



Australian Parents for Climate Action Submission to the Senate Environment and Communications Legislation Committee re: EPBC (Standards and Assurance) Bill 2021 25 March 2021

Australian Parents for Climate Action
c/o Environmental Leadership Australia
Level 2, 69 Reservoir Street
Surry Hills NSW 2010

Email: info@ap4ca.org

Australian Parents for Climate Action (AP4CA) represents over 14,000 parents, grandparents and carers from across Australia. We are Australia's leading organisation for parents advocating for a safe climate. Our supporters are from across the political spectrum, across Australian electorates, and from different socio-economic positions. We seek non-partisan responses to climate change and its impacts.

We are focused on pushing Australian governments and businesses to take urgent action to cut Australia's carbon emissions to net zero as quickly as possible. We encourage Australia to take a leadership role on the world stage, leading by example and calling for other nations to take the necessary action to protect our children's futures.

For more information, visit www.ap4ca.org

This submission was drafted by supporters of Australian Parents for Climate Action and approved by Suzie Brown, National Director.

Submission

The Environment Protection and Biodiversity Conservation (Standards and Assurance) Bill 2021 seeks to update the EPBC Act 1999, which is the law responsible for protecting Australia's natural ecosystems as society and the economy grows. Australian parents, including the 14,000 supporters of Australian Parents for Climate Action, rely on the EPBC Act to ensure that our children and theirs can continue to benefit from the nation's diverse wildlife and landscapes — natural features that not only have enormous economic, cultural and scientific value, but can also help mitigate the effects of climate change.¹

The Australian Government has introduced the EPBC (Standards and Assurance) Bill following a recent statutory review that found the Act ineffective and in need of fundamental reform.² However, **the new Bill is weak and fails to address key recommendations of the Government's own review.**

AP4CA calls for:

1. The urgent development and public release of strong National Environmental Standards, in line with recommendations of the 2020 Samuel Review. While we understand the Bill has been introduced as an interim “first step”³, it makes no guarantees that legislation will be adequately strengthened. Given the urgency of Australia's environmental decline and worsening climate crisis, **we can no longer afford to accept weak legislation that allows the continued destruction of our ecosystems.**
2. Greater scrutiny of “public interest” loopholes that allow the Minister for the Environment to approve certain projects that breach National Environmental Standards. Given Australia's obligation to limit global warming to a less catastrophic 1.5°C under the Paris Climate Agreement, **projects that increase Australia's net greenhouse gas (GHG) emissions can never justifiably be in the public interest.**
3. Greater powers for the Environment Assurance Commissioner (EAC) to ensure compliance and enforcement of environmental laws.
4. The government to reject the EPBC (Standards and Assurance) Bill in its current form, and look to develop a more comprehensive suite of amendments that benefits *all* stakeholders: businesses, industry, and importantly, the Australian people.

¹ Australian Government Department of the Environment and Energy (2016), '[Biodiversity: Importance of biodiversity](#)' and The Nature Conservancy (2017), '[How Nature Can Help Heal Our Planet](#)'.

² Samuel G (2020), '[Independent Review of the EPBC Act - Final Report](#)'.

³ Parliament of the Commonwealth of Australia House of Representatives (2021), '[Speech by Minister for the Environment Sussan Ley](#)' following the second reading of the EPBC Amendment (Standards and Assurance) Bill 2021, Thursday 25 February 2021.

The EPBC (Standards and Assurance) Bill must comprehensively address *all* recommendations of the Samuel Review

Climate change and extreme weather events are putting immense stress on Australia's natural ecosystems.⁴ Global average temperatures have increased by 1°C since the industrial revolution, and could be a total of 1.6°C-4.3°C higher by 2100, according to the IPCC. Extreme weather events have become more frequent and more severe.⁵ These effects exacerbate other threats to biodiversity, including the impact of human development. Now more than ever, we need strong, comprehensive environmental laws to ensure future development is ecologically sustainable.

