

17 November 2025

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
via email: ec.sen@aph.gov.au

Dear Committee Secretary

EPBC Inquiry on the EPBC, NEPA and related Bills

Thank you for the opportunity to provide our comments on the Environment Protection Reform Bill 2025, the National Environmental Protection Agency Bill 2025 and five related bills, (**the Environmental Protection Bills**).

Urban Development Institute of Australia (**UDIA National**), is one of the longest established peak bodies. Our members plan, finance and deliver the lion's share of new dwellings across the housing spectrum, from affordable housing, through to at-market and master-planned communities for all Australians.

UDIA National supports Government initiatives to improve delivery of environmental assessment and approvals. This means establishing a streamlined, single, simple environmental assessment system that coordinates Federal and State requirements, to avoid unnecessary duplication.

Our members **support the Environmental Protection Bills with a handful of crucial amendments, to prevent drafting conflicts from undermining core Government objectives.** Detailed amendments are available in a separate schedule however the critical changes are below.

We support Ministerial delegation (with direction by the Minister), for approvals and assessments. – It is important to ensure the EPA demonstrates (under Ministerial delegation) its ability to effectively balance environmental, economic and social issues in assessments and approvals.

We whole heartedly agree with the Minister's Press Club statements – *"You don't have to choose between the environment and jobs and business. We can protect and improve our environment, while removing duplication and speeding up approvals."*

Housing Industry Reform Expectations

UDIA members need predictable, clear and efficient EPBC assessment processes to resolve significant and costly delays for projects. These costs directly escalate prices for homebuyers.

The UDIA National Housing Pipeline data on roadblocks to housing delivery, show that **37% of available housing supply in major capital cities is constrained by one or more issues – 67% of these constrained holdings, face environmental approval delays.**

Nationwide, assessments and **approvals can take, on average, between 1 & 5 years depending on the state.** There are **upwards of 42,000+ houses held up by delayed approvals.** (310,000 potential Victorian houses are also without a pathway while environmental issues are being resolved).

A predictable, streamlined, single, simple environmental assessments depends on four vital factors:

1. **Clear environmental definitions with well understood application** – Industry estimates, up to 60% of time on assessments relate to ill-defined & subjective discussions on impacts & offset gains.

2. **Well understood Offset requirements with an efficient pathway** through avoidance and mitigation hierarchies – many projects simply cannot avoid or mitigate impacts but can offset.
3. **Actual streamlining of Assessment processes & State Accreditation** – one process with minimal information requests, where proponents know the exact information required & necessary criteria.
4. **Well defined review processes, KPI's and metrics** to measure performance of the EPBC process – accountability and transparency that allows refinement of assessments and approvals.

The industry's aims align well with the Minister's three stated pillars for environmental reform:

- Preserving what's precious by **strengthening environmental protection** and restoration.
- Delivering a power surge for productivity through **quicker project assessments and approvals**.
- Enshrining **greater accountability and transparency in environmental decision making**.

We have used the three pillar intentions as the basis for any amendments we recommend below.

Given the extremely tight timeframe turnaround for a 500 page set of amendments, our experts cannot be certain we have captured all the issues nor can members be certain whether the Government amendments will work as intended.

We have however identified 5 critical issues that are inadvertent drafting errors:

1. **Conflicting & circular definitions will inadvertently create more confusion & subjective negotiations**, undermining faster assessment. It also sets up differential state treatment, constricting accreditation.
2. **"avoid, mitigate and offset" drafting conflict in the MNES Standard and the proposed EPBC Act** – we must align to the Act's approach for considering avoidance to prevent derailing assessments.
3. **Assessment timelines will be undermined without tighter Request for Information (RFI's) rules** and upfront confirmation of documentation requirements.
4. **Conflicting drafting on "delegation" and "direction of powers" between the EPBC and EPA Act** means there is no review or accountability for EPA performance on delegated Ministerial powers.
5. **No 12-18 month transition period review of these complex new rules** to make sure that any unintended consequences can be identified and rectified.

