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**in** Property Council of Australia

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**Committee Secretary**

Environment and Communications Legislation Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Dear Committee Secretary

**RE: Property Council of Australia – Submission to Inquiry on Environment Protection Reform Bill 2025 and related bills**

The Property Council of Australia welcomes the opportunity to provide a submission on proposed changes to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act or the Act) in the Environment Protection Reform Bill 2025 (the bill) and related bills (the bills).

**About us**

The Property Council of Australia is the leading advocate for Australia's largest industry – property. Our industry represents 13% of Australia's GDP, employs 1.4 million Australians and generates \$72 billion in tax revenues. Property Council members invest in, design, build and manage places that matter to Australians across all major built environment asset classes.

Our members pursue ecologically sustainable development to build Australian cities and provide the vital pipeline of housing supply needed by our growing population. They include Australia's largest greenfield residential, industrial and commercial developers. Our members regularly engage with the EPBC referral and assessment process on projects across the country. By volume, property development is the largest user of the EPBC referral system. Based on this experience, the property sector recognises the critical importance of reforming the Act to better deliver environmental outcomes and enable sustainable development.

**General Comments**

Legislative change is essential to modernise the EPBC Act. To secure the delivery of housing supply for Australians and commercial development for Australian businesses, our priorities are for a wholistic package of legislative reform and policy development to deliver:

- a clear process that enables and supports ecologically sustainable development
- upfront transparency and improved, data-led approaches that protect and restore nationally significant environmental matters
- reduced delays during the assessment and approval of referred actions
- removal of duplication across federal and state approval processes

The proposed changes set out in the bills represent an important step towards long-promised reform. While some refinements are needed to improve clarity, at a high-level the bills reflect a pathway for reform that aligns with recommendations made by Professor Samuel in the Second Independent Review of the EPBC Act 2020 (the Samuel Review). The recommendations set out in the Samuel Review offer a sensible blueprint for reform.

We welcome the opportunity to contribute to the Senate Inquiry process to help ensure proposed reforms are fit for purpose, and we acknowledge in large part these reforms seek to deliver on the comprehensive recommendations outlined in the Samuel Review and do not need to be re-litigated. All policy makers must work constructively to refine these bills and move forward on overdue reform as soon as possible.

### **Detailed Feedback**

Our detailed feedback on the bills concerns the need to:

1. Refine key definitions
2. Embed efficiency
3. Guarantee industry certainty during the transitional period
4. Progress structural changes

Our detailed feedback can be addressed by modest legislative amendments to the bill. For our sector, the development of new National Environmental Standards (NES), establishment of a Restoration Contribution Fund and the Ministerial Power to make Protection Statements are critical fixes to our broken national environmental laws. These important features of reform require additional policy work and cannot meaningfully progress until key structural changes are made to the Act.

#### **1. Refine Key Definitions**

##### **1.1. Unacceptable Impact Criteria**

The Minister must have the power to decide an action cannot be approved because it poses a clearly unacceptable risk to an MNES, when that impact cannot adequately be mitigated or compensated for. We note that there is an existing process by which the Minister can decide a controlled action is “clearly unacceptable,” at any time from the point of referral. In practice, this mechanism has been rarely used.

While we support the intention of providing proponents with a clear ‘early no’, we are concerned the proposed definitions of unacceptable impacts will introduce new complexity – particularly in the context of threatened species.

Proposed unacceptable impact criteria for listed species and ecological communities references new and untested definitions for 'irreplaceable habitat'<sup>1</sup>, 'viability'<sup>2</sup>, and 'seriously impairs'<sup>3</sup>. In principle, we agree that an action that will or is likely to seriously impact or end the continued 'viability' of a protected matter should clearly be deemed to be an unacceptable impact. Our concern with the construction of the unacceptable impact definition is that both limbs of the test lack clarity due to imprecise definitions of key terms, namely i) 'irreplaceable habitat', or ii) 'seriously impair the viability'.

In terms of 'irreplaceable habitat', we welcome the requirement that Protection Statements will list 'irreplaceable habitat' for protected matters when made. It is essential for industry to have transparent up-front information about the location of critical habitat that is considered 'irreplaceable' to help inform development decisions that avoid impacting these areas. Given 'irreplaceable habitat' will already be listed in Protection Statements, to improve certainty where there is no Protection Statement for a MNES, we recommend the definition within the unacceptable impact criteria should be strengthened by linking these areas to the critical habitat register.

