

# WENTWORTH GROUP OF CONCERNED SCIENTISTS

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## **SUBMISSION TO THE SENATE INQUIRY INTO THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (STREAMLINING ENVIRONMENTAL APPROVALS) BILL 2020**

18 November 2020

The Wentworth Group welcomes the opportunity to provide a submission to the Senate inquiry on the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020*.

Reforms to the EPBC Act offer an opportunity to bend back the curve of biodiversity decline in Australia, while simultaneously simplifying and streamlining assessment and approval processes for business. In our 2020 submission to the EPBC Act review, we describe the full suite of reforms that in our view are needed to effectively deliver the objectives of the Act (see attached).

The Bill before the Senate will not achieve this outcome. It seeks to hand over Commonwealth environmental powers to state and territory governments without any enforceable safeguards. The Wentworth Group does not support this Bill for the following reasons:

1. The Bill does nothing to improve the protection and conservation of matters of national environmental significance, and evidence suggests it could even weaken existing protections;
2. The Bill undermines comprehensive reform of Australia's national environmental laws; and
3. Poor transparency and lack of scrutiny undermine trust in the reform process.

In light of these concerns, we ask that the Committee recommends that the Bill be withdrawn until the Senate has had the opportunity to consider the final report by the independent reviewer Professor Graeme Samuel AC and draft National Environmental Standards which have not yet been made public.

Should the Senate decide to consider the current Bill once this information is available, we suggest the Committee recommends that the Senate oppose the Bill unless it is amended to include the minimum safeguards specified in the box below. Without these amendments, it is impossible to guarantee that states and territories will protect matters of environmental significance in the national interest.

### **Recommendations: Minimum legislative safeguards required to ensure the EPBC Act delivers its objectives.**

1. The Bill must include a requirement to make national environmental standards, and those standards must be subject to disallowance by the Australian Parliament;
2. National environmental standards must be legally enforceable instruments prior to any devolution;
3. National environmental standards must be developed in a scientific, evidence-based manner by experts and include the requirements to:
  - a. 'Maintain or enhance' the absolute outcomes for all matters of national environmental significance; and
  - b. Prevent cumulative impacts, at all scales (e.g. national, state, regional and individual project levels) to provide line-of-sight between decisions and outcomes.
4. An independent body must exist to provide assurance and compliance with the national environmental standards.

## Shortcomings of the Bill

### 1. The Bill does nothing to improve the protection and conservation of matters of national environmental significance, and evidence suggests it could even weaken existing protections.

Australia is one of the most biologically diverse countries in the world, with more mammals and reptiles that occur nowhere else on Earth than any other nation, and more unique plants than 98% of the world's countries.<sup>1</sup> This biodiversity underpins the health and wellbeing of communities, supports industries in a myriad of ways, particularly in regional Australia, and is intrinsically linked to Indigenous culture and the identity of all Australians.

The *Environment Protection and Biodiversity Conservation Act* (EPBC Act) was legislated by the Australian Parliament in 1999 as the single overarching framework for national environmental protection.

It emanated from Australia's obligations as a signatory to the international Convention on Biological Diversity, and commitments made under COAG's Intergovernmental Agreement on the Environment in 1992 which set out, inter alia, "the responsibilities and interests of the Commonwealth in safeguarding and accommodating national environmental matters."

The primary role of the EPBC Act is to "provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance."<sup>2</sup>

Yet scientific evidence since its inception and both independent statutory reviews clearly show the Act is failing to achieve its objectives.<sup>3,4</sup> Every *State of the Environment* report including the first publication in 1992 has documented the serious, ongoing and growing pressures facing Australia's landscapes, water resources and biodiversity, which has continued and, in many cases, worsened since the Act was introduced.

