



## **Submission to the Senate Environment and Communication Legislation Committee Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021**

### **About ACF**

ACF is Australia's national environmental organisation. We represent a community of more than 700,000 people committed to achieving a healthy environment for all Australians. For more than 50 years, ACF has been a strong advocate for Australia's forests, rivers, people, and wildlife. ACF is proudly independent, non-partisan, and funded by donations from our community.

### **Overview**

#### **ACF does not support the passage of the *Standards and Assurance Bill* as currently drafted.**

When coupled with: the government's weak *Interim Environment Standards*; the *Streamlining Environmental Approvals Bill*; the broad discretion that will be afforded to jurisdictions to make decisions under accredited arrangements; the significant loopholes proposed in the standards framework; and the operational constraints on the proposed Environmental Assurance Commissioner, the reforms represent a significant weakening of environmental protections in Australia and a wind-back of national leadership on environmental matters.

Australia is one of 17 mega-biodiverse countries on the planet. Yet, we lead the world on the extinction of mammals and are ranked 2nd for the overall loss of biodiversity.

In his comprehensive independent review of the EPBC Act, Professor Samuel notes that:

*"Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat. They are not sufficiently resilient to withstand current, emerging or future threats, including climate change."*<sup>1</sup>

The independent review put forward 38 inter-connected recommendations to overhaul our system of national environmental laws. So far, the government has not released any comprehensive response to these recommendations. Professor Samuel warned against the exact scenario we now find ourselves in, where the government cherry picks elements of the reform, stating:

*"Governments should avoid the temptation to cherry pick from a highly interconnected suite of recommendations. Business, industry and non-government stakeholders, who have actively and constructively engaged in this Review, must continue their pursuit of common ground."*<sup>2</sup>

#### **ACF strongly encourages the Australian Government to release a comprehensive response to the 38 recommendations of the independent review of the EPBC Act.**

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<sup>1</sup> Pii Samuel, G 2020, Independent Review of the EPBC Act – Final Report, Department of Agriculture, Water and the Environment, Canberra, October. CC BY 4.0.

<sup>2</sup> Piii Ibid

There remains a genuine opportunity to deliver reforms that improve the efficiency of decision-making while addressing the deteriorating state of Australia's environmental assets. Strong environmental standards and robust conservation and regional planning frameworks are central to this. The reforms put forward do not address either of these key challenges.

**The most concerning element of the Australian Government's approach is the complete abandonment of the set of National Environmental Standards contained in the final report of the independent review.** These were developed based on consultations with industry, environmental, Indigenous, and scientific stakeholders. While far from perfect, they represent an essential step forward for delivering improved environmental outcomes across Australia. The government's proposed *Interim Environmental Standards* simply entrench the systemic problems of the EPBC Act.

More than 30,000 Australians and organisations contributed to the independent review of the EPBC Act. The vast majority of these people called for stronger and more effective laws to protect our incredible natural and cultural heritage. Without concerted action, our wildlife and ecosystems will continue on their precipitous decline. **Deteriorating environmental health and a lack of community support for reform will have significant and long-term impacts on the public faith in Australia's environmental regulatory framework and the durability of any reforms.**

### Australia's declining biodiversity

Australia, like the world, is in the grips of a climate and extinction crisis. Key environmental indicators continually demonstrate that the condition of Australia's environment is poor and continues to worsen.

Species are disappearing at 1,000-10,000 times the natural rate.<sup>3</sup> As one of the few mega-biodiverse developed nations in the world, our title as a global leader on extinction and biodiversity loss is shameful. Since 2000 Australia's list of nationally threatened species and ecological communities has increased by more than 30%, from 1,483 to 1,986. Australia now ranks second globally for overall biodiversity loss.<sup>4</sup>

Australia has been identified as a global deforestation hotspot, the only developed nation to make the list.<sup>5</sup> Since the EPBC Act came into force, it has been estimated that 7.7 million hectares of threatened species habitat has been destroyed, the vast majority of that unregulated.<sup>6</sup> Australia has experienced three contemporary Animal extinctions, all occurring since 2009.<sup>7</sup>

When the Act was established in 2000, the koala was thought to be common. However, habitat loss meant the species was listed vulnerable in 2012, and since then, rates of loss have only increased. Biodiversity offsets for the species have fundamentally failed to stem its decline.

