



**CONSERVATION
COUNCIL** ACT REGION

Submission to Senate Standing Committees on Environment and Communications: EPBC Amendment (Standards and Assurance) Bill 2021

March 2021

The Conservation Council ACT Region is the peak non-government environment organisation for the Canberra region. Since 1981, we have spoken up for a healthy environment and a sustainable future for our region. We harness the collective energy, expertise and experience of our more than 40 member groups to promote sound policy and action on the environment.

We campaign for a safe climate, to protect biodiversity in our urban and natural areas, to protect and enhance our waterways, reduce waste, and promote sustainable transport and planning for our city. Working in the ACT and region to influence governments and build widespread support within the community and business, we put forward evidence-based solutions and innovative ideas for how we can live sustainably.

At a time when we need to reimagine a better future, we understand that the changes we need will only happen with the collective support of our community.

For further information please contact:

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Introduction

In April 2020, the Conservation Council, alongside thousands of other Australian businesses, community representatives and environmental groups, submitted feedback on the Independent Review of the Environmental Protection and Biodiversity Conservation (EPBC) Act 1999.

The Council shared the widespread concern that the EPBC Act is fundamentally failing to protect Australia's natural environment, and ultimately does not have the ability to respond to the significant environmental challenges that we currently face, nor is it capable of adapting to the environmental challenges projected for the future.

In its current form, the EPBC Amendment (Standards and Assurance) Bill 2021 is not representative of the reform proposed in Professor Graeme Samuel's final report, and cherry picks recommendations despite the final report warning against this. Instead, the Bill will facilitate devolution of powers to the states, assigning the burden of ensuring compliance with, and enforcement of, National Environment Standards to states and territories.

Whilst the implementation of National Environment Standards and the establishment of an Environment Assurance Commissioner is important, the current EPBC Amendment (Standards and Assurance) Bill is not adequate enough to effectively deliver good environmental outcomes. In the midst of a biodiversity extinction crisis, the Bill must be strengthened.

In general terms, the Conservation Council considers that the development of national environmental legislation is being rushed, and that community engagement has been limited. The Final Report of the independent Review of the Environmental Protection and Biodiversity Conservation (EPBC) Act 1999 was only publicly released in February 2021, and yet already the parliament is considering legislation. It is unsurprising that this Bill does not fully implement the intention of the final report.

National Environmental Standards

The establishment of legally enforceable national environmental standards was recognised as the centrepiece of the reform in the Final Report released by Professor Graeme Samuel. While this Bill is an important step towards establishing these standards, there are no clear requirements around establishing or maintaining the quality or consistency of the standards.

Professor Graeme Samuel put forward a suite of recommendations relating to the establishment of legally enforceable National Environmental Standards, many of which were flagged for incorporation in tranche 1 of the reform. Instead, this Bill only advances the recommendation of establishing standards, without incorporating the accompanying recommendations that would ensure the standards form part of a broader framework to deliver strong environmental outcomes. As such, the Conservation Council supports the EDO's recommendation¹ to prepare

¹ Environmental Defenders Office, *Legal analysis of EPBC Amendment (Standards and Assurance) Bill 2021*, prepared March 2021.

legislation that incorporates all of the tranche 1 immediate reforms put forward in the Final Report before being introduced to Parliament.

Recommendations

1. Prepare legislation that incorporates all of the tranche 1 immediate reforms put forward in the Final Report before being introduced to Parliament.

Environment Assurance Commissioner

The EPBC Amendment (Standards and Assurance) Bill 2021 proposes to establish an Environment Assurance Commissioner, also a key recommendation put forward by Professor Graeme Samuel to improve community confidence in the decision-making process.

Under this Bill, the Commissioner will have limited independence, with responsibilities primarily associated with implementing bilateral agreements. The specific functions and powers of the established EAC are not clear, and the outcomes that would result from the EAC audits are also unclear. This is also not consistent with the recommendation put forward by Samuels for a “strong cop on the beat”.

The Environment Assurance Commissioner should instead be established, by statutory appointment, with responsibility to oversee; audit of decision-making by Commonwealth under the EPBC Act; audit of an accredited party under an accredited arrangement; conduct performance audits, like those of the Auditor General; and provide annual reporting provide annual reporting on performance of Commonwealth and accredited parties against National Environmental Standards (Recommendation 23, Final Report).

Recommendations

2. Establish the Environment Assurance Commissioner with all of the responsibilities and audit powers outlined in Recommendation 23 of the Final Report within the legislation recommended above.