**Recommendation:** Where critical habitat is also considered 'irreplaceable', this classification should appear on the public register and forms part of the definition, i.e. 'irreplaceable habitat' becomes 'registered irreplaceable habitat.' This would require minor amendments to the proposed definition:

**Section 528**

**Registered** irreplaceable habitat: is irreplaceable **habitat** for a species or ecological community if, whether biologically, physically or technically, it is impossible to reverse damage to the habitat, or impossible to restore, recreate or replace the habitat:

- a) in a relevant timeframe and location; and
- b) with the function (including the complexity and scale) necessary to support the viability of the species or community; and
- c) the relevant habitat appears on the critical habitat register.**

**INSERT**

**Registered irreplaceable habitat must be listed in the critical habitat register.**

Additional amendments would be needed to 207A to allow for the registration of irreplaceable habitat on the critical habitat register.

To improve industry certainty, the unacceptable impact criteria should limit consideration of irreplaceable habitat to registered irreplaceable habitat.

Our concern with the proposed alternative definition of an unacceptable impact being framed as an impact that would "seriously impair the viability" of a listed species or ecological community, is that it lacks clarity and is not well suited to project-level assessment.

Determining the ongoing viability of a species or ecological community requires consideration of population dynamics, threats, cumulative pressures, and habitat connectivity across a landscape.

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<sup>1</sup> Environment Protection Reform Bill 2025, p 365 (para 25-32).

<sup>2</sup> Ibid, p 370 (para 33-35).

<sup>3</sup> Ibid, p 354 (para 10-16).

These are matters best addressed at a strategic or species-level planning scale, rather than within an individual project referral and in the context of a referred action.

We agree, in principle, that actions which would seriously impair the viability of a protected matter should not be approved. However, incorporating this test directly into the assessment of referral is not appropriate. It risks introducing subjective and highly contestable judgment at the project level, where proponents and regulators may not have a clear benchmark for what constitutes “serious impairment,” for a particular protected matter.

**Recommendation:** Any viability-based thresholds be embedded within protection statements as the primary conservation planning instruments or alternatively within landscape-scale approaches, being either a strategic assessment or a Regional Plan, so that they can be defined and applied consistently.

Moving this requirement will still mean that referrals cannot be approved if action will result in an unacceptable threat to the viability of a species, and would do so with the benefit of additional contextual information relevant to a proposed action.

While we appreciate these are federal laws for the protection of listed Matters of National Environmental Significance, definitions relating to the protection of habitat for threatened and endangered species do not exist in a vacuum. All jurisdictions, except the Northern Territory, have introduced laws that explicitly reference and seek to protect ‘critical habitat,’<sup>4</sup> for protected species. We note that most species and ecological communities protected by the EPBC Act are also separately protected by state and territory laws.

One of our overarching priorities for EPBC Act reform is to resolve and avoid duplication between different levels of government. These reforms should be constructed such that state level assessment and approval processes can be appropriately accredited by the Minister in the creation of bilateral agreements.

The proposed unacceptable impact criteria are a relevant consideration in the accreditation of processes and the making of bilateral agreements. Introducing a broad definition of unacceptable impact, which considers the continued ‘viability’ of a species at the project, rather than the landscape level, could act as a barrier to the accreditation of state assessment and approval processes. While we have had limited time to consider the full package of legislative reform, we urge testing how unacceptable impact definitions interact with the existing definition of critical habitat within in state and territory environmental laws.

**Recommendation:** Unacceptable impact criteria must be drafted in such a way that state level processes are likely to be capable of accreditation in a bilateral agreement without significant disruption to state legislative settings.

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<sup>4</sup> Flora and Fauna Guarantee Act 1988 (Vic), also referenced in Biodiversity 2037 Plan; Nature Conservation Act 1992 (Qld); Nature Conservation Act 2014 (ACT); Biodiversity Conservation Act 2016(WA) Threatened Species Protection Act 1995 (Tas); the Biodiversity Act 2025 (SA); Biodiversity Conservation Act 2016 (NSW) – note ‘critical habitat’ not defined, terminology used is ‘Areas of Outstanding Biodiversity Value.’

## 1.2. Net-Gain Test

We support the inclusion of the mitigation hierarchy, which provides a clear and structured framework for avoiding, minimising, and compensating for significant residual impacts. We also agree that restoration activities should deliver a benefit to the environmental matters affected by a controlled action, ensuring that outcomes are measurable and meaningful.

### 1.2.1. *Net Gain Test – Commencement*

We understand that the requirement for the Minister to apply a net gain test is intended to be an operable provision of the law, without the need to reference relevant subordinate legislation – the National Environmental Standard for Offsets.

In terms of process, we further understand government intends to develop and implement a NES for Offsets, within the 12-month transition period, and therefore before commencement of the requirement to apply a net gain test. In other words, while legally possible for the Minister to apply a net gain test without reference to a NES for offsets and key definitions, it is not the intention of government for this to occur.