The key drivers of species loss are well known including: habitat clearing and fragmentation, invasive species and inappropriate fire regimes, as well as disease, pollution, and over-exploitation. Climate change represents one of the most pervasive threats to biodiversity. Creating longer, hotter fire seasons, causing ocean warming and acidification, and triggering heat waves that can potentially wipe out entire populations of species.

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<sup>3</sup> De Vos, J. M., Joppa, L. N., Gittleman, J. L., Stephens, P. R. and Pimm, S. L. (2015), Estimating the normal background rate of species extinction. *Conservation Biology*, 29: 452-462. doi:10.1111/cobi.12380

<sup>4</sup> Australia among the world's worst on biodiversity conservation  
<https://theconversation.com/australia-among-the-worlds-worst-on-biodiversity-conservation-86685> November 3, 2017

<sup>5</sup> Pacheco, P., Mo, K., Dudley, N., Shapiro, A., Aguilar-Amuchastegui, N., Ling, P.Y., Anderson, C. and Marx, A. 2021. Deforestation fronts: Drivers and responses in a changing world. WWF, Gland, Switzerland

<sup>6</sup> Ward, M.S., Simmonds, J.S., Reside, A.E., Watson, J.E.M., Rhodes, J.R., Possingham, H.P., Trezise, J., Fletcher, R., File, L., Taylor, M., 2019. Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia. *Conservation Science and Practice*

<sup>7</sup> Woinarski, J. C., Garnett, S. T., Legge, S. M. and Lindenmayer, D. B. (2017), The contribution of policy, law, management, research, and advocacy failings to the recent extinctions of three Australian vertebrate species. *Conservation Biology*, 31: 13- 23. doi:10.1111/cobi.12852

The 2019/20 bushfires across Australia highlighted the devastating dual impacts of climate change and biodiversity loss. The fires burned through 24 million hectares and killed an estimated 3 billion native animals. The fires focussed Australia's attention on our environment. Alongside the loss of property, life, wildlife and ecosystems, the fires brought to the front of mind the need to protect the air we breathe and conserve the places we love.

It is within this context that our central piece of national environmental law must be evaluated and reformed. As a large developed nation with no shared borders and sole jurisdiction across its territory, the Australian Government is in a unique position to create a new legislative framework that builds on its capacity to set direction and bring its significant resources to the challenges ahead.

A new national environmental law framework must be built on national leadership and a focus on delivering strong environmental outcomes. It must ensure there is broad scope and reach of Commonwealth interests. That decisions are made based on the best available science, and that impacts are assessed by an independent regulator free from the political interference of vested interests.

It must contain clear duties on decision-makers, put a greater focus on bioregional planning, and contain clear and measurable outcomes that the Commonwealth and the states must achieve. In some cases, it should also include prescriptions or processes for achieving those outcomes, where doing so would provide certainty for outcome delivery.

It must focus on the institutional and governance arrangements to independently assess information and coordinate across jurisdictions and develop robust information and data systems to understand trends in our environment better. It must put community interests at the centre of decision-making and ensure a high level of transparency and accountability for how decisions are made. This will need to be accompanied by adequate safeguards that empower communities to hold decision makers to account.

It is within this context that the current *Standards and Assurance Bill* should be assessed.

### **National Environmental Standards** (Schedule 1)

The Standards and Assurance Bill introduces a framework for National Environmental Standards. National Environmental standards are the centrepiece of the reforms recommended by Professor Samuel. New environmental standards that clearly articulate the outcomes that environmental decision making should achieve are critical.

