



Wilderness Society Submission: Environment Protection Reform Bill 2025 and related bills

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Table of Contents

Summary of recommendations	2
Introduction	3
Australians want reforms that better protect nature	4
The need for genuine reform of the EPBC Act	5
Overarching comments on the Environment Protection Reform Bills	6
Urgent action on forests is needed	8
Deforestation and Regional Forest Agreements (RFAs)	8
Deforestation and the “continuations of use” exemption	10
Transparency and accountability not yet ensured	11
The Bills must not erode the government’s duties regarding threatened species	13

About the Wilderness Society

The Wilderness Society is an independent, community-based, not-for-profit environmental advocacy organisation. Our vision is to transform Australia into a society that protects, respects and connects with the natural world that sustains us. We are committed to protecting, promoting and restoring wilderness across the continent for the survival and ongoing evolution of life on Earth. From community activism to national campaigns, we seek to give nature a voice to support the life that supports us all. We are powered by more than 150,000 supporters from all walks of life.

Summary of recommendations

- A. Remove provisions from the Bills that would weaken the current EPBC Act, including:**
- a. Devolution of approval responsibilities, and the proposed removal of the limitation on accrediting state and territory processes for the water trigger.
 - b. The proposed offsets “pay to destroy” fund.
 - c. NOPSEMA’s proposed ability to be accredited.
 - d. The ability of protection statements to override, recovery plans, threat abatement plans, and conservation advices.
 - e. The limitation of consultation requirements for strategic assessments and the power to vary approvals for classes of actions.
 - f. The provisions to wind back existing rights regarding the reconsideration of decisions.
 - g. The unconstrained power to make rulings, including in relation to individual proponents.
 - h. The new exemption for ‘national interest proposals’.
- B. Constrain any “fast tracking” provisions and avoid reducing nature protection.**
- a. Amend proposed ‘streamlined assessment’ pathway to include adequate impact assessment and consultation.
 - b. Significantly strengthen bioregional planning provisions.
 - c. Remove the minor preparatory works provisions.
- C. Closing existing gaps and loopholes that enable deforestation.**
- a. Remove the Regional Forest Agreement exemption from the EPBC Act and the *Regional Forest Agreement Act 2022*.
 - b. Remove the exemption for continuations of use in section 43B, which has turbo-charged deforestation.
- D. Strengthen nature protections.**
- a. Remove subjective and discretionary language that is threaded throughout the Bill and which would weaken protections and accountability.
 - b. Replace the above discretion with an objective test for the application of National Environment Standards, net gain requirements and unacceptable impacts, including in any accreditation frameworks.
 - c. Compel the referral of planned native vegetation clearing affecting protected matters.
 - d. Require regular public reporting on environmental trends, and the National Environmental Standards.
 - e. Ensure National Environmental Standards for Community Consultation and for First Nations Participation are scheduled to be in force from the outset.

Introduction

As one of the world's most megadiverse countries, Australia's biodiversity is magnificent, unique and rightly treasured by Australians and the world. Many of Australia's species are only found here, and Australia is home to many iconic World Heritage Areas. Australia's unique animals and plants have cultural value to Australians of all backgrounds, especially for First Nations peoples, and are vital to supporting economic prosperity,¹ wellbeing and community health.² Australia's national environment law must protect and safeguard this heritage now and for future generations.

Australia's environment is under increasing pressure. Independent reporting shows all major indicators of environmental health have declined over the more than two decades the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has been in force. Australia is worst in the world for mammal extinctions,³ second worst in the world for loss of diversity of life, and fourth in the world for overall plant and animal extinctions.

