

DEA's response to the Interim Report of the Independent Review of the EPBC Act

Australia is currently undergoing a ten-year legislated review of its primary environmental law, the *Environmental Conservation and Biodiversity Protection Act 1999* (EPBC Act). This presents a critical opportunity to address the dire and rapidly declining state of Australia's natural environment and the flow on implications of this for human health.

DEA, along with numerous other health and environment groups, have called for a complete overhaul of the law to ensure that it affords our wildlife and natural places the protection they need and deserve. In contrast, commentary from the Federal Government has suggested that its primary focus is to find ways to cut purported 'green tape' to allow for hastier approvals for major projects.

On Monday July 20, the interim report of the EPBC Act review was released by Professor Graeme Samuel, the chair of the review panel. This included some positive proposals, but on the whole failed to present a reform agenda commensurate with the environmental crisis we face. In fact, some of the report's recommendations have the potential a lead to a lowering of environmental protections at a time when entire ecosystems are on the brink of collapse.

DEA will be providing a response to the interim report. Our comments will centre around the following points.

Positive aspects of the Interim report

1. The report gives due recognition to the scale of challenges facing Australia's natural environment and biodiversity. It also recognises the abject failure of the EPBC Act to fulfil its objective of protecting Australia's environment and the need for major reform.
2. It proposes the development of National Environmental Standards as the centrepiece for reform. These would be 'precise, quantitative' measures that would clearly delineate the environmental outcomes the EPBC Act seeks to achieve. If appropriately set, they could play a key role in improving environmental protection. Being binding and enforceable, they would also form the foundation for effective regulation.
3. The report calls for a strong and independent regulator to address a key reason the EPBC Act has been so ineffective – namely, the near complete failure of the Federal Government to implement it. By operating at arm's-length from government, an independent regulator would remove the influence of politics from environmental decision-making. It would also ensure accountability and transparency and improve public trust.

It is a major concern that the Federal Government has already ruled out supporting this recommendation. Without a clear mechanism to ensure that the Act is complied with and enforced, there will be no gain from any reform, no matter how positive. DEA called for an independent regulator in its submission to the EPBC Act review, and will continue to push for this.

4. It recommends commencing a national engagement process for modernising the protection of indigenous cultural heritage and better incorporating the extraordinary expertise of Indigenous Australians into biodiversity and environmental management.

Worrying aspects of the Interim report

1. The Interim Report fails to pay any consideration to the fundamental dependence of human health on environmental health. Indeed, human health receives ***only one mention*** in the 117-page report. This is a major omission and missed opportunity.

As outlined in DEA's submission to the Review Panel, recognising the indispensable value of biodiversity and intact ecosystems to human health lays the foundation for laws capable of truly protecting our environment. Without this recognition, commensurate action is far less likely to be taken.

2. The Report supports devolving environmental responsibilities to States and Territories on the grounds this would remove duplications and inefficiencies in assessments and approvals. ***This recommendation is deeply concerning.*** Time and time again, State and Territory Governments have demonstrated their failure to act in the national interest in managing the environment. As an example, Regional Forest Agreements have allowed logging to occur at the expense of critical habitat and threatened species all over Australia for decades. Charging state logging bodies with the responsibility for identifying threatened species in forests that will earn them money when logged is like putting the fox in charge of the henhouse. This approach has seen iconic species like the Leadbeater's possum and Greater Glider pushed to the brink of extinction in Victoria.

Even more concerning, because the handing over of powers closely aligns with the Federal Government's agenda of fast-tracking approvals, it has voiced its intention to progress legislation to facilitate this ***as early as next month***. This is prior to development of the proposed National Environmental Standards, and without any plan in place to improve regulation. Given the lower bar set for environmental protection at the state and territory level compared with nationally, this would effectively fast-track environmental destruction and extinctions.

While efficiency of process is important, this ***must not*** occur at the expense of environmental protection.

3. The Interim Report does not support expanding the list of Matters of National Environmental Significance (MNES), which are matters of such importance to the

national interest that any action that might negatively impact them requires assessment by and approval from the Federal Government. Most importantly, it fails to support a 'greenhouse gas trigger' (a level of greenhouse gases generated by a project that would trigger the requirement for federal assessment under the EPBC Act) on the grounds that Australia's emissions would be better dealt with via other mechanisms and laws. However, Australia currently has no legislative or other framework in place for addressing climate change at the federal level. **DEA continues to strongly contend that climate change, one of the biggest threats to our environment, must be clearly and explicitly dealt with by the EPBC Act.**

The report also recommends against a 'land clearing trigger', despite the devastating impact ongoing broad scale land clearing by the States is having on Australia's species and the contribution it makes to our emissions. It also suggests narrowing the Federal Government's responsibilities in relation to our water resources despite the increasing issues with water that we face. Once again, the rationale given is that these issues would be better regulated by other regimens. DEA reiterates that these matters **are not** effectively regulated elsewhere, and hence must be addressed through the EPBC Act.

4. Despite making note of the stark inadequacy of listing processes and recovery planning for threatened species and ecological communities, the report provides no clear recommendations on ways to improve on these. If Australia is to have any hope of bringing species back from the brink and avoiding escalating extinctions, reforms must directly target threatened species conservation.
5. The Interim Report does not recommend the setting of binding national standards for air or noise pollution despite the risks these pose to environmental and human health. Currently, responsibility for both forms of pollution lies with the States and Territories, leading to inadequate standards and inconsistent and generally ineffective monitoring and regulation across jurisdictions. DEA argued in its submission to the review panel, and will continue to argue, that air and noise pollution must be brought under the aegis of federal environmental law.

DEA's submission to the EPBC Act review can be found [here](#), while an open letter DEA wrote to the Federal Environment Minister can be found [here](#). Individuals wishing to make a comment on the Interim report can do so via [the Review website](#).