

13 November 2025

**TO: Australian Senate Environment and Communication
Legislation Committee**

RE: Environment Protection Reform Bill 2025 and related bills

Introductory Remarks

AMEC appreciates the opportunity to provide further comment on the proposed amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

AMEC considers this legislation can set the foundation for a system that delivers both the strong environmental protections Australians expect and the certainty that industry needs to invest, explore and create jobs. The reforms have the potential to offer a significant step forward on both desired outcomes compared to the status quo.

However, AMEC cautions that more scrutiny and further clarification is required around several elements of the proposed reforms to ensure that the reforms are able to strike the right balance and can lift, rather than hamper, Australian productivity.

AMEC's submission to the inquiry will constitute two forms. This submission (part 1) will focus on initial concerns raised by members from available documentation. AMEC will provide a further submission (part 2) once a further detailed analysis is able to be undertaken on the 1,400 pages of legislative documentation released by the Department of Climate Change, Energy, the Environment and Water (DCCEEW).

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing almost 600 member companies across Australia. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of Australia's mineral exploration and mining sector capital value.

General Comments

On 30 October 2025, the Australian Government introduced the Environment Protection Reform Bill 2025 [and related Bills] into Parliament. The Parliament subsequently referred the bill to the Senate's Environment and Communications Legislation Committee for inquiry. The committee was expected to report its findings by 24 March 2026, with a deadline for public submissions on 5 December 2025. AMEC, like many industry associations, framed our consultation with industry upon those timeframes.

AMEC welcomes the Government's intent to reform the EPBC Act to make it fit-for-purpose by delivering stronger protections for our environment and also simplifying and speeding up approvals processes for industry, as per the Samuels Review recommendations. AMEC welcomes the sentiment to deliver bilateral assessments and approvals which AMEC

considers to be the key lever in reducing duplication and cost, and where the majority of time savings in the legislation can be achieved.

AMEC further welcomes the intent of the government to rule out a climate trigger in the EPBC Act, as per the Samuels Review recommendations. A key purpose of the reforms is to streamline red tape and remove duplication therefore the reforms should avoid duplicating the Commonwealth's existing framework for regulating emissions (the Safeguard Mechanism).

AMEC commends the Commonwealth Environment Minister, Senator the Hon Murray Watt, for his consultation to date, and his willingness to engage with AMEC on the reforms.

However, this Senate hearing comes a mere 15 days following reading into the House of Representatives. This narrow window makes it challenging to comment on the extensive documentation, legislative frameworks and explanatory memoranda that have been published to date. Due to the immense complexity of the legislative framework there are still several considerable components yet to be published. This leaves several important questions unanswered, some of which are fundamental to the investment attractiveness of Australia, and which touch upon sensitive topics such as land use and decision making.

AMEC's position is that with some further refinement to the legislation that has been made available for review to date, the EPBC Act reforms have the potential to enable better protection of the environment while also supporting industry and business to achieve the outcomes that will grow our sector and help drive investment into Australia. After two independent reviews spanning over a decade, these EPBC Act reforms could finally lead to a significant improvement in productivity leaving our environment, economy and general prosperity of Australia better-off. Given the brevity of the process, for the purposes of the Senate Inquiry, AMEC's submission will be provided in two parts. Part 1 below prioritises initial concerns from our members.

1. Unacceptable impacts criteria

As per the legislation, projects with unacceptable impacts on Matters of National Environmental Significance (MNES) will not be capable of approval under the EPBC Act. Unacceptable impacts will not be able to be compensated for through offsets and will need to be avoided or mitigated below the unacceptable criteria before a project can be considered for approval.

Concern: On the face of it, this is a logical, fair and reasonable position. However, AMEC considers there are limitations with this position – caused by a significant lack of reliable environmental data particularly for remote and regional parts of Australia where many resources projects are located.