Based on the information provided during early consultation, we understand the standard will contain critically important legal definitions and methodological information that will impact how this test is to be interpreted and applied.

Introducing the net gain test, prior to determining essential information that will impact how the test will be applied, does not provide industry with the information needed to provide any meaningful input on the proposed introduction of this test. We note that the Head of Power for the Minister to make National Environmental Standards is captured separately and it appears unnecessary to include the test in the primary legislation prior to the development of the offsets NES.

Additionally, while we look forward to further constructive consultation on the development of an NES for offsets – it remains a possibility that a standard will not be made within the proposed 12-month transition period. On this basis, we are concerned there remains a high degree of uncertainty associated with the insertion of this provision.

<p><b>Recommendation:</b> All components of the net gain test should be in the Offsets Standard, which can further define the component definitions of "baseline" and "measurable improvement". Due to the additional consultation needed to inform these issues, we recommend this requirement is contained in the National Environmental Standards for Offsets. We note and consultation on the drafting of the NES should be comprehensive.</p>
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### 1.2.2. *Net Gain and Residual Impacts*

Our interpretation of the proposed changes is that a controlled action with a residual significant impact could still be approved by passing the net gain test through the application of conditions.

The definition of "residual significant impact" captures those impacts that will not be "avoided, mitigated or repaired" in the course of complying with any relevant conditions of approval.

By contrast, "passing the net gain test", which purports to deal with circumstances in which there are "residual significant impacts", can be achieved by the imposition of a condition.

Accordingly, there is a tension between the two concepts, since, theoretically:

- a condition could address the residual significant impact such that the net gain test is passed;
- but there being a residual significant impact (being one that subsists despite conditions) is a trigger for the application of the net gain test.

Further thought should be given to the drafting of the definitions to make clear how the two concepts fit together.

Additionally, we note that the NES for MNES proposes to define the concepts of "avoided, mitigated and repaired", such that the relevant conditions to be considered are not likely to include the compensatory/offsetting type conditions contemplated in the net gain test. However, there does not appear to us to be a connection between those concepts as used in the section 527H, and the definitions in the MNES Standard, which creates some uncertainty.

## 2. Embed efficiency

We support the proposed changes to introduce additional transparency requirements when the Minister or the Minister's delegate requests further information from proponents.<sup>5</sup> While this is a welcome first step, the objective of these changes should also be to improve the completeness and clarity of information requests.

It is regularly the experience of our members that multiple, disaggregated requests for additional information from department officials are received at each stage of project referral and assessment. At times, the justification for these requests is not made clear to project proponents. There are examples of information requests that reflect little understanding of the significant cost increases for environmental consultancy and legal services that each separate inquiry imposes on the proponent. Ultimately, these costs are passed on to homebuyers, further eroding housing affordability.

In line with the government's productivity agenda and welcome focus on housing affordability, the publicly reported information about requests made to proponents should be used to establish efficiency targets to consolidate information requests and reduce their frequency and associated delays to assessment and approval processes.

<p><b>Recommendation:</b> Strengthen the proposed provisions and require the NEPA to report, at least annually, to the Minister on the number of information requests alongside recommendations to improve the efficiency of information request processes.</p>
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### 2.1. Statutory timeframes and keeping assessments on track

While we acknowledge the Act does provide statutory timeframes for assessments, there are no substantive consequences if these are not met. This, overlaid with frequent interruptions to these timeframes triggered by information requests, has led to a regulatory environment characterised by inefficiencies.

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<sup>5</sup> Respectively, these changes impact ss 76, 89, and 132 of the Act.

While the intention for the streamlined assessment process is to bring timeframes down from 70 to 50 days, it is not clear from the draft legislative extracts that there is a corresponding intention to strengthen adherence to statutory timeframes and promote the efficient administration of the Act.

The most recent review of the assessment process by the ANAO in 2019 revealed an average overrun of statutory timeframes for approval decisions by 116 days in 2018–19.<sup>6</sup> While we acknowledge government efforts to address this issue since 2019, the current reform process presents an opportunity to legislate a requirement for the new EPA to request a performance audit within 2 years of its establishment.

**Recommendation:** Ensure legislation establishing the EPA and its powers include a requirement for an external review and public accountability regarding any overrun on statutory timeframes during the EPBC Act referral process.

### 3. Clear Transition

We have welcomed the Australian Government's commitment to intervene to help unlock housing developments currently under consideration in August this year. Members report that the additional departmental resourcing and targeted support to help move referrals for housing development through the assessment process efficiently is having a noticeably positive impact.

