

18 November 2020

Committee Secretary
Senate Standing Committees on Environment and Communications
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Canberra ACT 2600
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Dear Secretary

Submission to the Environment Protection and Biodiversity Conservation Act (Streamlining Environmental Approvals) Bill 2020.

Gecko Environment Council Assoc Inc (Gecko) thanks the Committee for the opportunity to submit comments on the above Bill. Gecko is a not-for-profit environment association founded in 1989 and has been active for the past 30 years in protecting the environmental values and ecological sustainability of the Gold Coast, Queensland and, when appropriate, nationally. Gecko's Mission is

"To actively promote, conserve and restore the natural environment and improve the sustainability of the built environment of the Gold Coast region in partnership with our member groups and the wider community."

Over that time Gecko, as a leading regional environmental body, has actively participated in all consultations relating the EPBC Act, the cornerstone of Australia's environmental protection as well as to development proposals that trigger Matters of National Environmental Significance (MNES). In this instance we would like to express our strong objection to this Bill, its manner of hasty passage through Parliament and the lamentably curtailed debate that has taken place. We believe that this Bill, which has been prematurely drafted and tabled, should have been informed by the final report of the statutory independent review of the EPBC Act conducted by Prof Graeme Samuel AO. This has yet to be presented to the public, together with the government's considered response. The findings of the preliminary report clearly stated that, "The EPBC Act is ineffective. It does not enable the Commonwealth to protect and conserve environmental matters that are important for the nation." This view was backed up by the Australian National Audit Office which found that the federal government's administration of the EPBC Act was neither effective nor efficient.

No proof has been provided to demonstrate that the Bill will provide increased efficiency or a reduction of the costs of development applications

Any amendments to the Act should only occur following the conclusion of the review process that commenced last year. The review was eagerly anticipated by the environmental movement and the sudden introduction of the above Bill prior to the review's completion was both unexpected and highly disappointing. Any amendments which the government decides to apply following recommendations from the final report will undergo a process of complex drafting, tabling in Parliament, debate and public consultation. The very changes to the Act proposed under this Bill

may prove to be no longer appropriate or may require revision. Gecko considers that the Bill in its current form will, if passed ahead of any EPBC Act revisions recommended by the report, weaken national environmental protections in Australia and accelerate Australia's continuing biodiversity decline and extinction rate. Accordingly we ask that the Bill be withdrawn.

It is appropriate to highlight here the recent rapid progress of this Bill.

Passage through the Australian Parliament

It was tabled in House of Representatives on 27 August 2020 with Minister Ley offering only a very abbreviated first reading speech and explanatory notes which lack any indication of how the Bill would contribute to the protection of Matters of National Environmental Significance Interest, the primary purpose of the EPBC Act. Proper debate during the second reading was not permitted and an amendment requesting a delay in order that the national standards recommended by Prof. Samuels in his preliminary report should be drawn up and agreed to by every State and Territory prior to any further amendments to the Act was proposed but not even debated. This amendment had merit and sought to ensure national standards would be developed and to provide a greater level of protection for Australia's water resources but was not even debated. The Bill proceeded to the Senate on 6 October and rapidly progressed to committee stage, being sent to the Environment and Communications Legislation Committee on 12th November. Again, a motion was tabled calling for the Committee's reporting deadline to be extended to 3rd February 2021 noting that the extension of time would allow for consideration of the Samuel report plus fresh consideration of any issues raised through that process prior to the debate on this bill. Voting was 29-29, with the President of the senate giving the casting vote that saw the amendment refused.

The Committee decided that the close of submissions would be on 18th November, with the Report due by 27th November. This allowed a scant 4 ½ days for members of the public, scientists, environmental groups and state and territory governments to prepare submissions. Due consideration has to be given to this complex proposal which involves every state and territory government and their various planning, assessment and conservation legislative frameworks. The committee itself is subject to a very short time frame within which to evaluate those submissions, consider amendments and prepare its report.

The haste with which this Bill is being rushed through Parliament with debate being so curtailed does not instill confidence that the government is truly committed to the task of addressing the shortcomings of the EPBC Act in its current form.

