

Dear Committee Secretary and Members of the Committee,

**RE: Environment Protection and Biodiversity Conservation Amendment
(Standards and Assurance) Bill 2021**

Thank you for this opportunity to make a submission to the Senate Environment and Communications Legislation Committee Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021 (hereafter “the Bill”).

I am a Lecturer and Australian Research Council DECRA Fellow based at the University of New South Wales, Canberra¹. I have specific expertise in the design,

heritage that Australian communities hold dear. The time I dedicated to this work far exceeded what my University nominally provides for its academic employees to contribute “in kind” to policy and community engagement, and certainly came at a cost to my core work (research) performance. As an early career academic in a fixed term role, against a backdrop of thousands of my peers losing their jobs due to the impacts of COVID-19 on the University sector, this was a significant risk for me to take. I tell this story not in a misguided attempt to evoke sympathy, but rather as context to explain the depth of my disappointment, concern and frustration in the content of the present Bill.

The Bill simply “cherry picks”⁴ just two components of Professor Samuel’s “highly interconnected suite of recommendations”, seemingly to fit the Government’s pre-existing agenda to “slash green tape”⁵. I am shocked by the Government’s apparent blatant disregard for Professor Samuel’s comprehensive recommendations following a 12-month, taxpayer funded review process, for the investment of time and energy by the dozens of stakeholders consulted during the Review, and for the thousands of Australians who engaged with the Review in good faith.

The Bill contains two Schedules: one to enable the development of National Environmental Standards; and the other to establish the position of the Environmental Assurance Commissioner. I will address each in turn.

(1)

The Bill also provides the Minister with full discretion make a decision that is inconsistent with a national environmental standard if ~~the Minister is satisfied that the~~ *decision or thing is in the public interest*⁸. "Public interest" is not defined. T

is not defined

- II. Legislative complexity, duplication, and lack of clarity:
- III. Strategic coordination and leadership from Government

This Bill addresses none of these things, nor any of the other broader issues that go beyond the referrals, assessments and approvals Parts of the EPBC Act.

The Government has also ruled out any provision of resourcing to the States and Territories to carry out these new approval responsibilities, **I emphatically disagree with the Government’s assertion that bilateral approval agreements will result in no increase in the regulatory burden of the State and Territory regulators**¹⁵. The most likely outcome is that the workload will increase, there will be continued pressure on staff to push actions and projects through the system, and more and more issues will slip through the cracks. An Environment Assurance Commissioner can only “audit” what’s present in the system, not what hasn’t been captured.

So on paper, it might appear that assessments and approvals have been “streamlined” if projects are getting through the system quicker, but this masks the environmental impacts that are not being dealt with adequately at each state of the process¹⁶. **The most likely effect of this Bill**, if passed, and of any bilateral agreements entered into on the back of this Bill – which will likely take years – **is that risks to environmental and Heritage matters under the Act will simply build and worsen**.

This is a truly remarkable proposition in light of the recent destruction 46,000-year-old piece of Indigenous heritage at Juukan Gorge, and the most recent scientific evidence pointing to broadscale ecosystem collapse in Australia ¹⁷ **These risks will remain unmitigated, and likely worsen under this Bill**.

Fast-tracking a collection of 15 major projects to go through EPBC Act assessment and approval processes does nothing to resolve the often-legitimate concerns from small and medium sized enterprises, including agricultural producers, about regulatory burden and complexity.

Recommendations

In conclusion, I suggest that the following should occur:

1. The Federal Government should respond to the full suite of 38 Recommendations presented to it by the Independent Review of the EPBC Act, and communicate how it intends to advance its planned reforms to the Act beyond the “first phase”,

¹⁵ Exchange between Senator Green, Mr James Tregurtha (First Assistant Secretary Environment Protection Reform Taskforce) and Mr Dean Knudson (Deputy Secretary, Major Environment Reforms Group, Environment and Heritage Group) in Senate Estimates, Environment and Communications Legislative Committee 22nd March 2021, pp 72-75

¹⁶ The ANAO (2020) found: “*Departmental documentation does not demonstrate that conditions of approval are aligned with risk to the environment. Of the approvals examined, 79 per cent contained conditions that were non-compliant with procedural guidance or contained clerical or administrative errors*”