Of particular concern is the ambiguity of including habitat "necessary" for "foraging, breeding, roosting or dispersal" in the definition. This risks rendering any habitat that an animal (in the category) may use as "critical" with a reasonable concern being the subjectivity of what a future approvals officer will deem as "necessary." It is unclear to industry how assessing officers in government will consider these factors, and how extensive they will be in terms of land area, when determining unacceptability. For example, for the Ghost Bat and Pilbara Leaf

Nose Bat, this current definition would include nearly the entire Pilbara region, which accounts for over 3% of Australia's GDP.

AMEC considers that the new legal tests regarding unacceptable impacts detailed in s 527F pose a significant risk for project development largely due to the fact there is limited environmental data available to help deliver a fully informed determination meaning projects may inadvertently be ruled out on false pretences, mistaken claims or lack of certainty.

For example, one such threshold identified in the legislation is significantly impacting (seriously impairing) a listed threatened species in the "vulnerable category" (including irreplaceable habitat of listed threatened species). Almost all jurisdictions outside of Victoria and New South Wales lack reliable environmental data making it difficult to identify with certainty which specific habitats are irreplaceable (particularly if threatened species are numerous).

Further, while the term "unacceptable impact" is defined in Section 527F of the EPBC Reform Bill (which includes references to critical habitat), it is not defined in the exposure draft of the statutory instrument (National Environmental Standard (Matters of National Environmental Significance) 2025). This creates uncertainty for industry in how "unacceptable impacts" will apply to projects given "critical habitat" has not been defined for some species such as the Malleefowl.

As of 7 November 2025, only 5 critical habitats have been listed on the national register with most of these located on offshore islands. As highlighted above, "critical habitat" has not been defined for the Malleefowl bird species despite the fact the recently updated National Recovery Plan for the Malleefowl (2024) includes references to "critical" (but does not provide unequivocal information about Malleefowl habitats). Therefore, there is concern amongst proponents that impact assessments and associated offset requirements could treat large areas as "critical habitat," even though critical habitat for this species does not appear in the EPBC register of critical habitats. Given that a range of migratory bird species may occasionally visit inland water bodies, there is also a risk that the term "critical habitat" may be applied to nearby inland water bodies during project impact assessment or assessment of offset requirements.

For these reasons, AMEC members consider the unacceptable impact criteria not to be appropriate or commensurate. The concern is this could lead to overreach or overcorrection when considering whether a threshold has been surpassed – particularly outside the states of Victoria and New South Wales which lack reliable environmental data. Ultimately, it may result in no further clarity to the process and maintain the status quo where significant areas of the country are likely to be challenging or burdensome to develop within. There is a very real risk that in certain parts of regional and remote Australia, this test will provide a hurdle too high for investment. If it remains in its current form, the unacceptable impacts test risks becoming a future litigation magnet, as vexatious third parties are likely to interpret data regarding impacts differently.

Industry feedback has also focussed on transitional safeguards. Greater clarity is needed on the treatment of unlisted habitat during transition in order to prevent and avoid ad-hoc decision-making. There is concern that the Minister's decision, and this nation's economic opportunities, will be snuffed to the dead hand of legislation.

The new subsection 134(3AB) is read to mean that the unacceptable impact test will not apply to an action that is considered a national interest proposal. However, there is uncertainty in industry as to what fits within that definition and which criteria would deem a project to be in the national interest. Media commentary suggests critical minerals projects could be eligible and while this would be welcome - it creates a clear tension for AMEC as the methods of extraction for critical minerals projects can be similar (or potentially more challenging) than minerals not deemed critical in Australia.

Recommendation: AMEC recommends the Commonwealth Government take a risk-based approach and allow for the compensation of these impacts via restoration contributions and net gain.

Given the risk and unintended consequences of the current unacceptable impact criteria, AMEC recommends guidelines be developed prior to legislation being finalised to provide direction, clarify expectations, test assumptions, promote consistency and enable an appropriate framework to be gradually created that will help foster the desired outcome.

The Government should provide more information on the criteria regarding national interest exemptions to help manage expectations and bring transparency to decision making.