Fortunately, all of these inadvertent errors are easily solved by simple changes to the drafting along with greater detail under standards & guidelines, regarding application of assessments & approvals.

Making the Environmental Protection Bills work effectively

The amendments outlined below are specifically to address the five critical issues and **relate to unintended impacts from conflicting drafting across the bills, and drafting that undermines other objectives of the reforms**:

1. **Definitions: Conflicting drafting undermines streamlined assessment and state accreditation.**

The definitions for unacceptable impacts, significant impairment and net gains are unclear and very subjective – The unintended consequence is that the definitions can apply to any impact (if there is no suitable guidance on their application).

The Minister's Press Club statements make it clear this criteria is designed to provide a definition to enable a "quick no" on clearly unacceptable uses:

"The unacceptable impact criteria will set clear, up-front and transparent criteria for impacts that cannot be approved, enabling clear decisions early in the process.

What this means is that if someone wants to build an apartment block in a Ramsar-listed wetland, or mine Uluru, they'll get a quick no. Saving them time and money, not to mention saving our special places."

The purpose of the test criteria is to "knock out" clearly unacceptable proposals early, not sift through all projects to determine *how acceptable they are*. Unfortunately, the definitions do not set up an initial, "quick knock out" step.

We are sympathetic to the Department and drafter's dilemma in designing this criteria – We understand they have tried to design multiple qualifiers to ensure it applies to the most extreme cases, but requests for more refinement, lead to more definitions, that end up adding complexity rather than clarity.

Without definitional amendment (and guidelines/standards) on the application of the definitions, proponents/officials will continue to have unproductive "back and forth" negotiations, defeating streamlining.

The fundamental problem is that assessment and approvals are (rightly), delegable by the Minister to the NEPA and the agency officers will be looking for clear guidelines on how to apply the web of definitions in the criteria test. With the introduction of a large number of new terms, past precedent (unless specifically stated), cannot be relied upon from the old Act definitions. This is a new era of environmental reform.

Equally, the Department has previously confirmed that they rely on the rules, legislation and strategic/regional plans to "balance environmental, economic and social issues" rather than exercising their own discretions to balance these considerations under the rules. They (rightly), point out, that they do not have the expertise on economic and social issues to make this call, so look at the issue from an environmental lens only.

We understand this approach, since only the Minister has the experience and expertise to balance environmental, economic and social issues related to project proposals. Critically, however, balancing these considerations on a per-project basis **is** necessary as the environmental impacts will be considered case by case as well. The application of the unacceptable impacts criteria to the State/Territory accreditation process, as currently drafted, will also likely risk restricting the application of the Commonwealth standards of protection at a State level – effectively applying a different standard than would be applied to a Commonwealth decision in relation to the same action.

This means the proposed EPBC Act will unintentionally force proposals to fail to gain approval, that would otherwise be acceptable on the Commonwealth's criteria.

The accreditation criteria set out in s46(3)(h) and associated undertaking referred to in s48A(4) (along with related provisions in ss35(2)(d) and 58(2)(e)) refer to the definition of unacceptable impacts in s527F rather than all of the elements of the unacceptable impacts test in s136B.

The implication of this is that the limitations/exemptions applied to Commonwealth decisions (like national interest proposals and taking conditions into account) are not applied in the context of State decisions or accreditation requirements (rightly so in the case of national interest considerations).

We understand from our discussions that there is a provision to exempt an action from assessment under an accredited process (avoiding the operation of section 71A) where determined to be a national interest proposal – we have not seen this amendment to date. In any event, it is unclear how an action can be declared a national interest proposal if a State process is accredited or how the State and Commonwealth assessment and approval processes will interact in these circumstances.

Where a state process is required to align with the proposed unacceptable impacts criteria, **this can either:**

- 1) **prevent accreditation** (a key pillar of the reforms) or
- 2) **prevent proposals** (that have an EPBC Act specific exemption), **being assessed and approved through an accredited state process.**

The same can occur for other tests that can be excluded by the national interest proposal if assessed under the Commonwealth framework (e.g. not inconsistent with national standards).