The environment is now ranked in the top 5 issues facing Australians, according to Ipsos.<sup>5</sup>

The Bill before Parliament does nothing to address these serious concerns. Worse, it could weaken existing protections because state and territory laws do not meet Commonwealth standards. For example, native vegetation laws in Queensland and New South Wales are inconsistent with Commonwealth law because they allow significant impacts on threatened species and ecological communities.<sup>6-8</sup> A study by Ward et al. (2019) found 7.7 million hectares of potential habitat for listed threatened species and ecological communities was cleared in Australia between 2000 and 2017. The current Bill does not oblige states and territories to amend their laws and policies to reflect the requirements of the EPBC Act.

If the Bill is passed without a statutory requirement for effective and enforceable safeguards to protect matters of national environmental significance, there is no guarantee that the subsequent legislation needed to ensure all jurisdictions meet Commonwealth standards will be enacted.

### 2. The Bill undermines comprehensive reform of Australia's national environmental laws.

An independent review of the EPBC Act is required every ten years to examine the operation of the Act and the extent to which its objects have been achieved.

The first independent review was undertaken by former departmental secretary and diplomat Dr Allan Hawke in 2009. The final report proposed a comprehensive package of reforms to improve, expand and refine the Act "directed at better placing the Australian Government to manage the environmental challenges of the future."<sup>9</sup>

These reforms have only been partially adopted by the government, and most recommendations aimed at strengthening the Act have not yet been addressed nor implemented.<sup>10</sup> It is therefore unsurprising that the subsequent (interim) review by Professor Graeme Samuel described a continuation of environmental decline and poor outcomes under the Act. Comprehensive reform thus remains urgent.

Numerous other reviews of the operation of state and Commonwealth development assessment processes have reinforced the need for comprehensive overhaul of Australia's national environment laws: a Senate inquiry into the operation of the EPBC Act in 2009;<sup>11</sup> a Productivity Commission report into planning, zoning

and development assessments in 2011;<sup>12</sup> audits by the Australian National Audit Office in 2014 and 2017;<sup>13</sup> and a Senate inquiry into Australia's faunal extinction crisis in 2019.<sup>14</sup>

Concerns raised in these reports, as well as those identified by stakeholders in a 2014 Senate committee report into the *EPBC Amendment (Bilateral Agreement Implementation) Bill 2014* (the 'one-stop shop'), remain unresolved.

On 29 October 2019, Minister Ley announced that the second independent review of the EPBC Act would be led by former ACCC chairman Professor Graeme Samuel AC. Following a rigorous and extensive stakeholder consultation and consideration of 30,000 submissions, Professor Samuel's Interim Report was released on 20 July 2020. The Interim report found "fundamental inadequacies" of the "ineffective" 20-year old Act and stated that a "fundamental reform of national environmental law is required".<sup>4</sup>

Rather than putting forward a comprehensive reform package based upon the review findings, the Bill instead selectively focuses on one element in isolation, without any of the accompanying reforms and safeguards that were recommended in the interim report which are essential to addressing the fundamental inadequacies cited. This will inevitably mean further uncertainty and complexity for businesses and removes incentives to complete the reform package.

Without the broader suite of necessary reforms, this Bill risks locking in the decline of landscapes, water resources and biodiversity for the next decade. The recommendations in this submission would provide that basic guarantee.

### **3. Poor transparency and lack of scrutiny undermine trust in the reform process**

In his interim report, Prof Samuel identified that "the community and industry distrust the EPBC Act, and there is merit in their concerns" and that "transparent independent advice can improve trust in the EPBC Act."<sup>4</sup>

Despite this, information and public debate regarding the Bill has been restricted.

In September, lower house MPs were denied the opportunity to debate amendments to the Bill. In the same month, Senators were blocked from referring it to an inquiry multiple times. The Senate is now being asked to consider the Bill without Professor Samuel's final report being publically released.

Crucially, the draft National Environmental Standards proposed by Prof Samuel have not yet been released. Consequently, the public cannot be assured that the Bill won't result in weakening of the protection of matters of national significance. These are major setbacks that need to be resolved to restore trust, and ensure the reforms are fair, enduring and in the national interest.

