



Business Council of Australia

1 April 2021

Committee Secretary
Environment and Communications Legislation Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

sent via email: ec.sen@aph.gov.au

Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Dear Secretary

The Business Council welcomes the opportunity to comment on the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021 (the Bill).

The Independent Review of the EPBC Act conducted last year marked the beginning of a rare opportunity for reform of Australia's environmental laws to create a better system for achieving environmental outcomes in the national interest. The final report recommends implementing a new regulatory framework, providing the basis for significant reform of the existing Act. The Bill is an important step but will need to build on the other core aspects of Professor Samuel's review.

We support the fundamental direction of the Review's reform proposal, which comprises three core elements:

- national environmental standards (NES) that define environmental outcomes in the national interest and processes for integrated and efficient decision making;
- effective devolution of decision making based on accreditation of state and territory systems to achieve a 'single touch' approach to assessment and approvals; and
- rigorous, independent monitoring, compliance, enforcement and assurance that is progressive, proportional and well resourced.

Underpinning these core elements is the need to develop and invest in regional planning, delivery of a national information and data supply chain and a commitment to restoration through a renewed approach to the environmental offsets policy.

The Review found Australia's "environmental trajectory" to be unsustainable in the face of significant existing pressures — including land-use change, habitat loss and degradation, and feral animals and invasive plant species — and that the impact of climate change would continue to exacerbate these pressures going forward.

Level 42, 120 Collins Street,
Melbourne VIC 3000

GPO Box 1472, Melbourne 3001
www.bca.com.au

T 03 8664 2664
F 03 8664 2666

reception@bca.com.au

The Review also found current EPBC Act to be “ineffective and inefficient” for protecting matters of national environmental significance (MNES), highlighting several inadequacies, including a ‘project-by-project’ focus that fails to address cumulative environmental impacts, and planning, funding and regulatory decisions that are not well integrated or clearly directed towards achieving long-term environmental sustainability.

To start the improvement process, the Bill before this Committee — and the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020*, introduced last year — capture the core elements of a broader package of much needed reform. While we recognise that the reform process is far from complete and complex in its practical development, we acknowledge it can only occur one step at a time.

Therefore, we strongly encourage the Government to commit upfront to a clear pathway of staged reforms to the EPBC Act. Settings need to be monitored and evaluated, and the path forward adjusted as lessons are learnt and new information and ways of doing things emerge. It is vital that, as we step through the reform process in this way, that there is wide ranging and thorough consultation with all stakeholders — business, environment groups, Indigenous Australians and the broader community.

From businesses’ perspective this process can represent a win-win — a win for better environmental outcomes and a win for more efficient and streamlined project assessment processes. If done properly there will be much greater certainty for both the environment and business. The important issue to work through will be mitigating any legal uncertainty and regulation that is so prescriptive that it will unduly limit economic development.

This Bill represents a practical and necessary step along the reform pathway. The NES will require continued refinement over time based on extensive stakeholder feedback and consultation, and we note that the Bill incorporates reviews of interim NES within two years of their commencement (and up to five-year intervals thereafter). A critical element of this process will be the investment in and development of regional planning and strategic assessments as a basis for the application of NES. The Environment Assurance Commissioner (EAC) function may also require an expansion into functions beyond assurance, namely those related to compliance and enforcement.

We offer the following specific comments on the proposed bill:

- The Bill needs to be clear that a jurisdiction can enter into a bilateral arrangement with the Commonwealth for a single NES — which is particularly relevant for businesses impacted by the water trigger (for example, under existing Queensland legislation).
- The Bill needs to avoid NES being able to reference administrative guidelines, such as those made in relation to the water trigger, which effectively expand the remit of legislation without having to go through the legislative process.
- The proposed Bill needs to be clear with respect to the broader set of other possible management arrangements or authorisation processes — in addition to bilateral arrangements with jurisdictions — such National Offshore Petroleum Safety and Environmental Management Authority.

The BCA strongly encourages Parliament to initiate the practical task of reform by supporting the passage of both this Bill and the Streamlining Environmental Approvals Bill 2020. As stated by Professor Samuel:

“... reform is long overdue. Past attempts at reform have been largely unsuccessful. The inaction of the last two decades is in large part the reason why the review recommends such

fundamental reform to the Act and its operation, and the urgency with which reform should be pursued. Commitment to a clear pathway of staged reform is required."

There is more to be done, and business stands ready to work on the review of the standards and other aspects of the reform process. The Business Council has been working closely with other business organisations and conservation groups on achieving durable and impactful reform. We will continue to do so and urge government to support a consultative and transparent process as the reform agenda continues over the coming months. We also encourage government to set a clear timetable for the longer-term reforms, to provide confidence and certainty for all stakeholders in the process ahead.

The Business Council encourages Senators to support the passage of this Bill and to capture the momentum for reform off the back of the final report. If we don't make sensible steps forward, the risk is we will achieve no change – which is clearly unacceptable for the environment, business and the community.

Please don't hesitate to contact the BCA's Executive Director, Policy, Jessica Wilson, at
should you wish to discuss our submission further.

Yours sincerely

Jennifer A. Westacott AO
Chief Executive
Business Council of Australia