Australia is also a global deforestation hotspot.⁴

- **In NSW, native forest logging destroys up to 30,000 hectares of public native forest per year.** Many of the forests being logged are among the most biodiverse on the planet, in one of Australia's two Global Biodiversity Hotspots. Forests in this region have the greatest levels of diversity and species richness of anywhere in the world for a range of species groups, including marsupials, rainforest trees, songbirds and frogs. Yet they are being logged by the loss-making hardwood division of the state-owned logging agency, Forestry Corporation of NSW, which has an extensive history of illegal logging yet is exempt from rigorous federal oversight. Meanwhile, rates of land clearing in NSW continue to rise. Recent data shows a **40% increase in land clearing across NSW in a single year, wiping out 66,000 hectares of bushland.** That's equivalent to bulldozing Sydney's Royal National Park four times over.
- **In Queensland, more than 300,000 hectares of forest and bushland is destroyed each year,** primarily to expand pastures for cattle grazing. Since the Albanese Government took office, **an estimated 1 million hectares** of forest and bushland has been bulldozed in Queensland.⁵ On average, 88% of land clearing activity in Queensland each year is to make way for livestock pasture.⁶ Queensland is the only state considered a net source for land use change emissions, rather than a sink, as more emissions are released than absorbed by land use change. The latest Queensland Government reporting shows that nearly half (45%) of all land clearing in Queensland occurs in Great Barrier Reef catchments. In 2024, the World Heritage advisory body, UNESCO, singled out deforestation as a major threat to

¹ Ernst & Young. (2023). *Following the money: Financial services' links to deforestation and forest degradation in Australia*.

² Commonwealth of Australia. (2023). *Measuring What Matters: Australia's First Wellbeing Framework* (p. 44). Retrieved from https://treasury.gov.au/sites/default/files/2023-07/measuring-what-matters-statement020230721_0.pdf

³ Wilderness Society. (n.d.). 10 facts about deforestation in Australia. Retrieved July 12, 2024, from <https://www.wilderness.org.au/protecting-nature/deforestation/10-facts-about-deforestation-in-australia>

⁴ Thorpe, D. (2023). *Deforestation: How does Australia fare in global comparisons?* The Fifth Estate. Retrieved July 12, 2024, from <https://thefifthestate.com.au/business/deforestation-how-does-australia-fare-in-global-comparisons/>

⁵ Wilderness Society. (2025) Albanese's Deforestation Score Card. <https://wilderness.org.au/news-events/shocking-investigation-reveals-one-million-hectares-of-queensland-forest-bulldozed-under-the-albanese-government>

⁶ Based on an average of clearing attributed to livestock pasture over the last five years of Queensland's SLATS - <https://www.qld.gov.au/environment/land/management/mapping/statewide-monitoring/slats/slats-reports/2022-23-slats-report>



the Great Barrier Reef.⁷ Thirty-five catchments across World Heritage listed tropical rainforests, large rivers, tropical savannahs and wetlands, drain into the Reef. UNESCO has recommended the Federal and State Governments strengthen deforestation regulations to protect remnant and high-quality vegetation in Reef Catchments and other high priority areas, including vegetation along water courses. **Wilderness Society has notified the Federal government of the destruction of more than 5,500 hectares of federally mapped threatened species habitat in Queensland, the majority of which (65%) was not checked by the Albanese Government.**

- In 2022, the status of the combined koala populations in Queensland, NSW and the ACT was uplisted from “vulnerable” to “endangered” under the EPBC Act. The koala is projected to be extinct in NSW by 2050, yet logging and land clearing continues in its habitat, much of it under-assessed, or not assessed at all, under the EPBC Act. While one recent study **estimates that 100 million native animals, including koalas, are killed, injured or displaced by deforestation each year in Queensland and New South Wales**⁸.

Cumulative interactions between the major pressures impacting the environment, especially climate change, are amplifying the threat faced by Australia’s species and ecosystems. Strong reforms to the EPBC Act are needed to strengthen protections and processes, and enhance monitoring and enforcement.

Australians want reforms that better protect nature

Australians are impatient for legislative action to protect nature. At the federal level, the EPBC Act is widely regarded as needing urgent reform. More than 773,000 Australians have called on the Albanese government for strong reforms to the EPBC Act to better protect nature.