### **A once-in-a-decade opportunity to fix Australia's environment laws**

The centrepiece of Prof Samuel's interim report was strong and nationally consistent National Environmental Standards that provide enforceable rules for decision-making, provide line-of-sight between decisions and outcomes, and enable states to undertake assessment and approvals on behalf of the Commonwealth.

The standards need to establish a clear, legal requirement to 'maintain or enhance' outcomes for matters of national environmental significance, and account for cumulative impact in any decision/plan/policy. These are the most essential features of any National Environmental Standard for matters of national environmental significance, and without them, there is a risk of locking in the very shortcomings in implementation that were identified in the Review and underpin Australia's poor and worsening environmental record.

The standards also need to include legally enforceable limits to reign in the cumulative impacts of development on matters of national environmental significance before approval powers are handed over to state or territory governments.

Cumulative impacts are those which arise from many small impacts of development accumulating across a region resulting in irreparable environmental damage. For example, of the 8 million hectares of potential habitat for listed threatened species and ecological communities that was cleared in Australia between 2000 and 2017, over 93% was not referred to the Federal Government for assessment under the EPBC Act.<sup>9</sup> In

assessing developments on a project-by-project basis, the EPBC Act fails to capture most impacts, and as a consequence, it is death by 1000 cuts for threatened species and habitat.

Cumulative impacts are beyond the ability of any individual or company to address on their own. Overarching policies that address cumulative impacts are needed – and are standard practice in natural resource management. For example, the Australian Fisheries Management Authority sets annual catch limits to allow fisheries to sustain harvesting, the Murray-Darling Basin Authority caps the volume of water that can be taken from rivers to allow irrigators to grow food and fibre and support river health, and Commonwealth and state governments set legally binding limits on pollutants to safeguard air and water quality.

There are no such limits within our national environmental laws, and as a consequence, it's death by a thousand cuts for our landscapes and biodiversity.

Legally-enforceable limits for cumulative impacts would ensure that, for example, the minimum habitat to support a viable koala population is protected from clearing in the future. Evidence-based limits would not only safeguard the natural assets that would otherwise be permanently damaged or lost, they would also benefit businesses by providing greater clarity and speed of the assessment and approval process.

## References

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- 2 see Part 1 s3(1)(a) of the EPBC Act
- 3 Hawke, A. (2009). The Australian Environment Act - Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999. Final Report, Canberra.
- 4 Samuel, G. (2020). Interim Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Prepared for the Department of Agriculture, Water and the Environment, Canberra.
- 5 Ipsos (2020). *Ipsos issues monitor October 2020* [Online]. Ipsos. Available: <https://www.ipsos.com/en-au/ipsos-issues-monitor> [Accessed].
- 6 EDO and PYL (2020). *Devolving Extinction? The risks of handing environmental responsibilities to states & Territories* [Online]. Environmental Defenders Office and Places You Love, Sydney. Available: <https://www.edo.org.au/2020/10/05/devolving-extinction-the-risks-of-handing-environmental-responsibilities-to-state-territories/> [Accessed].
- 7 Wentworth Group (2014). Submission to the Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014. Wentworth Group of Concerned Scientists, Sydney.
- 8 Reside, A. E., Beher, J., Cosgrove, A. J., Evans, M. C., Seabrook, L., Silcock, J. L., Wenger, A. S. & Maron, M. (2017). Ecological consequences of land clearing and policy reform in Queensland. *Pacific Conservation Biology*, 23, 219-230.
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- 11 Senate Standing Committee on Environment Communications and the Arts (2009). The operation of the Environment Protection and Biodiversity Conservation Act 1999 - First report. Canberra.
- 12 Productivity Commission (2011). Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments. Australian Government, Canberra.
- 13 ANAO (2014 & 2017) Referrals, assessments and approvals of controlled actions under the Environment Protection and Biodiversity Conservation Act 1999. Australian National Audit Office, Canberra.
- 14 Senate Standing Committee on Environment and Communications (2019). Australia's faunal extinction crisis. Australian Parliament, Canberra.