The definition of "seriously impair" refers to "seriously altered for the worse", which is circular and unhelpful. The definition of "critical habitat" requires decision makers and officers to define what is "necessary" habitat for foraging, breeding, roosting or dispersal of threatened species (a highly discretionary and potentially very low threshold in this context), and "irreplaceable" includes reference to a "relevant" timeframe and location.

These definitions add to confusion and complexity that will further harm faster assessments.

With all three definitions relied on in a single unacceptable impacts criteria (e.g. for threatened species), the **layers of uncertainty can accumulate.**

It is impossible to confirm that the unacceptable impacts criteria and the definitions in the Proposed Act will work as intended without the time to assess it against common examples – the detail is best provided in Standards and guidelines with a more universal definition in the Act.

We agree with the concept of "a quick no" to proposals that could never be approved. However it is a strong power that removes a person's usual right to have a project assessed against the applicable criteria, and so **it must be exercised with particular care and controls.**

Critically, there is one solution that will help the definitions become more workable and also ensure an appropriate balance of environmental, economic and social issues.

Where the NEPA considers that a proposal may present an unacceptable impact, the proponent should have the option to request that the Minister make the final decision.

While the definitions will still need refinement and guidance on their application in Standards, some of the pressure may be removed off the unacceptable impacts criteria test if the final decision is not made by a delegate officer.

A. Amend the s74B power to allow for referral to the Minister to decide that a proposed action is clearly unacceptable based on information in the referral (for decisions under delegation).

Notice of a proposed unacceptable impacts decision by NEPA would be given first and the proponent can elect to have the final decision made by the Minister. We suggest that there are a few ways this could be achieved:

- a. Amend the delegation power in s574 of the Bill (amending s515(1A) of the Act) to exclude delegation of the power in s74B to decide that a referral is clearly unacceptable and/or the power in s74D to reconsider such a decision.

OR

- b. Amend s74C of the Act so that, where the decision is being made under delegation (by someone other than the Minister), (a) notice is first given of an *intention* to make a decision that a referral would have an acceptable impact (rather than notice of the final decision having been made) and (b) the proponent may elect to have the final decision made by the Minister (not under delegation).

B. Replace the unacceptable impacts criteria set out in s527F and all associated definitions with a simplified test that is less dependent on layered definitions, with any further details provided in Standards and guidelines.

The simplified test would state in one place the broad concept that a significant impact is an unacceptable impact where the residual impact will or is highly likely to threaten survival of protected matters or result in irreversible damage to critical values. We can provide drafting as requested.

Critical values can be succinctly defined as relevant to matters of national environmental significance. We can provide detail of suggested drafting if this would assist.

Additional detail/guidance on applying the definitions should be provided in the standards and supporting documentation.

- C. Ensure that State/Territory accreditation, assessment and approval processes allow for potential approval conditions to be taken into account when applying an unacceptable impacts test:

Add references to "taking into account any conditions to be attached to an approval" to sections 46(3)(h), 48A(4), 35(2)(d) and 58(2)(e).

- D. Further consideration required of the interaction between State/Territory legislative frameworks, the accreditation process, bilateral agreements, national interest proposals and national interest exemptions, to ensure accreditation is realistic and capable of effective implementation.

2. Mitigation Hierarchy: The MNES Standard conflicts with the proposed EPBC approach to "avoid, mitigate and offset", and undermines streamlining assessments.

The proposed EPBC Act applies avoidance, mitigation and offsets in a way that is workable for industry, including in its reference to "appropriate measures" in s134(3F). The proposed MNES Standard and the associated Policy Paper seem to be trying to align with the proposed EPBC Act but there is inconsistent drafting.

Some minor amendments are necessary to ensure that the drafting does not leave open the possibility that avoidance and mitigation actions must be taken (irrespective of whether they are appropriate – rather than appropriately considered). Otherwise the Standard will, unintentionally, create conflicting thresholds and potentially stop housing projects that have already taken all possible steps to try and avoid and mitigate impacts.