While we strongly support permanent reform to improve the underlying process to assess referrals, there will be a necessary period of transition both in the commencement of legislative amendments and the development of subordinate legislation. While there will be a transitional period of 12-months before the commencement of all legislative changes, there will also be a further 24-months where existing state bilateral agreements can be grandfathered. Given the early success of the prioritised assessment of housing referrals, these supports should remain in place at least until the end of the grandfathering period for existing bilateral agreements.

The next three years remain critical to make progress towards delivering the target for 1.2 million new well-located homes under the National Housing Accord by mid-2029. While our industry welcomes a clear pathway to lasting reform, targeted support for housing referrals must continue during this transition and for the duration of the Accord.

**Recommendation:** During the transitional period, following the passage of legislative reform, the housing sector must continue to receive targeted support to ensure referrals are managed efficiently and without disruption.

The existing taskforce for housing referrals within the department should be tasked with the assessment of new and existing referrals for housing development in the system over the duration of the National Housing Accord.

### 4. Progress structural change

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<sup>6</sup> ANAO, 2019, 'Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999', Auditor-General Report No. 47 of 2019–20.

One of the critical challenges, consistently identified by the private sector, civil society groups and legal experts is that the EPBC Act is a highly prescriptive and inflexible law. It is widely acknowledged that administering the existing laws is challenging, with detailed requirements and rigid process limiting the capacity for government to take meaningful steps that would improve administrative processes for business and ultimately deliver better environmental outcomes. Consistent with a core finding of the Samuel Review,<sup>7</sup> much needed simplification of the laws can only be achieved through substantive redrafting of the Act including new ministerial powers.

The bills present a range of structural amendments that are intended to provide the framework for the improved administration of the Act and / or provide relevant heads of powers to support the next tranche of policy development. These changes are substantively aligned with or important to the implementing recommendations in the Samuel Review. While we acknowledge there are many formulations of legislative settings that could achieve the objectives of the Samuel Review, the substance of certain structural changes are not controversial. The following are key structural changes reflective of the Samuel Review recommendations which should be supported.

#### Power to Make National Environmental Standards

National Environmental Standards (NES) are the centrepiece of the Samuel Review recommendations. We support the insertion of a new ministerial power to make NES that drive improved outcomes for business and the environment through new, legally enforceable instruments that set clear the boundaries for decision-making. The bills propose a new head of power to support the creation of NES. We also note that the first draft National Environmental Standards for i) Matters of National Environmental Significance and ii) Offsets have now been made available for consultation.

While this submission does not consider any draft NES, many of the critically important issues for our sector will be articulated in standards, rather than the primary legislation. To make meaningful progress on EPBC Act reform and ensure the standards making process can continue, the legislation must have include a head of power for the Minister to make NES.

#### Power to Make Protection Statements

We welcome the introduction of a new ministerial power to make Protection Statements. Current legislative settings have resulted in a patchwork of consideration documentation for protected matters. There has been notable inconsistency in the development and maintenance of Recovery Plans, Conservation Advices and Threat Abatement Plans.

We support the introduction of Protection Statements as the primary conservation planning document for the purpose of assessing referrals. The process to create Protection Statements outlined in the bill strikes a reasonable balance to ensure a robust and data-led approach to conservation and management, while remaining responsive to the consideration of relevant data and information from a variety of sources.

We anticipate Protection Statements could be used to alleviate gaps and outdated information within existing in conservation planning documents. We encourage government to work stakeholders to develop a shortlist of protected matters that should be a priority in the development of Protection

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<sup>7</sup> Independent Review of the EPBC Act – Interim Report, p 45.



Statements. This short list should reflect matters of national environmental significance most likely to trigger controlled actions in the EPBC referral process i.e. development corridors. This will ensure that project proponents have access to accurate and up-to-date information and supporting better outcomes for protected matters.

#### Establishment of a Restoration Contributions Holder

The proposal to establish a new Restoration Contribution Process, whereby proponents make a payment to a Restoration Contribution Holder to compensate for significant residual environmental impact has the potential drive improved efficiency and efficacy in restoration actions.

the administrative benefits are clear. An option to discharge offset obligations through a standardised payment rather than sourcing and managing individual offset sites, dramatically reduces the administrative burden on project proponents and is welcomed. This process must be supported by a transparent pricing mechanism to provide cost predictability.

Restoration Contributions should be accessible and encouraged by government to compensate for significant residual impacts – particularly in the context of priority development like housing. We note this is consistent with the proposed approach to priority development zones within regional plans. Because we expect it will be some time before regional plans are finalised, in the interim, priority developments must be supported to move through the assessment and approval process efficiently.