There are now multiple versions of national environmental standards that have been developed:

- *National Environmental Standards*, developed as part of the independent review of the EPBC Act; and
- *Interim Environmental Standards*, developed by the Australian Government following receipt of the final report of the independent review

While in principle, the legislation could be a step in the right direction, the loopholes built into the legislation, coupled with the government's proposed *Interim Environmental Standards*, mean that in practice, it will represent a weakening of environmental protections.

### **National Environmental Standards developed by the independent review**

As the independent review states:

- *The Standards should focus on outcomes for matters of national environmental significance and on the fundamental processes for sound decision-making. Standards should prescribe that all activities contribute to national environmental outcomes.*
- *Decisions should be made in a way that is consistent with the Standards. The rare exception being where the Commonwealth overtly exercises discretion, demonstrably and transparently justified in the public interest.*

- *The full suite of National Environmental Standards recommended should be implemented immediately. The Standards developed in detail by the Review should be accepted in full, and other necessary Standards should be developed and implemented without delay.*
- *All the Standards are necessary to improve decision-making by the Commonwealth and to provide confidence that any agreements to accredit States and Territories will contribute to national environmental outcomes not just streamline development approvals.”<sup>8</sup>*

The process through which the National Environmental Standards were developed in the Independent Review involved significant consultation with stakeholders. ACF attended a number of stakeholder roundtables as part of Professor Samuel's Consultation Group to discuss the development of standards. The Consultation Group was made of a broad membership across industry, academic, environmental, and First Nations representatives.

The final National Environmental Standards released in the independent review included:

- an overarching Matter of National Environmental Significance Standard, which included specific provisions for monitoring and reporting.
- Specific matter-specific standards that outlined environmental outcomes to be sought through regulation and other policy instruments
- Specific standards on:
  - o Indigenous engagement and consultation
  - o Data and Information
  - o Compliance and enforcement

ACF's view is that while National Environment Standards in the independent review are far from what's needed to address Australia's biodiversity crisis, they are a starting point representing an improvement on the status quo. The standards have been designed to sit within the existing legal framework of the EPBC Act, as the independent review notes:

*The recommended National Environmental Standards for MNES developed by the Review are an immediate step that can be taken. They clarify the existing settings of the EPBC Act to define clear limits of acceptable impacts while allowing flexibility for development. They represent an improvement on the status quo where opaque rules and unfettered discretion in decision-making can result in poor environmental outcomes. Progress towards stabilising the current rate of decline of MNES can be made if the recommended Standards for MNES are accepted in full and immediately implemented.*

*The recommended National Environmental Standards for MNES cannot deliver the level of protection required to alter the current trajectory of environmental decline. They are constrained by the current requirements of the EPBC Act. The Act needs to change so that Standards can be set in a way that enables the environment and our iconic places to be protected, maintained and actively enhanced. This is necessary to ensure ecologically sustainable development (ESD). ESD, including the sustainable management of heritage, means that development to meet today's needs is undertaken in a way that ensures the environment, natural resources and heritage are maintained for the benefit of future generations.<sup>9</sup>*

### **The Commonwealth Government's "Interim Environmental Standards"**

Despite the development of a detailed set of National Environmental Standards, the Australian Government has elected to develop its own set of *Interim Environmental Standards*. In contrast to the approach taken by the independent review, the government developed its version of the standards behind closed doors. The government's *Interim Environmental Standards* are presented to look similar to the standards developed by Professor Samuel but are significantly

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<sup>8</sup> pviii Samuel, G 2020, Independent Review of the EPBC Act – Final Report, Department of Agriculture, Water and the Environment, Canberra, October. CC BY 4.0.

<sup>9</sup> p3 Ibid

different in almost every other aspect. The Government did not consult with environmental organisations or First Nations representatives to develop its *Interim Environmental Standards*. Nor did the Government consult with the States and Territories on its proposed standards. The *Interim Environmental Standards* have not been publicly released by the Government, however, have been provided to selected stakeholders and are only publicly available through media websites.

The justification for the development of the *Interim Environmental Standards* that has been provided to stakeholders and the Senate is that they represent the intent of the National Cabinet. This is despite the fact that, to the best of our knowledge, the *Interim Environmental Standards* have not been provided to, or endorsed by, the National Cabinet.