In his 2020 Final Report into the Independent Review of the EPBC Act, Professor Graeme Samuel made a total of 38 recommendations, warning “governments should avoid the temptation to cherry pick” from the highly interconnected suite. Frustratingly, the Standards and Assurance Bill does just that. The Samuel Review recommended the introduction of nine National Environmental Standards (NES) and included in its appendices four fully drafted standards to be immediately adopted.⁶ However, the Government has not indicated whether it will adopt the recommended standards, or if it will pursue alternative, “watered down” standards that were leaked to the media in February.⁷

Environmental law experts warn that Australia's National Environmental Standards need to be “comprehensive, precise and strong” when they are first introduced, to avoid legislative inconsistencies that may otherwise condemn the nation to another 20 years of ineffective laws.⁸ A previous review of the EPBC Act in 2008 made 71 recommendations to improve it; however, while the Government agreed with the principles of the report, it chose not to implement the reform package and the situation remained largely unchanged.⁹

Biodiversity is important in the context of the climate crisis because natural ecosystems help mitigate the risks and effects of climate change. Scientists estimate that “natural climate solutions”, including conservation, restoration and improved land management actions across global forests, wetlands, grasslands and agricultural lands can provide over one-third of

⁴ The Conversation (2018), [‘Ecosystems across Australia are collapsing under climate change’](#).

⁵ Australian Academy of Science (2015), [‘Climate change and biodiversity’](#).

⁶ Samuel G (2020), [‘Appendix B - Recommended National Environmental Standards’](#) in *Independent Review of EPBC Act - Final Report*.

⁷ The Guardian (2021), [‘Morrison government flouts own review by proposing ‘watered down’ environmental standards’](#).

⁸ The Conversation (2020), [‘National cabinet just agreed to big changes to environmental law. Here’s why the process shouldn’t be rushed’](#).

⁹ King & Wood Mallesons (2019), [‘The EPBC Act Musical - time for the next part of a sequel?’](#)

cost-effective climate mitigation needed in the decade to 2030, to stabilise warming to the Paris Climate Agreement goal of below 2°C.¹⁰

Given the urgency of Australia's environmental decline and worsening climate crisis, we must have environmental laws that recognise the magnitude and gravity of the climate and biodiversity challenge and respond appropriately. **We cannot afford to accept another round of posturing and weak legislation that allows the continued destruction of our ecosystems.** If the Government truly intends to reform Australia's ineffective, inefficient EPBC Act, it must respond comprehensively and transparently to all recommendations of the Samuel Review.

The Bill must close any loopholes that allow projects that increase Australia's GHG emissions

The EPBC (Standards and Assurance) Bill includes a specific power for the Minister for the Environment to override National Environmental Standards for projects deemed to be in the "public interest". But the Bill does not stipulate what "public interest" entails. An effective, enforceable EPBC Act must clearly define the public interest test in law, to avoid the potential for abuse of the clause.

The Act should also clearly state how a project's consistency with National Environmental Standards is assessed, ensuring that all standards are demonstrably and directly applied. It should be specific and prescriptive enough to avoid any subjectivity by decision-makers.

AP4CA welcomes the Samuel Review's recommendation that the EPBC Act be amended to require all proposals "transparently disclose the full emissions profile of the development ... [and] also require that development proposals explicitly consider the effectiveness of their actions to avoid, mitigate or offset impacts on nationally protected matters under specified climate change scenarios".¹¹ **We strongly oppose the Morrison Government rejection of this recommendation on emissions reporting,** as we note that emissions data will be highly beneficial in determining each project's merit.¹² Specifically, we assert that **no project that increases Australia's net greenhouse gas (GHG) emissions can be in the nation's public interest.**

Australia's overriding obligation under the Paris Climate Agreement is to limit the increase in global temperature to "well below 2°C" above pre-industrial levels and pursue efforts to limit the

¹⁰ PNAS (2017), ['Natural climate solutions'](#).

¹¹ Samuel G (2020), [Independent Review of the EPBC Act - Final Report](#).

