



**HUMANE SOCIETY
INTERNATIONAL**
AUSTRALIA



**Environmental
Defenders Office**

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

By email to: ec.sen@aph.gov.au

26 May 2021

Dear Mr Palethorpe

Re: Senate inquiry on the *Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021* – Supplementary submission

Since giving evidence to the Committee on 4th May 2021, Humane Society International and the Environmental Defenders Office have reviewed the latest version of the national environment standards that were tabled by the Department of Agriculture, Water and the Environment on the 30th April¹. We provide this supplementary submission as organisations that have engaged in the development of the national environmental standards that were proposed by the EPBC Act Review, and as individuals that represented our organisations on Professor Samuel's Consultative Group providing detailed advice on those proposed standards.

In our previous submissions we refer to an earlier version of the Government standards which were provided to HSI and Places You Love Alliance by the Minister's office at the beginning of February. Our submissions were based on our detailed consideration of these standards, however since this point the Government has released another version of the standards as published by the Committee, hereafter the 'latest version'¹.

It is our organisation's view that **the latest version of the standards have further weakened possible environmental outcomes** as we seek to outline below.

The earlier version of the Government's standards contained a line in the National Standards section of the overarching MNES standard which stated:

*Environment assessment and **approval** decisions relevant to MNES:
9) Will not have unacceptable or unsustainable impacts on MNES.*

In the definitions, 'unsustainable and unacceptable impacts' are defined in relation to existing clauses of the Act which give guidance on what constitutes such impacts (s59).

In the latest version this has been weakened so that, as noted on pages 1 – 2 of the National Standards section of latest version, this standard has been further restricted so that it now

¹Available
at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Protectionandbiocon/Additional_Documents

only applies to 'arrangements and processes' and not to approval decisions on individual projects:

Arrangements and processes:

11) Will not have unacceptable or unsustainable impacts on MNES.

Alarming, it seems to signal that unsustainable and unacceptable impacts can be approved for project level decisions. Indeed, the changes to the standards in the latest version seem generally to be about applying different standards to different decisions – and not having them all apply to project level decisions.

We believe that this change may have been made with reference to section 46 of the Act that provides accreditation of *management arrangements* or *authorisation processes*, and the latest standard holds **arrangements** and **processes** as its focus. However, s46(3)(c) states:

(c) actions approved in accordance with the management arrangement or authorisation process will not have unacceptable or unsustainable impacts on a matter protected by a provision of Part 3 in relation to which the agreement makes a declaration under subsection (1).

So **s46(3)(c) of the Act does explicitly refer to actions approved and therefore applies the unacceptable/unsustainable test to individual action approvals in this context.** It is therefore our view that the latest standard is inconsistent with the Act in this respect and should at least say "actions approved in accordance with...". Applying the threshold test only at the level of the accredited arrangement or process blunts and therefore weakens the application of the proposed standard.

This will perpetuate the existing failures of the Act. It will create uncertainty and inconsistency. It will fail to address the cumulative impacts of individual decisions. Professor Samuel explicitly warned against taking this approach and cherry-picking certain reforms for the purpose of devolving approval powers.

In the view of both our organisations, it is essential that robust standards apply at the project level to take into account impacts on MNES at all levels. Without this, decision making under the EPBC Act will continue failing to achieve desired environmental outcomes and will not reverse the trajectories of environmental decline.

This further weakening of the latest national environmental standards exposes the fact that the reforms proposed in the EPBC Amendment (Standards and Assurance) Bill and the EPBC Amendment (Streamlining Environmental Approvals) Bill will weaken rather than strengthen environmental outcomes. The standards as proposed by the Government, and therefore the associated legislation, cannot be supported.

Yours sincerely

Nicola Beynon
Head of Campaigns
Humane Society International Australia

Rachel Walmsley
Head of Policy & Law Reform
Environmental Defenders Office