### An example of poor regulatory design

The Governments *Interim Environmental Standards* merely replicate existing provisions of the EPBC Act, this was confirmed in evidence provided at recent estimates hearings.<sup>10</sup> In practise, this means that an instrument under the EPBC Act will simply be repeating existing clauses almost word-for-word (See table 1 below for an example). This is poor regulatory design makes an already verbose piece of law even more complex. It is a messy backward step in terms of simplification of assessment processes.

**Table 1: Example of standards replicating existing legislation**

Extract from Interim Environmental Standards	Text in EPBC Act
<p><b>Proposed Migratory species standard</b></p> <p>1) Are not inconsistent with Australia's obligations under whichever of the following conventions or agreements the migratory species is listed:</p> <p>a) the Bonn Convention b) CAMBA c) JAMBA, or d) an international agreement approved under the EPBC Act.</p>	<p><b>Section 140</b></p> <p>.... the Minister must not act inconsistently with Australia's obligations under whichever of the following conventions and agreements because of which the species is listed:</p> <p>(a) the Bonn Convention; (b) CAMBA; (c) JAMBA; (d) an international agreement approved under subsection 209(4).</p>

### The Government's "Interim Environmental Standards" further entrench EPBC Act weaknesses

The EPBC Act has fundamentally failed to address the decline in Australia's biodiversity. This is a fact that has been acknowledged by the independent review and borne out in the ongoing deterioration of Australia's wildlife and ecosystems. In effect it is legislation geared toward decision-making processes without clear articulation of the environmental outcome's decision makers should deliver. This is highlighted by the independent review:

*The EPBC Act is not clear on what environmental outcomes it seeks to achieve for matters of national environmental significance (MNES). The objects of the Act are written broadly, which is appropriate for national legislation. The Act lacks effective mechanisms to describe or measure the environmental outcomes it is seeking to achieve and to ensure decisions are made in a way that contributes to these outcomes.*

*The current arrangements and decision-making requirements for MNES are opaque and buried within hundreds of statutory documents. These arrangements fail to integrate the goals of key plans (such as recovery plans and other management documents) with approval decisions. The Act lacks clear rules for protecting MNES and enables considerable discretion in decision-making.*

<sup>11</sup>

<sup>10</sup> p57 Proof Committee Hansard Senate Environment And Communications Legislation Committee Estimates (Public) Monday, 22 March 2021

<sup>11</sup> p43 Samuel, G 2020, Independent Review of the EPBC Act – Final Report, Department of Agriculture, Water and the Environment, Canberra, October. CC BY 4.0.

The National Environmental Standards that have been proposed in the independent review have been designed to address this deficiency. The independent review is clear that there are benefits across community, environment and business sectors for outcome based standards.

*National Environmental Standards should set clear requirements for those that interact with the EPBC Act and clear bounds for decision-makers. Standards should prescribe how activities at all scales, including actions, decisions, plans and policies contribute to outcomes for the environment....*

*National Environmental Standards should be concise, specific and focused on the requisite outcomes, with compliance focused on attaining the outcomes....*

*National Environmental Standards for MNES developed by the Review clearly prescribe the outcomes in managing the environment. This is important to help the community know what they can expect from the EPBC Act. It is important for business – who seek clear and consistent rules – and it is important for decision-makers and regulators because it gives clarity on the outcomes their decisions need to support.<sup>12</sup>*

Rather than providing bounds on decision making and highlighting the key outcomes that environmental assessments should work toward, the *Interim Environmental Standards* provide for significant discretion for sub-national decision makers. Ambiguous standards that provide limited guidance on environmental outcomes will not improve environmental indicators. They will also not provide for investment certainty. Ambiguous and poorly defined legislative frameworks and standards will inevitably lead to greater contestation and lack of trust in the overall regulatory system.

