

Environment Laws for the 21st century

STRONGER, SMARTER, SIMPLER



21 June, 2020

Dear Labor caucus,

Federal Environment Law – current review

By the end of June, Graeme Samuel is due to deliver an interim report for the statutory ten year review of Federal environment law, the Environmental Protection and Biodiversity Conservation (EPBC) Act.

As you will be aware LEAN campaigned across the party over the last few years on the importance of better environmental law. 500 sub branches of the party supported our call for “stronger, smarter, simpler” environment laws. The campaign’s core premise was that the only way to arrest environmental decline in Australia was for the Commonwealth to re-embrace environmental leadership, as was the case under the Whitlam/Fraser/Hawke governments but has been lost under the inadequate EPBC Act.

Bi-lateral approvals

The National Platform has an agreed framework for Labor’s approach to the laws. It explicitly rules out bi-lateral approvals of projects impacted by Federal environmental law:

Labor will not support handing approval powers under the Environment Protection and Biodiversity Act 1999 to state and territory governments and will terminate any arrangements that give states these powers (ALP National Platform 2018, Chapter 4, paragraph 47, p 80)

The platform also includes extensive positive principles to underpin Labor’s approach to environmental law reform. Attached are the relevant section of the Platform as well as LEAN’s full position on environmental law reform, as expressed in our one page submission to the Samuel Review.

We all agree there is room for creating a clearer, more efficient approval process which avoids unnecessary duplication. This is important as we look to a post COVID recovery.

However Labor has been very clear over many years that this is not solved by devolving Federal responsibilities to the states. The role of the Federal government in environment matters delivered the protection of the Great Barrier Reef from oil drilling, saved the Franklin River and ended sand mining on Fraser Island. Labor has defended this principle against corporate interests again and again.

What’s more, the Commonwealth has unavoidable legal responsibilities. The Law Council’s submission to the Samuel Review points out that Australia is signatory to 33 environment related international treaties and argues the Commonwealth needs to



retain the ability to lead on delivery of these obligations.

Approval bi-laterals must be off the table for the Federal Labor Party.

Federal Environment Protection Authority and mandatory environmental standards

Instead efficiencies should be delivered by better - not less rigorous - Federal led approval processes. That is why our Platform explicitly commits Labor to a Federal EPA that oversees clearer, simpler and more efficient approvals. At the same time addressing the failure of the act to arrest environment decline by tasking the EPA with working to national standards that define outcomes on key issues like arresting plastic waste and ensuring water security for the environment and communities. National standards – rather than ill-defined discretion - in turn provides clarity and business certainty to the approval process.

The current EPBC Act, which exists to protect the environment does not mandate any environmental outcomes. It is a process driven, not outcome focused piece of legislation. This is central to why it fails.

Good for business, good for the environment

In broad terms there is a pathway of win-win that Labor should be championing. More efficient approval processes, delivered by an EPA underpinned by mandatory national standards for environmental outcomes. Such standards will only aid in improving simplicity of the approval processes while also addressing the decline of our natural assets.


We all agree there is a problem

The submissions to the Samuel review all acknowledge our shared problem of a declining environment.

The Business Council writes: *“One of the greatest economic assets Australia possesses is the unique biodiversity and natural landscapes that Australia is renowned for across the world. These environmental assets need to be protected through the use of modern technology, clear points of regulatory accountability and transparent environmental standards.”*

The Property Council goes further, *“Australia needs an overarching national policy that establishes a clear vision for the protection and sustainable management of Australia’s environment to the year 2050. The commonwealth is uniquely placed to deliver such a plan in collaboration with states and territories.”*

Labor members and the community expect Labor to lead the debate as we consider reform of environmental laws. Labor’s response to the Samuel Review of the EPBC Act should reflect the position of the National Platform.



For David Tierney and Felicity Wade
LEAN National Co-conveners

PS. For more insight into the thinking that illuminated the LEAN campaign, we encourage you to read the Chifley Research Centre report, *Protecting the future: Federal leadership for Australia’s environment*. It is available at https://www.chifley.org.au/protecting_the_future.