

President Professor John Shine AC PresAA FRS



**Australian
Academy of
Science**

Inquiry Secretary
Senate Environment and Communications Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
By email: ec.sen@aph.gov.au

Dear Secretary,

Australian Academy of Science submission on the *Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021*

The Australian Academy of Science (the Academy) welcomes the opportunity to address the *Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021* (the Bill), currently subject to an inquiry by the Senate Environment and Communications Legislation Committee.

The *Environment Protection and Biodiversity Conservation Act (1999)* has not seen significant structural reform in twenty years. The review by Professor Graeme Samuel presents an important opportunity for reform in the regulation system that protects Australia's environment. As Professor Samuel notes in his report, there is an overwhelming need for such reform to protect our iconic and unique environments, ecosystems and species, which are in an overall state of decline and under increasing threat. The Samuel review describes the current EPBC Act as "ineffective", noting that it "does not enable the Commonwealth to effectively protect environmental matters that are important for nature." The Academy considers the report's perspective consistent with the available scientific evidence.¹

Consistent with our [previous statement on the Samuel Report](#), the Academy supports the recommendations of the Samuel review and calls on the Australian government to advance them as rapidly as possible.

The Samuel review's central recommendation was the development and implementation of legally enforceable National Environmental Standards (hereafter "Standards"). To meet the EPBC Act's objectives, these Standards need to be strong, consistent, effective, and clear. They need to place clear limits around which impacts are acceptable and which are not. They need to focus on outcomes rather than processes and ensure consistency of outcome across Australia's States and Territories.

In short, they must address the shortcomings of the current EPBC Act.

¹ See, for example:

Steffen, W., Broadgate, W., Deutsch, L., Gaffney, O., Ludwig, C., 2015. The trajectory of the Anthropocene: The Great Acceleration. *Anthr. Rev.* 2, 81–98. <https://doi.org/10.1177/2053019614564785>; Woinarski, J.C.Z., Braby, M.F., Burbidge, A.A., Coates, D.,

Garnett, S.T., Fensham, R.J., Legge, S.M., McKenzie, N.L., Silcock, J.L., Murphy, B.P., 2019. Reading the black book: The number, timing, distribution and causes of listed extinctions in Australia. *Biol. Conserv.* 239, 108261. <https://doi.org/10.1016/j.biocon.2019.108261>

The Bill provides mechanisms for establishing Standards as legislative instruments under the Act and provides for their review. It requires that environmental decisions made under the Act are “not inconsistent” with standards and require bilateral agreements with States and Territory made under the Act.

The explanatory memorandum states:

National Environmental Standards will set the requirements for decision-making to deliver outcomes for the environment and heritage, and clearly define the fundamental processes that ensure sound and effective decision-making. They will be specific, and provide clear rules, giving upfront clarity and certainty for decision-makers and proponents.

The Academy supports this purpose for the Standards, but since the draft Standards have not been included as interim Standards in the Act, it cannot be determined if these ideals will be met.

The amendments to the EPBC Act proposed in the Bill are structural and do not speak to the content of the Standards. The Minister’s second reading speech implies that the interim Standards will be based on the current Act rather than on the draft Standards proposed by Professor Samuel. This will not address the shortcomings of the Act, but rather entrench them for at least another two years. To provide assurance that the Standards envisaged in this Bill will meet the criteria laid out in the Samuel review, the draft Standards should be released for comment.

The Academy also notes that there is no requirement in this Bill for Regional Forestry Agreements to be subject to the National Environmental Standards. This is inconsistent with the Samuel report’s recommendations and will lead to environmental degradation in affected areas.

The Bill also provides for the office of the Environment Assurance Commissioner to undertake “transparent monitoring or auditing (or both) of the operation of bilateral agreements with the states and territories and Commonwealth processes under the Act for making and enforcing approval decisions.” This is a necessary function and consistent with the recommendations of the Samuel report. If this office is to have the necessary independence to fulfil its role, the Academy considers that the Commissioner should sit outside of the Department of Agriculture, Water and the Environment.

As noted above, the Academy supports the implementation of the Samuel reforms in their entirety. The Academy notes several areas which are not addressed by the current suite of legislation. Australia’s natural environment will be ill-served if these matters are neglected in environmental legislation reform. These areas include but are not limited to:

- Harnessing the value and recognising the importance of Indigenous knowledge, and strengthening cultural heritage protections
- Cultivating and applying scientific evidence through high-quality data and analysis tools
- Providing for monitoring, evaluation, and reporting on the effectiveness of the Act itself, going beyond the Environment Assurance Commissioner's function.

Robust Standards may meet these shortcomings. However, in the absence of clear signals and a committed, published, timetable, the Academy expresses concern that key reforms will not be made and the opportunity lost, to the serious detriment of Australia’s natural systems.

The Academy maintains that Australia’s monitoring of biodiversity, data collection, data curation and standards are inadequate and in pressing need of reform. The Academy recommends a comprehensive national biodiversity information system, led by an independent agency with a

legislative mandated to curate data, integrate data and tools, support decision-makers and ensure public confidence. For more on this proposal, [see our public statement on a biodiversity data agency](#).

To discuss or clarify any aspect of this submission, please contact Mr Chris Anderson, Director Science Policy at

Yours sincerely,

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President
The Australian Academy of Science