

September 2020

## STREAMLINING THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT

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The Commonwealth Government's Bill to make streamlining improvements to the *Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)* has now passed the House of Representatives. The Bill will now go to the Senate in early October 2020.

The Bill follows the independent review of the Commonwealth's key environmental approval legislation, which found earlier this year that the EPBC Act:

- / does not position the Commonwealth to protect the environment and Australia's iconic places in the national interest;
- / is dated and inefficient in its operation; and
- / is not fit to manage current or future environmental challenges, particularly in light of climate change.

The Bill only represents the "first tranche" of reforms to the existing legislation which are linked to the independent review. Significant further changes, including the introduction of legally enforceable National Environmental Standards, are anticipated in the coming months.

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### THE CURRENT ASSESSMENT AND APPROVAL PROCESS

Environmental approvals for development and activities in Australia are largely managed at State level. However, the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* creates an additional environmental assessment and approval regime where the proposed development or activity is likely to have a significant impact on matters of national environmental significance.

The EPBC Act currently provides that these Commonwealth environmental assessments and approvals may be combined with the assessment and approval processes undertaken by the States and Territories, pursuant to arrangements set out in bilateral agreements. The two types of bilateral agreements currently provided for under the EPBC Act are:

- / "Assessment" bilateral agreements – where a State/Territory is accredited to assess the environmental impacts of a project on behalf of the Commonwealth (with the assessment findings then relied upon by the Commonwealth when determining whether to approve a project); and
- / "Approval" bilateral agreements – where a State/Territory is accredited to assess and approve (or refuse to approve) projects, such that no additional approval from the Commonwealth is required.

To date, use of these mechanisms has been limited. In South Australia, there is no "Approval" bilateral, and "Assessment" bilateral arrangements only cover a very limited range of projects. As such, for the most part, projects are assessed and approved separately by the State and the Commonwealth, resulting in duplication of effort, significant cost and delay for projects and overlapping and inconsistent conditions of approval.

### INDEPENDENT REVIEW AND INTRODUCTION OF BILL

An independent statutory review of the EPBC Act commenced in October 2019, with the release of the [124-page Interim Report](#) in July 2020 (*Samuel Review*).

Only a month or so after the Interim Report's release, the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 (Bill)* was introduced to Parliament. The Bill represents the "first tranche" of reforms to the EPBC Act which are linked to the review. On 3 September 2020, the Bill passed through the Commonwealth House of Representatives. It is expected to be considered by the Senate in early October 2020.

## STREAMLINING OF APPROVALS AND THE DEVOLUTION OF POWER TO THE STATES

Among other things (and most significantly), the Bill seeks to amend the EPBC Act to much more readily facilitate the devolution of environmental approvals to the States and Territories by way of bilateral agreements.

If the Bill is passed, these bilateral agreements will permit the States to make approval decisions that account for not only for requirements under State legislation, but also in respect of matters of national environmental significance such as nationally threatened species, wetlands of international importance, the Commonwealth marine area, World Heritage sites and nuclear actions.

The Bill also allows the Commonwealth to 'pick up' where a State or Territory has left an assessment if an assessment is only partially completed or if a bilateral agreement is suspended or cancelled, also removing any duplication of assessment processes.

## NATIONAL ENVIRONMENTAL STANDARDS? WATCH THIS SPACE

Significantly, the Bill has not addressed the introduction of a set of enforceable National Environmental Standards that was proposed in the Interim Report in conjunction with the increased use of bilateral arrangements.

In the Samuel Review's view, the introduction of legally enforceable, "granular and measurable" National Environmental Standards are fundamental to improving the efficiency, accessibility and transparency of the Australia's environmental regulatory system, particularly if the States will be carrying out the Commonwealth's review role in relation to significant projects.

The Samuel Review's final recommendations will be delivered to Government in October 2020. Further amendment Bills are expected to follow thereafter.

If you have questions regarding the Bill or the EPBC Act, please contact:



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