Further, in August and October 2025, communities affiliated with the Wilderness Society participated in two waves of mobilisations around Australia, with community events in Western Australia, Tasmania, Queensland, New South Wales and Victoria turning out hundreds of Australians who expect and are demanding nature laws that work. These demands for strong and effective nature laws are the latest expression in a long history of high levels of community engagement and interest, including in the most recent independent ten-year review of the EPBC Act, which commenced half a decade ago.

Research has repeatedly shown that Australians care about nature and want the federal government to protect it from destruction. The Biodiversity Council’s second annual Biodiversity Concerns Survey,⁹ for instance, found that the majority of Australians:

- Say it is important to them to know nature is being looked after (85%) and that nature conservation issues would influence how they vote in future elections (89%).

⁷ Australian Marine Conservation Society (2024), ‘Great Barrier Reef still threatened by tree clearing in Reef catchments.’ Available at: <https://www.marineconservation.org.au/great-barrier-reef-still-threatened-by-stubbornly-high-tree-clearing-rates-in-reef-catchments/> (Accessed 28 Sept 2025)

⁸ Taylor, M., Paterson, M., Derkley, T. (2024) Australia’s deforestation crisis: How unsustainable beef production is pushing wildlife to extinction, pg. 5 Greenpeace Australia Pacific and RSPCA Australia. Available at <https://www.greenpeace.org.au/tic/planet4-australiapacific-stateless/2024/07/a7936650-rspca-greenpeace-deforestation-report-2024-web.pdf>

⁹ Biodiversity Council (2024). 2024 Biodiversity Concerns Report: A survey of community attitudes to nature conservation. March 2024.



- Support strengthening environmental laws to support nature (73%), protecting native species habitats from development (69%) and reducing the use of biodiversity offsets (67%).
- Believe it is very important to uphold Australia's international obligations under the Convention on Biological Diversity to stop or reduce the extinction of animals (64%) and ensure at least 30% of land and seas are protected (58%), in line with the Global Biodiversity Framework adopted in 2022.

The need for genuine reform of the EPBC Act

The EPBC Act is widely regarded as not fit for purpose, including by Professor Graeme Samuel in his independent review of the Act in 2021¹⁰, the Albanese government¹¹, and environmental groups.¹² As it currently stands, the EPBC Act is unable to protect Australia's iconic nature, avert species from becoming threatened, endangered, critically endangered, or extinct; it is unable to protect internationally significant and recognised ecosystems, and is failing to enable nature to heal, recover and thrive.

EPBC Act reforms are urgently needed to materially turn things around for nature. This requires:

- Protecting what is left (i.e. stronger protections and clarity on unacceptable impacts);
- Facilitating genuine ecosystem restoration and species recovery that is well-funded and not shrouded or perverted by weak and problematic offsets;
- Preventing the further endangerment of species and ecosystems caused by proponent-driven destruction of nature;
- Good and clear decision-making that delivers positive outcomes for nature; and
- Sound operation of the Act, which means well-informed and empowered regulator(s), and consistent application of the three universal community rights to participate in environmental decision-making, such that stakeholders have trust and confidence in environmental decisions made by the Federal government.

Last term, the Albanese government failed to comply with its own deadline in the Nature Positive Plan, namely that “A package of new environmental legislation ... will be released as an exposure draft prior to being introduced into the Parliament before the end of 2023.”¹³ That was followed up by bitterly disappointing changes to the Act that weakened environmental protection and community rights in the lead up to the 2025 federal election.

This term, there has been momentum for changes to the EPBC Act, but the key question remains whether the government's changes, if passed, would make it easier for destructive companies to ride roughshod over the Australian public and the natural environment, or whether the changes will help the Act “do what it says on the tin,” including by stopping deforestation, ending the march of Australia's species towards extinction and ensuring a fair say for the public.