There are significant differences between the approach taken by the independent review and the government in standard development. The contrast between the two versions is stark. Table 2 (below) contains a comparison of the proposed standard for Threatened species and ecological communities.

Whilst the independent review includes clear guidance for decision-makers, such as avoiding specific types of species, habitat types or ecological communities, and directives for no-net reductions, the government standards simply repeat existing provisions of the EPBC Act. The government's *Interim Environment Standards* provide significant discretion to State and Territory decision makers.

One of the key mechanisms that will actually bind decision making under the government's standards are recovery plans (decisions are not allowed to be inconsistent with a recovery plan). However, recent evidence given at Senate estimates highlights that the government is contemplating reducing the number of species covered by recovery plans - from more than 900 species currently to around 200.<sup>13</sup> Recovery plans have a key role to play in shaping how decisions are made under the EPBC Act. Whilst conservation advices are more flexible instruments, they do not have the same legal force as recovery plans.<sup>14</sup> Reducing the number of recovery plans, as foreshadowed at estimates will significantly weaken environmental protections in the context of the *Standards and Assurance Bill*.

Clear environmental standards that outline the bounds of decision making and ensure transparency have the potential to improve environmental health, ensure community buy-in and provide greater certainty for project investment decisions. Outcomes oriented standards will ensure the community understands how regulation is working to protect the environment

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<sup>12</sup> p2 Ibid

<sup>13</sup> p30 Proof Committee Hansard Senate Environment And Communications Legislation Committee Estimates (Public) Monday, 22 March 2021

<sup>14</sup> Recovery planning Restoring life to our threatened species

[https://d3n8a8pro7vnm.cloudfront.net/auscon/pages/1011/attachments/original/1466846598/Recovery\\_Planning\\_Report.pdf](https://d3n8a8pro7vnm.cloudfront.net/auscon/pages/1011/attachments/original/1466846598/Recovery_Planning_Report.pdf)



in the public interest and provide meaningful metrics against which regulatory performance can be measured.

**Table 2 Comparison of criteria within Threatened Species Standard**

<b>Independent Review Proposed National Environment Standard for Threatened Species and Ecological Communities</b>	<b>Government’s Interim Environment Standard for Threatened Species and Ecological Communities</b>
<ul style="list-style-type: none"> <li>● Not inconsistent with relevant recovery plans and threat abatement plans</li> <li>● Using best available information and data to ascertain areas of habitat (including habitat critical survival), important populations</li> <li>● Employ all reasonable measures to avoid and then to mitigate impacts</li> <li>● Support the rights of Indigenous Australians to practice customary activities</li> <li>● taking into account both individual and cumulative impacts</li> <li>● Avoid adverse impacts to the extent or quality of habitat critical to the survival of the species,</li> <li>● Avoid adverse impacts that are likely to result in the loss of individuals or populations of highly restricted and small and declining species</li> <li>● Ensure no net reduction in the population of a listed critically endangered or endangered species or important population of a vulnerable species.</li> <li>● Avoid adverse impacts to the extent or quality of areas of highly restricted and sensitive ecological communities</li> <li>● Ensure no net reduction in the extent or condition of a listed endangered or critically endangered ecological community.</li> <li>● Developing and implementing management arrangements that address cumulative impacts and key threats and support the recovery of listed threatened species and ecological communities.</li> </ul>	<ul style="list-style-type: none"> <li>● Are not inconsistent with Australia’s obligations under international agreements.</li> <li>● Promote the survival and/or enhance the conservation status of threatened species and ecological communities</li> <li>● Have regard to conservation advices</li> <li>● Not inconsistent with relevant recovery plans and threat abatement plans</li> </ul>

In making its own *Interim Environmental Standards* the government has also removed entire standards put forward by the independent review. These include the entire removal of standards for Indigenous engagement and participation in decision-making, Compliance and Enforcement and Data and Information. The intended outcomes for these standards are set out in Table 3 below. The Government has yet to justify why it has abandoned these standards as part of its approach.

