environmental approvals under the EPBC Act 1999 by removing duplication with state and territory processes. It does this by ensuring the legally robust devolution of environmental approvals to the states and territories.

These reforms are the first step towards implementing the national cabinet decision of 24 July 2020, where all states and territories agreed in principle to adopt reforms to move towards a single-touch approach to environmental approvals.<sup>11</sup>

- 1.18 On 24 July 2020, the Prime Minister, the Hon Scott Morrison MP, summarised this National Cabinet decision:

The National Cabinet agreed to move to single-touch environmental approvals underpinned by national environmental standards for Commonwealth environmental matters.

Some states are able to transition to this system faster than others. The Commonwealth will move immediately to enter into bilateral approval agreements and interim standards with the states that are able to progress now.

We will simultaneously be developing formal national standards through further public consultation.<sup>12</sup>

- 1.19 The Minister commented that these reforms would also ensure the EPBC Act is fit-for-purpose, and ensure stakeholders and the community can be more certain about its requirements and environmental protections:

---

<sup>10</sup> The Hon Sussan Ley MP, Minister for the Environment, *House of Representatives Hansard*, 27 August 2020, pp. 5757–5758. See below for a discussion of the ongoing statutory review. Note the legislation for the EPBC Act was introduced in 1999 and was enacted in 2000.

<sup>11</sup> The Hon Sussan Ley MP, Minister for the Environment, *House of Representatives Hansard*, 27 August 2020, p. 5758.

<sup>12</sup> The Hon Scott Morrison MP, Prime Minister, 'National Cabinet', *Media Statement*, 24 July 2020, [www.pm.gov.au/media/national-cabinet-24jul20](http://www.pm.gov.au/media/national-cabinet-24jul20) (accessed 19 November 2020).

The result for the community from this bill will be a more streamlined and clear process than what currently exists, providing greater certainty around environmental protections.

People want to know we have clear safeguards for protecting the environment. Business wants to know the parameters in which it can responsibly operate. And government needs to be reassured it is managing an efficient process of environmental checks and balances for future generations.

These reforms will unlock job-creating projects that will strengthen the economy and aid our COVID-19 economic recovery, without compromising Australia's unique environment.<sup>13</sup>

## **The EPBC Act, assessment and approvals, and bilateral agreements**

1.20 The EPBC Act has the following objectives:

- provide for the protection of the environment, especially MNES;
- conserve Australian biodiversity;
- provide a streamlined national environmental assessment and approvals process;
- enhance the protection and management of important natural and cultural places;
- control the international movement of plants and animals (wildlife), wildlife specimens and products made or derived from wildlife;
- promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; [and]
- promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge.<sup>14</sup>

1.21 The nine MNES contained in the EPBC Act are:

- world heritage properties;
- national heritage places;
- wetlands of international importance (often called 'Ramsar' wetlands after the international treaty under which such wetlands are listed);
- nationally threatened species and ecological communities;
- migratory species;
- Commonwealth marine areas;
- the Great Barrier Reef Marine Park;
- nuclear actions (including uranium mining); and

---

<sup>13</sup> The Hon Sussan Ley MP, Minister for the Environment, *House of Representatives Hansard*, 27 August 2020, p. 5759.

<sup>14</sup> DAWE, 'About the EPBC Act'.

- a water resource, in relation to coal seam gas development and large coal mining development.<sup>15</sup>

1.22 MNES are often called ‘triggers’, as actions that potentially impact an MNES ‘trigger’ the EPBC approvals process, in which the Minister must assess, evaluate and approve a proposal.<sup>16</sup>

### *The Commonwealth assessment and approvals process*

1.23 Under the EPBC Act, any action that is likely to impact on a MNES must be referred to the Minister for consideration, either by the Minister or a departmental delegate. Assessable actions can be projects, developments or other activities. They can be proposed by landowners, developers, companies or individuals, or by Commonwealth or other levels of government (‘the proponent’). Referrals are published, so that members of the public can inform the Minister or delegate’s decision.<sup>17</sup>

1.24 Once a referral is made, the Minister or the delegate decides whether assessment and approval is required by the EPBC Act. Departmental information outlines the timeframes for decisions:

Following receipt of a valid referral (containing all required information) the referral and attachments will be published on the Department’s web site for public comment. Any person may give the Minister comments on the referral within 10 business days of publication on the Department’s website.

A decision on whether the proposed action requires approval will be made within 20 business days.<sup>18</sup>

1.25 In deciding to approve a project or determining that further assessment is necessary, the following matters must be considered by the Minister or delegate, as set out in section 136 of the EPBC Act:

- the principles of ecologically sustainable development [outlined in section 3A of the Act]
- the results of the assessment of the impacts of the proposed action, including the relevant recommendation report from the secretary of the federal environment department
- referral documentation
- community and stakeholder comments
- any other relevant information available on the impacts of the proposed action, and

<sup>15</sup> DAWE, ‘About the EPBC Act’.

<sup>16</sup> DAWE, ‘Environment assessment approval process’, [www.environment.gov.au/epbc/environment-assessment-and-approvals](http://www.environment.gov.au/epbc/environment-assessment-and-approvals) (accessed 17 November 2020).

<sup>17</sup> DAWE, ‘Environment assessment approval process’.

<sup>18</sup> DAWE, ‘Referrals–Frequently Asked Questions’, [www.environment.gov.au/protection/environment-assessments/referrals-faq](http://www.environment.gov.au/protection/environment-assessments/referrals-faq) (accessed 17 November 2020).

- relevant comments from other Australian Government and state and territory government ministers (such as information on social and economic factors).

The minister may also take into account the environmental history of the individual or company proposing to take the action, including the environmental history of the executive officers of companies, and parent companies and their executive officers.<sup>19</sup>

1.26 According to departmental information, the types of decisions that can be made in this process are:

- The proposed action is NOT LIKELY to have a significant impact and does NOT NEED approval
- The proposed action is NOT LIKELY to have a significant impact IF undertaken in a particular manner [which is stipulated in the decision]
- The proposed action is LIKELY to have a significant impact and does NEED approval [known as a 'controlled action']
- The proposed action would have UNACCEPTABLE impacts and CANNOT proceed.<sup>20</sup>

1.27 In approving a project subject to conditions, the Minister or delegate can stipulate the proponent must fulfil certain obligations, including repair or mitigation of damage caused to an MNES. This can be done using a range of mechanisms, including bonds or securities, independent environmental auditing or compliance monitoring.<sup>21</sup>

1.28 Regarding controlled actions, the department states:

If the action is likely to have a significant impact a decision will be made that it is a controlled action. The particular matters upon which the action may have a significant impact (such as World Heritage values or threatened species) are known as the controlling provisions.

The controlled action is subject to a public assessment process before a final decision can be made about whether to approve it. The assessment approach will usually be decided at the same time as the controlled action decision. (Further information about the levels of assessment and basis for deciding the approach are available on the Department's web site).<sup>22</sup>

1.29 Currently, even if Commonwealth approval for controlled or other actions is granted, the proponent may still be required to obtain approval under state or local government requirements.<sup>23</sup>

---

<sup>19</sup> DAWE, 'EPBC Act–Environment Assessment Process', (Fact sheet), p. 6.

<sup>20</sup> DAWE, 'Referrals–Frequently Asked Questions', emphasis in original.

<sup>21</sup> DAWE, 'EPBC Act–Environment Assessment Process' (Fact sheet), pp. 6–7.

<sup>22</sup> DAWE, 'Referrals–Frequently Asked Questions'.

<sup>23</sup> DAWE, 'Referrals–Frequently Asked Questions'.

## Bilateral agreements

1.30 Part 5 of EPBC Act contains provisions for the Commonwealth to make bilateral agreements with the states and territories. As discussed earlier in this chapter, this enables the Commonwealth to accredit jurisdictional processes for the assessment and/or approval of certain actions that would be otherwise made through the EPBC framework. There are two kinds of bilateral agreements:

- assessment agreements, where jurisdictional processes are used to assess environmental impacts of proposed action, but the approval is made by the Minister under the EPBC Act. This means two decisions—state and federal—are required for approval; and
- approval agreements, where bilateral accredited management arrangement or authorisation processes under jurisdictional law do not require further assessment under the EPBC Act or a decision by a Commonwealth minister.<sup>24</sup>

1.31 The Commonwealth has made assessment bilateral agreements with all jurisdictions. However, at the time of writing, state and territory approval processes have not been accredited under approval bilateral agreements.<sup>25</sup> Departmental information states:

Under an approval bilateral agreement the state assesses the likely impacts of a project on the environment and makes a decision on approval, accounting for both state matters and matters of national environmental significance. Only one decision is made and includes conditions (if appropriate).<sup>26</sup>

1.32 Departmental information states that the Commonwealth has released Standards for Accreditation of Environmental Approvals under the EPBC Act, which ‘articulate the environmental standards and considerations for accreditation of state and territory approval processes through bilateral agreements’.<sup>27</sup>

---

<sup>24</sup> DAWE, ‘One Stop Shop for environmental approvals—Bilateral Agreements’, [www.environment.gov.au/epbc/one-stop-shop](http://www.environment.gov.au/epbc/one-stop-shop) (accessed 17 November 2020).

<sup>25</sup> For current assessment agreements, see DAWE, ‘One Stop Shop for environmental approvals’. Note that the previous approval agreement with NSW for the Sydney Opera House made in 2005 expired in 2010.

<sup>26</sup> DAWE, ‘One Stop Shop for environmental approvals—Bilateral Agreements’.

<sup>27</sup> DAWE, ‘One Stop Shop for environmental approvals—Standards for Accreditation’. These standards are available at: [www.environment.gov.au/resource/standards-accreditation-environmental-approvals-under-environment-protection-and](http://www.environment.gov.au/resource/standards-accreditation-environmental-approvals-under-environment-protection-and) (accessed 17 November 2020).

## The Samuel Review

1.33 The EPBC Act ‘requires an independent review of [the EPBC Act’s] operation, and the extent to which its objects have been achieved, to be undertaken at least once every 10 years’.<sup>28</sup>

1.34 The most recent review commenced on 29 October 2019 led by Professor Graeme Samuel AC. Professor Samuel is a former Chair of the Australian Competition and Consumer Commission and has led a number of reviews for Government previously. The Review released a discussion paper in November 2019, took submissions from organisations and members of the public, and consulted with stakeholders.<sup>29</sup>

1.35 An Interim Report was released in June 2020 to drive further consultation and discussion for potential reforms to the EPBC Act. Professor Samuel stated in his foreword:

My interim view is that the EPBC Act does not position the Commonwealth to protect the environment and Australia’s iconic places in the national interest. The operation of the Act is dated and inefficient, and it is not fit to manage current or future environmental challenges, particularly in light of climate change.<sup>30</sup>

1.36 The report expanded on this point, noting that the ‘current trajectory is unsustainable’, and:

The construct of Australia’s federation means that the management of the environment is a shared responsibility and jurisdictions need to work effectively together, and in partnership with the community.<sup>31</sup>

1.37 Regarding potential reforms, the Interim Report suggested that:

Fundamental reform of national environmental law is required, and new, legally enforceable National Environmental Standards should be the foundation. Standards should be granular and measurable, providing flexibility for development, without compromising environmental sustainability.

National Environmental Standards should be regulatory instruments. The Commonwealth should make National Environmental Standards, in consultation with stakeholders, including the states and territories. The law must require the Standards to be applied, unless the

---

<sup>28</sup> EPBC Act, section 522A.

<sup>29</sup> DAWE, ‘The independent review of the Environment Protection and Biodiversity Conservation Act 1999’. See also The Hon Sussan Ley MP, ‘Minister for the Environment, Graeme Samuel to lead Environment Review’, *Media Release*, 29 October 2019, [minister.environment.gov.au/ley/news/2019/graeme-samuel-lead-environment-review](https://www.minister.environment.gov.au/ley/news/2019/graeme-samuel-lead-environment-review) (accessed 17 November 2019).

<sup>30</sup> Interim Report, p. iii.

<sup>31</sup> Interim Report, p. 1.

decision-maker can demonstrate that the public interest and the national interest is best served otherwise.<sup>32</sup>

- 1.38 Regarding potentially devolving Commonwealth environmental powers to states and territories, the Interim Report proposed:

Duplication exists between the EPBC Act and state and territory regulatory frameworks for development assessment and approval. Efforts have been made to harmonise and streamline with the states and territories, but these efforts have not gone far enough.

The proposed National Environmental Standards provide a clear pathway for greater devolution. Legally enforceable Standards, transparent accreditation of state and territory arrangements, and strong assurance are essential to provide community confidence in devolved arrangements. Greater devolution will deliver more streamlined regulation for business, while ensuring that environmental outcomes in the national interest are being achieved.<sup>33</sup>

- 1.39 The Interim Report also recommended the consideration of an ‘independent cop on the beat’ to ensure compliance, enforcement and assurance of Commonwealth environmental laws:

An independent compliance and enforcement regulator, that is not subject to actual or implied political direction from the Commonwealth Minister, should be established. The regulator should be responsible for monitoring compliance, enforcement and assurance. It should be properly resourced and have available to it a full toolkit of powers.<sup>34</sup>

- 1.40 The Minister responded to the recommendations of Professor Samuel’s Interim Report on 20 July 2020, indicating:

The Commonwealth will commit to the following priority areas on the basis of the interim report:

Develop Commonwealth led national environmental standards which will underpin new bilateral agreements with State Governments.

Commence discussions with willing states to enter agreements for single touch approvals (removing duplication by accrediting states to carry out environmental assessments and approvals on the Commonwealth’s behalf).

...

The Commonwealth will take steps to strengthen compliance functions and ensure that all bilateral agreements with States and Territories are subject to rigorous assurance monitoring. It will not, however, support

---

<sup>32</sup> Interim Report, p. 1. See also pp. 3–5.

<sup>33</sup> See Interim Report, p. 1 and p. 8.

<sup>34</sup> Interim Report, p. 1.

---

additional layers of bureaucracy such as the establishment of an independent regulator.<sup>35</sup>

- 1.41 Professor Samuel handed his Final Report to the government on 30 October 2020. The EPBC Act requires that the report is tabled in Parliament within 15 sitting days after receipt by the Minister. Publishing the report is a matter for government but, at the time of writing, it has not been made available.<sup>36</sup>

### **Previous relevant reviews and inquiries**

- 1.42 There have been a number of previous reviews and inquiries into the EPBC Act, which are relevant to the bill, as they have touched on potential devolution of powers to states and territories under bilateral agreements.
- 1.43 This section outlines some key reports beginning with the statutory review of the EPBC Act led by Dr Allan Hawke and released in October 2009 (Hawke Review).

#### *The Hawke Review*

- 1.44 The EPBC Act requires the Commonwealth to undertake a statutory review every ten years into its operation and effectiveness. The Hawke Review was the first review, with the second ongoing at the time of writing (and discussed elsewhere in this chapter).
- 1.45 The Hawke Review found that the EPBC Act was not fit-for-purpose, and suggested it should be repealed and replaced by a new Act.<sup>37</sup> However, it also outlined potential reforms for EPBC Act, some of which are relevant to this inquiry.
- 1.46 Recommendation 4 of the Hawke Review advised the Commonwealth should work with states and territories to harmonise environmental frameworks and approvals processes:

#### Recommendation 4

The Review recommends that the Commonwealth work with the States and Territories as appropriate to improve the efficiency of the Environmental Impact Assessment (EIA) regime under the Act, including through:

- (1) greater use of strategic assessments;

---

<sup>35</sup> The Hon Sussan Ley MP, Minister for the Environment, 'Reform for Australia's environment laws', *Media Release*, 20 July 2020, [minister.awe.gov.au/ley/media-releases/reform-australias-environment-laws](https://minister.awe.gov.au/ley/media-releases/reform-australias-environment-laws) (accessed 19 November 2020).

<sup>36</sup> DAWE, 'The independent review of the Environment Protection and Biodiversity Conservation Act 1999'.

<sup>37</sup> Recommendation 1 of the *Independent Review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999* (Hawke Review), p. 27.