¹⁰ Samuel, G. (2020). Independent review of the EPBC Act – final report (p. 39). Department of Agriculture, Water and the Environment, Commonwealth of Australia. Retrieved from <https://epbcactreview.environment.gov.au/resources/final-report>

¹¹ DCCEEW. (2022). *Nature Positive Plan: Better for the environment, better for business* (p. 6). Department of Climate Change, Energy, the Environment and Water, Commonwealth of Australia. Retrieved from <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>

¹² Places You Love. (2022) *Policy Agenda: It's time for a new generation of national environmental laws*. Retrieved July 12, 2024, from <https://hsi.org.au/wp-content/uploads/2022/02/PYL-Policy-Agenda-2022-v2.pdf>

¹³ DCCEEW. (2022). *Nature Positive Plan: Better for the environment, better for business* (p. 5).

Overarching comments on the *Environment Protection Reform Bills*

The Wilderness Society is deeply concerned by the Bills that passed the House of Representatives on 6 November 2025. The Bills, as drafted, open up new avenues that can be exploited to enable even more destruction than under the current Act.

Given that Australia is the world's worst for mammal extinctions and a deforestation hotspot, reforms to the current federal environmental protection and recovery regime must:

1. **Be effective.** The priority must be reversing the environmental decline already occurring. Changes to the law must actually change the status quo and stop environmental destruction.
2. **Be fair.** The new laws must apply to all projects and sectors, without exemptions or carve-outs.
3. **Have integrity.** Communities and First Nations must have a meaningful say in environmental decisions that affect them.
4. **Be forward-looking.** Nature needs help to thrive in the future, including funding and recovery planning.

In line with the above four criteria, the Wilderness Society urges the Albanese government to urgently negotiate changes with the Senate crossbench to achieve the following outcomes in the proposed changes to the EPBC Act.

A. Remove provisions from the Bills that would weaken the current EPBC Act.

- a. Devolution of approval responsibilities to States or Territories or other entities would be a disaster for nature protection and must be avoided (see below discussion of RFAs). Similarly, the proposed removal of the limitation on accrediting state and territory processes for the water trigger should be reversed, and the limitation should remain.
- b. The proposed offsets "pay to destroy" fund must be removed entirely or be made subject to much stronger rules and restrictions. As it stands, it risks repeating the mistakes of similar funds that have been trialed in NSW and Queensland.
- c. NOPSEMA should not be able to be accredited, as this would introduce new risks for nature, community rights, and public accountability.
- d. Protection statements should complement, not override, recovery plans, threat abatement plans, and conservation advices, to make sure the Act works to foster the recovery of threatened species.
- e. Consultation requirements for strategic assessments should be reinstated and strengthened, and the power to vary approvals for classes of actions should be constrained to avoid the undermining of environmental protections.
- f. The provisions to wind back existing rights regarding the reconsideration of decisions should be removed.
- g. The unconstrained power to make king-like rulings, including in relation to individual proponents, is a threat to a level playing field and should be removed.
- h. The new exemption for 'national interest proposals' should be removed.



B. Constrain any “fast tracking” provisions and avoid reducing nature protection.

- a. The proposed ‘streamlined assessment’ pathway must be drastically amended to include adequate impact assessment and consultation, including access to information and a minimum consultation timeframe of 30 days, as well as a requirement to comply with a Community Consultation Standard and Environmental Impact Assessment Standard. The types of proposed projects that can be assessed via streamlined assessment should be restricted.
- b. Bioregional planning provisions should be significantly strengthened to become conservation-based. Including by clarifying assessment requirements for plans, making conservation zones true ‘no go’ zones, regardless of the sector, limiting priority actions, and exempting the water trigger from bioregional planning.
- c. The minor preparatory works provisions would create another way for developments to begin without federal oversight and should be removed.

C. Closing existing gaps and loopholes that enable deforestation.

- a. Remove the Regional Forest Agreement exemption from the EPBC Act and the *Regional Forest Agreement Act 2022*. This exemption has seen disastrous results for forests, communities, and the logging sector.
- b. Remove the exemption for continuations of use in section 43B. This provision has led to the federal government failing to regulate and oversee agricultural land-clearing, which has turbo-charged deforestation. Since the Albanese government, there has been 1 million hectares of destruction of forest and bushland in Queensland alone.

