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Committee Secretary
Senate Standing Committees on Environment and Communications
Parliament House Canberra ACT 2600
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16 November 2020

Dear Secretary,

Thank you for the opportunity to make a submission to the Senate Standing Committee on Environment and Communications (Legislation) inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020*.

WWF-Australia is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to 'stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature'. WWF-Australia has approximately one million financial and non-financial supporters.

If you require further information, please contact Quinton Clements, Head of Policy and Horizon Scanning, WWF-Australia on [REDACTED]

Yours sincerely,

[REDACTED]
Dermot O'Gorman
Chief Executive Officer
WWF-Australia

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Submission on the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020*

The World Wide Fund for Nature-Australia (WWF-Australia) welcomes the opportunity to contribute to the Committee's inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020* (the Bill).

The Independent Review

WWF would like to express disappointment and concern regarding the integrity of the process that has led to the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020* as well as its intended efficacy.

We have contributed constructively to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act) led by Professor Graeme Samuel, both in our own right and as a member of the Places You Love Alliance. We participated in the Consultative Group established by Professor Samuel to address areas identified in the Interim Report and have actively engaged with a range of business and industry stakeholders to explore opportunities for comprehensive and durable reform to the Act. We do so in the interests of advancing the restoration and protection of Australia's unique environment, heritage and biodiversity.

We note that the Independent Review was completed by its scheduled conclusion date of 31 October 2020 but that the Final Report has, to date, not been tabled in Parliament and publicly released. It is our view that to consider this Bill without the benefit of the Final Report being publicly available severely restricts the ability of the Committee, and the Senate, as well as stakeholders and the community, to understand its full implications for both our environment and its purported streamlining goals.

We have raised concerns regarding the integrity of the Independent Review process with both Professor Samuel and separately with the Government. The Government's introduction of this Bill, and its passage through the House of Representatives, two months before the Independent Review was completed and without the legally enforceable national standards, independent regulator and other mechanisms that would assure us that the environment would be protected and enhanced, undermines the process. The Government's rush to legislate only a part of the reforms proposed in the Interim Report, in our view, not only erodes the work of the Independent Review, but also blatantly ignores the overwhelming views expressed by the

majority of stakeholders that have participated in good faith and spirit across numerous roundtables.

The Bill

The present Bill is nearly identical to the “One Stop Shop” legislation that was introduced by the Government and rejected by the Senate in 2014, the *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014*. We draw the Committee’s attention to our submission to its 2014 Inquiry into that Bill which remains relevant to the present inquiry into the present Bill.

The streamlining proposed in the present Bill is principally in relation to clearing up uncertainties and increasing flexibility for bilateral agreements under the Act. It introduces amendments to the current Act including:

- Clarification that referrals are not required under the Act if there is an accredited approval regime in place.
- Allowing minor amendments to bilateral agreements.
- Providing for continuation of assessment and approval processes where an accredited state approval process has not been completed.
- Providing the ability for States and Territories to be accredited under the Act to approve actions for the purpose of the water trigger.

These changes have been described as “minor technical amendments to the EPBC Act”, “entirely consistent with Professor Graeme Samuel’s interim report and his findings in relation to an Act that is long overdue for reform”¹. However, WWF-Australia believes these amendments will have serious consequences including:

- Devolution of approval powers for the ‘water trigger’ confounds the intent in making it a Matter of National Environmental Significance - i.e. effective water resource management requires both a national perspective and strong safeguards to guard against potential conflicts of interest in State and Territory decision making and creates an enhanced risk to water resources, particularly for downstream states.
- The evidence shows States and Territories are not ready to take on these responsibilities. An audit conducted by the Environmental Defenders Office to assess State and Territory preparedness for devolution, found that no State or Territory law meets current national standards required to protect Matters of National Environmental Significance and in some jurisdictions, the legislated environmental protections have actually been weakened².

WWF-Australia’s position is two-fold:

- WWF-Australia’s long-standing position is that we do not support the devolution of Commonwealth responsibilities for Matters of National Environmental Significance to States and Territories. We believe the Commonwealth should maintain its

¹ Minister Ley Media Release 20 July 2020 <https://minister.ave.gov.au/ley/media-releases/reform-australias-environment-laws>

² Environmental Defenders Office and Places You Love Alliance, *Devolving Extinction: The Risks of Handing Environmental Responsibilities to the States and Territories*, October 2020.

responsibility for environmental decision-making and should go even further, by enshrining in statute independent monitoring, compliance, enforcement and assurance through a National Environmental Protection Authority.