- (2) accreditation of State and Territory processes where they meet appropriate standards;
- (3) accreditation of environmental management systems for Commonwealth agencies where the systems meet appropriate standards;
- (4) publication of criteria for systems and processes that would be appropriate for accreditation;
- (5) creation of a Commonwealth monitoring, performance audit and oversight power to ensure that any process accredited achieves the outcomes it claimed to accomplish;
- (6) streamlining and simplification of assessment methods, including combining assessment by preliminary documentation and assessment on referral information and removal of assessment by Public Environment Report;
- (7) establishing joint State or Territory and Commonwealth assessment panels;
- (8) use of joint assessment panels or public inquiry for projects where the proponent is either the State or Territory or Australian Government; and
- (9) greater use of public inquiries and joint assessment panels for major projects.<sup>38</sup>

1.47 The government agreed to this recommendation and committed to:

...enhancing the scope and use of these mechanisms to reduce duplication of systems and provide more certainty for business without reducing protection for matters of national environmental significance.<sup>39</sup>

1.48 On bilateral agreements specifically, the Hawke Review found:

The benefits of bilateral agreements and strategic assessments in generating efficiencies in environmental management and harmonising Commonwealth and State and Territory processes are widely recognised and supported. Both [Council of Australian Governments (COAG)] and State and Territory Governments individually have expressed strong support for assessment bilateral agreements, approval bilateral agreements, and strategic assessments. COAG has:

...agreed to the identification of opportunities for strategic assessments under the *Environment Protection and Biodiversity Conservation Act 1999* to avoid unnecessary delays in development approval processes. Strategic assessments are conducted over an entire region and provide a mechanism to approve classes of development which have been assessed under this process, rather than conducting individual assessments and approvals. Strategic assessments provide certainty for development proponents and reduce duplication, while providing greater protection for the environment.

Steps need to be taken to make this approach a reality.<sup>40</sup>

---

<sup>38</sup> Hawke Review, p. III.

<sup>39</sup> Hawke Review, p. 11.

- 1.49 However, the Hawke Review stated that a ‘Commonwealth monitoring and performance audit power should remain’ for bilateral agreements ‘to ensure that the process accredited is achieving the outcomes expected. Performance audit criteria need to be specified for the accredited system before approval is granted’.<sup>41</sup> The review also noted that National Standards could ‘support a move’ to use approval bilateral agreements ‘in the future’.<sup>42</sup>
- 1.50 The then-government signalled a willingness to investigate transferring environmental approval powers to the states and territories through bilateral agreements, as canvassed in the Hawke Review. However, as noted in Parliamentary Library research, these reforms were not progressed:

...in December 2012, then Prime Minister Julia Gillard subsequently indicated that more work was needed to progress such bilateral agreements to ensure that high environmental standards would be consistently maintained across all jurisdictions. The Prime Minister also reportedly said that it was necessary for the Commonwealth to maintain powers over World Heritage, Commonwealth waters and nuclear issues. She also expressed concern that there was too much variation between states.<sup>43</sup>

*Environment and Communications Legislation Committee inquiry into the EPBC Amendment (Bilateral Agreement Implementation) Bill 2014*

- 1.51 In 2014, this committee inquired into legislation that sought to facilitate a ‘one-stop shop’ approach to environmental approvals, the *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014*.<sup>44</sup>
- 1.52 This bill was similar in scope and substance to the bill currently being considered. The report recommended that the bill be passed and included dissenting reports from both the Australian Labor Party and the Australian Greens. The bill did not pass the Senate and lapsed at the prorogation of Parliament in April 2016.<sup>45</sup>

---

<sup>40</sup> Hawke Review, p. 13.

<sup>41</sup> Hawke Review, p. 13.

<sup>42</sup> Hawke Review, p. 67.

<sup>43</sup> Sophie Power, Parliamentary Library, *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020*, Bills Digest No. 18, 2020–21 (Bills Digest No. 18) [not paginated].

<sup>44</sup> See the inquiry webpage at [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/EPBC\\_Bilats\\_and\\_cost\\_recovery\\_Bills](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/EPBC_Bilats_and_cost_recovery_Bills)

<sup>45</sup> Bills Digest No. 18, [not paginated].

*Australian National Audit Office 2020 audit report*

1.53 In June 2020, the Australian National Audit Office (ANAO) released an audit report on the administration of referrals, assessments and approvals of controlled actions under the EPBC Act. The audit concluded that the department's 'administration of referrals, assessments and approvals of controlled actions under the EPBC Act is not effective', including:

Governance arrangements to support the administration of referrals, assessments and approvals of controlled actions are not sound. The department has not established a risk-based approach to its regulation, implemented effective oversight arrangements, or established appropriate performance measures.

Regulation is not supported by appropriate systems and processes, including an appropriate quality assurance framework. The department has not implemented arrangements to measure or improve its efficiency.

The department is unable to demonstrate that conditions of approval are appropriate. The implementation of conditions is not assessed with rigour. The absence of effective monitoring, reporting and evaluation arrangements limit the department's ability to measure its contribution to the objectives of the EPBC Act.<sup>46</sup>

1.54 The report found that the 'reasons for exceeding statutory timeframes vary' and may include:

... the department not considering that it has satisfactory information to assess the proposed action, administrative delays, disagreement between the department and the regulated entity over proposed conditions, and delays in state or territory approvals where actions are also subject to state or territory approval requirements.<sup>47</sup>

1.55 Regarding bilateral agreements and co-regulation with jurisdictions, the ANAO Report noted:

Bilateral agreements with states and territories contain provisions to support information sharing. Each agreement contains commitments to cooperate in monitoring compliance with conditions of approval, including through establishing complementary arrangements. However, complementary arrangements have not been established. In addition, only one agreement commits to a regular schedule for the provision of compliance information.

In the absence of agreed and structured information sharing arrangements, information received from co-regulators will be reactive, issue-based and dependent on personal relationships. As a consequence, compliance

---

<sup>46</sup> Australian National Audit Office (ANAO), *Referrals, assessments and approvals of controlled actions under the Environment Protection and Biodiversity Conservation Act 1999*, Audit report, 47, 2019-20 (ANAO Report), p. 8.

<sup>47</sup> ANAO Report, p. 51.

information may be incomplete and limited in value for strategic planning.<sup>48</sup>

1.56 The ANAO Report also set out departmental ‘progress on evaluations’, including government’s ‘one-stop shop’ policy commenced in 2013. It noted:

The policy does not contain requirements for evaluation, but involved establishing 8 new bilateral agreements. Active bilateral agreements are required to be reviewed at least once every 5 years under the EPBC Act ...

The department has not commenced statutory reviews for any of the bilateral agreements, despite all being in effect for more than 5 years.<sup>49</sup>

1.57 The department accepted the findings of the ANAO report, and responded that it would commence work to address the ANAO’s recommendations, and ‘ensure improvements are delivered in a timely and flexible manner to accommodate potential changes to the EPBC Act [stemming from the Samuel Review]’.<sup>50</sup>

## Outline of the bill

1.58 The bill consists of five schedules, which will be discussed in turn:

- Schedule 1—Referral of controlled actions;
- Schedule 2—Flexibility in performing assessment of controlled actions;
- Schedule 3—Accreditation of certain state processes;
- Schedule 4—Minor amendments of bilateral agreements; and
- Schedule 5—Miscellaneous.

### *Schedule 1—Referral of controlled actions*

1.59 Schedule 1 of the bill would provide that actions which are covered by bilateral agreements would not need to be referred to the Commonwealth for assessment or decision under the EPBC framework. Projects that take place in more than one jurisdiction would have to be covered by the bilateral agreements of all states and/or territories that would be affected.<sup>51</sup>

1.60 The new provisions would also provide that, where actions are covered by bilateral agreements, then they are unable to be referred for Commonwealth assessment.<sup>52</sup>

---

<sup>48</sup> ANAO Report, p. 22.

<sup>49</sup> The report noted that the NSW bilateral agreement has been subject to a ‘non-statutory transitional review’. See ANAO Report, pp. 70–71.

<sup>50</sup> ‘Entity response’ in ANAO Report, pp. 76–77.

<sup>51</sup> Explanatory Memorandum, p. 4.

<sup>52</sup> Explanatory Memorandum, p. 4.

### *Schedule 2—Flexibility in performing assessment of controlled actions*

1.61 Schedule 2 contains amendments that would allow the completion of assessments and approvals of actions by the Commonwealth in certain situations, including where a bilateral agreement had been suspended or cancelled, or where an approval bilateral agreement ceases to apply to a particular action.

1.62 This schedule would ensure that the Minister could step in expeditiously to deal with lapsed or cancelled bilateral agreements, or in cases where states failed to abide by environmental standards.<sup>53</sup> In introducing the bill, the Minister said of these provisions:

Approval bilateral agreements will enable the Commonwealth to 'call-in' an action for approval in appropriate circumstances, including where adequate environmental protection is not being achieved. If this occurs, or if a bilateral agreement is suspended or cancelled, the amendments ensure that projects can be picked up from where they left off. This provides a clear pathway for approval processes and means projects do not have to be sent back to the starting line.<sup>54</sup>

### *Schedule 3—Accreditation of certain state processes*

1.63 Schedule 3 has two parts:

- Part 1—Amendments relating to water resources; and
- Part 2—Amendments relating to bilaterally accredited authorisation process.

1.64 Part 1 would enable a Minister to allow jurisdictions to approve actions relating to coal seam gas (CSG) or large coal mines in a bilateral agreement. Currently, the EPBC Act does not allow jurisdictions to approve the development of CSG projects or large coal mines, if they are likely to have significant effects on water resources, and so trigger the relevant MNES.<sup>55</sup>

1.65 Although this provision does not remove the MNES relating to water resources, it would enable the Minister to accredit jurisdictions to approve projects covered by the water trigger.<sup>56</sup>

1.66 Part 2 proposes to extend the types of authorisation processes that can be accredited in bilateral agreements. This would amend the current provisions

---

<sup>53</sup> Explanatory Memorandum, pp. 5–6.

<sup>54</sup> The Hon Sussan Ley MP, Minister for the Environment, *House of Representatives Hansard*, 27 August 2020, p. 5758.

<sup>55</sup> Explanatory Memorandum, pp. 9–10.

<sup>56</sup> Explanatory Memorandum, pp. 9–10.

that do not allow a Minister to accredit an authorisation process unless it is set out in state or territory law.<sup>57</sup>

1.67 This provision would enable approval in bilateral agreements for processes that meet EPBC Act standards, even if they are only set out in jurisdictional procedures or guidelines and not in legislation.<sup>58</sup>

1.68 The Explanatory Memorandum states that this amendment is intended:

...to provide flexibility in the range of State and Territory authorisation processes that can be accredited for the purposes of an approval bilateral agreement, and to ensure that the Act focuses appropriately on the content and robustness of the authorisation process, rather than on where the process is set out.<sup>59</sup>

#### *Schedule 4—Minor amendments of bilateral agreements*

1.69 The Explanatory Memorandum states that Schedule 4 of the bill would amend the current arrangements for making minor amendments to bilateral agreements:

Section 56A sets out a process for minor amendments to a bilateral agreement if the Minister is satisfied that the amendment will not have a significant effect on the operation of the agreement. However, the Act does not currently include a process for dealing with minor changes to a management arrangement or authorisation processes accredited under an approval bilateral agreement or minor changes to the specified manner of assessment under an assessment bilateral agreement.<sup>60</sup>

1.70 This provision would allow jurisdictions to make minor amendments to environmental assessment processes:

...particularly if this will result in better environmental outcomes, without the need for the amendment of a bilateral agreement or the re-accreditation of a management arrangement or authorisation process. These amendments will facilitate the continuous improvement of accredited management arrangements or authorisation processes and the manner in which the impacts of an action are assessed and allow those processes to respond to changes in circumstances. This will provide certainty about the ongoing operation of bilateral agreements.<sup>61</sup>

#### *Schedule 5—Miscellaneous*

1.71 Schedule 5 makes a number of amendments to the EBPC Act's provisions for bilateral agreements, including:

---

<sup>57</sup> Explanatory Memorandum, p. 12.

<sup>58</sup> Explanatory Memorandum, p. 12.

<sup>59</sup> Explanatory Memorandum, p. 12.

<sup>60</sup> Explanatory Memorandum, p. 14.

<sup>61</sup> Explanatory Memorandum, p. 14.

- allowing approval bilateral agreements to apply in relation to the water trigger, meaning that ‘actions involving coal seam gas or large coal mining developments that have, will have or are likely to have, a significant impact on water resources are actions within a class of action that do not require approval under Part 9 of the EPBC Act’;<sup>62</sup>
- allowing a broader range of entities to make decisions under approval bilateral agreements, including a person or organisation approved by the jurisdiction, including local governments and councils;
- clarifying that approval bilateral agreements could apply to projects that have been approved before a minister accredits a state or territory process, providing that the action was approved in accordance with the relevant accredited process;
- clarifying that the minister can take into account all matters they consider relevant in deciding whether to accredit a jurisdictional management arrangement or authorisation process; and
- ensuring that bilateral agreements can reference the most current version of instruments and policy documents.<sup>63</sup>

### **Senate Scrutiny of Bills committee**

- 1.72 When examining a draft bill, the committee takes into account any relevant comments published by the Senate Scrutiny of Bills Committee (Scrutiny Committee).<sup>64</sup>
- 1.73 The Scrutiny Committee examined the bill and sought advice from the Minister on certain personal rights and liberties.
- 1.74 In its *Scrutiny Digest 11 of 2020* the Scrutiny Committee sought the Minister’s advice on ‘the type of documents that it is envisaged may be applied, adopted or incorporated by reference under proposed section 48AA and, in particular, whether these documents will be made freely available to all persons interested in the law’.<sup>65</sup>
- 1.75 The Scrutiny committee considered the Minister’s response to this matter in its *Scrutiny Digest 13 of 2020*, and requested further advice, particularly on whether the bill could be amended to require that any document incorporated into a bilateral agreement must be made freely available, on the face of the primary legislation.<sup>66</sup>

---

<sup>62</sup> Explanatory Memorandum, p. 17.

<sup>63</sup> Explanatory Memorandum, pp. 17–20.

<sup>64</sup> Senate Standing Order 25(2A).

<sup>65</sup> Senate Scrutiny of Bills Committee, *Scrutiny Digest 11 of 2020*, pp. 11–12.

<sup>66</sup> Senate Scrutiny of Bills Committee, *Scrutiny Digest 13 of 2020*, pp. 27–30.

1.76 In its *Scrutiny Digest 15 of 2020*, the Scrutiny Committee published and considered the Minister's advice in this regard. The Minister noted that the new legislation would 'support appropriate access and transparency, without the need for further legislative provisions', commenting:

I appreciate the importance of ensuring that documents relating to accredited state and territory assessment and approval processes are made freely available to the public. I have previously advised the Committee that the type of documents that may be incorporated into bilateral agreements would either be freely available or expected to be made freely available (for example, state or territory policies and plans relevant to assessment and approvals processes).

Further to this, it is intended that approval bilateral agreements will include a requirement that states and territories publish relevant information on the Internet relating to the assessment and approval process that assist decision-makers to exercise their functions and powers under an accredited process. This information would include rules, guidelines, practices or precedents.<sup>67</sup>

1.77 The Scrutiny Committee requested that an addendum be tabled as soon as possible, outlining the Minister's responses to matters raised in Scrutiny Digests, 'noting the importance of these explanatory materials as a point of access to understanding the law and, if needed, as extrinsic material to assist with interpretation'.<sup>68</sup>

### **Financial impact of the bill**

1.78 The Explanatory Memorandum to the bill states that the Interim Report of the Independent Review 'undertook a process and analysis equivalent to a Regulation Impact Statement'.<sup>69</sup>

1.79 The Interim Report did not provide a disaggregated outline of the financial impact for each of its individual recommendations. However, a summary of the Review's findings suggests that the suite of reforms would have economic benefits:

The proposed reforms are substantial, but the changes are necessary to set Australia on a path of ecologically sustainable development. This path will deliver long-term economic growth, environmental improvement and the effective protection of Australia's iconic places and heritage for the benefit of current and future generations.<sup>70</sup>

---

<sup>67</sup> Senate Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2020*, pp. 57–58.

<sup>68</sup> Senate Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2020*, p. 58.

<sup>69</sup> Explanatory Memorandum, p. 1.

<sup>70</sup> Samuel Review, *Interim Report*, p. 2.

## **Human rights**

1.80 The bill's statement of compatibility with human rights states that the bill is compatible with the human rights and freedoms recognised in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>71</sup>

## **Acknowledgement**

1.81 The committee would like to thank all organisations and individuals that made submissions or gave evidence at the hearing.