Background:

We refer the Committee to the infamous "One-Stop Shop" proposal tabled in 2014 devolving approval powers to the States, that is, the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014. That piece of legislation was referred to the Senate Environment and Communications Legislation Committee on 15 May 2014 and attracted hundreds of submissions objecting to the Bill's unacceptable dereliction of the highest level of oversight on matters of national environmental significance. It is referenced at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/EPBC_Bilats_and_cost_recovery_Bills/Report/index Detailed submissions were received from many eminent individuals and groups, such as the one from the Wentworth Group of Concerned Scientists <https://wentworthgroup.org/wp-content/uploads/2014/06/WG-Senate-inquiry-into-EPBC-Bilateral-Agreement-Implementation-Bill-Final.pdf>

The submission offered by eminent barrister Chris McGrath took the form of an essay “Is One stop shop for environmental approvals a messy backward step for Australia?” in which he outlines the evolution of the EPBC Act and subsequent moves to dilute its powers through proposals for bilaterals, commencing with the proposal presented by the Business Council of Australia to the Council of Australian Governments at its inaugural Business Advisory Forum meeting in April 2012. He reached the conclusion that **“Handing approval powers to State and Territory governments in approval bilaterals would severely undermine one of the key functions and benefits of the EPBC Act in practice – to provide an appropriate level of oversight on State government-sponsored projects. This would undermine the effectiveness of the Act in achieving its objectives.**

The Bill lapsed on 17 April 2016 and the current form of the bill goes even further than the 2014 version that met with such objection. The parlous state of the environment at that time has not been improved and the Australian environment is under greater peril than ever in the face of rapidly accelerating climate change, increased severity and frequency of bushfires, drought and extreme weather events. Now is the time for more robust application of and EPBC act with teeth, not reducing oversight.

Current Bilaterals:

Part 3(2) of the EPBC Act states, among other things:(2) In order to achieve its objects, the Act:(b) strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements; and(g) promotes a partnership approach to environmental protection and biodiversity conservation through:(i) bilateral agreements with States and Territories

Currently bilaterals with limited scope exist in NSW and Queensland. Although on 24 March 2020 the NSW Government and the Australian Government finalised amendments to the NSW Bilateral Agreement under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), relating to Biodiversity Assessments and Offsets, **The Australian Government remains the decision-maker for the EPBC Act approval.**

In Queensland there is a bilateral agreement between the Commonwealth and the State of Queensland under Section 45 of the Environment Protection and Biodiversity Conservation Act 1999 relating to environmental assessment. The bilateral agreement only covers the assessment requirements of the EPBC Act assessment process. The Commonwealth Government retains its separate approval powers under Part 9 of the EPBC Act. Gecko believes this is an appropriate safeguard.

The current Bill takes the process a considerable step further down the One-Stop Shop road for approvals under the EPBC Act, handing over approval powers to all states and territories without the necessary guidance of national standards and a binding framework to regulate its operation.

Conclusion:

1. Gecko Environment Council rejects the Bill in its current form and requests that it is withdrawn.
2. The legislation does not contain any measures that will improve the outlook for Australia’s environment.
3. Further weakening of the EPBC Act will only lead to more species and ecosystems decline, increased threats to Australia’s heritage places and degradation of our water resources.
4. Without a robust and legislatively effective set of national standards there is a risk that

different state governments may apply their approval powers influenced by self-interest and political expediency.

5. The federal government, with the overall duty to protect our national environmental values and heritage and to act in support of our international obligation under various treaties should not hand these responsibilities over to states and territories. It should retain its primary oversight on matters on national environmental significance (MNES).

6.. An Independent Regulator should be set up to ensure that the application of the EPBC Act is consistent, fair and in keeping with the objectives of the Act. This essential for equity of decision-making and not left open to interpretation by the government of the day in any state or territory.

Accordingly, Gecko requests that the Government undertakes a complete re-evaluation of its One Stop Shop Policy to streamline approvals under the EPBC Act by devolving this power to the states. Before taking such a step, with such profound potential impacts on the environment, the independent statutory review of the EPBC Act, which commenced **prior** to the tabling of this Bill, should be completed. Public release of the final Samuel Report, the government's response to its recommendations and the tabling of amendments in response to that review must precede any further steps to reduce oversight by the federal government of protection of Australia's environment. There is still a great deal of public participation during this further submissions phase that needs to be soberly reflected upon.

We ask that the government to withdraws this Bill and prepares a complete reform package that will deliver an EPBC Act which halts the decline of our biodiversity and protects Australia's unique natural and cultural heritage. We thank the committee for its consideration of these comments.

Yours sincerely



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