¹² Minister for the Environment The Hon Sussan Ley MP (2020), ['Reform for Australia's environment laws'](#). Minister Ley has indicated that the government would not support any extension of the EPBC Act to require reporting of GHG emissions.

temperature increase to 1.5°C in order to significantly reduce the risks and impacts of climate change.¹³ According to the IPCC, net anthropogenic CO₂ emissions must decline by about 45% from 2010 levels by 2030 (equivalent to about 50% off pre-Covid levels), and reach net zero around 2050, if we are to succeed.¹⁴ Even then, global warming of 1.5°C will devastate Australia, destroying a majority of our coral reefs, jeopardising the continuity of water and food supplies, and setting in motion unstoppable multi-metre sea level rise over the coming centuries, which will in time inundate our major cities and destroy billions of dollars of coastal infrastructure.¹⁵

Critically, emissions must be thought of as a cumulative “budget”, since most of the anthropogenic GHGs released into the atmosphere since the start of the industrial revolution are still there, contributing to global heating. Rather than focussing on the goal of reaching net zero emissions, we need to have strong interim targets and ensure we limit GHGs each and every year. Winning slowly on climate is still losing, as is highlighted starkly in the graphs in Figure 1.

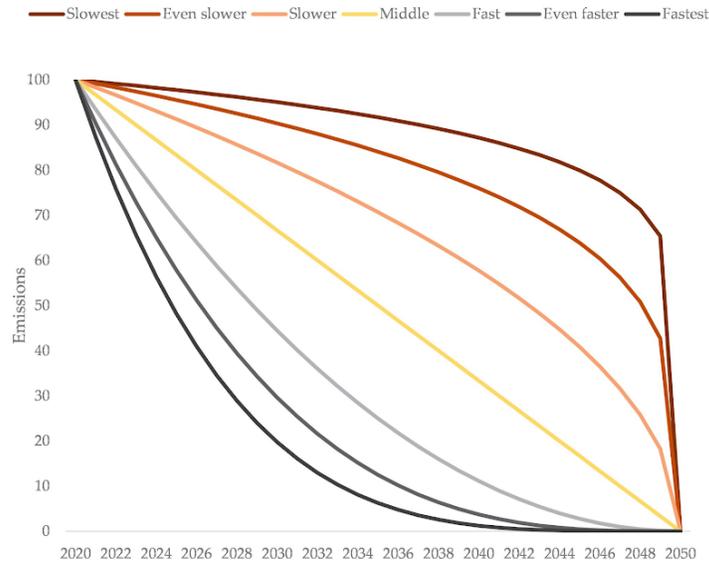
¹³ United Nations (2015), [Paris Agreement](#).

¹⁴ Intergovernmental Panel on Climate Change (2018), [Special Report: Global Warming of 1.5°C](#). IPCC modelling estimates that global net emissions must decline by 40-60% (interquartile range) and reach net zero by 2045-2055.

¹⁵ NASA (2019), [‘A Degree of Concern: Why Global Temperatures Matter’](#).

WHY DELAY DOES DAMAGE

The pathway to zero emissions by 2050 matters, because the slower pathways mean more emissions adding up over time
by @ketanj0



Going slow does four times more damage than going fast

Climate harm occurs due to cumulative emissions, as shown below. We need to stop adding to the problem ASAP

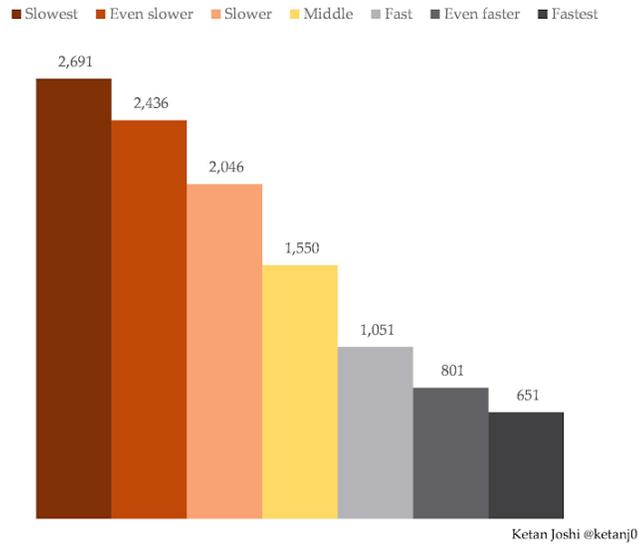


Figure 1: Rapid emissions reduction is critical now. The difference in cumulative emissions between steep cuts now and later is critical. Net zero by 2050 does not limit global temperature rise to 1.5 degrees unless there are steep cuts this decade.¹⁶

¹⁶ Joshi K. (2021), [‘Why delay does damage’](#).