---

<sup>71</sup> Explanatory Memorandum, pp. 21–22.

---

## Chapter 2

### Issues raised

- 2.1 This chapter sets out the issues raised on the bill in evidence received by the committee in submissions and at the public hearing.
- 2.2 It first outlines the support for the bill from a range of stakeholders. Following this, it discusses some of the concerns raised about the broader context of the bill by stakeholders before setting out the committee's views and recommendations.

#### **Support for reform of the EPBC Act**

- 2.3 Evidence received by the committee generally recognised the need to substantially reform the EPBC Act. Some stakeholders saw the bill's provisions as positive reforms of the EPBC framework, which would strengthen existing environmental protections and streamline the approvals process.
- 2.4 This section discusses the following matters in turn:
- the widely recognised need for reform of the EPBC Act;
  - support for provisions of the bill that would streamline environmental laws in Australia, including by reducing duplication between the Commonwealth and the states and territories through bilateral agreements;
  - evidence that the bill would maintain EPBC Act levels of protection for the environment and lift the environmental standards of jurisdictions; and
  - potential efficiency gains from the provisions of the bill for project proponents.

#### *General recognition that the EPBC Act needs reform*

- 2.5 A wide range of stakeholders from all sectors agreed that the EPBC Act is not effective and is failing to achieve its core outcomes. It was widely noted that the second 10-year review of the Act recently concluded by Professor Samuel provided a once-in-a-generation opportunity for reform. Stakeholders generally concurred with the position set out in the Interim Report, which found:

The EPBC Act is ineffective. It does not enable the Commonwealth to play its role in protecting and conserving environmental matters that are important for the nation. It is not fit to address current or future environmental challenges.<sup>1</sup>

---

<sup>1</sup> Interim Report, p. 1. For agreement that the EPBC Act needs reform see, for instance: Dr Peter Burnett, Private Capacity; Mr Dermot O'Gorman, Chief Executive Officer, WWF-Australia; Ms Kelly O'Shanassy, Chief Executive Officer, Australian Conservation Foundation (ACF); Professor Martine Maron, Wentworth Group of Concerned Scientists

- 2.6 A number of stakeholders noted the recommendations of the Interim Report, including the 'Proposed reform pathway' which states:

Immediate steps to start reform should be taken. In the first instance, amendments should be made to:

- fix duplication, inconsistencies, gaps and conflicts
- enable National Environmental Standards to be made
- improve the durability of the settings for devolved decision-making.<sup>2</sup>

- 2.7 Environmental groups generally recognised that the EPBC Act is failing to achieve environmental protections and supported the Interim Report's 'Proposed reform pathway', even if they opposed the bill currently being inquired into.<sup>3</sup>

- 2.8 A range of stakeholders from industry, agriculture and private enterprise also observed that the EPBC Act is failing to fulfil its environmental objectives and is in need of reform, including through the recommendations of the Samuel Review. For example, Ms Jennifer Westacott, CEO of the Business Council of Australia (BCA), told the committee:

We were very supportive of the interim report, which provides a blueprint for more effective regulation to protect the environment while helping to drive new investment and create jobs ... We think what Professor Samuel has set forward is a way of increasing accountability, increasing transparency and retaining the central goal of protecting the environment. This is a very positive step that has fostered a lot of collaboration between business and environmental groups and...will drive investment.<sup>4</sup>

### *Support for the bill's streamlining of environmental frameworks*

- 2.9 A range of stakeholders from industry and agriculture expressed support for the bill's streamlining of environmental frameworks between the Commonwealth and jurisdictions. These witnesses noted that the bill

---

(Wentworth Group); Mr Andrew McConville, CEO, Australian Petroleum Production and Exploration Association (APPEA); and Ms Jennifer Westacott, CEO, Business Council of Australia (BCA) in *Proof Committee Hansard*, 23 November 2020, pp. 1, 17, 20, 31, 36 and 37 respectively.

<sup>2</sup> Interim Report, p. 16. For evidence that noted the suite of proposed recommendations made in the Interim Report see, for example: Ms Robyn Glindemann, Chair, Australian Environment and Planning Law Group, Legal Practice Section, Law Council of Australia (Law Council); Ms Suzanne Milthorpe, National Environment Law Campaign Manager, The Wilderness Society; Ms Alexia Wellbelove, Senior Campaign Manager, Humane Society of Australia (HSI); Ms Jennifer Westacott, CEO, BCA in *Proof Committee Hansard*, 23 November 2020, pp. 9, 18, 24 and 37 respectively.

<sup>3</sup> For example, see: Environmental Defenders Office (EDO), *Submission 2*, pp. 3–4; WWF-Australia, *Submission 4*, p. 3; BirdLife Australia, *Submission 8*, p. 2; Australian Academy of Science, *Submission 26*, pp. 1–2; and Australian Marine Conservation Society (AMCS), *Submission 37*, pp. 1–2. See below for a discussion of concerns raised about the bill from these stakeholders.

<sup>4</sup> Ms Jennifer Westacott, CEO, BCA, *Proof Committee Hansard*, 23 November 2020, p. 37.

represents a good first step on the path to EPBC Act reform, and would be followed by other legislation and policy to strengthen Australia's environmental protection and management.

- 2.10 For example, Ms Tania Constable, CEO of the Minerals Council of Australia (MCA), commented that her organisation had called for reform to the EPBC Act 'as a matter of urgency for years'. She suggested the largely administrative reform proposed in the bill 'aligns directly' with the Interim Report of the Samuel Review and stated it:

...is an important and timely first step in reforming the operation of the EPBC Act for better business and environmental outcomes. The reforms in the bill are mostly administrative and will not have an impact on the environment. The bill aligns directly with the draft outcomes and direction of the independent review of the EPBC Act ... A steady approach to reform is appropriate.<sup>5</sup>

- 2.11 It was recognised by some stakeholders that arrangements for bilateral agreements are already contained in the EPBC Act, and that the bill primarily made minor and technical amendments designed to clarify and expand these arrangements. For example, Mr Andrew McConville, CEO of the Australian Petroleum Production and Exploration Association (APPEA), told the committee that the minor amendments made by the bill would lay solid groundwork for further reforms, including National Environmental Standards:

In relation to the streamlining approvals bill, we understand that the bill is set to expand and clarify provisions, which would allow the Commonwealth to delegate approval powers to the states and territories through bilateral agreements. These amendments appear, largely, administrative in nature but, importantly, they will assist potential future bilateral agreements and national environmental standards to be assessed and approved.<sup>6</sup>

- 2.12 Other stakeholders recognised that the proposed amendments were supported by all states and territories through the National Cabinet's decision to work toward establishing a 'single touch' process. For example, Mr Chris Everingham, the Chief Executive of the Chamber of Minerals and Energy of Western Australia (CMEWA), stated:

Bilateral agreements are already enabled under the EPBC Act and have been envisaged by the Act since the Act's commencement in 1999. The proposed amendments in the bill merely improve their stability, providing greater certainty for both the proponents and the governments who are party to the bilateral agreements. The proposed amendments are

---

<sup>5</sup> Ms Tania Constable, CEO, Minerals Council of Australia (MCA), *Proof Committee Hansard*, 23 November 2020, p. 38.

<sup>6</sup> Mr Andrew McConville, CEO, APPEA, *Proof Committee Hansard*, 23 November 2020, p. 36. On the procedural nature of the bill, see also the comment by the EDO that the proposed amendments 'seek to clarify, codify and expand existing practices' in *Submission 2*, p. 10.

aligned with national cabinet's decision to establish a single-touch environmental approval system.<sup>7</sup>

- 2.13 Ms Westacott of the BCA suggested that the bill's provisions to reduce duplication and inconsistencies would 'kickstart' further reforms, which would lift environmental standards across Australia. She told the committee:

...this [bill] is an important first step to kickstart a comprehensive reform package that would include: the improved national environmental standards, which we believe are best applied at a regional scale; a strengthened regional planning and strategic assessment; strong compliance enforcement and assurance functions; and improved data and monitoring. We see these elements, along with the conservation movement, as part of a package that will be critical as devolution rolls out. It is through this package that we'll see accreditation driving improvement in the assessment processes undertaken by states and territories as well as in lifting environmental standards across the country.<sup>8</sup>

- 2.14 Mr Dean Knudson, Deputy Secretary of the Major Environment Reforms Group of the Department of Agriculture, Water and the Environment (the department), also recognised that the bill represented a first step in the long-term process of EPBC Act reform, following government consideration of the Final Report of the Samuel Review. Mr Knudson noted the bill would have a positive effect for both environmental and economic outcomes:

...this is one of a number of pieces of reform. The minister has certainly talked about a series of tranches of reform of the legislation. [The EPBC Act is] well over a thousand pages and quite complex to reform. This is one of the first pieces but, fundamentally, it delivers on maintaining strong environmental standards while also shortening time frames for business.<sup>9</sup>

### *The value of streamlining the EPBC process and reducing duplication*

- 2.15 The bill would amend existing provisions of the EPBC Act relating to bilateral agreements, to make them more efficient, effective, and robust. The amendments would reduce the current duplication between the Commonwealth's EPBC framework and equivalent jurisdictional processes, and enable a single assessment and approval process.
- 2.16 A range of stakeholders supported this move toward a 'single touch' approach facilitated through bilateral agreements. For instance, the West Australian (WA) Minister for the Environment, the Hon Stephen Dawson MLC, submitted that the WA government:

---

<sup>7</sup> Mr Paul Everingham, Chief Executive, Chamber of Minerals and Energy of Western Australia (CMEWA), *Proof Committee Hansard*, 23 November 2020, p. 38.

<sup>8</sup> Ms Jennifer Westacott, CEO, BCA, *Proof Committee Hansard*, 23 November 2020, p. 37.

<sup>9</sup> Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, Department of Agriculture, Water and the Environment (DAWE), *Proof Committee Hansard*, 23 November 2020, p. 58.

...fully supports the making of approval bilateral agreements to remove unnecessary duplication between State and Commonwealth environmental approval processes, whilst maintaining strong environmental protections.<sup>10</sup>

- 2.17 Industry stakeholders also saw the removal of duplication in environmental approvals as an important reform. For instance, Mr McConville of APPEA told the committee that his organisation:

...strongly supports bilateral agreements as one of a suite of tools that can be used to reduce duplication and increase cooperation in environmental protection. Importantly, consistent national environmental standards focused on outcomes rather than process will help improve environmental protection, whilst supporting the needs of business.<sup>11</sup>

- 2.18 Ms Constable of the MCA outlined the complexity of the current system:

...it doesn't make sense that Commonwealth and state/territory environmental approval processes overlap and are not synchronised. Different triggers, time frames for reviews, requests for further information and a lack of efficient interagency coordination create unnecessary complexity, costs and delays.<sup>12</sup>

- 2.19 Mr Tony Mahar, CEO of the National Farmers' Federation (NFF), also spoke favourably of the bill's approach to reducing complexity and duplication in environmental frameworks across federal and state governments:

This duplication provides major concerns for farmers and we seek mechanisms to provide the certainty and clarity that is needed to operate a farm business. Many of the interactions the farm sector has with the EPBC Act are in the context of being required to manage practical processes in the context of conservation advice for identified threatened species. Understanding these requirements, accessing information that supports decisions and clarifying the separation between state and federal requirements is quite challenging and difficult at a practical level for farmers across this country. It is our view that this legislation does not propose to resolve all of the concerns with the EPBC Act. It is a step in a further process which we're looking to as a solution to well-documented and ongoing concerns with how this act interacts with farmers.<sup>13</sup>

### *Maintaining strong environmental protections*

- 2.20 A number of stakeholders noted that the bill's proposed reforms would maintain the environmental protections contained in the EPBC Act. It was argued that, in some cases, certain jurisdictions would have to improve their environmental frameworks to meet the requirements of both the EPBC Act and

---

<sup>10</sup> WA Government, *Submission 46*, p. 1.

<sup>11</sup> Mr Andrew McConville, CEO, APPEA, *Proof Committee Hansard*, 23 November 2020, p. 36.

<sup>12</sup> Ms Tania Constable, CEO, MCA, *Proof Committee Hansard*, 23 November 2020, p. 38.

<sup>13</sup> Mr Tony Mahar, CEO, National Farmers' Federation (NFF), *Proof Committee Hansard*, 23 November 2020, p. 38.

the National Environmental Standards that would underpin any bilateral agreement made subsequent to this bill.<sup>14</sup>

2.21 Mr Knudson from the department emphasised that the bill's amendments will deliver on maintaining strong environmental standards.<sup>15</sup> He noted that the government has committed to developing strong National Environmental Standards, and that these would underpin any bilateral agreements the Commonwealth makes with states and territories.<sup>16</sup>

2.22 Mr Greg Manning, Assistant Secretary of the department's Bilateral Agreements Branch, expanded on how the existing level of protection set by the EPBC Act would be maintained under a reformed approach to bilateral agreements. In doing so, he also touched on how National Environmental Standards would ensure environmental protections would be applied:

...the Act sets out the things the minister must be satisfied of in terms of the level of protection and the nature of the assessment process and all those things for MNES [matters of national environmental significance]. That may be met differently by each jurisdiction, according to their legislation. But the requirements of the EPBC Act for doing that would remain consistent, so in that regard we would back that in. The national environmental standards as Professor Samuel has envisaged them would apply nationally, as I understand it. So, if we're making the commitment in the bilateral agreements for a state to meet the standards, that will be the same for all jurisdictions.

...I can guarantee that before [agreements are] entered into we will do all the work to make sure they meet all the requirements of the Act for entering into those agreements and therefore that the level of protection envisaged by the Act for devolving them would be met. But I would almost say with some certainty that the processes that the states will deploy to achieve that will be different.<sup>17</sup>

---

<sup>14</sup> See, for example: Ms Jennifer Westacott, CEO, BCA; and Ms Tania Constable, CEO, MCA in *Proof Committee Hansard*, 23 November 2020, pp. 37 and 38, respectively.

<sup>15</sup> Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, DAWE, *Proof Committee Hansard*, 23 November 2020, p. 58.

<sup>16</sup> Mr Knudson suggested that there were two mechanisms the Commonwealth could use regarding National Environmental Standards: either incorporating the standards in the accreditation bilateral agreements themselves; or developing independent legislation setting out the standards. See *Proof Committee Hansard*, 23 November 2020, p. 52.

<sup>17</sup> Mr Greg Manning, Assistant Secretary, Bilateral Agreements Branch, DAWE, *Proof Committee Hansard*, 23 November 2020, pp. 61–62.

### *Potential efficiency gains for industry and agriculture*

2.23 As noted above, some groups suggested that reforms initiated by the bill would reduce the burden of compliance on industry, and so have economic benefits for certain sectors and the Australian economy more generally.<sup>18</sup>

2.24 Mr McConville set out some of the costs to business of negotiating different Commonwealth and state and territory environmental regimes:

Overlapping requirements between the states and the Commonwealth lead to widespread duplication of processes, and this doesn't actually lead to any particular help to the environment but does often cause unnecessary delays, increasing costs for the development of Australia's natural resources. Overlapping and duplication of regulatory requirements can result in excessive and often conflicting regulatory processes and double handling, and it is definitely the case that double handling does not deliver better environmental outcomes.<sup>19</sup>

2.25 The submission made by the MCA sets out some of the costs of delays to industry:

For business, regulatory inefficiency leads to delays that impact investment, increases costs to business and slow or prevent the benefits from mining flowing to regional communities and the broader Australian economy. A one-year delay to a project can reduce the Net Present Value (NPV) by between 10 and 13 per cent. For large mining projects (of \$3 billion to \$4 billion), delay costs can be up to \$1 million per day.

Capital investment is mobile. Delays and uncertainty in regulatory processes increases business risk, making Australia less attractive for investment. For the minerals sector, this diverts investment offshore affecting the broader economy through reduced national output and the related economic and social contributions over the long term.<sup>20</sup>

2.26 The department highlighted research from 2014 that calculated reducing duplication between Commonwealth and jurisdictional frameworks would bring immense economic benefits to business and industry, of around \$426 million annually.<sup>21</sup>

---

<sup>18</sup> See, for example: Mr Andrew McConville, CEO, APPEA; Ms Jennifer Westacott, CEO, BCA; Ms Tania Constable, CEO, MCA; Mr Paul Everingham, Chief Executive, CMEWA; Mr Tony Mahar, CEO, NFF, *Proof Committee Hansard*, 23 November 2020, all at pp. 36–38. See also Property Council of Australia and the Urban Development Institute of Australia (UDIA) National (PC and UDIA), *Submission 10*, p. 1.

