



Australian Government

Australian Government response to the
Senate Environment and Communications Legislation
reports:

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

Environment Protection and Biodiversity Conservation
Amendment (Standards and Assurance) Bill 2021
[Provisions]

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Introduction

The Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 (the Streamlining Environmental Approvals Bill) was introduced into Parliament on 27 August 2020. The Bill amends the existing provisions of the EPBC Act to support the operation of bilateral agreements.

On 12 November 2020, the Selection of Bills Committee referred the Streamlining Environmental Approvals Bill to the Senate Environment and Communications Legislation Committee¹ (the Committee).

On 27 November 2020, the Committee released its final report. The Committee supported the Bill as an important first step towards reform of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). Whilst the Committee recommended that the Senate pass the Bill (recommendation 2), the Committee also recommended 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 1).

The Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021 (the Standards and Assurance Bill) was introduced into Parliament on 25 February 2021. The Bill complements the Streamlining Environmental Approvals Bill, and establishes a legislative basis to ensure that bilateral agreements, and the accreditation of state and territory environmental approval systems, are underpinned by national environmental standards. It also establishes the Environment Assurance Commissioner to provide independent oversight and assurance of environmental assessment and approval systems, including accredited state and territory systems. The Selection of Bills Committee referred the Standards and Assurance Bill to the Committee on 25 February 2021².

On 8 June 2021, the Committee released its final report. Subject to two amendments to require the first review of any interim standard to be completed within two years of commencement (recommendation 1) and provide for the sunseting of interim standards (recommendation 2), the Committee supported the passage of the Bill (recommendation 3).

Labor, the Australian Greens and the Senate crossbench all provided dissenting reports to the Streamlining Environmental Approvals Bill inquiry report. Senator Rex Patrick also provided a dissenting report to the Standards and Assurance Bill inquiry report.

Committee Recommendations - Government Response

The Committee's recommendation in its report on the Streamlining Environmental Approvals Bill was addressed by the introduction of the Standards and Assurance Bill. The Standards and Assurance Bill makes it clear that bilateral agreements with the states and territories will be underpinned by the national environmental standards.

Government amendments to the Standards and Assurance Bill in the House of Representatives address the Committee's recommendations in its report on the Standards and Assurance Bill. Those amendments provide for the automatic repeal (sunseting) of interim national environmental standards and require the first review of an interim National Environmental Standard to be completed within 2 years of its commencement.

¹ Selection of Bills Committee, Report No. 10 of 2020, Appendix 4 (12 November 2020)

² Selection of Bills Committee, Report No. 3 of 2021, Appendix 2 (25 February 2021)

Dissenting Reports – Government Response

The Final Report of the Independent Review of the EPBC Act, undertaken by Professor Graeme Samuel AC, was publicly released on 28 January 2021³.

The Review found that the EPBC Act is complex, a comprehensive reworking of the EPBC Act is required, and reform should be delivered in stages. Consistent with this view, the Government is taking a staged approach to the reforms.

For each stage of reform, the Government will release a pathway document and associated timeline setting out the Government's proposed reforms and consultation and engagement processes. This approach is appropriate given the significant scale of the reform proposed by the Review. A staged approach will also better facilitate stakeholder engagement across all aspects of the reform agenda.

On 16 June 2021, the Government released *A pathway for reforming national environmental law* and associated timeline⁴. The pathway document sets out the Government's initial stage of reforms. Together, these documents will guide the Government as it engages with stakeholders to deliver meaningful and enduring reform informed by the recommendations of the Review.

The Government's first priority is to deliver single touch environmental approvals underpinned by national environmental standards and strong assurance. This aligns with the central pillars of reform, as recommended by the Review:

- strong, legally enforceable national environmental standards
- increasing efficiency by streamlining environmental approvals, particularly by accrediting state and territory processes
- strong, independent assurance that arrangements are working well and delivering outcomes for the environment, for business and for the community.

Together, the Streamlining Environmental Approvals Bill and the Standards and Assurance Bill deliver on the National Cabinet agreement of 24 July 2020, reaffirmed in December 2020, that all jurisdictions move to a single touch environmental approval system. At its December 2020 meeting, the National Cabinet agreed the immediate priority was to pass legislation streamlining approval processes. National Cabinet also agreed National Environmental Standards should be developed which reflect the current requirements of the EPBC Act.

States and territories seeking accreditation under the EPBC Act to make environmental approval decisions for Commonwealth protected matters will need to demonstrate their systems are not inconsistent with any national environmental standards in force under the EPBC Act.

The Standards and Assurance Bill supports this by:

- requiring the Minister to be satisfied that a state or territory arrangement or process proposed for accreditation is not inconsistent with the national environmental standards

³ The Final Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* is available at www.epbcactreview.environment.gov.au

⁴ The *A pathway for reforming national environmental law* and timeline are available at www.environment.gov.au/epbc/about.environmental-law-reform

- requiring approval bilateral agreements with states and territories to include provisions that decisions approving the taking of an action in accordance with an accredited arrangement or process will not be inconsistent with the national environmental standards.

The Minister for the Environment has developed the draft national environmental standard for matters of national environmental significance (MNES), reflecting National Cabinet's commitment. The draft national environmental standard for MNES ensures the same rules for Commonwealth protected matters apply regardless of whether an approval decision is made by the Australian Government or a state or territory. The Department of Agriculture, Water and the Environment published the draft national environmental standard for MNES on its website on 29 April 2021⁵.

The Standards and Assurance Bill also establishes the Environment Assurance Commissioner. The Commissioner will monitor and audit the systems, including accredited state and territory systems, that support environmental approval decision-making. Consistent with the Review, the Commissioner will be independent, established by statutory appointment with legislated functions and powers, housed within the Department of Agriculture, Water and the Environment and supported by dedicated resources.

⁵ The final draft national environmental standard for Matters of National Environmental Significance is available at www.environment.gov.au/epbc/about.environmental-law-reform