D. Strengthen nature protections.

- a. Remove subjective and discretionary language that is threaded throughout the Bill as this would weaken protections and limit opportunities for scrutiny and accountability. This discretionary language flies in the face of the clear recommendation from Graeme Samuel’s independent review of the EPBC Act, which urged the removal -- not addition -- of discretion in the act. More discretion means more politics and less science in decisions regarding destructive development proposals. Australia’s nature should be managed according to science and global best practices, not the whim of the Minister of the day.
- b. Replace the above discretion with an objective test for the application of National Environment Standards, net gain requirements and unacceptable impacts, including in any accreditation frameworks.
- c. Compel the referral of planned native vegetation clearing within threatened or migratory species habitat or areas where such species are likely to occur, within a threatened ecological community, or within the Great Barrier Reef catchment, for assessment under the EPBC Act.
- d. Require regular public reporting on environmental trends, and measurable outcomes in the National Environmental Standards, with the EPA to regularly report against the performance of the Standards against outcomes and the Act’s objects.
- e. Ensure National Environmental Standards for Community Consultation and for First Nations Participation are scheduled to be in force from the outset, to enhance transparency and accountability, build public trust, and ensure consistency of rules for proponents.

Urgent action on forests is needed

Deforestation and Regional Forest Agreements (RFAs)

Action is urgently needed to address governance challenges and grave threats to biodiversity caused by the exemption of logging activities within RFAs from processes and requirements in the EPBC Act.

Native forest logging within RFAs is directly linked with increased risk of extinction. In particular:

- As at 2020, after decades of operation of the RFAs, more than a quarter of all federally-listed forest-dependent threatened species that were listed as threatened when the RFAs were signed were closer to extinction.¹⁴ In the five years since, yet more forest-dependent federally listed species for which logging is a key threatening process, have been listed, or uplisted.
- In 2018, four forest-dependent species affected by logging under RFAs (Leadbeater's Possum; Swift Parrot; Western Ringtail Possum; Regent Honeyeater) were identified as being among the 20 bird and 20 mammal species most likely to become extinct by 2038, demonstrating the acute impact of logging operations.¹⁵ The Wilderness Society recently issued legal proceedings against the Tasmanian Forest Practices Authority asking the regulator to explain why it has approved logging in some of the last remaining breeding forests of critically endangered swift parrots in Huon Valley forests.

RFAs are 20-year agreements between the Commonwealth and the NSW, Victorian, Tasmanian and WA governments made between 1997 and 2001. While touted as a framework for sustainable native forest management that balances environmental and industry objectives, RFAs have comprehensively failed to achieve such outcomes. This is widely acknowledged, including by Professor Samuel in his Review of the EPBC Act.¹⁶ One in four forest-dependent threatened species are closer to extinction since the establishment of the RFAs. The native forest logging industry's production and employment have substantially declined since RFAs began.

The Samuel Review considered the operation of the RFAs in relation to the EPBC Act, as part of the inquiry into the broader operation and effectiveness of the EPBC Act. Professor Samuel found (at p. 106) that:

- “the environmental considerations under the RFA Act are weaker than those imposed elsewhere for MNES and do not align with the assessment of significant impacts on MNES required by the EPBC Act” and
- “that there is insufficient Commonwealth oversight of RFAs and the assurance and reporting mechanisms are weak”.

Professor Samuel recommended that the level of environmental protection afforded in Regional Forest Agreements (RFAs) be increased, and specifically that “the Commonwealth should

¹⁴ Wilderness Society. (2020). *Creating Jobs, Protecting Forests? The State of the Nation's RFAs*. (p. 5) Retrieved from https://www.wilderness.org.au/images/resources/Creating_Jobs_Protecting_Forests_REPORT.pdf

¹⁵ Geyle, Hayley M., et al (2018) *Quantifying extinction risk and forecasting the number of impending Australian bird and mammal extinctions*. Pacific Conservation Biology. Retrieved from <https://doi.org/10.1071/PC18006>

¹⁶ Samuel, G. (2020). *Independent review of the EPBC Act – final report* (p. 106-108). Department of Agriculture, Water and the Environment, Commonwealth of Australia. Retrieved from <https://epbcactreview.environment.gov.au/resources/final-report>



immediately require, as a condition of any accredited arrangement, States to ensure that RFAs are consistent with the National Environmental Standards” (p. 108).