<sup>19</sup> Mr Andrew McConville, CEO, APPEA, *Proof Committee Hansard*, 23 November 2020, p. 36.

<sup>20</sup> MCA, *Submission 41*, p. 1.

<sup>21</sup> Mr Knudson referred to figures set out in 'Fact sheet 2A: Economic Benefits of the One-Stop Shop' (2014), [www.environment.gov.au/epbc/publications/fact-sheet-2a-economic-benefits-one-stop-shop](http://www.environment.gov.au/epbc/publications/fact-sheet-2a-economic-benefits-one-stop-shop) (accessed 24 November 2020). Ms Tania Constable, CEO, MCA, suggested these figures would be much higher in 2020. See Mr Knudson and Ms Constable, *Proof Committee Hansard*, 23 November 2020, pp. 58 and 38, respectively.

2.27 A number of organisations suggested that reducing costs for business, while maintaining environmental protections, should be expedited by the Commonwealth, as it would assist to drive the Australian economy as it recovers from the effects of the COVID-19 crisis.<sup>22</sup>

### **Concerns raised in evidence**

2.28 A number of concerns were raised about the broader context of the bill in evidence received by the committee, including:

- the short time frame for this inquiry, particularly given the Samuel Review Final Report has not been released publicly;
- the lack of provisions in the bill for strong, legally enforceable national environmental standards and a national regulator;
- potential negative outcomes from devolving decisions to states and territories in a 'single-touch' approach;
- the need for more robust accountability and transparency requirements for environmental decisions made by governments; and
- that the economic benefits of a devolved model have been overstated.

### *Timeframe for this inquiry*

2.29 The committee received concerns about the short time frame for this inquiry, which argued that new environmental legislation should not be considered until the release of the Samuel Review's Final Report.<sup>23</sup> For example, Ms Alexia Wellbelove of the Humane Society International (HSI) told the committee:

Whilst we appreciate the opportunity to give evidence on this bill, our concern is that this process is too rushed to consider some of the significant issues that are involved ... The current bill locks in inadequacies in the system without attempting to achieve any environmental outcomes, simply for reasons of efficiency, all whilst an important statutory review of the EPBC Act is underway.<sup>24</sup>

2.30 Some stakeholders urged the committee to delay the inquiry until after the Samuel Review's Final Report is publicly released. For instance, Mr Dermot O'Gorman, CEO of WWF-Australia, recommended:

---

<sup>22</sup> See, for example: PC and UDIA, *Submission 10*, p. 1; MCA, *Submission 41*, pp. 1–2. See also Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, DAWE, *Proof Committee Hansard*, 23 November 2020, p. 58.

<sup>23</sup> Submissions: EDO, *Submission 2*, p. 1; Friends of Grasslands (FOG), *Submission 21*, p. 2; HSI, *Submission 6*, p. 1; AMCS, *Submission 37*, p. 1; International Fund for Animal Welfare (IFAW), *Submission 27*, p. 1; and The Wilderness Society, *Submission 5*, pp. 8–9. This view was also expressed by a number of submissions made by individuals, as well as the form letters received by the committee.

<sup>24</sup> Ms Alexia Wellbelove, Senior Campaign Manager, HSI, *Proof Committee Hansard*, 23 November 2020, p. 16.

...that the legislation being considered by the Senate be delayed until the independent final report is released publicly and made available to the parliament and stakeholders so that we can respond to the findings.<sup>25</sup>

- 2.31 A number of submitters and witnesses suggested the bill's proposed reforms would be better understood if considered against the recommendations of the Final Report of the Samuel Review. In this context, it was noted that the Interim Report recommended the development of National Environmental Standards and the establishment of an independent regulator for environmental matters.<sup>26</sup>
- 2.32 As noted above, the department and some stakeholders noted that this bill would deliver a first tranche of reform of the EPBC Act, as recommended by the Interim Report, and that the government is currently considering the Final Report of the Samuel Review and its recommendations.<sup>27</sup>

### *National Environmental Standards in the bill*

- 2.33 It was suggested in evidence that devolution of certain decision-making powers to states and territories should be accompanied by a range of safeguards, as recommended by the Samuel Review's Interim Report, particularly with respect to the National Environmental Standards.<sup>28</sup>
- 2.34 For example, Ms O'Shanassy, CEO of the Australian Conservation Foundation (ACF), told the committee:

We do not believe that devolution to states and territories will be efficient or good for nature. We recognise that Professor Samuel has put forward a model to devolve decision-making responsibilities to accredited states and territories, but he has done so with a number of safeguards, and maintaining federal oversight and responsibility, at least in his interim report. We of course are not aware of what will be in his final report. Professor Samuel says that there are a series of interconnecting safeguards, such as national environmental standards that protect the environment in the national interest, independent assurance auditing and enforcement functions to make sure that the states and territories do the right thing and that project proponents are meeting their approval conditions, and of course critical resources for bioregional planning and data collection.

---

<sup>25</sup> Mr Dermot O'Gorman, CEO, WWF-Australia, *Proof Committee Hansard*, 23 November 2020, p. 17.

<sup>26</sup> For instance, see: WWF-Australia, *Submission 4*, p. 6; The Wilderness Society, *Submission 5*, p. 8; EDO, *Submission 2*, p. 1 and 9; Law Council, *Submission 3*, pp. 2–3; HSI, *Submission 6*, p. 1; IFAW, *Submission 27*, p. 1; and Dr Peter Burnett, *Proof Committee Hansard*, 23 November 2020, p. 3.

<sup>27</sup> For example, see: Ms Jennifer Westacott, CEO, BCA; Ms Tania Constable, CEO, MCA; and Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, DAWE, *Proof Committee Hansard*, 23 November 2020, pp. 37, 38 and 58, respectively.

<sup>28</sup> For example, see EDO, *Submission 2*, pp. 16–17.

The bill has none of these safeguards in it. It is all downside and no upside for nature.<sup>29</sup>

2.35 Some stakeholders acknowledged that the government is currently considering its response to the Samuel Review, including draft National Environmental Standards. It was argued that the bill should be considered alongside these standards, to ensure the potential effects of the bill would be understood. For example, the ACF submitted that national standards would form the 'centrepiece' of Professor Samuel's Interim Report, which could:

...underpin devolution of federal decision making. The strength or otherwise of these standards will be a key determining factor as to whether the reforms recommended can actually address the significant challenges Australia's environment faces.<sup>30</sup>

2.36 Professor Martine Maron of the Wentworth Group expanded on this point:

...we are being told there is a process underway and it will come along and that shouldn't be a reason to hold up this legislation. But it's a little difficult to understand how this legislation will interact with those standards unless we have those standards in front of us ...

It is very hard to see ... how [the proposed amendments] would fit in with what's really needed [for EPBC Act reform] without there being a head of power in this bill for requiring those standards to be met, for providing the sort of detailed assurance. For example, what sort of recourse is there if an arrangement is made with a state, a decision is made that appears on the face of it not to be compliant—what then? It is very uncertain at the moment, and I think it would be not impossible to make the bill such that those safeguards were built in.<sup>31</sup>

2.37 As set out in Chapter 1, the government has committed to developing robust National Environmental Standards and embedding these as a foundation of any bilateral agreements made subsequent to the provisions of this bill.<sup>32</sup>

2.38 At the hearing, the department confirmed that any bilateral agreements made subsequent to the bill would include robust Commonwealth-led National Environmental Standards that would be binding on jurisdictions. According to the department, this means that the bill's provisions for the accreditation of

---

<sup>29</sup> Ms Kelly O'Shannassy, CEO, ACF, *Proof Committee Hansard*, 23 November 2020, pp. 20–21.

<sup>30</sup> ACF, *Submission 9*, p. 6.

<sup>31</sup> Professor Martine Maron, Member, Wentworth Group of Concerned Scientists, *Proof Committee Hansard*, 23 November 2020, p. 31.

<sup>32</sup> See, in particular, the following items cited in Chapter 1 of this report: the Hon Scott Morrison MP, Prime Minister, 'National Cabinet', *Media Statement*, 24 July 2020; The Hon Sussan Ley MP, Minister for the Environment, 'Reform for Australia's environment laws', *Media Release*, 20 July 2020.

states and territories in bilateral agreements would not be able to proceed until National Environmental Standards come into effect.<sup>33</sup>

2.39 Mr Knudson from the department suggested these standards could be incorporated in the bill's reforms in a number of ways:

...either in the accreditation [bilateral] agreement itself or in the legislation, but it's a matter for government as to which route they choose to take. The Prime Minister himself also committed to the idea of devolution, combined and underpinned by strong environmental standards. So I think the government's position is relatively clear. It's then a choice of which way they wish to proceed.<sup>34</sup>

### *Environmental outcomes*

2.40 Some evidence received by the committee raised concerns about potential negative outcomes from the devolution of environmental decisions to states and territories.

2.41 The Environmental Defenders Office (EDO) outlined a number of these risks, which largely sum up the concerns of other stakeholders:

The fact is that devolution of the federal government's environmental protection role to the state and territory governments is still a flawed, high risk and ill-considered policy for multiple reasons, including:

- only the Australian Government can provide national leadership on national environmental issues, strategic priorities and increased consistency;
- the Australian Government is responsible for our international obligations to protect the environment, which the EPBC Act implements;
- State and Territory laws still do not meet national standards;
- State and Territory environmental laws and enforcement processes are not always up to standard, and do not consider the cross-border, cumulative impacts of state-based decisions;
- States and Territories are not mandated to act (and do not act) in the national interest;
- State and Territory governments often have conflicting interests—as a proponent, sponsor or beneficiary of the projects they assess; and
- State and Territory governments would need significant resourcing assistance to take over the job (and potentially the liability) of federal government in assessing impacts to matters of national environmental

---

<sup>33</sup> Mr Greg Manning, Assistant Secretary, Bilateral Agreements Branch, DAWE, *Proof Committee Hansard*, 23 November 2020, p. 53.

<sup>34</sup> Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, DAWE, *Proof Committee Hansard*, 23 November 2020, p. 52.

significance, but no resourcing has been committed to by the federal government to take on this extra, important work.<sup>35</sup>

2.42 Some evidence suggested these shortcomings of state and territory frameworks, standards and resourcing would lead to poor environmental outcomes, particularly for threatened species. For example, HSI submitted:

...to delegate environmental approval powers to state and territory governments will result in a setback to decades of progress towards the conservation of threatened species and ecological communities, threatening commitments Australia has made at the international level.<sup>36</sup>

2.43 It was argued that it would be particularly difficult to maintain environmental protections where matters hinge on national priorities, cross jurisdictional boundaries, or pertain to international obligations. As The Wilderness Society submitted, jurisdictions are 'incapable of adequately assessing projects that impact MNES' as:

State and territory governments do not assess projects with the national interest—or national significance of species or ecosystem—in mind. They are not appropriate authorities to assess the impact of projects that impact across state borders or on shared environmental values such as migratory species, terrestrial aquatic ecosystems, or even endemic species.<sup>37</sup>

2.44 Members of the Places You Love Alliance noted EDO audits of state frameworks conducted in 2012 and 2014, which indicated that no state or territory met the existing suite of national environmental standards required to protect MNES. It was also noted that jurisdictions did not currently have the resources to approve environmental decisions effectively and efficiently.<sup>38</sup>

2.45 A number of stakeholders noted that local government may be accredited to make decisions under bilateral agreements. Many considered local government inappropriate bodies to administer environmental decisions that contain a MNES, including assessing matters that go to Australia's international obligations.<sup>39</sup>

---

<sup>35</sup> EDO, *Submission 2*, pp. 4–5. A range of these concerns was expressed in a number of submissions made by individuals, as well as the form letters received by the committee.

<sup>36</sup> HSI, *Submission 6*, p. 2.

<sup>37</sup> The Wilderness Society, *Submission 5*, p. 5.

<sup>38</sup> For example, see: EDO, *Submission 2*, p. 5; WWF-Australia, *Submission 4*, p. 2; HSI, *Submission 6*, p. 3; and ACF, *Submission 9*, p. 8.

<sup>39</sup> For instance, see Ms Rachel Walmsley, Policy and Law Reform Director, EDO; Ms Alexia Wellbelove, Senior Campaign Manager, HSI; Mr Gerard Early, Director, and Mr Roderick Campbell, Research Director, Birdlife Australia; Mr James Trezise, Policy Analyst, ACF; and Professor Bruce Thom, Member, Wentworth Group, *Proof Committee Hansard*, 23 November 2020, pp. 8 and 10, 22, 22, 27 and 32, respectively.

- 2.46 Some evidence raised concerns that the bill would potentially remove the MNES relating to the ‘water trigger’, in particular by accrediting a state or territory to approve mining or coal seam gas projects that may impact on water resources.<sup>40</sup>
- 2.47 As noted above, some stakeholders provided evidence that bilateral agreements underpinned by robust National Environmental Standards will maintain strong environmental protections.
- 2.48 It was suggested that the bill would be a good immediate first step to instigate this process of reform, which would lift environmental standards across states and territories to meet the baseline of the Commonwealth’s National Environmental Standards. These improvements could be consolidated by further reforms stemming from the Samuel Review.<sup>41</sup>

### *Compliance, enforcement and assurance*

- 2.49 Stakeholders also expressed concern that bilateral agreements accrediting state and territory decision-making processes would not be sufficiently transparent, or subject to parliamentary or public scrutiny.
- 2.50 For example, the Law Council of Australia (Law Council) cited its submission to the Samuel Review:

If approval bilateral agreements are to be implemented, and the non-regression principle is to be met, the agreements cannot operate and should not operate without robust and comprehensive Commonwealth oversight. This oversight, which must be properly resourced in both financial and human terms, is necessary to ensure that Commonwealth standards of assessment and approval are maintained, the Commonwealth’s international obligations under the international treaties to which it is a signatory are met and public confidence and trust is maintained.

In the absence of Commonwealth oversight, the Law Council is concerned that over time, the standards of assessment and approval will not be maintained by State and Territory regulators and that each State and Territory may implement the EPBC Act requirements in a different way leading to inconsistency and unfairness for proponents and third parties.<sup>42</sup>

- 2.51 Other evidence expressed fears that agreements would not be subject to public or parliamentary scrutiny. For example, EDO submitted:

---

<sup>40</sup> For instance: EDO, *Submission 2*, p. 10 and pp. 12–13; HSI, *Submission 6*, pp. 1–2; and ACF, *Submission 9*, pp. 8–9;

<sup>41</sup> For example, see: Ms Jennifer Westacott, CEO, BCA; Ms Tania Constable, CEO, MCA; and Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, and Mr Greg Manning, Assistant Secretary, Bilateral Agreements Branch, DAWE, *Proof Committee Hansard*, 23 November 2020, pp. 37, 38, 58 and 61, respectively.

<sup>42</sup> Law Council, *Submission 3*, p. 2.

There is an alarming lack of assurance under the proposed devolved framework ... [The bill] allows accreditation of policies not set out in law, not even written yet, and removes oversight of parliament (by removing disallowance mechanisms) for a number of determinations. The Bill reduces oversight of minor changes to state laws that may impact environmental outcomes at the project level.

To give actual assurance, a framework needs to have independent compliance capacity at the federal and state/territory levels, proper public and parliamentary scrutiny, and clear consequences for breaches.<sup>43</sup>

- 2.52 The ACF commented that the bill would provide an 'exceptional' amount of discretion to the Minister to determine what a 'minor amendment' may be, including determining what matters might adversely affect a MNES:

The real impact of this will be less public and parliamentary scrutiny of bilateral agreements and their operation, and an accompanying reduction in community trust in environmental decision makers.<sup>44</sup>

- 2.53 Some submitters advocated for the Commonwealth to consider an independent regulator, as recommended by the Interim Report of the Samuel Review. It was suggested this could be a mechanism to ensure environmental protections were adequate, being implemented appropriately by states and territories, and sufficiently oversights. This would, it was observed, give public confidence in the devolution of environmental decisions and the accreditation of jurisdictions.<sup>45</sup>
- 2.54 Others voiced concern that there is no mechanism to deal with cases in which there is a conflict of interest, particularly where a state or territory government is both proponent and approver.<sup>46</sup>
- 2.55 The department gave evidence that bilateral agreements would be subject to parliamentary scrutiny and disallowance. Mr Manning provided a detailed explanation of the scrutiny that every bilateral agreement would be subject to, before it came into force:

The first step in the process is for the issuing of a notice of intent, which the minister does, saying that she's proposing to negotiate agreements with each of the states and territories. That has transpired already for each jurisdiction. The next step in that process would be the publication of a draft agreement, out for public comment. There's a mandatory minimum 28-day public consultation period in relation to each of those draft

---

<sup>43</sup> EDO, *Submission 2*, p. 19.