- In order to mitigate the significant risks associated with devolution, the full reform architecture proposed in the Interim Report - accreditation based on legally enforceable national standards, assurance frameworks to ensure the standards are upheld and a Commonwealth statutory independent monitoring, compliance, enforcement and assurance body – must be implemented first. Legislation needed to establish such a framework is likely to be complex and warrant close interrogation by Parliament, legal experts, scientists and the broader community. A rushed attempt to revitalise the ‘One-Stop Shop’ policy in the form of the handing over approval powers, especially in the absence of robust safeguards and systemic reforms proposed in the Interim Report, will have serious and detrimental consequences for Australia’s unique biodiversity and natural heritage.

We believe that the broader context of the administration of environmental regulation should be considered as the Committee assesses the implications of this Bill. WWF-Australia is concerned that significant pressures continue to be brought to bear on all levels of government as they seek to administer regulation designed to protect public health and environmental values. In particular, we are concerned that there is a misplaced belief, exacerbated because of the COVID-19 pandemic and need for economic recovery, that speed of approval should be prioritized over quality of assessment.

It is of particular concern that debate around approvals for large and likely environmentally damaging projects is focused on how quickly the approvals should be given, rather than on how effectively the Commonwealth is carrying out its responsibility to administer a regulatory regime that prevents projects with unacceptable environmental impacts from progressing. Little attention is given to the enormous compliance gap as discussed below.

Whilst the Act was thought adequate to address the significant environmental challenges at the time it was introduced, it has failed to address the continued, and accelerating decline, in Australia's biodiversity due to loopholes, exemptions, pervasive compliance and enforcement failure and lack of investment in implementation.

The Australian Government’s 2016 *State of the Environment* Report (Biodiversity chapter) observed that:

“The outlook for Australian biodiversity is generally poor, given the current overall poor status, deteriorating trends and increasing pressures. Our current investments in biodiversity management are not keeping pace with the scale and magnitude of current pressures. Resources for managing biodiversity and for limiting the impact of key pressures mostly appear inadequate to arrest the declining status of many species. Biodiversity and broader conservation management will require major reinvestments across long timeframes to reverse deteriorating trends.”³

³ <https://soe.environment.gov.au/theme/biodiversity>

The 2016 *State of the Environment* report also recognised that invasive species and habitat destruction were the two greatest threats to threatened species in Australia, with climate change fast becoming the third major threat.

Despite this evidence, virtually none of the 7.7 million hectares of destruction of EPBC Act listed threatened species habitats since 2000 (an area larger than that of Tasmania) was even referred for approval as required under the EPBC Act, and there is little sign of effective enforcement by the EPBC Act regulator to rein in these epidemic levels of non-compliance with the referral obligations of the Act. Even for the small minority of destructive projects that are actually referred, only a tiny fraction are denied approval.⁴

An Australian National Audit Office audit of the administration of referrals by the EPBC Act regulator found that *“to 30 June 2019, 6253 proposed actions have been referred to the Minister, with 5088 of those actions approved and 21 actions not approved”*. The ANAO also reported *“high volumes of land clearing for agriculture without referral or approval”* as a key compliance issue.⁵

In Queensland alone, the State with the highest levels of forest and woodland destruction at present, habitats for 265 EPBC Act-listed, threatened species covering almost 250,000 hectares were destroyed between 2016 and 2018 with no evidence of any referral and approval under the EPBC Act, including fifty thousand hectares of koala habitat. Of this destruction, 94% was for livestock pasture development and yet there has not been a referral for clearing for livestock pasture in the last 10 years in Queensland and no successful prosecutions under the Act in Queensland. Queensland state laws allowed this to happen because they have no regard to the EPBC Act or EPBC Act protected matters and are weakened by significant loopholes.⁶

The Queensland Audit Office recently was highly critical of the State Government’s management of biodiversity conservation:

*“The Department of Environment and Science’s response to conserving threatened species lacks cross program coordination and is unlikely to effectively conserve and recover many threatened species. This is because the department has not taken a strategic approach, and has no system to prioritise, coordinate and report on recovery activities, threatened species population trends and the effectiveness of conservation management.”*⁷

The current high rates of habitat destruction are driving the loss of Australia’s threatened species but also threatening the existence of species not even listed as threatened yet. WWF-Australia has estimated that 37 million native animals including those not listed as threatened

⁴ Ward, M.S., et al. 2019. Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia. *Conservation Science and Practice*, 1(11).

