

Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024

The Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024 (**the Bill**) seeks to limit the ability of people to request the reconsideration of a controlled action decision (concerning whether a project needs assessment or not) under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). EDO does not support the passage of the Bill, as it **unnecessarily limits the opportunity for both public participation and environmental protection**.

Reconsideration of controlled action decisions

The EPBC Act assessments and approval regime only deals with actions which will have a significant impact on a matter of national environmental significance (**MNES**), and therefore which require national oversight by the Federal Environment Minister. The decision whether or not an action will have a significant impact on MNES, and therefore whether it should be subject to national oversight, is called a **controlled action decision**.

In certain circumstances, the Minister has limited power to revoke and substitute a controlled action decision. Any person, including a community group or the proponent, may request the Minister to reconsider their decision. There is no time limit for when this request can be made.

The Bill adds a new section to limit the ability of people to request a reconsideration to within 36 months of the original decision being made. If the Bill is passed, this would mean that from the date of the original controlled action decision, it will only be possible for people to lodge a reconsideration request within three years.

The Bill is unnecessary because:

- 1. Approval decisions or activities already taken are not subject to reconsideration.** A reconsideration request for a controlled action decision cannot be made if the action in question has already been taken, or if the Minister has already granted approval. An open timeframe for people to request reconsideration does not ‘cast doubt over the certainty of every approval granted under the EPBC Act’,¹ because it cannot be used to revoke approvals granted under the EPBC Act.
- 2. Safeguards for the exercise of reconsideration are already inbuilt.** The ability of a person to request reconsideration is limited by specific legislative grounds. Reconsideration will only be warranted where there is substantial new information about the impacts the action might have on MNES, or where there is a substantial change of circumstances that was not foreseen at the time of the first decision. For example, if the habitat of a threatened species has been impacted by an unforeseen disaster, like severe bushfire or catastrophic flood. The onus is on the person

¹ The Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024, Explanatory Memorandum.

to provide this new information, and the Minister must be satisfied that the grounds have been met.

- 3. The purpose of reconsideration is to address changes in scientific understanding or circumstances and possible risks to MNES.** Limiting reconsideration to a particular timeframe runs directly counter to the purpose of the provision (which is to provide for changed circumstances or new information). How much time has elapsed since the original decision is, and should be, irrelevant – where circumstances have materially changed, or new scientific information has come to light, decisions should be re-evaluated.

Case study: impacts of the 2019-2020 bushfires on native wildlife

The bushfire season of 2019-2020 was unprecedented in terms of scale, intensity and duration in Australian bushfire history. Along with loss of life, and damage to property and infrastructure across Queensland, NSW and Victoria, the bushfires had a devastating impact on our natural environment. Significant ecosystems and landscapes were decimated, and as many as three billion native animals were impacted nationally.²

Widespread damage to ecosystems, landscapes and the significant loss of wildlife caused by the fires means that assumptions underpinning environmental assessment, decision-making and policies should be revisited to consider the impacts of the bushfires. Mechanisms in the EPBC Act which allow for this – including the reconsideration of controlled action decisions – should be retained, so that decisions, including about threatened species like the koala, can be made on the basis of up-to-date scientific information about our environment and climate.

Unprecedented and unforeseen changes in circumstances must be able to feed into environmental decision making.

- 4. Reconsideration of controlled action decisions operates as an important check and balance on state and territory environmental regimes.** Many controlled action decisions where the Minister has determined no Federal approval is necessary rely heavily on state or local regulators adequately managing impacts of the action, including impacts on nationally protected matters like World Heritage places or threatened species. The right of third parties to bring matters to the Federal Minister’s attention through a reconsideration request is a crucial check and balance on these state and local regulators.

The Bill should not proceed:

In EDO’s view, the Bill will unduly limit the ability of communities to raise legitimate concerns with the Environment Minister about past decisions and take active steps to protect the matters of national environmental significance the EPBC Act is intended to protect.

For more information:

Frances Medlock

frances.medlock@edo.org.au

² WWF-Australia, [Impacts of the Unprecedented 2019-20 Bushfires On Australian Animals](#) (November 2020).