<sup>44</sup> ACF, *Submission 9*, pp. 9–10.

<sup>45</sup> For example: EDO, *Submission 2*, p. 19; The Wilderness Society, *Submission 5*, p. 1; Birdlife Australia, *Submission 8*, p. 4; Bush Heritage Australia, *Submission 19*, p. 2; and Ms Jennifer Westacott, CEO, BCA, *Proof Committee Hansard*, 23 November 2020, p. 39.

<sup>46</sup> For instance, see: EDO, *Submission 2*, p. 5; FOG, *Submission 21*, p. 2; and ICON Science Research Group, RMIT, *Submission 28*, p. 3.

agreements. Following that, the minister would consider all of the public comments and the interests of Indigenous peoples in promoting conservation, as part of making her decision to enter into a bilateral agreement. Then, following that decision to enter it, the minister would issue a statement of reasons as to why she has chosen to enter that agreement. All of that is set out in the EPBC Act itself.

At the same time, there is a process that also needs to transpire in relation to the accreditation of the particular processes put forward by the state or territory under the bilateral agreement. That process would require the actual tabling of the processes put forward by the state or territory before both houses of parliament for a period of not less than 15 sitting days. The minister is not at liberty to accredit within that 15-sitting-day period. So they are the processes which are set out in the Act for both making a bilateral agreement and accrediting the state processes.<sup>47</sup>

2.56 Mr Knudson emphasised that these processes included provision for the Parliament to scrutinise, amend or disallow regulatory frameworks and bilateral agreements, including oversight by the Senate.<sup>48</sup>

2.57 Mr Manning outlined some of the oversight mechanisms available to the Commonwealth in the implementation of bilateral agreements:

Assurance will be the key element, you would expect, of a bilateral agreement to support the oversight role of the Commonwealth on the states' activities ... You would expect to see elements that include things like: a senior officials committee overseeing the operation of the agreement; requirements for regular evaluation of the operation of the agreement as a whole; the capacity to audit the operations of the agreement and/or the individual decisions that a state might be taking in relation to it; reporting requirements from a state to the Commonwealth, both in terms of the operation of the agreement and the individual decisions but also in relation to our international agreements and requirements so that we can continue to fulfil the obligations; escalation procedures where a dispute might arise, most likely starting with officials but then escalating up through the various ranks; and various provisions for exclusions, from the things not to apply, not to fall under the agreement, and therefore to be required to come to the Commonwealth for assessment.<sup>49</sup>

### *Benefits to business stakeholders*

2.58 Some evidence suggested that the benefits of the bill to industry, agriculture and private enterprise had been overstated.

---

<sup>47</sup> Mr Greg Manning, Assistant Secretary, Bilateral Agreements Branch, DAWE, *Proof Committee Hansard*, 23 November 2020, pp. 57–58.

<sup>48</sup> Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, DAWE, *Proof Committee Hansard*, 23 November 2020, p. 63.

<sup>49</sup> Mr Greg Manning, Assistant Secretary, Bilateral Agreements Branch, DAWE, *Proof Committee Hansard*, 23 November 2020, p. 63.

2.59 For example, Mr Bill Browne, a researcher with the Australia Institute, suggested that the burden of ‘green tape’ had been overstated. As an example, he told the committee that just 0.8 per cent of resources projects have not been approved since commencement of the EPBC Act—despite the public and industry perception that many projects had been declined. Moreover, he cited Samuel Review data that:

...shows that three-quarters of the time taken up by the approval process is while the project is with the proponent, not while the project is with the minister or the department, and two-thirds of the increase in approval process time is from days when the project is with the proponent. There are numerous examples of stalled projects, such as the Alpha coalmine and Kevin’s Corner coal projects in the Galilee Basin that show that it is likely to be economic realities that are delaying these projects, not environmental laws.<sup>50</sup>

2.60 Some stakeholders noted that greater efficiency in the Commonwealth’s evaluation processes could be achieved by better resourcing the department to process applications effectively, rather than devolving decision-making to states and territories. For example, Ms Rachel Walmsley from EDO noted a recent Australian National Audit Office report’s findings regarding Commonwealth EPBC Act assessments and suggested that ‘resourcing departments so they have enough staff to effectively administer an act is critical’.<sup>51</sup>

2.61 As outlined above, this perspective was not shared by representatives of industry, resources and agriculture sectors, who gave evidence that a reduction in duplication between Commonwealth and jurisdictional environmental frameworks would mean significant savings in time and costs. This was supported by departmental estimates from 2014, which calculated a ‘single touch’ approach could save enterprise around \$426 million a year.<sup>52</sup>

### **Committee view**

2.62 The committee received evidence that broadly agreed the EPBC Act is not currently achieving its stated goals. A range of stakeholders from all sectors agreed that our national approach to environmental management is in need of critical and immediate reform.

---

<sup>50</sup> Mr William (Bill) Browne, Researcher, The Australia Institute, *Proof Committee Hansard*, 23 November 2020, p. 19.

<sup>51</sup> Ms Rachel Walmsley, Policy and Law Reform Director, EDO, *Proof Committee Hansard*, 23 November 2020, p. 11. See also Dr Peter Burnett, *Submission 42*, pp. 4–5.

<sup>52</sup> See evidence referred to earlier in the chapter for the views of industry. See also department estimates highlighted by Mr Knudson in the public hearing: ‘Fact sheet 2A: Economic Benefits of the One-Stop Shop’ (2014).

2.63 This evidence largely concurred with concerns voiced by Professor Samuel in the Interim Report of the Review of the EPBC Act, which stated:

The EPBC Act is ineffective. It does not enable the Commonwealth to play its role in protecting and conserving environmental matters that are important for the nation. It is not fit to address current or future environmental challenges.<sup>53</sup>

2.64 Considering this outlook, the Interim Report of the Samuel Review set out elements of a ‘reform pathway’ for the EPBC Act, advising that this should be commenced without delay:

Immediate steps to start reform should be taken. In the first instance, amendments should be made to:

- fix duplication, inconsistencies, gaps and conflicts
- enable National Environmental Standards to be made
- improve the durability of the settings for devolved decision-making.<sup>54</sup>

2.65 This bill represents an important first step on implementing this pathway to reform. The Minister for the Environment acknowledged this when introducing the bill to Parliament:

This bill is the first tranche of EPBC Act reforms linked to the independent statutory review of the act, which is only the second 10-yearly review since the act commenced in 1999.<sup>55</sup>

### *Support for bilateral agreements enabling a ‘single-touch’ approach*

2.66 The bill would enable a ‘single-touch’ approach for approvals. This would empower the Commonwealth to negotiate bilateral agreements with jurisdictions, so that states and territories would be able to assess and approve applications that currently require both Commonwealth and jurisdictional approval.

2.67 Evidence received by the committee considered that this reform would significantly reduce the current duplication, inconsistencies, gaps and conflicts between Commonwealth and state and territory frameworks, while retaining mechanisms to maintain robust environmental protections.

2.68 Evidence considered by the committee indicated that these protections will include robust National Environmental Standards, which will underpin any bilateral agreement made subsequent to this bill’s provisions. As the Minister stated unequivocally to parliament in introducing this legislation:

---

<sup>53</sup> Interim Report, p. 1.

<sup>54</sup> Interim Report, p. 16.

<sup>55</sup> The Hon Sussan Ley MP, Minister for the Environment, *House of Representatives Hansard*, 27 August 2020, pp. 5757–5758.

Bilateral agreements will be underpinned by strong Commonwealth-led national environmental standards.<sup>56</sup>

- 2.69 Some evidence highlighted that the amendments made by the bill would improve Australia's environmental protections and outcomes, as states and territories would have to meet not only existing EPBC Act protections, but also ensure their environmental frameworks met the requirements of the National Environmental Standards that will underpin bilateral agreements.
- 2.70 National Environmental Standards were seen as a key reform in the recommendations of the Samuel Review's Interim Report. The committee understands from the department that the final Standards are being considered by the government, as part of its consideration of the Final Report of the Samuel Review.
- 2.71 The committee also notes that a 'single-touch' approach was endorsed by the National Cabinet of Commonwealth and jurisdictional chief ministers in July 2020.<sup>57</sup>
- 2.72 The committee received evidence from stakeholders that the bill would not only bring environmental benefits, but also positive economic outcomes for industry and the economy more generally. As Mr Knudson from the department put it:
- This is one of the first pieces [of EPBC Act reform following the Samuel Review] but, fundamentally, it delivers on maintaining strong environmental standards while also shortening time frames for business.<sup>58</sup>
- 2.73 Regarding approvals for industry, agriculture and private enterprise, evidence from these sectors overwhelmingly suggested the bill would provide greater clarity and certainty about their obligations and interaction with Australia's environmental management system and legislative framework. It was noted that the reduction of duplication would greatly reduce the regulatory burden and complexity of approving projects through both Commonwealth and state and territory frameworks.
- 2.74 The committee notes that a 2014 study on the effects of regulatory duplication in Australia's environmental management system showed potential savings for private enterprise of around \$426 million annually.<sup>59</sup>

---

<sup>56</sup> The Hon Sussan Ley MP, Minister for the Environment, *House of Representatives Hansard*, 27 August 2020, p. 5758.

<sup>57</sup> The Hon Scott Morrison MP, Prime Minister, 'National Cabinet', *Media Statement*, 24 July 2020, [www.pm.gov.au/media/national-cabinet-24jul20](http://www.pm.gov.au/media/national-cabinet-24jul20) (accessed 19 November 2020).

<sup>58</sup> Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, DAWE, *Proof Committee Hansard*, 23 November 2020, p. 58.

<sup>59</sup> As noted above: 'Fact sheet 2A: Economic Benefits of the One-Stop Shop' (2014).

2.75 Creating the conditions for industry to flourish, while maintaining environmental protections, is particularly important for Australia at this time, given we face the significant challenges of our national post-COVID 19 recovery.

### *Concerns raised*

2.76 The committee notes that a number of concerns were raised in evidence about the introduction of the bill. These included that Professor Samuel's report has not yet been made public by the government, that the bill does not contain reference to the National Environmental Standards, which it was argued could potentially weaken current EPBC protections, and that bilateral agreements would not be sufficiently open to public and parliamentary scrutiny.

2.77 The committee notes that this bill represents the first tranche of reform of the EPBC Act. Evidence provided to the committee indicated that the Minister is considering the Final Report of the EPBC Review. The committee also notes that the bill's provisions would implement a key element of Professor Samuel's 'Proposed reform pathway', namely fixing 'duplication, inconsistencies, gaps and conflicts' between Commonwealth and jurisdictional frameworks.

2.78 Regarding National Environmental Standards, the committee understands that these are being considered by the government, in tandem with the Final Report of the EPBC Review.

2.79 The committee notes that the Prime Minister and Minister have both unequivocally stated that any bilateral agreements would be underpinned by strong Commonwealth-led National Environmental Standards. This commitment aligns with Professor Samuel's recommendation that National Environmental Standards are the keystone of reform of the EPBC framework.

2.80 The committee is also reassured by the department's confirmation that any bilateral agreement would need to include National Environmental Standards.

2.81 Given this, the committee recommends that this commitment is recognised in the Explanatory Memorandum setting out the bill's purpose and provisions.

### **Recommendation 1**

**2.82 The committee recommends that the Explanatory Memorandum be amended to clarify that bilateral agreements made with jurisdictions under the provisions of this bill will be underpinned by strong Commonwealth-led National Environmental Standards.**

2.83 Regarding oversight, the committee understands that the provisions of any bilateral agreement would be subject to oversight by the Parliament, as well as public scrutiny. As a departmental official told the committee:

One of the things that I would try to emphasise is that there will be oversight by the Senate in this process. We will need to go through with a

disallowable instrument ... to effectively accredit whatever piece of legislation in a jurisdiction is proposed for devolution, and, at that time, there will be an accreditation agreement. The accreditation agreement will refer to the standards, and that will all be publicly available.<sup>60</sup>

### *Conclusion*

- 2.84 The committee supports the bill as an important first step toward reform of the EPBC Act. Stakeholders overwhelmingly noted deficiencies in that Act, and advised that reform should be undertaken immediately, which concurs with the findings of the Samuel Review's Interim Report released in June 2020.
- 2.85 The committee notes the concerns of some submitters and witnesses who gave evidence. However, it considers that devolution of environmental approvals to states and territories is consistent with the intent of the EPBC Act from its inception in the late 1990s, and that the creation of National Environmental Standards to underpin bilateral agreements will maintain robust environmental protections, while reducing the existing duplication, inconsistencies, gaps and conflicts of the current approach.

### **Recommendation 2**

- 2.86 The committee recommends that the Senate pass the bill.**

**Senator the Hon David Fawcett**  
**Chair**

---

<sup>60</sup> Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, DAWE, *Proof Committee Hansard*, 23 November 2020, p. 54.

# Labor Senators' dissenting report

## The Bill

- 1.1 The Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 (the bill) proposes to devolve environmental approval powers to the states and territories.

## Samuel Review

- 1.2 The Morrison Government states that this bill is in response to the reforms proposed in the interim report of Professor Graeme Samuel's Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act).
- 1.3 The Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (the Samuel Review) commenced on 29 October 2019.
- 1.4 The Minister for the Environment appointed Professor Graeme Samuel AC to conduct the Review. The EPBC Act requires that an independent review be undertaken at least once every ten years.
- 1.5 The Samuel review discussion paper was released in November 2019 and submissions closed in April 2020.
- 1.6 The Samuel Review Interim Report was delivered to the Minister on 30 June 2020.
- 1.7 The Final Report for the Samuel Review was handed to the Minister on 30 October 2020.
- 1.8 Labor Senators believe that the Samuel Review process is providing a once-in-a-generation opportunity to reform the environmental laws in a way that provides a win-win outcome, with both much-improved environmental protection and more support for jobs creation and investment.
- 1.9 Labor Senators do not believe that those two objectives are inconsistent with each other. They are not in opposition to each other. With goodwill, with cooperation and with negotiation, it is not beyond the wit and wisdom of Australian parliamentarians, experts, industry leaders, traditional owners, environmentalists and other community leaders to come up with a way forward together.
- 1.10 Labor has constructively engaged with the Samuel Review from the beginning.

## Context for the review

### *Environmental decline*

- 1.11 Professor Samuel's Interim Report sounded a clarion call about the state of the environment:

The environment and our iconic places are in decline and under increasing threat. The EPBC Act does not enable the Commonwealth to effectively protect and conserve nationally important environmental matters. It is not fit for current or future environmental challenges.<sup>1</sup>

- 1.12 Professor Samuel's Interim Report summarises some alarming examples of decline derived from the 2016 State of the Environment Report and expert submissions to the EPBC review. As to threatened species and biodiversity, the Interim Report states:

Australia is losing biodiversity at an alarming rate and has one of the highest rates of extinction in the world. More than 10% of Australia's land mammals are now extinct, and another 21% are threatened and declining. Populations of threatened birds, plants, fish and invertebrates are also continuing to decrease, and the list of threatened species is growing. Although there is evidence of population increases where targeted management actions are undertaken (such as controlling or excluding feral animals or implementing ecological fire management techniques), these are exceptions rather than a broad trend.

Since the EPBC Act was introduced, the threat status of species has deteriorated. Approximately 4 times more species have been listed as threatened than those that have shown an improvement. Over its 20-year operation, only 13 animal species have been removed from the Act's threatened species lists, and only one of these...is generally considered a case of genuine improvement.<sup>2</sup>

### **Threatened species management**

- 1.13 Any genuine reform approach to Australia's national environment laws should have the protection of threatened species central to its objectives.
- 1.14 The Morrison Government has failed to protect our threatened species. Whilst the Act is deficient, the administration of the Act is one of the most concerning aspects of Australia's environmental failures, under this government.

