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

By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

**Submission to the Inquiry into the Environment Protection & Biodiversity Conservation (Streamlining Environmental Approvals) Bill 2020**

The Sunshine Coast Environment Council (SCEC) is the peak environmental advocacy group for the Sunshine Coast region in Queensland

Established in 1980, we currently represent 60 community groups primarily working on conservation, sustainability and natural resource management. This group membership comprises over 15,000 individuals with an additional 5,000 people as SCEC supporters.

While the opportunity to provide comment on the *EPBC Amendment (Streamlining Environmental Approvals) Bill 2020* (**the Bill**) is welcome, it must be stressed that the Bill warrants greater scrutiny and consideration commensurate with the significance of this legislation than a 10 day inquiry can appropriately provide. That the ‘process’ to date has been extremely poor is an understatement. This flawed legislation has been rammed through parliament without any debate (nor anyone speaking to it) and is essentially a ‘carbon copy’ of the ill-conceived 2014 ‘One Stop Shop’ policy which led to the *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014* – which rightly failed to progress in the Senate..

Furthermore, it is not even informed by the Final Report from the Samuels Review with the government prematurely and inappropriately acting before this fundamental and critical piece of work was delivered. That the Bill has now been referred to this Committee at least provides the opportunity to be more judicious and have it considered in the context of the broader reforms currently being developed as part of the independent statutory review process. However, we submit that more time should be given to provide the appropriate level of consultation.

SCEC reminds for context...

- The *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020* (**the Bill**) would detrimentally amend Australia’s core environmental legislation, the EPBC Act currently in the process of undergoing its second statutory 10 year review by Professor Graeme Samuel AC.

- Professor Samuel's interim report was published on 20 July 2020 and the final report was presented to the Government on 31 October. The review received 30,000 detailed public submissions. No other environmental law reform process has attracted this amount of public interest. Professor Samuel's Interim report foreshadowed a package of integrated systemic reforms underpinned by clear recommendations. These included legally enforceable national environment standards and an independent regulator to ensure compliance with these same standards should devolution of powers be contentiously pursued.
- The Bill was introduced and passed the House against the backdrop of Australia's biodiversity in rapid and alarming decline and the State of Environment report noting "***the poor state and declining trend of Australia's biodiversity are an issue of particular concern***". The rate of number of species and ecological communities threatened with extinction is growing every year taking Australia (one of only 17 megadiverse countries on the planet) closer to ecological collapse. Instead of addressing this accelerating crisis, this Bill cements Australia's appalling track record for species conservation
- Matters of National Environmental Significance (MNES) are clearly defined responsibilities for the Commonwealth Government. That the government is seeking to abrogate these responsibilities and all but walk away from international Agreements and Conventions is unconscionable. Such a situation must not be facilitated by this Bill.

### Specific issues;

#### ***The Bill conspicuously carves out devolution from a broader package of reforms creating unacceptable risks with no safeguards***

- The Government has deliberately carved out this one element of the Samuel Interim Report to progress in isolation: that is, to devolve its responsibilities for regulating impacts on Matters of National Environmental Significance to states and territories without any of the integrated systemic reforms and robust safeguards Professor Samuel outlined in the Interim Report.
- Not only does the Bill offer no improvement to environmental protection, it entrenches existing and known limitations and inadequacies in the EPBC Act. In effect, it weakens already broken laws which will worsen an already dire state of affairs.

- The Government's depiction of the Bill as simply containing technical amendment is misleading given the magnitude of consequences.
- Devolution of the federal government's environmental protection role to the state and territory governments remains a dreadful proposition, just as it was when it was badged the 'One-Stop Shop' policy under the former Abbott Government in 2014. To go about it in a rushed, ill-considered and ad hoc manner is even more reprehensible.
- The Samuel interim report states there are interdependencies in the system that it will recommend - that any approval bilateral agreement with state and territory governments must be underpinned by robust legally enforceable National Environmental Standards, transparency and accountability frameworks and an independent federal compliance regulator.
- Of particular concern with this Bill is its failure to include any provision (or head of power) to make National Environment Standards legally enforceable. National Environmental Standards are key to whether environmental law reform succeeds or fails and this Bill should not be considered without them.
- The Bill negates necessary national oversight and protection of water resources by removing the current prohibition on the inclusion of the water trigger in bilateral approval agreements.
- A notable and somewhat telling omission from the Bill is the establishment of an independent compliance and enforcement regulator, a critical accountability mechanism, despite such an institution being proposed by Professor Samuel to oversee a devolved system. That the government rejected such a crucial recommendation amplifies the weaknesses in this Bill and the government's lack of resolve to implement critical reforms to improve environmental protections and oversight.

