



14th August 2020

Prof Graeme Samuel
c/ EPBC Act Review Secretariat
Department of Agriculture, Water & Energy
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By Email: epbcreview@environment.gov.au

Dear Prof Samuel

[Interim Report on the Independent review of the Environment Protection and Biodiversity Conservation Act](#)

Thank you for the opportunity to respond to the Interim Report for this review.

The Australian Land Conservation Alliance (ALCA) represents a substantial collective of land restoration and conservation organisations working with landholders on privately owned and managed land across Australia. Our members are non-advocacy organisations and together represent a substantial and growing voice in Australia's land management sector.

ALCA and its member organisations are working to support some of the most pressing conservation issues across the country – including restoring endangered ecosystems, building the protected area estate, and using natural solutions to tackle climate change. We are actively developing policy around these issues and providing leadership on the development of innovative finance mechanisms for conservation. We engage with many landholders who retain and enhance habitat for matters of national environmental significance and offer advice, support and resources to these landowners.

[Key issues](#)

ALCA welcomes the Interim Report to the Review of the Environment Protection and Biodiversity Conservation Act (EPBC) Act. We echo his strong and unambiguous conclusion that our environment is in a state of crisis and that strengthening of our environmental laws is critical to rectify this. We support a number of the interim findings or recommendations, including the need for:

- an independent compliance and enforcement regulator;
- mandatory, measurable National Environmental Standards;
- simplified assessment and approval processes, subject to stringent oversight and enforcement;
- improved regional landscape planning and recovery and threat abatement, subject to adequate funding and oversight;
- best practice indigenous engagement and improved protection of cultural heritage;
- improved accountability and transparency;
- increased resourcing to enable more effective implementation and enhanced community trust; and
- a market-based nature fund.

However, we note with concern some of the Interim Report's recommendations, and/or the implications of government's response to some of the recommended reforms. In particular we note:

- increased devolution of assessment and approval powers to the states will only work in combination with an independent regulator and increased financial support for implementation, monitoring, enforcement. The recommendations were designed as a package not as individual items to be cherry-picked;
- the proposed National Environmental Standards need to be strengthened to ensure they are clear, detailed, consistent and measurable. They should not be adopted in their interim form as proposed in the Interim Report – there is far too little detail to make informed assessments based on what is presented. As with devolution, National Environmental Standards require an arms-length regulator to ensure they are properly implemented and enforced. The Final Report should include clear timelines for development and implementation of the Standards;
- the failure to support other new triggers for matters of national environmental significance, and the limiting of the water trigger, represents a narrowing of scope for the EPBC Act and is a lost opportunity for strengthening our national laws, particularly in the face of climate change. ALCA continues to call for expanded matters of national environmental significance (MNES), in particular for significant land clearing activities and greenhouse gas emissions.

Independent regulator

ALCA supports the establishment of an independent regulator that is not subject to actual or implied political direction from the Commonwealth Minister.

The Interim Report recommends a regulator whose focus will be on policing the States' and Territories' implementation of national standards and devolved arrangements. ALCA absolutely supports this proposal as a start but notes that this will shift general compliance functions and burdens to the States and Territories, with significant funding implications for state and local planning and environment agencies – many of which are already overstretched. The Final Report should address how the Commonwealth should pursue State and Territory cooperation by providing financial assistance to support implementation efforts.

ALCA is extremely concerned by the government's recent indications that it will not support this recommendation. This is despite the very critical report by the National Audit Office earlier this year that confirmed the administration of the EPBC Act is ineffective and not proportionate to environmental risk.¹ Without an independent regulator the viability of a number of other proposed amendments to the Act are undermined, as outlined below.

Conditions for devolution to the states

As stated above ALCA considers that any further devolution of assessment and approval powers to the states and territories will only work in combination with an independent compliance and enforcement regulator and adequate resourcing of the states/territories to undertake. As the Interim Report has noted, separate oversight will build public trust in the ability of the law to deliver environmental outcomes, and ensure that breaches of the law are fairly, proactively and transparently managed. Without this assurance, the devolution process is at risk of becoming (and/or being perceived as) a tool for fast-tracking developments, overlooking conflicts of interest, and further embedding environmental decline.

¹ <https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act>

A strong, well-resourced independent regulator is required in conjunction with the 5 key steps proposed by the Interim Report are critical before any devolution occurs, including that that National Environmental Standards are developed and finalised to set a benchmark for protecting the environment; that States or Territories demonstrate their systems meet those standards; that the State and Territories are adequately resourced to undertake the assessment and approvals processes; and that the Commonwealth (in some cases via an independent regulator) accredits and provides assurance oversight of the activities of State and Territory based agencies, to ensure national interest environmental outcomes are being achieved.

ALCA urges the Review Panel to make devolution of assessment and approval powers to the states conditional on an independent regulator. In the absence of a regulator, the approvals function should continue to reside with the Commonwealth. Where the state or territory government is the proponent of a development, this should be assessed by the Commonwealth regardless. This will give an appropriate level of transparency and accountability and reflect the national responsibilities of the Commonwealth for the protection of MNES.

National Environmental Standards

ALCA supports the development of granular, measurable and legally enforceable National Environmental Standards to ensure a consistent and robust application of the national law. These should be developed in consultation with stakeholders and in accordance with the steps outlined in the Interim Report.

Effective implementation of national standards will rely on adequate resourcing: resources and capabilities across States and Territories differ significantly and this can contribute to inconsistencies and inefficiencies, particularly in relation to compliance and enforcement. Once again, the Final Report should address how the Commonwealth will provide financial resources required to support the implementation of the new standards.

We note with concern that the draft National Environmental Standards provided in the Interim Report may be adopted by government without adequate consultation and before they have been strengthened to ensure they are sufficiently detailed and rigorous. ALCA strongly opposes this course. The Final Report should include clear timelines for development and implementation of the Standards, and ALCA would be very happy to provide input into this process.

Transparency

ALCA welcomes the Interim Report's call for improved data and reporting. This will be essential if approvals are to be devolved and automated. Substantial resources will be needed to support an evolved 'data supply chain', including increased new data collection and modelling, and this needs to be a strong recommendation in the final report. ALCA's members are guided by science and we caution the simplicity of a 'single source of truth' in assessments regarding potential impacts on Australia's ecological systems and process, which are inherently complex, and for which knowledge is constantly developing.

ALCA further notes that the proposed breadth of matters for which National Environmental Standards may be created, and the proposal that these be set by the Environment Minister, creates challenges in relation to transparency. We reiterate our call for transparent decision making by Ministers or other decision makers when exercising discretion, including that the reasons for those decisions are made readily available for public consideration and scrutiny.

New triggers for federal protection and climate change

ALCA is disappointed that the Interim Report has not recommended new triggers for MNES. This, and the limiting of the water trigger, represents a narrowing of scope for the EPBC Act and is a lost opportunity for strengthening our national laws, particularly in the face of climate change. ALCA continues to call for expanded MNES, in particular for significant land clearing activities and greenhouse gas emissions.

ALCA believes that a strong, well implemented environmental framework must address climate change. We welcome the recommendation in the Interim Report that climate change be a more visible consideration in the project assessment and approval process, but believe the Act should go further to ensure that impacts of climate change on biodiversity are capable of being a triggering process under the Act, in accordance with international climate goals and national commitments. The Commonwealth's failure to effectively regulate emissions via other means makes this step all the more necessary.

Australian Land Conservation Alliance