---

<sup>1</sup> Interim Report, p. 17.

<sup>2</sup> Interim Report, p. 19.

- 1.15 It is estimated that fewer than 40 per cent of our threatened species have recovery plans and the Morrison Government is clueless about whether recovery plans are being implemented.<sup>3</sup>
- 1.16 Under the Coalition, 170 out of 171 threatened species recovery plans are overdue. The threatened species recovery plan for the koala, originally due in 2015, is one of them.<sup>4</sup>
- 1.17 Under the Liberals and Nationals, the National Koala Conservation Strategy, which ran out in 2014, has not yet been replaced six years later.
- 1.18 Three billion animals were killed or displaced in the bushfires.<sup>5</sup> An area of up to 19 million hectares was burned.<sup>6</sup> A NSW inquiry has found koalas are at risk of being extinct in New South Wales by 2050.<sup>7</sup>
- 1.19 Although there has been incredible environmental destruction and mismanagement, the Morrison Government has chosen to persist with devolving environmental assessments and approvals to the states and territories without strong national environmental standards as the foundation for reform, despite this being central to the Samuel review interim report.

### **A strong federal role in environmental decision making on Matters of National Environmental Significance**

- 1.20 Having a strong federal role in environmental decision making on Matters of National Environmental Significance has saved many of Australia's iconic environmental assets from destruction.
- 1.21 It was federal Labor governments that stopped drilling on the Great Barrier Reef, stopped logging in the Daintree, and prevented the damming of the Franklin.

---

<sup>3</sup> Lisa Cox, 'Australian threatened species at risk with no recovery plans finalised in past 18 months', *The Guardian Online*, 19 October 2020, [www.theguardian.com/environment/2020/oct/19/australian-threatened-species-at-risk-due-to-government-inaction-over-backlog-of-recovery-plans](http://www.theguardian.com/environment/2020/oct/19/australian-threatened-species-at-risk-due-to-government-inaction-over-backlog-of-recovery-plans) (accessed 27 November 2020).

<sup>4</sup> Mr James Larsen, Deputy Secretary, Environment and Heritage Group, Department of Agriculture, Water and the Environment, *Proof Committee Hansard*, 11 November 2020, p. 7.

<sup>5</sup> WWF, 'WWF: 3 billion animals impacted by Australia's bushfire crisis', 28 July 2020, [https://www.panda.org/wwf\\_news/?364738/3-billion-animals-impacted-by-Australias-bushfire-crisis#:~:text=Nearly%20three%20billion%20animals%20%E2%80%93%20mammals,%2C%20%2C%20and%2051%20million%20frogs](https://www.panda.org/wwf_news/?364738/3-billion-animals-impacted-by-Australias-bushfire-crisis#:~:text=Nearly%20three%20billion%20animals%20%E2%80%93%20mammals,%2C%20%2C%20and%2051%20million%20frogs) (accessed 27 November 2020).

<sup>6</sup> Lisa Cox, 'Australian threatened species at risk with no recovery plans finalised in past 18 months', *The Guardian Online*.

<sup>7</sup> BBC News, 'Koalas face extinction in New South Wales by 2050, report finds', 30 June 2020, [www.bbc.com/news/world-australia-53231348](http://www.bbc.com/news/world-australia-53231348) (accessed 27 November 2020).

1.22 With our natural environment—a driver of tens of thousands of jobs and our way of life —under greater pressure than ever, the Australian people don't want to see the Commonwealth getting out of the business of protecting the environment, and Professor Samuel's report makes it clear that the Commonwealth should not do so.

**Administration of the environment department by the Coalition—  
Australian National Audit Office Report: *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999***

1.23 Australia has an environmental crisis and a jobs crisis, and the government are failing woefully on both counts. The Morrison Government's woeful record on environmental protection and biodiversity conservation has not come about because they've been too focused on administering the project approvals aspect of the law.

1.24 The Australian National Audit Office (ANAO) released a report into the administration of the EPBC Act, *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999* on 26 June 2020.<sup>8</sup>

1.25 The ANAO Report found that the Department of Agriculture, Water and the Environment's (the department's) administration of referrals, assessments and approvals of controlled actions under the EPBC Act is not effective.<sup>9</sup>

1.26 Further the report states that:

- The department's regulatory approach is not proportionate to environmental risk.
- The administration of referrals and assessments is not effective or efficient.
- Conditions of approval are not assessed with rigour, are non-compliant with procedural guidance and contain clerical or administrative errors.
- The department is not well positioned to measure its contribution to the objectives of the EPBC Act.<sup>10</sup>

---

<sup>8</sup> ANAO, *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999*, Auditor-General Report No. 47 2019–20, [www.anao.gov.au/sites/default/files/Auditor-General\\_Report\\_2019-2020\\_47.pdf](http://www.anao.gov.au/sites/default/files/Auditor-General_Report_2019-2020_47.pdf) (accessed 27 November 2020).

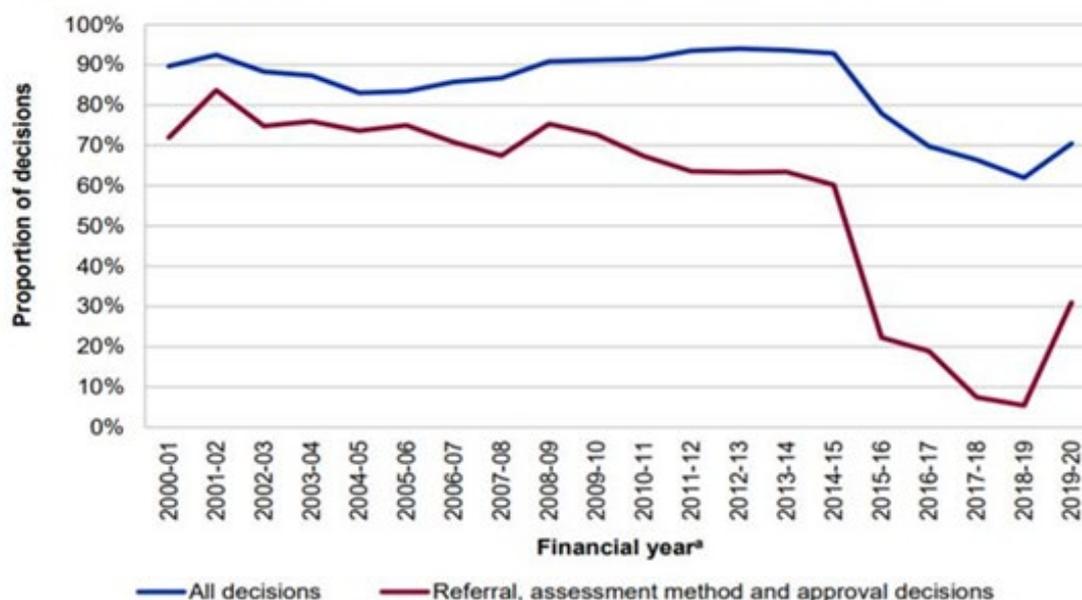
<sup>9</sup> ANAO Report, p. 6.

<sup>10</sup> ANAO Report, p.6.

### *Unnecessary job and investment delays*

- 1.27 The ANAO report found that there was a 510 per cent increase in key decisions approval delays between 2014-15 and 2018-19, under the Coalition Government.
- 1.28 The ANAO Report found that 95 per cent of all key decisions were made outside of statutory timeframes in 2018-19.
- 1.29 When Labor was last in government, 60 per cent of all key decisions under the EPBC Act were made on time (within the statutory timeframes), and when delays did occur, they were on average just 19 days over statutory timeframes.

**Figure 3.1: Proportion of decisions made within statutory timeframes by financial year**



Note a: Data for 2019–20 is as at 29 April 2020.

Note: Results presented in this graph may differ from the department's reporting due to differences in methodology (for example, see paragraph 4.70).

Source: ANAO based on Department of Agriculture, Water and Environment data.

- 1.30 The ANAO report states:

For the three key decisions (referral, assessment method and approval decisions), the department made only five per cent within statutory timeframes in 2018–19 (20 out of 368 decisions).<sup>11</sup>

- 1.31 The report confirms that:

This decrease was most pronounced from 2014–15 to 2018–19, with the proportion of referral, assessment method and approval decisions made within statutory timeframes decreasing from 60 per cent in 2014–15 to five per cent in 2018–19. The average time taken for approval decisions increased from 19 days over the statutory timeframe in 2014–15 to 116 days over the statutory timeframe in 2018–19.<sup>12</sup>

<sup>11</sup> ANAO Report, p. 16.

<sup>12</sup> ANAO Report, p. 50.

1.32 The ANAO report concludes that:

Reporting on compliance with statutory decision-making timeframes is not consistent with the EPBC Act. The Act does not require assessment method decisions to be made for actions covered by bilateral agreements – however, these have been included in calculations as decisions made on time. This has resulted in inaccurate reporting, with the department reporting internally that it made 12 per cent of referral, assessment method and approval decisions on time in 2018–19, when the actual figure was five per cent.<sup>13</sup>

1.33 The increase in unnecessary key decision delays, coincided with the implementation of Coalition budget cuts to the environment department, which commenced in the 2014 Budget.

1.34 The Morrison Government tacitly acknowledged that the Coalition Government were responsible for the delays, when in late 2019 they had to inject \$25 million dollars back into the department to assess and approve projects under the EPBC Act.

1.35 The ANAO Report noted:

As part of the Mid-Year Economic and Fiscal Outlook 2019–20, the government announced \$25 million over two years ‘to reduce unnecessary delays’ in environmental assessments and approvals. The additional funding was designed to address the backlog of environmental approval applications, with a focus on major projects.<sup>14</sup>

1.36 The Morrison Government has since attempted to claim credit for decreasing key decision delays, describing their efforts as congestion busting<sup>15</sup>, following the damning ANAO Report. That is despite clear evidence that Coalition budget cuts were responsible for significant increase in key decision delays.

### *Errors and non-compliance*

1.37 The ANAO Report found that 79 per cent of key decisions contained errors or were non-compliant with the Act.<sup>16</sup> Labor Senators contend that this is largely a function of mismanagement and budget cuts, not the structure of the Act.

---

<sup>13</sup> ANAO Report, p. 72.

<sup>14</sup> ANAO Report, pp. 16–17.

<sup>15</sup> The Hon Sussan Ley MP, Minister for the Environment, ‘Congestion busting assessments protecting our environment and our economy’, *Media Release*, 23 April 2020, <https://minister.awe.gov.au/ley/media-releases/congestion-busting-assessments-protecting-our-environment-and-our-economy> (accessed 27 November 2020).

<sup>16</sup> ANAO Report, p. 10.

## Samuel Review Interim Report findings

### *National Environment Standards should be the foundation of reform of the EPBC Act*

1.38 In his Interim Report, Professor Samuel stated:

Fundamental reform of national environmental law is required, and new, legally enforceable National Environmental Standards should be the foundation. Standards should be granular and measurable, providing flexibility for development, without compromising environmental sustainability. National Environmental Standards should be regulatory instruments. The Commonwealth should make National Environmental Standards, in consultation with stakeholders, including the states and territories.<sup>17</sup>

1.39 In his public comments following the release of the report Professor Samuel said:

New, legally enforceable National Environmental Standards should be the centrepiece of reform—setting clear and concise rules that deliver outcomes for the environment and enable development to continue in a sustainable way.

The development of National Environment Standards should be a priority reform measure. Interim Standards could be developed immediately, followed by an iterative development process as more sophisticated data becomes accessible. Standards should focus on detailed prescription of outcomes, not process.

National Environmental Standards will mean that the community and business can know what to expect. Standards support clear and consistent decisions, regardless of who makes them. Where states and territories can demonstrate their systems can deliver environmental outcomes consistent with the Standards, responsibilities should be devolved, providing faster and lower cost development assessments and approvals.

Community trust in the EPBC Act and its administration is low. To build confidence, the Interim Report proposes that an independent cop on the beat is required to deliver rigorous, transparent compliance and enforcement.<sup>18</sup>

1.40 The Samuel Review envisages that devolution should be considered in the context of National Environment Standards; however the Morrison Government has not proposed standards in this bill.

1.41 Professor Samuel warned against devolution without National Environment Standards:

---

<sup>17</sup> Interim Report, p. 1.

<sup>18</sup> Professor Graeme Samuel, 'Professor Graeme Samuel AC releases Interim Report', 20 July 2020, *Media Statement*, <https://epbcactreview.environment.gov.au/news/media-statement-professor-graeme-samuel-ac-releases-interim-report> (accessed 27 November 2020).

In 2015 the Parliament did not support these amendments, in response to significant community concerns about the ability of states and territories to uphold the national interest when applying discretion in approval decisions.

Legally enforceable National Environmental Standards provide a clear pathway for greater devolution

The National Environmental Standards proposed by the Review would provide a legally binding mechanism to provide confidence to support greater devolution.

There was considerable community and stakeholder concern that environmental outcomes were not clearly defined and the states and territories would not be able to uphold the national interest in protecting the environment. A lack of clear environmental (as opposed to process) standards fuelled political differences at the time.<sup>19</sup>

1.42 And:

Legally enforceable Standards, transparent accreditation of state and territory arrangements, and strong assurance are essential to provide community confidence in devolved arrangements.<sup>20</sup>

1.43 To build confidence, the Interim Report proposes that an **independent cop on the beat** is required to deliver rigorous, transparent compliance and enforcement.

1.44 The Interim Report states:

The current collaborative approach to monitoring, compliance, enforcement and assurance is too weak. Serious enforcement actions are rarely used, indicating a limited regard for the benefits of using the full force of the law where it is warranted. When they are issued, penalties are not commensurate with the harm of damaging a public good of national interest. They do not provide an adequate deterrent.

A strong, independent cop on the beat is required. An independent compliance and enforcement regulator, that is not subject to actual or implied political direction from the Commonwealth Minister, should be established. The regulator should be responsible for monitoring compliance, enforcement and assurance. It should be properly resourced and have available to it a full toolkit of powers.<sup>21</sup>

*This bill does not propose a strong independent cop on the beat as recommended by the Samuel Review Interim Report*

1.45 Furthermore, the Minister for the Environment, the Hon Sussan Ley MP, ruled out a future introduction of a strong independent cop on the beat in her press

---

<sup>19</sup> Interim Report, p. 8.

<sup>20</sup> Interim Report, p. 1.

<sup>21</sup> Interim Report, p. 2.

conference following the release of the Interim Report, despite this being a key recommendation the Samuel Review.<sup>22</sup>

*The Bill was drafted before the Samuel Review Interim Report was finalised, which means the government pre-empted the findings of the Interim Report*

- 1.46 Despite the Morrison Government using the Samuel Review as an excuse for the introduction of the EPBC Act Streamlining Bill, the Bill was drafted well before the Interim Report was even finalised.<sup>23</sup>
- 1.47 Documents obtained under freedom of information laws reveal that in February 2020, the Prime Minister intended to introduce a bill to transfer environmental approval powers, through devolution powers to state governments by mid-year 2020.
- 1.48 The Final Report of the Samuel Review has not been released to the public, which means the Government is asking the Senate to vote on a bill without understanding the full scope of Professor Samuel's recommended reform, and has failed to provide appropriate time for the parliament and the public to consider its consequences of such reform.
- 1.49 This bill is almost an exact replica of the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill from 2014, highlighting that the government always intended to pursue this bill, despite the independent Samuel Review findings.
- 1.50 The Government rushed the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 through the House of Representatives, gagging debate on the bill in September 2020 and then failed to list the bill for debate in the Senate for several months.
- 1.51 Despite the bill proposing a devolution to the states which would naturally increase workloads, the Minister said that no additional funding would be provided to assist states and territories to ensure further unnecessary delays do not occur.

We are not providing additional funding to the states.<sup>24</sup>

- 1.52 Labor senators believe that the passage of the bill will likely result in even more job and investment delays.

---

<sup>22</sup> The Hon Sussan Ley MP, Minister for the Environment, 'Congestion busting assessments protecting our environment and our economy', *Media Release*, 20 July 2020.