2. Net gain test (offsetting impacts to protected matters)

All residual significant impacts of an action on MNES must be compensated to a net gain. The previous concept adopted in the last Parliament was "nature positive." Actions will pass the "net gain" test where a condition is imposed on the approval requiring an offset and/or payment of a restoration contribution charge that results in a "net gain" for the MNES in question. This is intended to ensure projects will deliver real conservation gains for the environment. Provision is made for restoration contribution payments to be paid into a new Restoration Contributions Special Account to be managed by a new independent body. The Bill also allows for the use of Nature Repair Market biodiversity certificates for environmental offsetting purposes.

Concern: The meaning of "net gain" is not defined in the Bill and open to interpretation and determination by the Minister of the day. There is concern amongst members regarding how "net gain" is calculated and measured, with fears this may result in subjective analysis if not addressed in the legislation. This is particularly the case in situations where environmental damage *may* occur but is not certain or likely. While the net gain test definition is understandable where damage has or will occur, proponents should not be asked to financially compensate for an uncertain future environmental risk. Further, there is concern that the Minister can apply a "net gain test" to previously approved projects when making a routine variation request to a condition.

Recommendation: AMEC recommends these concerns can be ameliorated if regulations prescribe procedurally how "net gain" is measured based on a whole-of-environment approach. This includes a consistent baseline methodology, clear metrics for measuring improvement (such as area, quality, extent, or population viability), rules for additionality (ensuring gains are over and above what would have occurred without the offset or contribution), and robust verification processes (monitoring, auditing, and independent

validation to confirm that predicted gains are achieved and maintained over time). Without these regulatory details, proponents will face uncertainty about how restoration contributions are calculated, how “success” will be determined, and how ongoing compliance will be assessed under the net-gain test leading to low confidence in how the reform is administered.

The model could consider incentives for proponents to lessen their impact after approval. For example, a proponent who clears less vegetation than approved should not have to compensate (pay offsets) for impacts not had. Existing similar incentives include payments to the Pilbara Environmental Offsets Fund being made based on land cleared, or even Western Australia’s Mining Rehabilitation Fund which is an annual payment based on area of land disturbed but not yet rehabilitated.

3. National Environment Standards

The legislation will introduce legally binding, measurable standards for MNES, regional planning, restoration actions and contributions, community engagement and consultation, and First Nations engagement. The Commonwealth Environment Minister will have the power to make, vary and revoke national environmental standards and to apply the standards to decision-making under the EPBC Act. The standards are intended to improve environmental outcomes and certainty for business by ensuring the quality and consistency of decision-making. Each standard must prescribe one or more outcomes or objectives, and also the parameters, processes to be followed or actions to be taken to achieve each outcome or objective. They will be legislative instruments like Regulations.

Concern: To date, DCCEEW has only published policy position papers on two draft standards: Matters of National Environmental Significance (MNES) and Environmental Offsets. While AMEC appreciates the volume of work involved in legislative drafting, the lack of information on the remaining standards is a point of anxiety and uncertainty amongst AMEC members. Further information on the remaining three standards will be welcomed, in addition to advice on how standards will interact with intersecting reforms (such as the Aboriginal and Torres Strait Islander Heritage Protection Act) and state and territory legislative frameworks (including if these existing frameworks will also require legislative change to enable compatibility with Commonwealth reforms).

The development of the First Nations engagement and participation standard, which may bring certainty to members through the project development phase, has not been shared with industry. Without the ability to review, there is concern amongst members that the First Nations engagement and participation standard will lack alignment with both the state and federal legislation in this area. Given the complexities arising from Juukan Gorge, and the challenges of the Western Australian Aboriginal Cultural Heritage 2021 legislation, the lack of detail (still) is engendering distrust in the process.

Recommendation: The drafted Section 136A, states approval must not be inconsistent with prescribed national environmental standards, making it clear that the Environment Minister of the day cannot grant an environmental approval unless adhering to the standards. AMEC would welcome the release of all national standards and enable enough time in the consultation phase for industry to review and engage with decision makers and government agencies if required.

AMEC is firmly of the view that the First Nations engagement and participation standard should mirror the ATSIHP reforms to ensure consistency and avoid duplication (and therefore uncertainty). AMEC would welcome timely and considered consultation on the First Nations engagement and participation standard.