Currently, NSW and Tasmania remain as the only two native forest logging states. In 2023, WA announced an end to native forest logging in that State by 2024. In 2023 Victoria followed with the end of native forest logging taking effect from 1 January 2024, and the termination of Victoria’s RFAs by 1 January 2025.

Currently, RFAs exempt native forest logging from the EPBC Act’s ordinary assessment and approval requirements and from prohibitions of actions likely to significantly impact listed threatened species without EPBC approval. By removing the exemption, logging operations would be subject to the EPBC Act’s assessment and approval process and its critical safeguards to prevent significant impacts on threatened species and other protected matters. State forestry agencies, departments or similar should be required to refer proposed logging operations that are likely to have a significant impact on listed threatened species for assessment and approval, like all other sectors. Logging operations would then be unable to proceed without assessments of the impacts on some of the most imperilled species in the country that are threatened by continued logging of their breeding and foraging habitat (e.g. mapped important breeding habitat of the Swift Parrot in Tasmania and forests inhabited by the Greater Glider in NSW).

While Minister Watt has confirmed he accepts the Samuel review recommendation to apply National Environmental Standards to RFAs, the Bills contain no mechanism to ensure this would be required to occur. Without such a mechanism in these Bills, the government won’t fulfill its commitment. This requires legislative change now. It is not credible to say that the EPBC Act’s National Environmental Standards will apply to native forest logging and RFAs if native forest logging and RFAs remain exempt from the Act. As per the previous paragraph, the Wilderness Society calls for the full removal of the RFA exemption, not just the application of National Environmental Standards to RFAs.

Deforestation and the “continuations of use” exemption

Action is urgently needed to address accountability gaps and grave threats to biodiversity caused by the “continuations of use of land etc” exemption in section 43B of the EPBC Act.

In Queensland, the Northern Territory, northern WA and western NSW, deforestation carried out by the agricultural sector is the biggest driver of habitat destruction yet is rarely referred for assessment under the EPBC Act¹⁷, in part because of overly broad interpretations of section 43B of the EPBC Act as exempting such deforestation. Extensive deforestation is carried out across mapped, and likely to occur, federally listed threatened and migratory species habitat without referral for assessment and approval under the EPBC Act.¹⁸ While case law about this provision is relatively sparse, the Wilderness Society is of the view that the exemption leads to both

¹⁷ Ward, M. S., et al. (2019). Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia. *Conservation Science and Practice*. The Society for Conservation Biology. Retrieved from <https://conbio.onlinelibrary.wiley.com/doi/10.1111/csp2.117>

¹⁸ Brown, A. (2024, March 6). Land clearing: two million hectares of Queensland forest destroyed in five years, new analysis shows. *The Guardian*. Retrieved July 12, 2024, from <https://www.theguardian.com/australia-news/2024/mar/06/queensland-land-clearing-deforestation-data-analysis>



proponents and the regulator allowing the continued destruction of regenerated forests and bushland that must be referred and assessed under the EPBC Act to happen without such oversight.

Enforcement action by the Federal Department rarely occurs, despite the Act's existing prohibition of actions likely to have a significant impact on threatened species without assessment and approval.¹⁹ Indeed, a 2020 Auditor General's report found that despite the substantial impact of agriculture on the environment, agricultural projects are rarely referred to the federal regulator: of the more than 6,000 referrals received by the responsible department over 20 years of operation of the EPBC Act, only 165, or 2.7 per cent were for agricultural projects. Self-assessment, or avoidance of assessment, were cited as two potential reasons for this low number.²⁰ The Wilderness Society and other civil society groups have repeatedly notified the Federal Department of such clearing without seeing any enforcement actions in response.²¹ State and Territory laws are likewise inadequate in scope and application to stop such land clearing and deforestation.