As noted by Professor Samuel:

“Proponents are generally not in the business of restoring and managing habitats. There are, however, expert land managers and specialist project managers who deliver these services. The right policy and legal settings would provide certainty for these parties to invest in landscapes, confident that proponents will be in the market to purchase offsets based on these investments down the track.”<sup>8</sup>

From an environmental impact point of view, a pooled investment model offers far greater potential to achieve strategic, landscape-scale outcomes. Centralised funds could be directed to larger, better-connected projects that improve biodiversity resilience and support threatened species recovery, rather than a patchwork of isolated offset sites. Managed and overseen by government, these investments would have the benefit of long-term stewardship, monitoring, and adaptive management beyond individual project timelines. A central fund would also enable alignment with national conservation priorities and climate adaptation goals, while public reporting on offset investments and ecological outcomes would enhance transparency and community confidence.

The legislation appropriately makes clear that it is open to the Minister or their delegate to freely choose to attach a condition for either a restoration contribution payment or a requirement for a proponent to provide their own offset to compensate for significant residual impact.

However, based on consultation with the department we are concerned there may be a policy, determination or subordinate legislation with the intention to limit the decision maker’s ability to attach conditions for a restoration contribution.

Any approach whereby restoration contributions conditions may only be made available as an option to a proponent as a ‘last resort’ – i.e. only after efforts to secure a proponent-led offset are exhausted –

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<sup>8</sup> Independent Review of the EPBC Act – Final Report, p 141.

would significantly undermine the potential productivity gains and economies of scale in strategically valuable restoration activities and is not aligned with the legislative intent.

**Recommendation:** While we are supportive of the legislative settings proposed in the bills to establish a Restoration Contribution Holder, it is essential that supporting policy settings and regulatory processes ensure that Restoration Contributions are an accessible option for proponents to compensate for impacts.

Policy settings and regulatory requirements must not require proponents to first attempt to source and deliver proponent-led offsets, before a decision maker is able or inclined to agree to attach a condition to make a restoration contribution

#### National Environmental Protection Agency (NEPA)

We note that the Samuel Review envisaged a clear distinction between the role of government in making policy and final approval decisions, and the role of an independent regulator in ensuring compliance and integrity in the system. Consistent with this, we are comfortable with the proposed approach to establish a National Environmental Protection Agency with delegated powers to assess and approve projects and vested compliance and enforcement powers.

It is appropriate that decision-making authority remains with the Minister and the NEPA's compliance and enforcement functions operate independently and transparently, within the framework of legislated national environmental standards.

Our members have deep experience navigating environmental assessment processes in all Australian jurisdictions. While they report there is a spectrum of quality in the proponent interface with such processes, the question as to whether an assessment is better conducted by a government department or a regulatory agency has not emerged as a material or determinative factor in the proponent experience or outcome. Administrative arrangements are most effective where there is high-performance culture, and efficient and well-resourced teams with appropriate subject matter expertise. Clear processes, unambiguous legislative instruments and suitably experienced staff members are much more important to the success or otherwise of an environmental assessment process from the perspective of a system user.

The NEPA model aligns with the substantive findings and of the Samuel Review to improve the rigour and consistency of environmental assessments, while retaining democratic accountability for decisions with significant economic and social implications. Provided assessments and approvals remain **delegated** powers to the NEPA, it is our expectation is that functionally, most assessment and approvals will be considered by NEPA staff in much the same manner that existing referrals are managed by departmental staff.

#### Power to Make Declarations

Should the Minister decide that assessments will be delegated to a NEPA, we support a level of ongoing oversight and direction by the Minister to their delegates in the exercise of assessment and approval powers.

To that end, we welcome the introduction of a new ministerial power to make declarations. We consider declarations should play a strong role in informing the administration of new legislative arrangements.

Declarations should be used to provide clear direction to a new NEPA on government expectations and policy priorities as well as clarify expectations on process.

Likewise, we welcome the new power for an NEPA CEO to make declarations on approaches to compliance and enforcement – we consider this a useful transparency measure. At a future point, following the introduction of National Environmental Standards, we anticipate Ministerial and NEPA-led declaration will be useful to support the process of accrediting state and territory with EPBC Act delegations – which ultimately will remove duplication and avoid inconsistencies where there is a bilateral agreement in place.

The Property Council looks forward to further engagement on this important issue.

Please contact Eleanor Sondergeld, National Policy Manager – Sustainability and Regulatory Affairs at  
should you wish to discuss this feedback in  
further detail.

Yours faithfully,

Matthew Kandelaars

**Group Executive, Policy & Advocacy**  
**Property Council of Australia**