It is not always possible or appropriate to take avoidance mitigation and repair measures within the scope of the referred impact site before offsetting any residual significant impacts (eg: on constrained sites) – especially where avoidance and mitigation has already been taken into account in state/territory zoning, strategic plans and/or assessment and approval pathways, so further avoidance/mitigation is not possible or necessary.

Specifically the problem is in the failure to refer to "appropriate" measures in all Steps of Principle 1, and the different wording picked up regarding avoidance vs mitigation.

The Step 1 Avoidance criteria in Principle 1 (at clause 8(2)) includes 'if possible' at the beginning of the subsection. Step 2 and Step 3 do not include the words 'if possible' at the beginning of the subsection. None of Steps 1, 2 or 3 refer to 'appropriate measures'. We do agree the intention of the steps is to make it clear you do not have to absolutely avoid, mitigate or repair before you offset (you just need to go down the steps and do if you can do).

We are aware from discussions with the Department that the wording of the Act and the intention for the mitigation hierarchy to only require a consideration of any appropriate avoidance and mitigation, before deciding on offsets, is correct. We request this inconsistency is rectified in the final version of MNES Standard.

- A. Confirm as a part of MNES policy that the final MNES Standard will state appropriate avoidance, mitigation and repair measures are to be considered (and are not mandatory) before offsetting impacts can be undertaken.
- B. Make simple amendments to Principle 1 of the MNES Standard to align it with the proposed EPBC Act:
Adding:
 - a) 'appropriate measures' in Steps 1, 2 and 3 – at clauses 8(2)(3) and (4) – and
 - b) 'if possible' in clauses 8(3) and (4).
- C. Amend s134 (3G)(c) on residual significant impacts to take into account planning and other instruments that may have already dealt with avoidance/mitigation:
(c) whether any other planning, assessment or approval processes are applicable or relevant to the action and have already considered and provided for the avoidance, mitigation or repair of any impact or damage as part of those processes.

3. New Streamlined Assessment: Timelines undermined without tighter controls on multiple Requests for Information (RFI's) and upfront clarification on documentation requirements.

Although the new rules require reasons to be given for each RFI, the current delays in assessments can be significantly reduced if Proponents have details of the information required with the application and RFI's are kept to a minimum.

While requests for information are useful to clarify applications, they have been used to require Proponents to do things as simple as changing the name on the application. With "stop the clock's" in place during RFI's the true penalty from request delays is hidden from the overall statistics.

We are also concerned about removal of the existing low-impact assessment pathways (eg: "assessment on referral information" or "assessment on preliminary documentation") which work well for lower impact proposals and simply require guidance on information required from proponents. The removal of the 'lighter touch' assessment pathways, suitable for the lowest impact proposals, will have the effect of automatically streamlining a large number of proposals into a single assessment pathway that will naturally need to cater for the assessment of more complex proposals.

- A. Amend s76 to ensure the second and subsequent RFI's must be with the consent of the proponent with the option to escalate to the Minister or proceed without the RFI:

Amend section 76(1), (3) and (4) to clarify that these provisions relate to a single request from the Minister (the first request) which may only be made once.

Include a **new subsection which deals with subsequent requests for information**, for example new subsection (7A):

“(7A) The Minister may, following the receipt of information provided in response to the request under subsection (1), (3) or (4), make further requests for information to the person proposing to take an action (a further request), where:

- a) the Minister is satisfied the further information is reasonably necessary to make the decision for which it was requested;*
- b) the Minister has given [reasonable OR not less than 14 days] notice to the person of the Minister’s intention to make a further request; and*
- c) the person proposing to take the action consents in writing to the Minister making the further request.”*

Include a **new subsection that deals with situations where the person proposing to take the action does not consent** to the further request

“(7B) If the person proposing to take the action does not consent to the Minister making the further request under section 7A(c), the person may:

- a) where the request has been made by a delegate of the Minister, request that the Minister determine whether or not the further request is reasonably required to make the relevant decision; or*
- b) request that the relevant decision be made without the information that would have been the subject of the further request.”*