Case study: Third party notifications of potentially illegal deforestation

Since December 2023, the Wilderness Society has referred twenty-six instances of potentially illegal deforestation to the federal government for assessment. In each case, habitat for listed threatened and endangered species, including species like the koala, northern quoll and greater glider, was bulldozed with no assessments undertaken, and no approvals granted.²²

A significant majority of the detected clearing events occurred in Great Barrier Reef catchments (19 out of 26 incidents or 70%), introducing the likely risk that run-off of sediment and pollutants from forest and bushland destruction drains into the Great Barrier Reef. State wide, nearly half of all clearing in Queensland occurs in Great Barrier Reef catchments.

Changes to the EPBC Act are needed to subject agriculture to the same rules as other sectors, and to halt the routine, unsupervised and extensive clearing of threatened species habitat described above. Regulators must be empowered to ensure that clearing of threatened and migratory species habitat does not proceed without assessment and approval, given such action clearly has a significant impact on listed threatened and migratory species.

¹⁹ Taylor, M., & Shoo, A. (2022) *Double standard: The failure of Australia's national environment law to prevent the pastoral industry bulldozing threatened species habitat in Queensland*. Australian Conservation Foundation. Retrieved from https://assets.nationbuilder.com/auscon/pages/21249/attachments/original/1668483392/Old_land_clearing_report_Nov_2022.pdf?1668483392

²⁰ Commonwealth of Australia (2020) *Referrals, assessments and approvals of controlled actions under the Environment Protection and Biodiversity Conservation Act 1999*. Auditor-General report no. 47 2019-20 performance audit. Prepared by the Australian National Audit Office. Report available here: <https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act>

²¹ Wilderness Society. (2024, March 25). *Joint deforestation investigation exposes broken national environment law*. Retrieved July 12, 2024, from <https://www.wilderness.org.au/news-events/joint-deforestation-investigation-exposes-broken-national-environment-law>

²² Wilderness Society. (2024, March 25). *Joint deforestation investigation exposes broken national environment law*. Retrieved July 12, 2024, from <https://www.wilderness.org.au/news-events/joint-deforestation-investigation-exposes-broken-national-environment-law>

Transparency and accountability not yet ensured

Environment Minister Watt has set out that transparency and accountability is the third pillar of his reforms. Yet in various ways the Bill would harm community rights to information, to participate and to challenge bad environmental decisions. We welcome the work being done towards establishing a First Nations participation standard, but hold deep concern about the apparent deprioritisation of the community consultation Standard and lack of a timeframe to deliver it, despite a commitment to establish this Standard in the government's Nature Positive Plan.

A key reason, Professor Samuel found, for community distrust in the EPBC Act is: “[l]imited access to information about decisions and the lack of opportunity to substantively engage in decision-making under the Act” (p. 81)²³. This is why Samuel recommended that National Environmental Standards set requirements relating to community consultation and First Nations participation in decision-making.

For community consultation to improve public trust and enhance decision-making, there need to be clear, strong requirements that align with international best practice on. The Wilderness Society's experience over many decades is that proponents will not consult properly with First Nations and the broader community unless the regulator has a responsibility to make sure they do, and that that responsibility leads to concerted enforcement efforts.

It is no secret that under federal nature laws, the public has inadequate access to information, is not properly consulted and has a lack of avenues to challenge bad decisions.²⁴ Each of these represents a failure to provide for community rights in environmental decision-making as established under the United Nations Rio Declaration, to which Australia is a signatory. Community rights under the Rio Declaration include the right of community members to: access information about proposals that will affect the environment; participate in decision-making; and seek remedy in cases where decisions have been made improperly or unlawfully.