ACF is of the firm view that the standards in Table 3 are essential. Additionally, a full suite of National Environmental Standards should be developed that include standards on:

- community participation
- biodiversity offsets
- regional planning
- restoration and recovery

**Table 3: Deleted National Environmental Standards in the Australian Government's proposed *Interim Environmental Standard***

<i>Proposed Standard</i>	<i>Outcome sought through standard</i>
<b>Indigenous engagement and participation in decision-making</b>	Indigenous Australians are empowered to be engaged and participate in decision-making, and their views and knowledge are respectfully and transparently considered in the legislative and policy processes that support the protection and management of the environment under the EPBC Act.
<b>Compliance and Enforcement</b>	The EPBC Act requirements, and those under accredited arrangements, are complied with and enforced so that matters covered by the EPBC Act are protected. Decisions demonstrate integrity, consistency and transparency to foster public trust in compliance and enforcement activities.
<b>Data and Information</b>	Decisions made in the operation and evaluation of the EPBC Act are informed by the best available evidence. That the current and future condition and trends of matters protected by the EPBC Act and related pressures, threats, impacts and restoration outcomes, are understood and accessible to interested parties.

### **Flaws and loopholes in the design of the legislation**

In addition to the concern that ACF has with the Government's weak *Interim Environmental Standards* there are significant flaws in the design of Schedule 1 of the Bill. These include:

- Section 65C(3) ensures that the weak *Interim Environmental Standards* prepared by the Government will not be disallowable by the Parliament. In effect the legislation will lock-in these standards. There is no sunset provision for these standards. In practise, it will mean that there is potential for the *Interim Environmental Standards* to be in place permanently.
- There is no provision for public comment or stakeholder consultation on the development of National Environmental Standards. Reforms should ensure that these are made based on open and transparent consultation across communities and sectors
- The framework for review of the standards built into the legislation (Section 65C) is weak and does not compel the Minister to update the standards. The current bill includes no provision for:
  - a. Ensuring an independent review of standards be undertaken.
  - b. Providing for public and stakeholder comment on the review or development of standards.
  - c. Timeframes for the conduct of the review or tabling the review to Parliament (rather the Minister must only publish a review on the website at their discretion).
- The Bill provides a broad based "public interest" exemption (Section 65H (7 - 9)), without a definition of what constitutes "public interest", or specify any constraints or limits on application.



- Section 65H (2) provides significant discretion for decision makers in relation to considering whether standards are being met or not. For example, a decision maker will be able to factor in existing government programs or plans when making decisions on whether a mine or development meets a particular standard. A worst-case example would be where a government decision maker authorises a mine that does not comply with a standard for protecting threatened species but justifies this on the basis that the government has a taxpayer funded conservation program for that species elsewhere. Even more concerning is the provision for the consideration of policies of other jurisdictions in making such a determination (Section 65H 2a - c). Theoretically a Commonwealth Minister could use a state-based program to justify that a particular standard is being met. In essence this section would enable private entities to internalise any financial benefits, whilst externalising environmental and social harms (that in turn would be met by the taxpayers).

These loopholes must be addressed if environmental standards are to drive improved environmental and heritage outcomes across the country.

### **Environmental Assurance Commissioner** (Schedule 2)

ACF supports the independent oversight and audit of environmental decision making. The creation of a National Environmental Assurance Commissioner (EAC) is potentially a step in the right direction. Provision for the EAC to be independently appointed by the Governor General is welcome. However, the strength and independence of the position is undermined by significant weaknesses in the legislation, including:

