



Catholic Religious Australia Submission to the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

15 March 2021

Submission to the Senate Standing Committee on the Environment and Communications inquiry into the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Catholic Religious Australia (CRA) welcomes the opportunity to make a submission to the Senate Standing Committee on the Environment and Communications' inquiry into the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021 (the Bill).

CRA is the peak body representing the Leaders of 150 Catholic Religious Institutes and Societies of Apostolic Life which operate in Australia. Our religious institutes comprise more than 5,000 Catholic religious women and men and their lay colleagues, who work in education, health care and social services. Australia's religious congregations are strongly committed to action for justice. Through their justice ministries, they work with and advocate for Australia's most vulnerable communities, including the environment.

We welcome the final report of the second independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and agree with the dire concerns of Professor Graeme Samuel AC, who stated that, "Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat. They are not sufficiently resilient to withstand current, emerging or future threats, including climate change."¹ We take seriously Prof. Samuel's advice that "fundamental reform" of the Act is needed in order to avert an environmental disaster for Australia's flora and fauna, and his 38 recommendations to do this. We are concerned that the Bill has cherry-picked some recommendations, whilst ignoring others and will fail to make the necessary reforms needed to protect and enhance Australia's environment and biodiversity. We understand that the government has a desire to balance environmental protection with economic growth, especially in the wake of the COVID-19 pandemic. However, the natural world is facing an even greater crisis and we implore the government to use this timely review of the EPBC Act to make amendments that will help to address this.

Interim National Environmental Standards

We are concerned that the government is pushing for an approval of its proposed framework for making, varying, revoking and applying the National Environmental Standards, without publicly releasing their proposed Interim National Environmental Standards (Interim Standards). We have grave concerns that the passing of the Bill will "lock in" these Interim Standards, without any opportunity for public comment or consultation. Prof. Samuel's Final Report proposed new Standards, which were developed in consultation with stakeholders and experts and designed to strengthen the EPBC Act through inclusion of matters of national environmental significance (such as world heritage, endangered species, wetlands, etc.), Aboriginal and Torres Strait Islander engagement and participation, compliance and enforcement, and data and information.

The government's proposed Interim Standards have allegedly been leaked to the Australian media, with these revealing that the government does not intend to use the Final Report's suggestions, but instead will simply re-hash the current Standards. The Final Report was very clear that the current Standards will not

¹ Professor Graeme Samuel AC, *Independent Review of the EPBC Act – Final Report* (Canberra, ACT: Department of Agriculture, Water and the Environment, 2020) <https://epbcactreview.environment.gov.au/resources/final-report/foreword>

avert an environmental crisis in Australia. The Bill stipulates that the Interim Standards will not be reviewed for two years, with no guarantee that at that stage they will be strengthened, while further destruction of the environment occurs in the meantime. We therefore call on the government to publicly release their proposed Interim Standards to the wider Australian public for comment, and to take more seriously the recommendations of Prof. Samuel's Final Report in their development, delaying the passing of this current Bill until this is done.

Application of the Standards to Bilateral Agreements with the States and Territories

Whilst CRA supports Prof. Samuel's claim in the Final Report that "consultation with States and Territories is essential," we also agree with its warning that "the process cannot be one of negotiated agreement to accommodate existing rules or development aspirations. To do so would result in a patchwork of protections or rules set at the lowest bar." The Bill proposes that bilateral agreements with States and Territories will be reliant on the States and Territories' environmental assessment, approval and management processes being consistent with the National Environmental Standards. However, a report by the Environmental Defence Office, *Devolving Extinction? The risks of handing environmental responsibilities to states & territories*,² shows that State and Territory laws, processes and policies are unable to comprehensively meet current National Environmental Standards (let alone the Standards proposed in Prof. Samuel's Final Report). Legislative and governance reform and additional resourcing for States and Territories is needed before considering the construction of bilateral agreements, none of which is addressed in the Bill.

Public Interest Exception

We are concerned that the Bill includes a "public interest exception," which would allow for the National Environmental Standards to be overridden if the minister considers it to be in the public interest. "Public interest" is not defined beyond stating that environmental considerations may need to be balanced with the social and/or economic impacts of a project. A clearer definition of "public interest" is needed to ensure that this exception is not invoked at the whim of the Minister; it must be a definition that places great priority on the protection of the environment.

Decision making under the National Environmental Standards

We are concerned that the Bill grants too much discretion to a decision maker to confirm that their actions are consistent with the National Environmental Standards. The Bill allows for a broad array of environmental promotion, protection or conservation actions made across Commonwealth, State or Territory bodies, to potentially counterbalance a decision that may contravene the National Environmental Standards. At its most extreme, this may result in the authorisation of an action that does not comply with a Standard, simply because the government may have another program elsewhere that does uphold the Standard, "offsetting" the damage. This loophole can be abused to justify actions that will harm the flora and fauna local to a specific project. We urge the government to either clarify or completely remove this exemption from the Bill, to ensure that the National Environmental Standards have genuine authority and cannot be overridden because of the application of discretion on the basis of the view that other broad environmental measures are already taking place.

² Environmental Defenders Office, *Devolving Extinction? The risks of handing environmental responsibilities to states & territories* (October 2020) <https://www.edo.org.au/wp-content/uploads/2020/10/201004-EDO-PYL-Devolving-Extinction-Report-FINAL.pdf>

National Environment Assurance Commissioner

CRA commends the Bill's provision for an independently appointed National Environment Assurance Commissioner, responding to Prof. Samuel's Final Report recommendation. However, we are concerned about the lack of power granted to the Commissioner, who would be unable to monitor, investigate or audit individual projects or decisions, limited to only assessing systems and processes that arise as a pattern across multiple projects. Similarly, by requiring the Commissioner to schedule audits according to an annual work plan, co-designed by the Federal Environment Minister, the Commissioner may not be able to undertake responsive investigation and audit of issues as they occur, nor in a timely manner. This may result in decisions or projects operating in contravention of the EPBC Act.

Furthermore, the investigative power of the Commissioner is not clearly defined within the Bill. Whilst the Commissioner is able to request relevant information from a person, it is not clear what enforcement powers the Commissioner has. Moreover, the Bill also fails to spell out any accountability the States and Territories have to the Commissioner if they have approved projects that contravene the EPBC Act. The Bill has not provided for dedicated staff for the Commissioner and, by placing the Commissioner within the Federal Department of Agriculture, Water and the Environment, the Commissioner would have to request funding from the Secretary of the Department and may not be able to truly act independently of the Department.

We therefore call for the National Environment Assurance Commissioner to be established outside of any government department, with adequate staffing and resources. The Commissioner needs to have strong regulatory powers, including the ability to investigate individual decisions and issues, as they arise, being able to hold non-compliers accountable for their actions to enforce compliance with the EPBC Act.

Conclusion

CRA strongly urges the government to address *all* of the recommendations of the Final Report, as an integrally interrelated package of reforms. All Australians have a responsibility to face up to the harm we have been inflicting on the environment, through prioritising unsustainable and unhindered economic growth over the protection of the finite goods of the earth. The second review of the EPBC Act has provided us with an opportune moment to greatly improve Australia's stewardship of the natural world, beginning with stronger National Environmental Standards, implemented urgently and intentionally to avert the greatest crisis in our time, the destruction of our home.