The failure of the EPBC Act to adequately enshrine community rights in environmental decision-making, and thus to ensure accountability and integrity, was highlighted in Professor Samuel's independent review, which recommended that information provision be improved (pp. 88-89), there should be more opportunities for the community to engage in decision-making (p. 88), and there should be limited merits review of decisions (pp. 94-95). In other words: sweeping reforms around data and monitoring, a standard to support community consultation and access to key justice provisions such as merits review to ensure governments make decisions fairly and in line with laws and regulations are urgently needed.

²³ Samuel, G. (2020). *Independent review of the EPBC Act – final report* (p. 81)). Department of Agriculture, Water and the Environment, Commonwealth of Australia. Retrieved from <https://epbcactreview.environment.gov.au/resources/final-report>

²⁴ Wilderness Society. (2022). *Who holds the power? Community rights in environmental decision-making*. Retrieved, from <https://www.wilderness.org.au/images/resources/WhoHoldsThePowerReport.pdf>

Case study: Inadequate consideration of community concerns regarding the Narrabri Gas Project

In working with communities across the continent, the Wilderness Society is aware of many examples that highlight these failings in practice. One particularly pertinent example is that of community members—including Gomeroi Traditional Owners, farmers and conservations—who engaged in the consultation process regarding the Narrabri Gas Project in the Pilliga Forest. There was a record-breaking number of submissions (23,000, 98% opposed to the project) but then Environment Minister Sussan Ley’s statement of reasons only addressed public submissions in five of the statement’s 670 paragraphs. The community got no explanation of how their submissions were considered in making the decision. This is problematic because a significant component of meaningful public participation occurs when a decision-maker engages with public feedback, weighs it in their decision, and transparently explains the decision to the public.²⁵

The insertion of worryingly broad discretion and subjective tests would also undermine community rights in environmental decision-making.

Many key aspects of the Bills are framed as subjective and discretionary, using the test of ‘to the satisfaction of the Minister’. Often they are paired with a weaker test of being ‘not inconsistent’ with set criteria, instead of a positive test requiring the decision making to act ‘in accordance with’ or ‘complies with’ such requirements. Samuels’ Review of the EPBC Act found that a fundamental shortcoming of the current EPBC Act is that it does not provide sufficient constraints on discretion. Samuel viewed this unfettered discretion as causing uncertainty and poor environmental outcomes. As mentioned above, the Bills in their current form would exacerbate, rather than fix, these existing flaws.

In addition to negating the Samuel Review’s recommendation, this broad discretion would further erode public trust in environmental decisions and make it harder for proponents to achieve genuine social licence, affecting business certainty and increasing operational risks.

The Bills must not erode the government’s duties regarding threatened species

The Bills set out a new instrument, protection statements, which would be the “default primary document” used to clarify what a decision maker must consider during the approval of actions in protecting threatened species or ecological communities. While Protection statements could be a useful tool that support the implementation of new environmental protection mechanisms, as drafted the Bills would modify existing requirements that the Minister not act inconsistently with a recovery plan and must have regard to conservation advices, and instead require only that the Minister must not act inconsistently with Protection Statements (while still being able to consider recovery plans and conservation advices). This would be a backwards step.

²⁵ United Nations Environment Programme. (2015). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>



This concerning proposal in the Bills comes in the aftermath of a federal court case brought by the Wilderness Society against the Federal Environment Minister. As part of a settlement of those proceedings in September 2025, the Environment Minister conceded he failed to make mandatory recovery plans for key species and agreed to court orders to fix the breach. This outcome set an important national precedent, that recovery plans are not optional. They are a binding duty under the EPBC Act, and governments must deliver them.

Once a recovery plan is in force, the decision-maker under the act must not make an assessment decision that is inconsistent with applicable recovery plans. The changes to this regime in the Bill, if not amended, would see the Albanese government inventing a legislative 'fix' that would enable it, and future federal governments, to side step requirements to make assessment decisions that are 'not inconsistent with' recovery plans. Recovery plans must remain legally binding roadmaps to help species like the greater glider and the ghost bat survive and recover.

ENDS