Scientists have calculated an approximate emissions budget to maintain a “safe” climate that avoids triggering irreversible natural tipping points such as ice sheet failure committing multi-metre sea level rise; the total loss of coral reefs; the release of methane currently trapped in northern hemisphere permafrost; and others that collectively would condemn us to runaway climate change.¹⁷ That budget equates to, in total, about eight more years at the pre-Covid 2019 level of global greenhouse emissions. As former Australian Chief Scientist Penny Sackett and climate scientist Will Steffen have noted, Australia’s share of the budget, on a per capita basis, is currently about *two more years at current emissions levels*.¹⁸

Systemic decisions that increase GHG emissions at this point in history will in future be viewed as acts of inter-generational genocide, in direct opposition to the safe future of humanity and best interests of the Australian people.¹⁹

The Environment Assurance Commissioner must be sufficiently resourced to enforce environmental laws and stop ecocide

The EPBC Act has been criticised for weak and ineffective compliance and enforcement, and the current EPBC (Standards and Assurance) Bill risks perpetuating those weaknesses by watering down proposed reforms.

The Samuel Review called for the establishment of an independent Environment Assurance Commissioner (EAC) position to oversee the performance of decision-makers, as well as a separate Office of Compliance and Enforcement. The Bill establishes an EAC — to be housed in the Department of Agriculture, Water and the Environment and supported by dedicated resources — but hands off compliance and enforcement responsibilities to states and territories instead.²⁰

In its current form, the EPBC Act has been widely panned for weak and ineffective compliance and enforcement. An academic analysis of federal government forest and woodland maps in 2019 found that 7.7 million hectares of threatened species habitat had been cleared or destroyed in the 20 years since the Act was enacted. Only 7% of that area had been referred to the federal government under environmental laws; the remaining 93% had neither been assessed nor approved.²¹

¹⁷ Nature (2019), [‘Climate tipping points - too risky to bet against’](#).

¹⁸ Sydney Morning Herald (2019), [‘Our carbon budget is all but spent, but who in Canberra is counting?’](#)

¹⁹ The Monitor (2019), [‘The ugly truth: Climate change is generational genocide’](#).

²⁰ Parliament of the Commonwealth of Australia House of Representatives (2021), [‘Environment Protection and Biodiversity Conservation Amendment \(Standards and Assurance\) Bill 2011: Explanatory Memorandum’](#)

²¹ Conservation Science and Practice (2019), [‘Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia’](#).

According to the Samuel review: “Enforcement provisions are rarely applied and serious action rarely taken... Penalties do not appear commensurate with the harm of damaging a public good of national interest.”²² There have only been 41 recorded breaches of the EPBC Act that have been subject to compliance outcomes. Since 2010, only 22 infringements have been issued for breaches of conditions of approval granted under the EPBC Act, with total fines less than \$230,000 — that is less than the parking fines issued by some local councils each year.

To be successful in protecting Australia’s natural ecosystems, the EPBC Act needs the trust and respect of industry and the public. **Both an EAC and an Office of Compliance and Enforcement are needed with sufficient, dedicated resources to enforce environmental laws and stop ecocide.**

Conclusion

The government’s narrow response to its 2020 statutory review of the EPBC Act does little to improve public trust in Australia’s ability to address its interrelated extinction and climate crises. With the government’s own report finding that Australia’s current environmental trajectory is unsustainable, we need to look beyond current government priorities of “single touch approvals” and “cutting green tape” and enact stronger, enforceable legislation that ensures future developments are environmentally sustainable. AP4CA recommends that the government reject the EPBC (Standards and Assurance) Bill in its current form, and look to develop a more comprehensive suite of amendments that benefits *all* stakeholders: businesses, industry, and importantly, the Australian people.

²² Samuel G. (2020), '[Chapter 9 - Compliance and enforcement](#)' in *Independent Review of the EPBC Act - Final Report*.