



18 November 2020

Committee Secretary

Senate Standing Committees on
Environment and Communications

PO Box 6100

Parliament House

Canberra ACT 2600

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

Submission to the Senate Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020.

Dear Committee,

BirdLife Australia welcomes the opportunity to participate in this Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 (the Bill).

We are deeply disappointed that a chance for substantial, durable package of reform to address Australia's biodiversity crisis may be missed.

BirdLife Australia is an independent non-partisan grassroots charity with over 200,000 supporters throughout Australia. Our primary objective is to conserve and protect Australia's native birds and their habitat. Our organisation is the national partner of BirdLife International, the world's largest conservation partnership.

BirdLife Australia has played a major role in the conservation and monitoring of Australia's bird life throughout our almost 120-year history. We have invested in long-term threatened bird conservation programs, often in partnership with other organisations and communities, bringing together research, education, on-ground remediation, advocacy and campaigning. The organisation relies on thousands of volunteers and citizen scientists who play a key role in delivering our bird conservation programs.

Our core programs adopt a long-term, multi-species and landscape scale approach to conservation for Coastal Birds, Woodland Birds, Mallee Birds and others. Our Key Biodiversity Areas program does the same for sites of recognised global importance for birds and biodiversity more broadly. Our Preventing Extinctions program focuses on threatened birds that are most likely to become extinct and require leadership from BirdLife Australia.

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BirdLife Australia submits that the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), the primary national law tasked with protecting Australian birds and the environment has not succeeded in meeting its objective and must be reformed. However, we hold serious concerns that the amendments proposed under the Bill will lock in the current limitations and inadequacies in the EPBC Act and could lead to further declines in environmental outcomes and extinctions.

Firstly, the process is breaking faith with the community. BirdLife Australia submits that the process by which the Bill has been developed and introduced into Parliament undermines the statutory review of the EPBC Act which has been undertaken but is yet to formally report. The purpose of the statutory review was to examine operation of the Act and recommend any necessary changes. More than 30,000 Australians provided a submission to the Review of the Act. The interim report of the Review described in detail the overwhelming concern and value Australians hold for their natural environment as well as how current laws are failing to prevent environmental destruction. The interim report made a number of recommendations for reform that would operate in tandem, including the redrafting of a new Act (or even Acts), legally enforceable national standards, a new independent regulator, improved participation by local communities and First Nations People in decision making, better access to justice and improved data, transparency and information mechanisms.

The federal Environment Minister received the final report of the independent review of the Act on October 30, 2020. However, the final report and recommendations are yet to be made public or provided to MPs. The review has not been used to inform this legislation, which was introduced to the House of Representatives nearly two months prior to the completion of the formal review, at a time when consultation on a number of proposed elements was still being conducted. In fact, this legislation is a near identical copy of legislation that was first proposed in 2014 but failed to pass.

Introducing this bill prior to the release of the final Report and in isolation of the other elements that are required to actually deliver environmental protection (see further below) not only undermines the statutory process of the review, it makes a mockery of the Indigenous, scientific, economic, environmental and legal expert advice that has been contributed, and the many thousands of Australians who also took part.

The quick turnaround of this inquiry indicates the possibility that this legislation will be rushed through Parliament before the end of the year, and without the full and proper scrutiny required to ensure it will function correctly and deliver the environmental protections Australia's nature needs. Not only will this continue or even hasten biodiversity decline, it is extremely unclear how the legislation will function in relation to state regimes and future flagged amendments.



In relation to the content of the Bill itself, BirdLife holds a number of significant concerns.

First, the Bill proposes greater devolution in decision-making to the states and territories through accredited bilateral agreements despite previous audits of state laws (2012, 2014, 2020¹) that concluded that no state or territory environmental laws meet current national standards. State and Territories are not mandated to act in the national interest and their environmental laws do not consider the cumulative impacts of decisions made in other jurisdictions. The lack of Commonwealth oversight will specifically have implications for threatened species whose range cover multiple jurisdictions and where recovery actions and management plans in one jurisdiction may be undermined by destructive practices in another. This is already evident for the Critically Endangered Swift Parrot. Regional Forest Agreements exempt forestry activities from assessment under the EPBC Act in accordance with the bilateral agreements with States. This agreement removes national oversight, which has allowed the Swift Parrot to decline, to the point it is now critically endangered. While a mainland State Government could take steps to conserve and restore Swift Parrot habitat in their jurisdiction, these actions would result in limited, if any, conservation outcomes if the Tasmanian Government continues to log critical nesting habitat. BirdLife Australia holds that matters of national environmental significance (MNES) must be protected at the national level and that the Commonwealth Government retains its responsibility for these matters.

Second, the Bill fails to deliver strong, legally enforceable National Environmental Standards (Standards), a key recommendation of the Interim Report of the Independent Review of the EPBC Act and announced by the Government as part of a reform package. Standards should be granular and measurable, providing flexibility for development, and should be informed by public consultation and independent statutory scientific committees. Enforceable Standards, codified in law to ensure they are applied, should be the foundation of any national environmental law reform and this Bill must not be considered without them.

Third, the Bill does not establish an independent compliance and enforcement regulator, another recommendation from the Independent Review. Compliance with the EPBC Act has historically been poorly monitored and enforced. The Critically Endangered Grey Range Thick-billed Grasswren only occurs in a limited range in remote western New South Wales, largely within areas open for mineral exploration. Small mineral exploration operators are unlikely to self-refer their actions, that may impact Grasswren habitat, under the EPBC Act and without an independent national regulator are unlikely to face any compliance or enforcement actions. BirdLife Australia is concerned that if the Bill is passed without the establishment of an

¹ Environmental Defenders Office and the Places You Love Alliance (2020). *Devolving Extinction? The risks of handing environmental responsibilities to states and territories.* <https://www.edo.org.au/wp-content/uploads/2020/10/201004-EDO-PYL-Devolving-Extinction-Report-FINAL.pdf>



independent regulator, destructive actions like mineral exploration actions will continue with limited oversight from either the Commonwealth or State governments and further push endangered species to the brink of extinction.

Finally, the Bill fails to address two key inadequacies of the EPBC Act, the poor coordination of environmental data to measure both impact of projects and outcomes of species recovery efforts, and the failure to protect critical habitat and implement recovery efforts for threatened species. BirdLife Australia would like to impress on the Committee the importance of National Recovery Plans and monitoring in ensuring a coordinated and science driven approach to preventing species extinction and recovering our most threatened species. We need transparent, publicly available national environmental accounts with accurate threatened species data as a critical first step to improving the performance of any regulatory system reform.

BirdLife Australia encourages the Senate Standing Committee on Environment to reject the Bill and urge the Government to develop a new bill that must include strong National Environmental Standards and an Independent Regulator.

BirdLife Australia has a unique perspective on the reforms required for effective legislation to protect Australia's threatened species and would welcome the opportunity to present this perspective as a witness during the upcoming public hearing.

Should you have any questions or require more information please contact Erin Farley, BirdLife Australia Campaigns Manager.

Yours sincerely,

Paul Sullivan
Chief Executive Officer
BirdLife Australia

Attachments:

BirdLife Australia's Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999.

BirdLife Australia's Submission to the Environment and Communications References Committee for inquiry on Australia's faunal extinction crisis.

2019 additional to: BirdLife Australia's Submission to the Environment and Communications References Committee for inquiry on Australia's faunal extinction crisis.