



5 Milner Street,
Hindmarsh SA 5007

Phone: (08) 7127 4630

Fax: (08) 82319773

Website: www.ncssa.asn.au

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Phone: +61 2 6277 3526

Fax: +61 2 6277 5818

ec.sen@aph.gov.au

Wednesday 24th March 2021

Re: Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

Dear Committee Members,

The Nature Conservation Society of South Australia (NCSSA) welcomes the opportunity to participate in this inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021*.

Since 1962, the NCSSA has been a strong advocate for the protection of native vegetation and biodiversity in South Australia, with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and the management of protected areas. Members and supporters are drawn from all parts of the State and all walks of life and include many professional biologists as well as native vegetation and wildlife management experts.

The NCSSA works directly on a number of threatened and declining species in South Australia, including the woodland birds of the Mount Lofty Ranges and plants such as orchids and grasses, which we wish to bring back from the edge of extinction. These species require strong protection in law and resources for implementing recovery actions if we are to reverse current trends.

The NCSSA wishes to remind the Committee of the continuing decline of Australia's biodiversity, which the Australian Government's own 2016 State of the Environment report described as follows:

'The outlook for Australian biodiversity is generally poor, given the current overall poor status, deteriorating trends and increasing pressures.'¹

The NCSSA is one of the 30,000 Australians who made a submission to the 10-yearly review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). We called for:

1. New Commonwealth environmental laws that truly protect and restore our natural environment, strengthen our democracy and support community involvement,

¹ <https://soe.environment.gov.au/theme/biodiversity>

2. The Commonwealth to expand the Matters of National Environmental Significance, particularly through protection for the National Reserve System,
3. The use and evaluation of tools that avoid cumulative impact and the adoption of a broader interpretation of 'biodiversity conservation' than is supported by narrowly confining considerations to 'significant impact' on current Matters of National Environmental Significance,
4. A requirement for adequate resourcing to be made available to administer the Act, including mandatory funding for threatened species and ecological community recovery,
5. Establishment of a set of national environmental accounts, and
6. Improvement of threat abatement planning and implementation.

None of these desired changes are reflected in this Bill nor the EPBC Amendment (Streamlining Environmental Approvals) Bill 2020 that is also currently before the Senate. Rather, we advocate for the Commonwealth to maintain a leadership role in environmental protection and biodiversity conservation, including by retaining the power to grant approvals under the EPBC Act.

The NCSSA notes that the final report by Professor Samuel on the Independent Review of the EPBC Act outlined 38 recommendations and three tranches of reform to overhaul the EPBC Act. Rather than present a limited version of three elements of the proposed reform (devolution, National Standards and an Assurance Commissioner), as the two Bills before the Senate do, the Government should address the final Review report in full and, following this, a comprehensive legislative package should be presented to Parliament.

The NCSSA therefore urges the Committee to recommend **the Standards and Assurance Bill not be passed**. This is specifically because:

The draft Bill and proposed standards and oversight fall well short of that recommended in the Samuel Report. Although the NCSSA supports the National Environmental Standards that are the centrepiece of this report, we propose that the Morrison Government has cherry-picked elements of the report and entirely discarded the detailed set of National Environmental Standards developed by the Independent review of the EPBC Act. We advocate that the proposed "interim standards" simply replicate existing problems in the EPBC Act and that they do not describe environmental outcomes, merely prescribe process that is inherently flawed and has allowed an ongoing declining trajectory for threatened species and ecological communities across Australia.

For example, a shortcoming of the draft standards included in this Bill is that they exclude any reference to 'cumulative impact', a consideration which features in the stronger draft standards proposed by the Independent Review. The failure to address the decline in threatened species due to the cumulative impact of many small decisions – also known as 'death by a thousand cuts' – has been an issue since the inception of the EPBC Act.

A current example of where this is relevant in South Australia is in relation to a proposal to build a rocket launching facility in protected native vegetation on the Eyre Peninsula. This vegetation is habitat for two bird species listed as 'vulnerable' – the Southern Emu-wren (Eyre Peninsula, *Stipiturus malachurus parimeda*)² and the Mallee Whipbird (*Psophodes leucogaster leucogaster*)³. These species were both once much more widespread but have suffered range reductions primarily due to habitat clearance and changes in fire regimes. The NCSSA believes that building a rocket launching facility in this area, including in an area identified as habitat for an 'important population' of Southern Emu-wren, is likely to have a 'significant impact' on these species. The NCSSA believes that any decision on this proposal should take into account

² http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=26006

³ http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=81025

the cumulative impact of both historical but also recent clearance of other habitat for these species, such as for a near-by wind farm and for a planned electricity transmission line upgrade along the Eyre Peninsula. Therefore, the relevant National Environmental Standard needs to specify that cumulative impact is to be taken into account in decision-making relating to threatened species so that the true impact of many individual decisions can be addressed, and the impact that they have on the conservation of Australia's threatened species truly reflected.

The NCSSA contends that the draft standard to 'not be inconsistent with a recovery plan' is meaningless for the 62% of species and 68% of threatened ecological communities that don't have a recovery plan (DAWE Annual Report 2020 <https://www.awe.gov.au/sites/default/files/2020-10/annual-report-2019-20-awe-oct-2020.pdf> table 34 pg. 162) and not particularly useful for those that do because recovery plans are generally not written in such a way to give advice for approving development decisions. Although a higher percentage of threatened species and ecological communities have Conservation Advice (74% and 83% respectively), the draft Bill currently only includes a requirement to take them into account rather than act consistently with them.

