Joint Position of State and Territory Conservation Councils on EPBC Act reform

The State and Territory Conservation Councils of Australia are the independent, not-for-profit peak conservation bodies in each State and Territory of Australia. Collectively, we represent hundreds of grass roots environmental organisations and groups and have approximately 750,000 individual supporters across Australia. We have advocated for the protection of nature and climate across Australia for many decades, standing with Traditional Owners in their ongoing care for Country and the communities whose interests we represent. Today, we work as a connected network that works together effectively on shared interests.

Overhaul of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (**EPBC Act**) is long overdue and critical to the future of Australia's unique environment. Whilst the proposed reforms contain important improvements in some areas, they also weaken a number of critically important protections for nature, climate and communities in Australia.

In our view, the three central principles of an effective EPBC Act are:

(a) strong, enforceable, and objective upfront protections for nature and climate;
(b) strong federal responsibility and oversight for decisions made under the EPBC Act;
(c) strong public participation in decisions made under the EPBC Act.

These core principles are unacceptably compromised by the proposed reforms. The reforms should only be supported by the Australian Parliament once the following matters are addressed:

1. **Limit wide-ranging Ministerial powers**

   The bedrock of the Samuel Review's recommendations on EPBC Act reform was the removal of "unfettered" discretion in decision-making, which has led to poor environmental outcomes.

   The proposed reforms are unacceptably weakened by subjective tests in drafting. Ministerial discretion undermines positive innovations, including the creation of national environmental standards, a definition of "unacceptable impacts", and a "net gain" requirement. This must be amended to increase certainty and reduce discretion.

Proposed amendments:

1) ensure objective decision-making and make the test for compliance more prescriptive;
2) Subject the rulings power to substantive and procedural safeguards;
3) ensure that protection statements cannot override recovery plans, conservation advices and threat abatement plans;
4) for strategic assessments – remove or constrain 'minor variations', retain public consultation and objectively apply environmental protections;
5) Restore pre-2024 reconsideration request provisions;
6) remove the new 'national interest proposal' exemption power, or constrain this power and the existing national interest exemption.

2. Strictly limit and appropriately safeguard devolution of approval powers to State and Territory Governments

The reforms resemble and extend the former Coalition Government's "one stop shop" policy, facilitating the handing of decisions on projects to state and territory governments. This would apply irrespective of the development, and would if implemented effectively remove federal decision-making about, and federal parliamentary scrutiny of, these projects (with the exception of enforcement and compliance functions).

The reasons for retention of Commonwealth responsibility to approve projects include:

- the Commonwealth has obligations under international environmental treaties to protect matters of national environmental significance, and should retain responsibility for these matters;
- it could create unacceptable conflicts of interest, since State and Territory governments often have conflicting interests – as a proponent, sponsor or beneficiary of the projects they assess;
- it would create a patchwork of inconsistent processes across states and territories that would increase complexity and cost for proponents and government, not decrease it;
- the purpose of the "water trigger" (recently expanded to cover fracking of shale gas) – to create federal oversight of water resources for certain projects - would be undermined by handing decisions back to state and territory governments.

Under current laws, although there has been a theoretical power to hand decision-making to the states, it is quite constrained. In addition, approvals under the water trigger are specifically excluded from hand back to States and Territories.

In their current form, the reforms provide that the accreditation of state and territory processes (including approvals) can only occur where the "Minister is satisfied" that such processes would

“not be inconsistent with” proposed national environment standards. This embeds a high level of discretion and subjectivity.

Proposed amendments:

1) the Federal Government to retain responsibility for project approval decisions, and assessment accreditation only being allowed where strict, objective tests of consistency with NES are met;
2) Water trigger to remain exempt from devolution/accredition;
3) Reinsert requirement for Minister to publish a notice of intention to enter into bilateral agreement;
4) Remove new provisions prohibiting referral of actions where an approval bilateral or accredited process is in place;
5) Remove new provisions enabling amendment of bilateral agreements by Ministerial determination without public consultation or parliamentary process.
6) Remove provisions enabling a non-state or territory government entity to be accredited with EPBC Act powers;
7) Remove provisions enabling accreditation of unenforceable procedures, guidelines or subordinate legislation.

3. Limit streamlined (or fast-tracked) assessments

The reforms create a new "streamlined assessment" method of assessment, which poses significant risks to climate, biodiversity, water resources and rights of public participation in decision-making.

This method of assessment would replace three existing assessment pathways (assessment on referral documentation, preliminary documentation and public environment report) with a new 30 day approval method. Public participation would be reduced to a 10 day comment period on a referral. Our analysis suggests that roughly 60% of actions with a significant impact on matters of national environmental significance assessed under these three pathways would be replaced by the streamlined assessment fast-track.

This would enable the fast-tracking of a large number of fossil fuel, mining, deforestation, housing and renewables projects, with community rights gutted.

Proposed amendments:

1) Remove the streamlined assessment, or specify that it can only be applied to low risk projects ;
2) Retain the preliminary documentation and public environment report assessment pathways.

4. **Close loopholes around agricultural clearing and native forest logging**

   The Bills fail to close the existing loopholes that allow for forests and woodlands to be cleared under Section 43B. This loophole provides for the indefinite continuation of activities that are having a significant impact on Matters of National Environmental Significance without ever having been assessed under the EPBC Act.

   Proposed amendments:

   1) Remove or sufficiently constrain the outdated exemption for continuations of use (s43B EPBC Act).
   2) Remove the Regional Forest Agreement (RFA) exemption or comprehensively apply National Environmental Standards to logging in RFA areas, while improving monitoring, compliance, reporting and accountability.

In addition to the core issues above, the State and Territory Conservation Councils support the following amendments:

- vesting of Environment Protection Australia with decision-making powers;
- Insertion of requirement to consider climate impacts of proposals;
- Removing or constraining the “pay to destroy” offsets fund.