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# **Statutory Review of the Environmental Protection and Biodiversity and Conservation Act, 1999, Cth**

Statement on the Interim Report

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**August 2020**



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Statutory Review of the Environmental Protection and Biodiversity and Conservation Act, 1999, Cth: Statement on the Interim Report

Engineers Australia  
11 National Circuit, Barton ACT 2600  
Tel: 02 6270 6555  
Email: [publicaffairs@engineersaustralia.org.au](mailto:publicaffairs@engineersaustralia.org.au)

[www.engineersaustralia.org.au](http://www.engineersaustralia.org.au)

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# Introduction

On 20<sup>th</sup> July 2020, the Interim Report (the Report) of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999, Cwth (EPBC Act) was published online at the EPBC Act review [website](#). This statement represents the views of Engineers Australia (EA), the EA College of Environmental Engineering Board (CEEB) and Sustainable Engineering Society (SENG) regarding the Report. On 13<sup>th</sup> of August 2020 a joint response to the online survey regarding the Report was lodged on behalf of EA, CEEB and SENG, reflecting the views conveyed in this statement.

The principles of environmental stewardship and sustainability are integrated within Engineers Australia's [Code of Ethics](#) and Stage 2 competency standards which define the requirements for Chartered membership of Engineers Australia (CPEng) and registration on the National Engineering Register (NER). These principles also comprise important parts of EA's [Sustainability Policy](#) and [Climate Change Policy](#). EA's [vision](#) is to serve as the trusted voice of the engineering profession and the global home for engineering professionals renowned as leaders in shaping a sustainable world.

## Principle findings

The EPBC Act is Australia's key environment and heritage legislation intended to provide a national scheme to protect environment, protect heritage and conserve biodiversity. EA agrees with the Report that the EPBC Act is ineffective in its current form and does not enable the Commonwealth to effectively manage current or future environmental matters important to Australians.

EA also agrees with the Report that fundamental reform of national environmental law is required, and that new, legally enforceable National Environmental Standards comprise the foundation. Environmental standards should be outcomes-focused, based on the best available scientific knowledge and represent prudent application of the precautionary principle. Projects with potential to materially impact the environment should be held accountable to specific and measurable minimum environmental standards based on the best available scientific knowledge and the precautionary principle. While environmental law should be sufficiently efficient and flexible so as not to unnecessarily hinder development, appropriate checks and balances should be enforced so as to protect ecosystems that are important for the health and wellbeing of the environment as well as that of current and future generations of Australians.

Finally, EA agrees that the transparency of the Act mechanisms must be greatly enhanced to ensure saliency of material issues and the decision-making process. Decision-makers, proponents and the community should be provided access to the best available data, information and knowledge relevant and material to the decision-making process.

## Views on recommendations

The engineering profession can get behind the interim recommendations as sensible and long overdue improvements to the legislation and its administrative regime. The key initiatives include:

- setting National Environmental Standards that are clear and transparent to all parties, that would also assist efforts across state and territories to harmonise their development assessment and approval processes (preventing duplication, aiding streamlining);
- valuing and engaging Indigenous participation and knowledge in decision making (and enshrined in one of the Standards);
- improving access to the best available data, information and knowledge for decision-makers, proponents and the community via the development of a 'national source of truth' (as used within the Standards), which would, in turn, reduce the costs for businesses and governments in undertaking their EPBC obligations; and
- using an evidence-based approach to assessments driven by transparent and timely access to the best available data (again, established within the Standards), that are based on national objectives and outcomes as identified within newly developed strategic national and/or regional plans for 'big-ticket' pervasive issues and making use

of adaptive planning to ensure cumulative impacts or emerging threats are adequately identified and addressed ecosystem-wide.

This last recommendation requires a quantum shift in information and data systems, making use of system-thinking tools and processes. The engineering profession has much to contribute in this space. Building this capability comes with a significant cost, but one that must be faced to meet the governments ambition of using market-based solutions to drive environmental outcomes. Robust and trusted information underpins and enables investment.

## Areas for further consideration

The more complicated area for reform is in regulatory oversight. The Report also recommends that the Commonwealth accredit the states to do the heavy lifting for EPBC assessments and work to align jurisdictional processes with the National Environmental Standards (while retaining right of review). It is paired with a recommendation to create an independent regulator responsible for monitoring, compliance, enforcement and assurance. From a governance perspective, independence supports the devolution in decision making by providing a point of public trust. Low trust in the current framework is a primary theme of the Review.

The government has already ruled out this proposal for an independent regulator on the basis that it would add regulatory complexity. From a learned society perspective this does not make sense. An independent regulator is not the same as peer review – but it shares the same concern for critical interrogation of conclusions and setting best practice. Moreover, if the EPBC Act is viewed as ‘green tape’, then it is clear that higher quality decision making frameworks are sorely needed so that regulation functions as an enabler of outcomes rather than an impediment to action.

While EA agrees with the 3-phase reform pathway described in the Report, EA believes that it is also essential to establish an independent monitoring, compliance, enforcement and assurance regulator, not subject to actual or implied direction from the Environment Minister that has a clear mandate to enforce compliance with law.

The Interim Review explicitly rejects expanding the mandate of the Act beyond its ‘nature’ specific focus, to include for example, a climate change trigger. The reasoning is scope creep: “broadening the environmental matters dealt with by the EPBC Act would result in muddled responsibilities, leading to poor accountability, duplication and inefficiency”. EA notes that anthropogenic climate change serves as a root cause that exacerbates many aspects of environmental degradation including more extreme natural disasters and adverse ecosystem impacts. Hence, projects and developments that contribute to climate change via degradation of carbon sinks or creation of new carbon sources should be considered with respect to the materiality of their indirect impacts upon Australian environments and ecosystems.

The question left hanging by the EPBC Act Initial Review is: where are these broader environmental obligations being addressed and by whom, if not under Australia’s main national legislative mechanism for addressing environmental matters?

## Additional information required

The Report does not mention regulations, policies, processes and reforms of the national environmental legislations of other nations, some of which may serve as best-practice examples or cautionary tales that should be considered when revising the Act and its mechanisms. A review should be undertaken of the national environmental legislation of other countries to inform decisions applicable to the Australian context and the reform of the Act.

The Report also does not mention whether local experts, industry and practitioners, including EA, will be consulted in developing the framework and systems associated with the reformed Act. Many stakeholders, including developers whose projects can impact the environment, have a genuine motivation to help improve a system that supports efficient ecologically sustainable development. The experience, perspectives and ideas of these stakeholders should be harnessed with the aim of creating a system that optimises interactions with these various stakeholders and for which stakeholders have a sense of contribution and ownership.

The Act should ensure that investigations, data and information provided to decision-makers and the public is collected and presented by impartial, independent third-party experts not paid directly by development projects. The

reform should empower regulators to behave objectively in making decisions consistent with the principles of ecological sustainable development (ESD).

Finally, technology, data and automation have important roles to play in ensuring that the reformed system of environmental protection is coherent, efficient, transparent and applied in a way that does not create unnecessary burden for projects or industry.

## Next steps

Engineers have a significant role to play in shaping business and innovation in line with the principles of ecologically sustainable development. This role is made harder when public decision-making, and environmental objective-setting at a national level is ambiguous due to the current Act. Disambiguating and pointing out where engineers are not supported by the policy framework is therefore forms an important part of the sustainability commitment of Australia's engineers.

EA, CEEB and SENG look forward to reviewing the Final Report and contributing further to the reform of the Act.



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