Any decision-making under the Act should mandate the use of best available information and include a standard for protecting critical habitat and avoiding adverse impacts to it. The current draft only includes critical habitat in the definitions and refers to the Register of Critical Habitat. In 20 years since the EPBC Act came into legislation only 5 species have had their critical habitat listed on the Register – are all on Commonwealth land and mostly on offshore islands and therefore does not accurately represent thousands of threatened species throughout Australia. <https://www.environment.gov.au/cgi-in/sprat/public/publicregisterofcriticalhabitat.pl>

Any framework for making standards will be ineffective if there are no clear requirements around the quality, consistency and comprehensive application of standards. Further, the development of national environmental standards must be done properly and prior to any further consideration of devolving decision making from the Commonwealth to the states and territories.

The NCSSA recommends that the Committee reject the Standards and Assurance Bill as currently drafted, and recommend that any legislation brought forward in future address the following points:

- The National Environmental Standards prepared in Professor Samuel's final report should form the basis of standards that are proposed and established. These must include standards for:
 - matters of national environmental significance including habitat critical to the survival of threatened species
 - Indigenous participation and engagement
 - cumulative impacts
 - compliance and enforcement
 - data and information
- Legislation should mandate the development of national environmental standards must be made for the following matters:
 - community participation
 - biodiversity offsets
 - regional planning
 - restoration and recovery

- Legislation must build in a provision for non-regression, by which environmental standards are unable to be weakened or removed except in circumstances of significant new scientific or cultural information.
- Reforms should follow an appropriate accreditation pathway, whereby National Environmental Standards are first established prior to any agreements entered into with the states and territories
- Include requirements for monitoring and reporting to ensure that decision makers are held accountable for meeting the standards and to enable the Environmental Assurance Commissioner to assess the systems performance.
- Clarify the list of considerations relevant to a determination of consistency with standards (i.e., to focus on the standards being demonstrably and directly applied, rather than broadly applied in conjunction with other environmental measures).
- Define the public interest test in law and require the Minister to publicly notify of their intention to use such legislation and provide a public statement of reasons at the same time a decision is made.
- Require reviews of standards to be conducted by independent scientific experts and require the Minister to respond publicly to reviews.

Schedule 2 of the draft Bill addresses the role of the Environmental Assurance Commissioner whose general audit functions are focused primarily on bilateral agreement implementation. As drafted the audit powers are not comprehensive and places the burden of ensuring actual compliance with, and enforcement of, national environment standards predominantly on states and territories.

It is critical that the powers of the EAC be comprehensive and that they include the power to pursue compliance for individual proposals. A 'live' example of an impact on Matters of National Environmental Significance (MNES) is the die-off of the mangroves and saltmarshes that is currently happening at St Kilda in South Australia (<https://savestkildamangroves.com/>). Hypersaline brine (very salty water) has been allowed to leak from nearby ponds that were formally used to produce salt, and the NCSSA believes this has impacted on MNES included listed threatened and migratory species and ecological communities. The State Government, primarily through the Department for Energy and Mining, is responsible for regulating this mine. It is inappropriate to have the State Government investigating itself for any potential breach of the EPBC Act, and therefore essential that there is a strong, independent 'cop on the beat' in the form of a Commonwealth Environment Assurance Commissioner.

The NCSSA contend the following are key drawbacks of the model proposed by the government:

- The EAC would have no dedicated staff and would have to request resources from the Secretary of the Department, meaning it could be subject to constraints in doing its work based on political considerations.
- The EAC would be unable to audit individual approvals and can only audit systems and processes.
- The annual plan requirements potentially prevent the EAC doing an unscheduled audit in response to non-compliance – potentially limiting its ability to be responsive and targeted.
- Compliance and enforcement are primarily to be undertaken by the states and territories under this model, however there is no compliance and enforcement standard in the governments "interim standards". This ultimately limits the ability of the EAC to ensure states and territories have effective regulatory approaches to protecting matters of national environmental significance.

The NCSSA recommends that the Committee reject the Standards and Assurance Bill as currently drafted, and recommend that any legislation brought forward in future address the following points:

- The EAC should be constituted outside of the federal Department of Agriculture, Water and the Environment as a statutory Commission, with its own staff and resources.

- ^The EAC should be able to audit both systems and projects as necessary, without limitations.
- The Minister should be compelled to table responses in parliament to audit reports of the Commission within a stipulated time.
- A compliance and enforcement standard must be in force before any accreditation of state and territory processes takes place.
- The government should establish an Independent Office of Compliance and Enforcement.

The NCCSA therefore encourages the Committee to recommend this Bill be rejected, and then to ensure adequate time, and due process, is taken to consider how the EPBC Act can be strengthened to deliver what is truly needed to rebuild and restore our unique places and wildlife.

If you would like to clarify or discuss this submission, please contact me on 0447848964 or via email at nicki.depreu@ncssa.asn.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N de Preu', written in a cursive style.

Nicki de Preu
Conservation Ecologist

Nature Conservation Society of South Australia