⁵ <https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act>

⁶ WWF-Australia (2020), *Pervasive inaction on national conservation law in Queensland, 2016-18*. Technical report. <https://www.wwf.org.au/ArticleDocuments/353/pub-pervasive-inaction-on-national-conservation-law-in-queensland-2016-18-Nov20.pdf.aspx>

⁷ https://www.qao.qld.gov.au/sites/default/files/reports/conserving_threatened_species_.pdf

(mammals, birds and reptiles), may lose their habitats and die over the coming decade, if the current pervasive lack of compliance and enforcement continues.⁸

Attempts by the Commonwealth regulator to enforce the Act are also subject to political interference,⁹ which along with the inadequacy of State and Territory biodiversity regimes, underscores the necessity of instituting an “independent cop on the beat”, as proposed in the Samuel Interim Report.

The Queensland example above demonstrates the fundamental dangers to the very purposes of the EPBC Act posed by the proposed devolution of powers to States and Territories for Australia’s biodiversity.

A number of previous inquiries, including most recently the Samuel Interim Report and the ANAO performance audit *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999*, have highlighted the alarming maladministration of the Act, with a pervasive lack of compliance and enforcement, and suggested substantial improvements to the operation and administration of the Act. The Interim Report flagged a significant overhaul of Act, including: establishing new legally enforceable National Environmental Standards that would underpin streamlining measures; improved transparency and accountability of decision makers, including limited merits review; a ‘quantum shift’ in the data and information systems underpinning national environmental law; a rethink of biodiversity offsetting; dramatically reshaping Indigenous participation and cultural heritage protection and a ‘strong independent cop on the beat’ in relation to environmental compliance and enforcement.

It is our view that the Committee must consider the importance of comprehensive and durable reform to the Act and reject the piecemeal approach represented by this Bill. There is a clear need for legislation that truly reflects the recommendations and insight of environmental experts and ensures a holistic package of reforms that incorporate stronger standards and independent compliance. Failure to do this will result in the weakening of environment laws and further species extinctions.

⁸ <https://www.wwf.org.au/news/news/2020/37-million-animals-already-lost-due-to-lack-of-independent-cop-on-the-beat>

⁹ <https://www.theguardian.com/australia-news/2018/nov/27/draft-approvals-to-bulldoze-2000ha-of-queensland-forest-thrown-out>

Recommendations

WWF-Australia submits:

1. That the consideration of the Bill (and any other related legislation) by the Senate be delayed until the Independent Review's Final Report is released publicly and the Parliament, stakeholders and the community can appropriately respond to the findings.
2. That the Government provide a timeline to address the findings of the Independent Review, including assurances that the process will be rigorous and would include the types of preconditions that would need to be in place for negotiation with States and Territories to commence.
3. A comprehensive package of reforms to the Act be introduced and considered by Parliament together, including a full suite of strong legally enforceable National Environmental Standards; an independent regulator for compliance and enforcement; and robust accountability and transparency requirements.

Should the Committee consider accepting proposed amendments to the Bill, WWF-Australia submits:

1. The Bill as drafted does not reflect the Interim Report recommendations that national environmental standards must be developed, be enforceable regulatory instruments, and be the basis of any devolution. Therefore the Bill should be amended to include provisions for a clear head of power for the development of national standards for Matters of National Environmental Significance; a process for making, consulting, revising and adopting those standards; and requiring that any class of action, management arrangement or authorisation process accredited under the Act must meet the National Environmental Standards.
2. Amendments that established requirements that would need to be met before accreditation negotiations can be completed - i.e. State and Territory legislative and institutional reform, and funding.
3. That an amendment be included to establish an independent monitoring, compliance, enforcement and assurance regulator.
4. Delete the amendments relating to water resources (Schedule 3, Part 1) – i.e. preserve Section 29, Part 4, subsection 29(1), together with subsections 46(1), 46(2) and 46(2A), that prohibit an approval bilateral agreement from applying to the water trigger.