- The EAC is provided with no dedicated staff or resources. The bill's Explanatory Memoranda outlines the expected operating budget over four years to be only \$9 million. This is a small amount for the operation of a Commission that sits across all environmental assessments and approvals under the EPBC Act. In addition, funding is not guaranteed. The EAC will need to request resources from the Secretary of the Department, meaning it could be subject to constraints in doing its work based on political considerations (Section 501T).
- The EAC would be unable to audit individual approvals and can only audit systems and processes (subsection 501C 3) . This is highly problematic from an audit and assurance perspective. The limitation of the EAC to investigate individual projects will seriously inhibit its capacity to understand how any accredited arrangement is working. The EAC will instead be reliant on reports by jurisdictions as to their conduct in implementing National Standards at the project level.
- Compliance and enforcement is primarily to be undertaken by the states and territories under this model. However (as noted above) there is no compliance and enforcement standard in the government's *Interim Environmental Standards*. This ultimately limits the ability of the EAC to ensure states and territories have effective regulatory approaches to protecting matters of national environmental significance.
- The EAC will also be empowered to delegate its responsibilities to staff inside the Federal Environmental Department, creating potential conflicts of interest, especially those that are directly involved in administering standards or any bilateral agreements.
- The annual plan requirements (Section 501W) potentially prevent the EAC from doing unscheduled audits in response to non-compliance – limiting its ability to be responsive and targeted.

These significant flaws in the legislative design are primarily a symptom of the government's desire to cherry pick elements from the independent review, rather than release a comprehensive response to the review and its interconnected set of recommendations.

## Recommendations

1. **ACF does not support the passage of the Standards and Assurance Bill as currently drafted.** When coupled with the government's weak *Interim Environmental Standards*, the *Streamlining Environmental Approvals Bill*, the broad discretion that will be afforded to jurisdictions to make decisions under accredited arrangements, the significant loopholes in the standards framework, and the operational constraints on the proposed Environmental Assurance Commissioner, the reforms represent a significant weakening of environmental protections and the wind back of national leadership on environmental matters in Australia
2. **The government must respond to the full suite of 38 recommendations put forward in the independent review** to provide the Australian community and the Senate with a clear indication of how it intends to act on these interconnected set of reforms.
3. **The Senate should not pass legislation that will entrench the Government's proposed *Interim Environmental Standards*.** Instead, the National Environmental Standards contained in the independent review's final report should form the basis of reforms, including standards on:
  - a. Indigenous community engagement and participation,
  - b. Compliance and enforcement and
  - c. Data and information.Any accreditation of State and Territory systems should not occur without these standards in place.
4. **Additional National Environmental Standards should be developed** for:
  - a. community participation
  - b. biodiversity offsets
  - c. regional planning
  - d. restoration and recovery
5. **Legislation should explicitly set out a transparent and consultative process for the development of National Environmental Standards**, including:
  - a. Expert committees should be tasked with developing a draft set of national standards, building on committee structures (such as the ESD committee recommended by the independent review) or existing statutory committees.
  - b. The legislative process for standard development should include:
    - i. a statutory period for standard development and consultation
    - ii. a statutory timeframe for the provision of a recommended standard to the Minister with advice on the content, nature, duration and operation of the standards
    - iii. Once received the Minister must either:
      1. Enact the standard as a legislative instrument under the legislation; or
      2. Elect not to enact a standard, and provide reasons for doing so; or
      3. Request the committee to re-evaluate the standard for a specified period to account for new information.

6. **The legislation should ensure that reviews of standards must be conducted by independent reviewers**, seek public comment and require the Minister to respond publicly to reviews.
7. **Loopholes in the legislation must be closed, including:**
  - a. **Removing or amending subsection 65H(2) of the bill** to ensure that general government policies or programs are not able to be used to justify private development activities or private entities meeting a relevant standard.
  - b. **Defining the proposed Public Interest Test in law** and require the Minister to publicly notify of their intention to use such legislation and provide a public statement of reasons at the same time a decision is made.
8. **The proposed National Environmental Assurance Commissioner should be truly independent and sit within a well-resourced Commission** outside of the Department. The Commission should operate without any constraints on its work, including powers and responsibilities to undertake unscheduled audits of both assessment and approval systems and individual projects.
9. **ACF is supportive of the principle recommended in the independent review to assign statutorily defined powers for Commonwealth compliance and enforcement** that are both independent of political decision making and transparent in their operation. Our view is these should be housed in a genuinely independent body such as a Commonwealth Environment Protection Agency along with Commonwealth approval oversight powers.