Industry requires absolute clarity on whether references to “critical habitat” in the MNES standard mean registered critical habitats under the EPBC Act or whether “critical habitat” is open to interpretation by assessing officers. The latter adds ambiguity and reduces clarity.

4. Bilateral approvals and assessments

The EPBC Act will be amended to reduce duplication in assessments between federal and state processes via accreditation and bilateral arrangements. This would allow state and territory governments to take the lead on assessing and determining projects. AMEC strongly supports the establishment of bilateral agreements between the Commonwealth and states and territories.

Concern: While AMEC welcomes the intent to deliver approval and assessment bilateral agreements, there is concern and uncertainty over a) whether state or territory government processes can satisfy the threshold requirements of the proposed National Environmental Standards, unacceptable impact and net gain tests and b) the lack of a targeted timeframe in terms of implementation of a bilateral. The reforms must guarantee timely accreditation of state and territory processes (provided it meets the threshold tests) following passage of the reforms to enable bilateral agreements to be successfully implemented, and for the benefits to be realised. AMEC would welcome a clear and staged process to move toward an approval bilateral. While this is challenging, a near term delivery of an assessment bilateral (if the reforms are passed) is essential.

Further, there are also open and longstanding questions around the “ongoing assurance” function of the Environment Protection Agency (EPA) CEO to recommend suspension or variation of the bilateral following reviews. This creates the potential for investment uncertainty and delays, additional costs and administrative duplication for individual projects caught amidst a change.

Recommendation: AMEC considers that approval and assessment bilateral agreements are the biggest determiner to cut timeframes and duplication while maintaining high environmental standards. The publication of a commitment by state, territory and federal departments of a clear timetable for the accreditation of states for both assessments and approvals within six months of the legislation being enacted, would allow proponents to plan approval strategies and manage transitional risk. A clear grandfathering requirement before any suspension or variation issued by the EPA CEO, could be a solution.

5. Greenhouse gas disclosure requirements

Proposed amendments will require proponents to disclose estimates for Scope 1 and 2 greenhouse gas emissions as part of the assessment of a controlled action. Proponents will also be required to disclose associated emissions mitigation measures and abatement targets along with the estimated emissions.

Concern: AMEC supports the Government's intent to exclude a climate trigger from the EPBC Act reforms, as per the Samuel Review recommendation. AMEC also supports regulating emissions through relevant existing frameworks (i.e. the Safeguard Mechanism). This aligns with current state methods and requirements. However, the motivation for and productive value of requirements regarding greenhouse gas disclosures are unclear, and potentially concerning. Industry can foresee that this will be a vehicle for a climate trigger in all but name. There is also a portion of AMEC membership who have queried why legislation should encompass any requirements on greenhouse gas emissions given the existence of the Safeguard Mechanism.

Recommendation: To give industry confidence and clarity, government must clarify the intent of greenhouse gas disclosure requirements and ensure they do not create a new system of conditions that duplicate or intersect with the current federal and state processes or add further unnecessary burden to environmental approvals processes. In particular, the requirements should avoid actions that inadvertently open the prospect of a quasi-climate trigger now and in the future which can reverse the intent to reduce duplication.

6. Environmental Protection Orders

The reforms will empower the CEO of the EPA to issue Environment Protection Orders (EPO) which may require work to cease - either in writing or in urgent circumstances, verbally. This power may be exercised if there is a likely or actual contravention of the EPBC Act which poses an imminent risk of serious damage to the environment.

Concern: It appears the drafting has excluded the operation of the natural justice hearing rule in relation to the issue or variation of an EPO. An EPO could have very serious implications for a proponent, such as requiring stop work orders without a specified end date, which is a serious concern and risks impacting industry from both a cost and reputational perspective. Industry does not want to contravene the EPBC Act however in such circumstances (which AMEC anticipates will be rare) there should be an equal right of response that proponents can claim via the ability to appeal an EPO determination if deemed appropriate.