***The Bill will exacerbate the ecological crisis and jeopardise urgently needed***

The Interim Report identified significant overhaul of Australia's national environmental law, including: establishing new legally enforceable National Environmental Standards to underpin any streamlining measures; improved transparency and accountability of decision makers, including limited merits review; a 'quantum shift' in the data and information systems underpinning national environmental law; a rethink of biodiversity offsetting; dramatically reshaping Indigenous participation and cultural heritage protection and a 'strong independent cop on the beat' in relation to environmental compliance and enforcement.

- To compound its' rejection of an independent regulator, the Government has not committed to improving transparency or access to justice provisions.

There are no guarantees on the passage of the further tranches of reform recommended. The manner in which the government has handled this significant decadal review does not engender any confidence these key elements of the reform package will be appropriately brought on despite its suggested willingness to do so.

- Protecting Matters of National Environmental Significance requires a national perspective across state boundaries. Only the Commonwealth can provide national leadership on national environmental issues, strategic priorities and increased consistency.
- SCEC supports the development of a full suite of comprehensive, carefully considered and detailed National Environmental Standards to improve and sustain environmental outcomes. Robust National Environment Standards should follow a statutory process and be informed by comprehensive public consultation and the independent statutory scientific committees established under the Act.
- Such standards must be legally enforceable.

### ***State and territory processes do not support devolution***

- State and territory laws still do not meet national standards. Two previous audits of state laws in 2012 and 2014 concluded that no state or territory laws met the full suite of federal processes necessary to have federal powers devolved to them. An updated review in 2020 by the Environmental Defenders Office<sup>1</sup> clearly shows the same conclusion. Not only does no state or territory law meet current national standards, but in some jurisdictions, the environmental protections in state and territory laws have actually been weakened.
- State and Territory environmental laws and enforcement processes are often not up to standard, and do not consider the cross-border, cumulative impacts of state-based decisions;
  - States and Territories are not mandated to act (and do not act) in the national interest;
  - State and Territory governments often have conflicting interests – as a proponent, sponsor or beneficiary of the projects they assess; and

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<sup>1</sup> [Devolving Extinction: The risks of handing environmental responsibilities to states & territories](https://www.edo.org.au/2020/10/05/devolving-extinction-the-risks-of-handing-environmental-responsibilities-to-state-territories/)  
<https://www.edo.org.au/2020/10/05/devolving-extinction-the-risks-of-handing-environmental-responsibilities-to-state-territories/>

- State and Territory governments would need significant resourcing assistance to take over the job (and potentially the liability) of the federal government in assessing impacts to matters of national environmental significance, but no resourcing has been committed to by the federal government to take on this additional critical work.

***Rushed reforms do not serve the environment or business***

- The Government's claims 'single touch approvals' will reduce regulatory burden, promote economic activity and create certainty around environmental protections. These parroted claims are disputed.
- The Bill will in effect create an 'eight stop shop' or 'eight touch approvals' which, to compound matters, the government has refused to commit to providing any resources to states and territories to improve their systems or account for impacts on Matters of National Environmental Significance
- Weakening environmental protection will not promote economic activity and is a false economy. A sustainable economy depends on a well-protected and functional environment. It is a dangerous furphy to think and act otherwise.

SCEC reiterates its objection to the Federal government delegating their federal approval powers to the states. Such an inappropriate arrangement will likely result in negative and irreversible impacts on Australia's already fragile biodiversity and conservation status.

This Bill does not reflect the Samuel Review in which the reforms were contemplated as a package to include new National Environment Standards and crucial oversight from an independent regulator as these key elements are glaringly absent in this Bill.

Yours sincerely

Narelle McCarthy  
Liaison & Advocacy  
E: [liaison@scec.org.au](mailto:liaison@scec.org.au)