<sup>23</sup> Lisa Cox, 'Coalition prepared transfer of environmental powers to states months before EPBC review reported', *The Guardian Online*, 10 November 2020, **Error! Hyperlink reference not valid.** (accessed 27 November 2020).

<sup>24</sup> Mike Foley, 'No integrity': Why states can't be left holding the environment file', *The Guardian online*, 25 July 2020, [www.smh.com.au/politics/federal/no-integrity-why-states-can-t-be-left-holding-the-environment-file-20200723-p55eu3.html](http://www.smh.com.au/politics/federal/no-integrity-why-states-can-t-be-left-holding-the-environment-file-20200723-p55eu3.html) (accessed 27 November 2020).

## Inquiry

1.53 The Australian community and environmental experts are against this bill. The inquiry received 127 submissions and 22,234 form submissions, the overwhelming majority of which were opposed to the bill.

### *Timeframe for this inquiry*

1.54 Labor senators believe that holding a one-day senate inquiry into one of the largest proposed changes to national environment law in decades, is completely inappropriate and demonstrates that this government isn't serious about securing broad support for durable environmental reform. It also demonstrates that the government is not comfortable with scrutiny.

1.55 Stakeholders who gave evidence to the inquiry also noted that the bill was rushed.

1.56 Ms Alexia Wellbelove of the Humane Society International (HSI) told the committee:

Whilst we appreciate the opportunity to give evidence on this bill, our concern is that this process is too rushed to consider some of the significant issues that are involved... The current bill locks in inadequacies in the system without attempting to achieve any environmental outcomes, simply for reasons of efficiency, all whilst an important statutory review of the EPBC Act is underway.<sup>25</sup>

1.57 Mr Dermot O'Gorman, CEO of WWF-Australia, recommended:

...that the legislation being considered by the Senate be delayed until the independent final report is released publicly and made available to the parliament and stakeholders so that we can respond to the findings.<sup>26</sup>

## Conclusion

1.58 Labor Senators reject this bill because it ignores findings from the Interim Report of the Samuel Review and pre-empts recommendations from the Final Report. Further, Labor Senators note the failures of the bill to:

- include strong national environment standards
- include a strong independent cop on the beat, to ensure compliance and enforcement
- fix unnecessary delays caused by underfunding and mismanagement of the environment department by the Coalition Government since 2014
- secure a strong role for the Commonwealth in matters of national environmental significance

---

<sup>25</sup> Mrs Alexia Wellbelove, Senior Campaign Manager, Humane Society International, *Proof Committee Hansard*, 23 November 2020, p. 16.

<sup>26</sup> Mr Dermot O'Gorman, Chief Executive Officer, WWF-Australia, *Proof Committee Hansard*, 23 November 2020, p. 17.

- secure strong parliamentary oversight of Australia’s environmental outcomes under the Act.
  - secure broad support from stakeholders, which is the cornerstone of durable environmental reform
- 1.59 Labor Senators believe this bill would see more major project job delays, more investment uncertainty, more conflict, less trust in decisions and worse outcomes for the environment.
- 1.60 Despite being the foundation of Professor Graeme Samuel’s proposed reforms, and contrary to the Minister’s own promises, there are no National Environment Standards in this bill.
- 1.61 Labor Senators believe that with no proposed standards, no independent ‘cop on the beat,’ and no additional funding for the states despite the extra responsibility, this bill is designed for political conflict.
- 1.62 It is clear that this bill is not designed to secure jobs, provide investment certainty, or protect Australia’s precious national environment.
- 1.63 Labor Senators note that the Environment Minister said in July 2020 that the Government would introduce *strong rigorous environmental standards* that had *buy-in across the board* at the same time as introducing proposed legislative change. The Morrison Government has failed the test it set for itself.
- 1.64 Labor Senators note the Coalition Government’s abject failure to administer the department responsible for the Act appropriately since its election in 2013, which is a direct consequence of mismanagement and funding cuts to the environment department, originating in the 2014 Budget.
- 1.65 Labor Senators note that if the Morrison Government was serious about securing broad support and durable reform, it would not be rehashing former Prime Minister Abbott’s failed 2014 bill, breaking their promise on national standards or cherry-picking and ignoring the interim report of one of Australia’s most experienced business regulators, Professor Graeme Samuel.

### **Recommendation**

- 1.66 Labor Senators recommend that the Senate reject this bill.**

**Senator Nita Green**  
**Member**

**Senator Catryna Bilyk**  
**Member**



## Australian Greens' dissenting report

- 1.1 This Bill is a carbon copy of Tony Abbott's 2014 attack on the environment. It failed to pass the parliament back then and it should fail this time around.
- 1.2 The inquiry into this Bill has been a sham. The Greens moved multiple times since late August for an inquiry into the government's bill to hand decision making power for environmental approvals to the states and the government refused.
- 1.3 Submitters had less than one week to prepare a written submission on a bill that has enormous consequences for our environment.
- 1.4 A large number of submissions, particularly from environment groups, are extremely critical of the time frame.
- 1.5 The once-in-ten-year statutory review of the Environment Protection and Biodiversity Conservation Act (EPBC Act) had not been finalised before the Government commenced drafting this Bill.
- 1.6 The final report of the independent review was handed to the Minister for the Environment on October 30 but has not been publicly released nor has it been provided to this Committee for the purposes of properly considering this Bill.
- 1.7 The Interim Report by Professor Graeme Samuel clearly stated National Environmental Standards and an independent regulator were necessary parts of any reform that involves devolving assessment powers for Matters of National Environmental Significance to the states.
- 1.8 The Minister has said this Bill is the first tranche of legislation which will also include National Environmental Standards and the Committee heard evidence from a number of witnesses that they have seen standards that the Government is considering.
- 1.9 It is extraordinary that the Senate is holding an inquiry into a piece of legislation, and has asked witnesses questions on documents they have seen but the Committee is apparently not allowed to see. It is impossible to properly assess this Bill without the basic documents that will underpin and give effect to it.
- 1.10 In his Interim Report Professor Samuel stated:

Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat. The current environmental trajectory is unsustainable.<sup>1</sup>

- 1.11 This Bill does nothing to prevent further decline, decrease threats or reverse the current unsustainable environmental trajectory.

### **The Bill fails the environment**

- 1.12 This Bill will make it easier for mining companies and big developers to get approval for projects that will destroy the environment and harm our native animals.

- 1.13 The inquiry heard from the Minerals Council of Australia CEO who said the Bill was about:

Faster approvals for mines and other major projects.<sup>2</sup>

- 1.14 The industry groups also insist this Bill is only administrative and won't have negative consequences for the environment but when this question was put to other witnesses including former Department of Environment deputy secretary Mr Gerard Early they strongly disagreed:

It's not administrative when it fundamentally changes the role of the Commonwealth in the national leadership for environmental protection.<sup>3</sup>

- 1.15 The Department also admitted that despite this enormous opportunity to reform the EPBC Act and actually reverse the state of decline this Bill doesn't do that:

Senator HANSON-YOUNG: What in this legislation before us increases environmental protection?

Mr Knudson: One of the key things in this, and we talked a little bit about it earlier, is providing that clarity. Professor Samuel was quite clear that the lack of clarity, the lack of accountability in respect of environmental outcomes that are expected to be achieved, and, quite frankly, the accountability to businesses that they will get decisions in a timely manner—

Senator HANSON-YOUNG: No. What increases environmental protection in this piece of legislation that we are discussing today?

Mr Tregurtha: Senator, this piece of legislation is not designed to do that.<sup>4</sup>

---

<sup>1</sup> *Interim Report of the Independent review of the EPBC Act*, (Interim Report) June 2020, p. 1.

<sup>2</sup> Ms Tania Constable, CEO, Minerals Council of Australia (MCA), *Proof Committee Hansard*, 23 November 2020, p. 37.

<sup>3</sup> Mr Gerard Early, Director, Birdlife Australia, *Proof Committee Hansard*, 23 November 2020, p. 22.

<sup>4</sup> Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, and Mr James Tregurtha, First Assistant Secretary, Environmental Protection Reform Division, Department of Agriculture, Water and the Environment, *Proof Committee Hansard*, 23 November 2020, p. 62.

- 1.16 It is significant that a number of witnesses who gave evidence against the Bill were formerly employed by the Environment Department. Mr Gerard Early was responsible for the EPBC Act for seven years as the head of the approvals and wildlife division of the environment department and was later a deputy secretary. He said:

My point is that history suggests that, quite apart from all the reasons put forward today in opposition to this bill, it is highly flawed in repeating the mistakes of the pre-EPBC Act era. In fact, history suggests to me that this bill would have perverse outcomes that would fly directly in the face of those who are supporting it. If this bill were made into law, it would increase risk and uncertainty, not reduce it. The bill is intended to streamline environmental approvals by devolving them to the states and territories. However, it provides no proper basis for doing that, and that is the fundamental problem. There would be no clear and legally enforceable standards involved. There would be no robust Commonwealth oversight of how the devolved approvals would work. While Commonwealth authorisations would continue to be set out in the Commonwealth law, this would be relaxed for the states and territories, where authorisations could merely be procedures or guidelines under a state or territory law. There is not even certainty about who the approving entity would be, given that the bill would eliminate the requirement that the proposals have to be approved by state and territory governments and their authorities. In effect, the bill would have the Commonwealth pretty much vacate the field, concentrating only on its own proposals with no real capacity to examine whether state and territory approvals actually met the requirements of the EPBC Act. In other words, back to the future before the EPBC Act was legislated.<sup>5</sup>

- 1.17 Dr Bruce Lindsay, the Acting Director Advocacy and Law Reform at Environmental Justice Australia, outlined a plethora of issues with the Bill and highlighted in particular that:

Our view is that the bill misconceives what national environmental laws should be doing, which is addressing Australia's poor environmental performance, not fasttracking or legitimating ongoing environmental harms and destruction through questionable legal tools.<sup>6</sup>

- 1.18 Professor Samuel criticised the 2014 version of this Bill, which is indeed a carbon-copy of this Bill, in his Interim Report, stating that:

Previous attempts to devolve decision-making focused too heavily on prescriptive processes and lacked clear expectations and thresholds for protecting the environment in the national interest. The National Environmental Standards proposed by this Review provide a legally binding pathway for greater devolution, while ensuring the national interest is upheld (see Chapter 1). Pursuing greater devolution does not mean that the Commonwealth 'gets out of the business' of environmental

---

<sup>5</sup> Mr Gerard Early, Director, Birdlife Australia, *Proof Committee Hansard*, 23 November 2020, p. 20.

<sup>6</sup> Dr Bruce Lindsay, Acting Director Advocacy and Law Reform, Environmental Justice Australia, *Proof Committee Hansard*, 23 November 2020, p. 9.

protection and biodiversity conservation. Rather, the reform directions proposed would result in a shift with a greater focus on accrediting and providing assurance oversight of the activities of other regulators and in ensuring national interest environmental outcomes are being achieved.<sup>7</sup>

- 1.19 It is clear the Government never intended to heed Professor Samuel's advice. It has simply reintroduced the same Bill he criticised, and has failed to put forward the National Environmental Standards to ensure the national interest in environmental outcomes.
- 1.20 When it comes to protecting our water resources this Bill also fails. The water trigger currently operates to make any "coal seam gas development" or "large coal mining development"<sup>8</sup>, which has or will have or is likely to have a significant impact on water resources, a protected matter under the EPBC Act. The amendments remove the water trigger exclusion. This should not be allowed to occur and the water trigger approvals should be retained by the Commonwealth.
- 1.21 Reforms to the EPBC Act were an opportunity for our environment laws to consider the impact of new developments on our climate. This Bill does nothing to address catastrophic climate change the world is facing. Just this year we lost billions of wildlife and hectares of our wild places in climate fires. New laws are needed that require climate impacts and carbon emissions to be assessed before large-scale projects are given environmental approval. This week the Environment Minister approved the carbon-bomb that is the Narrabri gas fields, a climate trigger would have ensured a policy for this project would not have been approved because of its climate damage.
- 1.22 It's clear this Bill has the potential to set environmental outcomes back decades.

## **No National Standards**

- 1.23 Professor Samuel stated in his interim report that:

The EPBC Act is ineffective. It does not enable the Commonwealth to play its role in protecting and conserving environmental matters that are important for the nation. It is not fit to address current or future environmental challenges. Fundamental reform of national environmental law is required, and new, legally enforceable National Environmental Standards should be the foundation. Standards should be granular and measurable, providing flexibility for development, without compromising environmental sustainability.<sup>9</sup>

- 1.24 The Environment Minister said in her Second Reading speech on this Bill that the:

---

<sup>7</sup> Interim Report, p. 54.

<sup>8</sup> Department of Agriculture, Water and the Environment, 'About the EPBC Act'.

<sup>9</sup> Interim Report, p. 3.

Bilateral agreements will be underpinned by strong Commonwealth-led national environmental standards.<sup>10</sup>

1.25 Yet the Parliament has never been provided with the so-called Commonwealth-led National Environmental Standards.

1.26 Evidence at the hearing into this Bill however, made it clear that the Department and the Minister have developed national standards and have shopped them around to various groups. These appear not to be the same as those contained in Professor Samuel's interim report or those developed during Professor Samuel's consultation with stakeholders. Worse still, it seems the standards won't even be an improvement on the status quo which we know is failing the environment:

Senator HANSON-YOUNG: So are they simply what is already in effect in the EPBC Act or are they not?

Mr Tregurtha: I would say that the version is largely similar. I think there are some areas where Professor Samuel's standards potentially do have slight divergence from that.<sup>11</sup>

1.27 The Department was unable to say how exactly the standards they finally put forward are given legal effect and offered a number of possibilities including that they be contained within bilateral agreements. The result of this will not be national standards at all but rather standards specific to each jurisdiction:

Senator HANSON-YOUNG: I want to go back to the issue of the standards referenced in the bilaterals. If the federal government is going to enter into negotiations with each of the states, those bilaterals will all be different, based on those negotiations, won't they?

Mr Manning: They're likely to end up in slightly different places, simply by virtue of the fact that each jurisdiction will bring forward its own pieces of legislation, and they will be different and will operate in different manners. The bilateral agreements in essence become the terms and conditions under which the powers are devolved. So yes, the agreements are likely to end up being slightly different, to cater to the differences for each jurisdiction.<sup>12</sup>

1.28 The Morrison Government has ignored the fact the EPBC Act is failing to protect the environment and needs fundamental reform with new national standards that protect the environment at the core of that reform. Pursuing this

---

<sup>10</sup> The Hon Sussan Ley MP, Minister for the Environment, *House of Representatives Hansard*, 27 August 2020, p. 5758.

<sup>11</sup> Mr James Tregurtha, First Assistant Secretary, Environmental Protection Reform Division, Department of Agriculture, Water and the Environment, *Proof Committee Hansard*, 23 November 2020, p. 55.

<sup>12</sup> Mr Greg Manning, Assistant Secretary, Bilateral Agreements Branch, Department of Agriculture, Water and the Environment, *Proof Committee Hansard*, 23 November 2020, p. 61.

legislation and asking the parliament to vote on it without ever putting forward such standards makes a mockery of this process.

### **No Independent Regulator**

1.29 Professor Samuel stated in his interim report that:

The current collaborative approach to monitoring, compliance, enforcement and assurance is too weak. Serious enforcement actions are rarely used, indicating a limited regard for the benefits of using the full force of the law where it is warranted. When they are issued, penalties are not commensurate with the harm of damaging a public good of national interest. They do not provide an adequate deterrent. A strong, independent cop on the beat is required. An independent compliance and enforcement regulator, that is not subject to actual or implied political direction from the Commonwealth Minister, should be established. The regulator should be responsible for monitoring compliance, enforcement and assurance. It should be properly resourced and have available to it a full toolkit of powers.<sup>13</sup>

1.30 This followed a scathing assessment by the Auditor-General which found the Environment Department was failing to properly administer the EPBC Act including an absence of effective monitoring, reporting and evaluation arrangements for controlled actions.

1.31 The Environment Minister rejected Professor Samuel's proposal of an independent regulator the day she released his interim report. The Department confirmed at the hearing legislation has not been drafted for a regulator.

1.32 An independent regulator should be considered a core part of reforming the EPBC Act and should be legislated as part of a holistic reform of the Act.

### **Koalas and other wildlife on the brink**

1.33 Under the EPBC Act, koalas have already lost one million hectares of critical habitat. Rio Tinto was able to blast away 46,000 years of Indigenous heritage. Water catchments for Sydney have been polluted by dirty coal mines.

1.34 At least 7.7 million hectares of critical habitat has been destroyed for mining and development over the last 20 years.

1.35 The government cannot guarantee that not one more hectare of critical koala habitat will be lost under this plan. They cannot guarantee that not one more sacred aboriginal site will be blown up.

1.36 Unless habitat clearing is stopped, koalas will soon be extinct.

1.37 The Chair of the Threatened Species Scientific Committee stated at Senate Estimates on 11 November 2020 that habitat loss is the biggest threat to koalas:

---

<sup>13</sup> Interim Report, p. 2.

Senator HANSON-YOUNG: I'd like to know what is the scientific committee's view of the biggest threat to koalas?

[Prof. Marsh]: Habitat loss and degradation and fragmentation.<sup>14</sup>

- 1.38 This Bill will not prevent further habitat loss, in fact it may fast-track clearing.
- 1.39 The laws have failed to protect Australia's environment and wildlife for far too long. Things must change. We need stronger protection, not weaker laws.
- 1.40 The Greens will move in the Parliament for a moratorium on habitat clearing to save the koala from extinction. This is the type of reform the EPBC Act actually needs so our native wildlife is protected rather than increasingly facing extinction.
- 1.41 Instead, if this Bill passes, koalas and other threatened species will be treated differently across jurisdictions:

Senator HANSON-YOUNG: Yes. This is following up, effectively, on what standards or baselines need to be put in place and accepted by states. Mr Trezise [Policy Analyst, Australian Conservation Foundation] you're suggesting that, because the way the legislation is set up has to be done through state-by-state negotiation, there is nothing in here to assure the Australian people that there will be any type of national consistency.

Mr Trezise: No.

Senator HANSON-YOUNG: The rules governing the protection of koalas in Queensland could be very different to those in New South Wales or the ACT or anywhere else.

Mr Trezise: Yes, and that's what we observed in the 2014 negotiations as well.<sup>15</sup>

- 1.42 The Department also confirmed it hasn't even modelled the impact of these reforms on the preservation of the environment or wildlife:

Senator HANSON-YOUNG: ...You said earlier that you've done some modelling to say what the cost savings to business or industry was. What was the figure you referenced?

Mr Knudson: The figure was \$426 million a year, and it was done a number of years ago. It was under Prime Minister Abbott, when the one-stop-shop reforms were being pursued.

Senator HANSON-YOUNG: What would the costs of habitat loss and extinction be?

Mr Knudson: That was not the point of the analysis. The analysis was done on a cost-recovery impact basis, and the cost to business of the deferral—the delays in decision-making. That's what was assessed.

<sup>14</sup> Emeritus Professor Helene Marsh, Chair, Threatened Species Scientific Committee, *Proof Committee Hansard*, 11 November 2020, p. 4.

<sup>15</sup> Mr James Trezise, Policy Analyst, Australian Conservation Foundation, *Proof Committee Hansard*, 23 November 2020, p. 28.

Senator HANSON-YOUNG: So, we're going through this extraordinary process to review Australia's environmental laws and all we've got is some figures that say how much business will save. We've got no idea about how much the loss of habitat means to the Australian people or our economy or what it means if koalas go extinct and what that's going to mean to our economy, let alone what other kind of price you want to put on it. There's no other modelling in relation to the actual preservation of the environment.<sup>16</sup>

- 1.43 The threat this Bill poses to Australia's wildlife is very real, leading HSI to state:

We urge the government to withdraw the bill and consider important and much needed reforms to the EPBC Act as a package—one that is appropriate to tackle Australia's extinction crisis and actually deliver protection to our most threatened species by protecting critical habitat and the places our wildlife need to survive.<sup>17</sup>

### **The Senate has not been provided with all relevant information**

- 1.44 The Minister for the Environment has refused to provide answers to a number of questions on notice from this committee by claiming public interest immunity. The Minister has argued that to release the bilateral agreement template or the draft accreditation guidelines would impede on the public interest by generating:

...potentially significant commentary around policy positions that have not yet been finalised or adopted by the Government.<sup>18</sup>

- 1.45 The Senate should not be asked to vote on this legislation without being provided all the relevant information. This includes the bilateral agreement template and the draft accreditation guidelines.
- 1.46 It is concerning that the Government would move to pass this amendment to the EPBC act to devolve power to the states without having a formalised policy position on template bilateral agreements or draft accreditation guidelines.

### **Recommendation 1**

- 1.47 This Bill not be passed.**

### **Recommendation 2**

- 1.48 The Morrison Government immediately release the final report of the Samuel Review.**

---

<sup>16</sup> Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group, Department of Agriculture, Water and the Environment, *Proof Committee Hansard*, 23 November 2020, p. 62.

<sup>17</sup> Mrs Alexia Wellbelove, Senior Campaign Manager, Humane Society International, *Proof Committee Hansard*, 23 November 2020, p. 17.

<sup>18</sup> The Hon Sussan Ley MP, Minister for the Environment, Public interest immunity claim provided to the committee as part of the Department of Agriculture, Water and the Environment - Answers to questions on notice taken at public hearing, 23 November 2020 (received 25 November 2020).

**Recommendation 3**

**1.49 The Senate reject the claim of public interest immunity made by the Minister for the Environment and pass an order for the production of documents relating to the bilateral agreement template and the draft accreditation guidelines.**

**Recommendation 4**

**1.50 EPBC Act reform be informed by a full and proper consideration of the final Samuel Report with the intent of protecting the environment.**

**Senator Sarah Hanson-Young**

**Australian Greens**



## Crossbench dissenting report

- 1.1 The Interim Report of the Samuel Review recommends, amongst other things, that environmental approvals should be streamlined. While we are open to devolving Commonwealth environmental approvals to the states, it is strictly conditional on whether the approvals were made properly. Relevant considerations to this are:
  - (1) How the devolution arrangements fit in relation to the other recommendations in the Samuel Review;
  - (2) The National Environmental Standards that must be met;
  - (3) The strength and thoroughness of the bilateral agreements between the Commonwealth and the States; and
  - (4) The strength of the Commonwealth's accreditation process.
- 1.2 In relation to point 1, the Final Report of the Samuel Review is with the Minister. Despite the fact that the report has to be tabled within 15 sitting days of the Minister receiving it, the Minister has not provided it to Senators for consideration, even though this would have significantly benefited the committee in its evaluation of the bill.
- 1.3 In relation to point 2, the National Environmental Standards from the Samuel Review's Final Report have been provided to Senators, but at very late notice.
- 1.4 In relation to point 3, the Department advised the committee that a draft bilateral agreement template exists. The Minister, however, has declined to provide the template to Senators to consider, stating that it is not in the public interest to do so.
- 1.5 In relation to point 4, the Department advised the committee that a draft accreditation template exists. The Minister, however, has declined to provide the template to Senators for consideration, stating that it's not in the public interest to do so.
- 1.6 The government expects us to support a change in legislation while hiding behind public interest immunities to refuse to provide us

with all the relevant information we need to properly consider the legislation. We therefore cannot support this bill. It is not in the public interest to do so.

**Recommendation 1**

**1.7 Crossbench senators recommend that the Senate not pass the bill.**

**Senator Stirling Griff**  
**Participating member**

**Senator Jacqui Lambie**  
**Participating member**

**Senator Rex Patrick**  
**Participating member**

# Appendix 1

## Submissions and additional information

- 1 Conservation Council SA
- 2 Environmental Defenders Office
  - Attachment 1
  - Attachment 2
  - Attachment 3
- 3 Law Council of Australia
- 4 WWF-Australia
- 5 The Wilderness Society
  - Attachment 1
  - Attachment 2
- 6 Humane Society International
  - Attachment 1
  - Attachment 2
  - Attachment 3
  - Attachment 4
- 7 National Parks Association of Queensland
- 8 BirdLife Australia
  - Attachment 1
  - Attachment 2
  - Attachment 3
- 9 Australian Conservation Foundation
- 10 Property Council of Australia and the Urban Development Institute of Australia (UDIA) National
- 11 Wentworth Group of Concerned Scientists
  - Attachment 1
- 12 Environmental Justice Australia
- 13 Ecological Consultants Association of Victoria
- 14 Frog Safe, Inc.
- 15 The Jane Goodall Institute Australia
- 16 Transition Wyndham
- 17 Friends of Clontarf Hill and Adjacent Bushland Inc.
- 18 Toodyay Friends of the River Inc.
- 19 Bush Heritage Australia
- 20 Sustainable Living Armidale's Wildlife Habitat Group

- 21 Friends of Grasslands
- 22 BirdLife Western Australia
- 23 Lawyers for Forests
- 24 Australian Land Conservation Foundation
- 25 Ms Gabrielle Davidson
- 26 Australian Academy of Science
- 27 International Fund for Animal Welfare
  - Attachment 1
- 28 ICON Science Research Group, RMIT
- 29 Kimberley Land Council
  - Attachment 1
- 30 350 Australia
- 31 Climate and Health Association
- 32 Queensland Conservation Council
- 33 Mineral Policy Institute
  - Attachment 1
- 34 Mr Daryl Killin
- 35 Professor Paul Martin
- 36 Environment Centre (NT)
- 37 Australian Marine Conservation Society
- 38 Greenpeace Australia
- 39 National Farmers' Federation
- 40 Business Council of Australia
- 41 Minerals Council of Australia
- 42 Dr Peter Burnett
- 43 Australian Petroleum Production and Exploration Association
- 44 Chamber of Minerals and Energy of Western Australia
- 45 ACT Government
- 46 WA Government
- 47 Mr Damon Anderson
- 48 Ms Michele Madigan
- 49 Mr Tom Knowles
- 50 Mr Alastair Wood
- 51 Ms Pam Smith
- 52 Ms Roma Gillam
- 53 Dr Marc Wilson
- 54 Mr Rob Appleby
- 55 Mr Ralph Carlisle
- 56 Ms Rosalynd Gooding
- 57 Mr Ian Gorrie
- 58 Ms Caroline Underhill-Pomeroy
- 59 Mr David Noonan

- 
- 60 Dr MA Ferland
- 61 Nature Conservation Society of South Australia
- 62 Dr Romane Cristescu
- 63 Wildlife Preservation Society of Queensland
- 64 Dr Jess Drake
- 65 Ms Gabriella Hont
- 66 North East Hills Environmental Conservation Association Inc.
- 67 Ms Suzanne Dance
- 68 Mr Matthew Stanton
- 69 Labor Environment Action Network
- 70 Ms Kay Wood
- 71 Ms Phoebe Rountree
- 72 SEQ Community Alliance Association Inc.
- 73 Dr John Coulter
- 74 Arid Lands Environment Centre
- 75 Mr Alec Roberts
- 76 The Toodyay Naturalists' Club Inc.
- 77 The Hon. Diane Evers
- 78 Koala Action Gympie Region Inc.
- 79 Brisbane Residents United Inc.
- 80 Ms Gillian King
- 81 Ms Silvana Anthony
- Attachment 1
- 82 National Parks Association of NSW
- 83 Mr Daniel Moore
- 84 Conservation Council of Western Australia
- 85 Environment Institute of Australia and New Zealand
- 86 Dr Anna Seth
- Attachment 1
- 87 Sunshine Coast Environment Council
- 88 Indigenous Advisory Committee
- 89 Mr John Sheens
- 90 Ms Sally Marsh
- 91 Doctors for the Environment Australia
- 92 BirdLife Southern NSW
- 93 Ms Christine Morris
- 94 Mr Michael Mullerworth
- 95 Ms Lynne Madden
- 96 Koala Action Inc.
- Attachment 1
- 97 Denmark Environment Centre
- Attachment 1

- 98 Total Environment Centre
  - Attachment 1
- 99 Dr David Semmens
- 100 WIRES
- 101 Mr David Arthur
- 102 Mr Bill Eger
- 103 Gecko Environment Council Association Inc.
- 104 Save Sydney's Koalas
- 105 Australian Heritage Council
- 106 Mrs Sandra Thompson
- 107 Business Council for Sustainable Development Australia
- 108 Ms Ellen Bock
- 109 Ms Lisa Bailey
- 110 Nature Conservation Council of NSW
  - Attachment 1
  - Attachment 2
  - Attachment 3
- 111 Wando Conservation and Cultural Centre
  - Attachment 1
  - Attachment 2
  - Attachment 3
- 112 Better Planning Network
  - Attachment 1
  - Attachment 2
- 113 New England Greens Armidale Tamworth
  - Attachment 1
- 114 Mr Tim Colegate
- 115 Mr Jonathan Peter
- 116 Ms Wendy Flannery
- 117 Mr Colin Smith
- 118 Ms Karen O'Clery
- 119 Mr Rocky Henry
- 120 Anda Banikos
- 121 Mr John Philpott
- 122 Ms Michelle O'Loughlin
- 123 *Name Withheld*
- 124 *Confidential*
- 125 *Confidential*
- 126 Ms Sigrid Heise-Pavlov
- 127 Ms Jennifer Ryan

---

### *Additional Information*

- 1 Australian Conservation Foundation, WWF-Australia, BirdLife Australia, Humane Society International, Wilderness Society – Clarification of consultations between the Places You Love Alliance and the Government on the Bill, 26 November 2020

### *Answer to Question on Notice*

- 1 Department of Agriculture, Water and the Environment - Answers to questions on notice taken at public hearing, 23 November 2020 (received 25 November)

### *Form Letters*

- 1 Form letters type A (with variations) received from 374 individuals: examples
- 2 Form letters type B (with variations) received from 4361 individuals: examples
- 3 Form letters type C (with variations) received from 1931 individuals: examples
- 4 Form letters type D (with variations) received from 7049 individuals: examples
- 5 Form letters type E (with variations) received from 88 individuals: examples
- 6 Form letters type F (with variations) received from 8431 individuals: examples

### *Tabled Documents*

- 1 Tabled 23 November, WWF Australia Report 37 Million Animals Lost



## Appendix 2

### Public hearing and witnesses

*Monday, 23 November 2020*

Parliament House, Committee Room 2S1, Canberra and via videoconference

*Dr Peter Burnett, Private capacity*

*Environmental Defenders Office*

- Ms Rachel Walmsley, Director of Policy and Law Reform

*Environmental Justice Australia*

- Dr Bruce Lindsay, Acting Director Advocacy and Law Reform

*Law Council of Australia*

- Ms Robyn Glindemann, Australian Environment Planning Law Group Chair

*Humane Society International*

- Mrs Alexia Wellbelove, Senior Campaign Manager

*WWF-Australia*

- Mr Dermot O'Gorman, Chief Executive Officer

*The Wilderness Society*

- Ms Suzanne Milthorpe, National Environment Law Campaign Manager

*The Australia Institute*

- Mr Rod Campbell, Research Director
- Mr Bill Browne, Researcher

*BirdLife Australia*

- Mr Paul Sullivan, Chief Executive
- Mr Gerard Early, Director

*Australian Conservation Foundation*

- Ms Kelly O'Shannassy, Chief Executive Officer
- Mr James Trezise, Policy Analyst

*Wentworth Group of Concerned Scientists*

- Professor Martine Maron, Member

- Professor Bruce Thom, Member

*Australian Petroleum Production and Exploration Association*

- Mr Andrew McConville, Chief Executive
- Mr Keld Knudsen, Director

*Minerals Council of Australia*

- Ms Tania Constable, Chief Executive Officer
- Mr Chris McCombe, General Manager – Safety and Sustainability

*Chamber of Minerals and Energy of Western Australia*

- Mr Paul Everingham, Chief Executive

*Business Council of Australia*

- Ms Jennifer Westacott, Chief Executive Officer

*National Farmers' Federation*

- Mr Tony Mahar, Chief Executive Officer
- Mr Warwick Ragg, General Manager Natural Resource Management

*Department of Agriculture, Water and the Environment*

- Mr Dean Knudson, Deputy Secretary, Major Environment Reforms Group
- Mr James Tregurtha, First Assistant Secretary, Environmental Protection Reform Division
- Mr Bruce Edwards, Assistant Secretary, Environment Protection Reform Branch
- Mr Greg Manning, Assistant Secretary, Bilateral Agreements Branch

*Murray-Darling Basin Authority*

- Mr Phillip Glyde, Chief Executive