Recommendation: AMEC supports new Environment Protection Orders to manage urgent environmental risks and damage in a timely manner, provided the goalposts for such orders are clear and do not move, with decisions clearly articulated by the CEO and include merit-based opportunities for appeal. The requirements to table the EPO in Parliament and the Environment Minister to have rights to revoke or amend (in Section 474D) would be welcomed. AMEC urges that serious consideration is applied to equal right of response via the ability to appeal an EPO if legitimate grounds to do so exist and include statute of limitation provisions in the legislation to ensure maximum timeframes and provide certainty to industry.

7. Nuclear trigger amendments

Proposed amendments aim to clarify elements of the nuclear trigger, which will allow for lower-risk activities involving naturally occurring radioactive material (NORM) to proceed without government referral if they are below a certain threshold. The reforms seek to streamline project assessments by better defining the application of the nuclear trigger and ensuring that

only activities with a significant environmental impact are subject to referral and assessment. The proposed reforms will align the EPBC Act's "nuclear action" terminology and application with existing Commonwealth legislation dealing with nuclear safety and protections, specifically with the codes and guides issued by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).

Concern: The proposed change in terminology from “nuclear actions” to “radiological exposure actions” may cause unintended complexities. There is a significant difference between the terms “nuclear” and “radioactive” which are not interchangeable. Whilst the proposed change in terminology may more accurately reflect the activities that are currently, and proposed to be, listed in the EPBC Act, it may also infer a widening in the scope of the Commonwealth’s role, beyond the initial intent of the inclusion of nuclear actions (provided the definitions of the International Atomic Energy Agency for nuclear installations and material are used).

The proposed amendment to the definitions of what constitutes an action now includes 1A(e) which explicitly includes rather than excludes NORM: *“mining, processing, stockpiling or disposing of naturally occurring radioactive materials, if the action exceeds the activity level prescribed by the regulations for the circumstances in which the action is taken”*.

It is noted that the definition provides an activity level that must be exceeded, and infers that amendments may be made to the regulations to provide specific limits for different “circumstances in which the action is taken.” However, without provision of detail on proposed amendments to the regulations (if there are any), it is very difficult to assess whether this amendment will meet the stated objective.

Further, there is concern that the reference to aligning closer with ARPANSA regulations may result in more mineral sands operations (as well as rare earths) down to the scale of laboratories, being captured in the definition. For a new or modified mineral sands operation to trigger the current Nuclear Action MNES referral requirement, they only must disturb or handle 10 tonnes of a material with an activity level of greater than 1 Bq/g. This equates to less than a single front end loader bucket of Heavy Mineral Concentrate, and therefore already includes most (if not all) mineral sands operations.

If the ARPANSA exemption levels are referred to, this decreases down to 10 kg of any material with an activity of 1Bq/g. The ARPANSA exemption levels are suitable to trigger worker dose assessments and to be adopted as a nationally agreed standard for state regulation decisions, but not as an indicator for significant impact on the environment.

Recommendation: AMEC recommends the government publish further information via the release and confirmation of proposed amendments to the regulations and supporting guidelines. Some in industry have voiced concern that the current draft changes may appear inconsistent with the long-standing intention to clarify that mineral sands and other NORM operations are excluded, as initially intended, from the scope of the EPBC Act. If this unintended consequence were to occur it would risk inhibiting the development of the critical minerals industry. AMEC welcomes further detail of proposed amendments and how they are interpreted in regulation.

8. Grandfathering provisions

There are limited options under the current EPBC Act for the Commonwealth and proponents to proactively and progressively transition pre-1999 actions from a grandfathered position to an approved position, without having to cease the action in the interim.

Introducing the ability for the Environment Minister of the day to temporarily exempt from the EPBC Act (or condition) the continuation of a pre-1999 ongoing activity, while an assessment of that activity takes place represents a generational reform opportunity to improve outcomes for both the environment and business.

In our next submission, AMEC intend to propose amendments to the legislation that could set the parameters for further development in the policy and regulation phase.

Final Comments

AMEC appreciates the opportunity to comment on these amendments, and for the government's willingness to consult.

AMEC is firmly of the view, that although this legislation is not perfect, if the changes sought in this submission are addressed, it will deliver on the promise of better environmental protection and greater efficiency for industry.

For further information contact: