



Think Globally. Act Locally!

## Householders' Options to Protect the Environment Inc.

PO Box 6118 – Clifford Gardens, Toowoomba QLD 4350

(22 Vacy Street, Toowoomba QLD 4350)

Ph 07 4639 2135; Email: [office@hopeaustralia.org.au](mailto:office@hopeaustralia.org.au)

Website: <http://www.hopeaustralia.org.au>

ABN 48 036 173 161

Thursday, 1 October 2020

## A call for a **New** Generation of Australian Environmental Laws

A review by Maria Hernandez, HOPE researcher WA

Australia's beautiful and unique natural environment is in an unsustainable state of decline. This has been demonstrated by the Australia State of the Environment Report 2016, which had identified persistent environmental problems such as a biodiversity loss, land degradation, extensive development along coastlines and cities, and climate change impacts<sup>1</sup>. More recently, the Australia's Environment Summary Report 2019<sup>2</sup> has also reported that the national Environmental Condition Score (ECS, based on Australia's key environmental indicators) was 0,8 out of 10 in 2019; the lowest score since at least 2000. This report has also stated that, in 2019, Australia's list of threatened species included a total of 1890 species, representing a 36% increase from 2000. Furthermore, a study published by leading Australian ecologists in 2019<sup>3</sup> has found that over 7.7 million hectares of potential habitats and communities were cleared between 2000 and 2017, contributing to the wildlife extinction crisis Australia is currently facing.

Since its enactment in 2000, the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) has been subjected to two independent statutory reviews: the first review completed in 2009 by Dr Allan Hawke AC<sup>4</sup> and the second, currently being finalised by Professor Graeme Samuel AC<sup>5</sup>. Both statutory reviews concur that the EPBC Act is complex and that it should be redrafted comprehensively or replaced by a new Act (or set of related Acts). Both independent reviews also assent that the environmental impact assessment and approvals regime under the EPBC Act is inefficient and should be streamlined to reduce duplication and inconsistencies. Furthermore, the interim report of this year's EPBC Act review indicates that the Act is ineffective, and it is not fit to address current or future environmental challenges. Fundamentally, this interim report proposes a reform package involving the development of a new set of legally enforceable National Environmental Standards, the creation of an independent compliance, monitoring, and enforcement regulator, the accreditation of State and Territory assessment and approval processes ('devolution'), and the centralisation of information and data collection.

Despite that the second statutory review of the EPBC Act is still in progress and that the final report is not due until the end of October this year, the Federal Government has started to propose changes to the national environmental laws, arguing this would support Australia's economic recovery from the Covid-19 crisis without compromising the environment. Just recently, on August 27<sup>th</sup>, the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 (Cth) (EPBC Amendment Bill) was introduced to the Australian Parliament, with the purpose of facilitating devolution of approval powers to States and Territories (referred as 'single touch'

---

<sup>1</sup> The Australian Panel of Experts in Environmental Law. *Blueprint for the Next Generation of Australian Environmental Law*. August 2017.

<sup>2</sup> Australian National University. *Australia's Environment Summary Report 2019*.

<sup>3</sup> Ward MS, Simmonds JS, Reside AE, et al. *Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia*. Conservation Science and Practice. 2019. <https://doi.org/10.1111/csp2.117>

<sup>4</sup> Dr Allan Hawke AC. *Report of the Independent Review of the EPBC Act. Final Report*. October 2009.

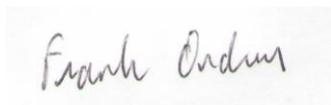
<sup>5</sup> Professor Graeme Samuel AC. *Independent Review of the EPBC Act. Interim Report*. June 2020.

environmental approvals) and improving the bilateral agreement process. However, as the EPBC Amendment Bill failed to include the creation of new National Environmental Standards and a strong independent compliance and enforcement regulator, environmental experts are concerned that it could instead weaken environmental protections. This EPBC Amendment Bill has been strongly criticised as it is almost identical to the 'one-stop-shop' legislation introduced by the Australian Government in 2014. Conservationist groups does not support this 'devolution' regime, arguing that State and Territory environmental laws and enforcement process do not meet federal standards; States and Territories may have conflict of interest in approving projects which are of financial benefit to them, and States and Territories would need additional funding to be able to take over this job. Some even claim that the 'single touch' regime may create a more complicated system rather than simplifying it<sup>6</sup>.

A similar approach has been taken by the Places You Love (PYL) Alliance, a network of leading environmental non-government organisations across Australia. In response to similar concerns about the complexity and ineffectiveness of the Australian environmental law system, PYL convened the Australian Panel of Experts in Environmental Law (APEEL), calling for a major overhaul of national environmental laws. As a result, APPEL released the blueprint for the next generation of Australian environmental law<sup>7</sup> in 2017, including 57 recommendations. With this reform proposal, APPEL was seeking to ensure a healthy and resilient environment for future generations.

Additionally, several Australian National Audit Office (ANAO) performance audits have been conducted to examine the operation of the EPBC Act since it came into action in 2000. The latest ANAO performance audit report<sup>8</sup> released in June this year has indicated that the administration of referrals, assessments and approvals under the EPBC Act is neither effective nor efficient. Likewise, according to this report, previous ANAO performance audits conducted in 2003, 2007, 2014, 2016, and 2017 have also reported deficiencies in compliance monitoring and enforcement arrangements.

Australian environmental laws should enable protection, conservation, management, and restoration of Australia's natural and cultural heritage in an effective and efficient manner. However, as clearly identified by the multiple audits and independent reviews conducted on the EPBC Act since its commencement in 2000, the Australian Government's central piece of environmental legislation is failing to deliver. A fundamental reform in the way the Australian environmental laws are written, applied, and enforced is necessary to stop this environmental crisis and work towards the protection and recovery of Australia's precious environment without compromising its economy.



Frank Ondrus, President – HOPE Inc., ph. 07 4639 2135  
*Written by Maria Hernandez, HOPE researcher WA*

---

<sup>6</sup> Environmental Defenders Office. *EPBC Act reform: Are we about to fast track our way to weaker environmental standards and protections?*. 7 Aug 2020.

<sup>7</sup> The Australian Panel of Experts in Environmental Law. *Blueprint for the Next Generation of Australian Environmental Law*. August 2017.

<sup>8</sup> Auditor-General Report No.47 2019–20. *Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999*. June 2020.