“(7C) If, following the process under section 7B(a), the Minister determines the further request is reasonably required to make the relevant decision, the person proposing to take the action must either:

- a) consent in writing to the further request being made; or*
- b) request that the relevant decision be made without the information that would have been the subject of the further request.”*

B. Proposed EPBC Act to confirm new streamlined assessment will confirm documentation requirements up front with the following amendment:

“93A Information requirements for streamlined assessment

Where the Minister has decided under section 87 that the relevant impacts of the action must be assessed by streamlined assessment, the Minister or the designated report writer must, as soon as reasonably practicable after the making of the decision, provide the person proposing to take the action with a list of the information required to undertake the streamlined assessment.”

C. Maintain existing streamlined assessments either for an extended transitional period or indefinitely:

- 1) under the current Division 3A (on referral information) and
 - 2) under the current Division 4 (on preliminary documentation),
- with guidelines on information requirements for proponents.

Where the existing streamlined assessments are to be kept for a transitional period, this could be achieved by a savings and transitional provision.

4. Lapsing non-controlled issues: Inadvertent impact on 5 year lapsing dwelling projects risking critical housing projects having to restart assessment & delay housing projects by years.

Under the Proposed EPBC Act, not-controlled action decisions will lapse after 5 years and there is no way for the time to be extended. Previously, there was no lapsing of the decision. This means there is an inadvertent impact that a project, delayed for issues including change of ownership or delays in unrelated assessment pathways, will lose their ability to deliver housing and need to go through the lengthy process all over again. This will delay critical housing supply.

A. Increase the initial lapsing date for the decision, and/or allow for an extension of the decision under s79F:

(4) The Minister may, by written notice, extend the lapsing date for a decision under section 75, if in the Minister is satisfied it is appropriate to do so.

(5) Prior to the lapsing date in subsection (1) or (4), a person proposing to take an action may request an extension to the lapsing date. An application under this subsection must outline the reasons for the request.

(6) Upon receiving a request under subsection (5), the Minister must decide whether or not to approve the request and give written notice of the decision, with the revised lapsing date, if applicable, to the person proposing to take the action

B. In the alternative, change the lapsing date to 10 years instead of 5 years under s 79F(1)

5. Review of Performance on delegated responsibilities: Conflicting drafting between the EPBC and EPA Act – All delegated powers should be under the direction of the delegator and reviewable.

The Proposed EPBC Act reforms make it clear that the EPA CEO is independent on any compliance and penalty issues but must act under direction of the Minister for any delegated powers or functions related to assessments and approvals (S515AAA EPBC Act).

In a potential conflict of legislation, the EPA Act unintentionally implies that the EPA is fully independent and cannot be directed by the Minister on delegated powers and functions in contravention of the Act.

Inadvertently, the proposed EPBC Act reforms do not give the Minister (or any other authority), the ability to review performance on delegated powers and functions during the tenure of the EPA CEO – this would mean the EPA CEO could not be directed, reviewed or managed in relation to powers that are merely delegated – this is authority we would not give to an elected official much less an agency.

Equally, there is no circumstance in which the EPA CEO can be terminated for professional misconduct or professional non-performance of any kind during their tenure.

There needs to be strong accountability measures for the new EPA and its CEO.

This includes addressing major failures to meet statutory timeframes, poor administration of the EPA, or to re-dress major bias.

We agree that an independent EPA needs to be able to act without political pressure; however, that does not mean there should be no accountability nor transparency regarding EPA and CEO actions.

This is a fundamental premise of good governance – lack of accountability and transparency encourages poor decisions, no matter how disciplined the organisation is to start.

There are relatively simple solutions for the inadvertent errors.

- A. Amend sections of the EPA Act to clarify independence (s14), statement of expectations (s16(2)), to confirm at the end of each, that the Minister can provide instruction to the CEO on delegated powers and functions:

“except for powers and functions delegated by the Minister or other delegators.”

The CEO response (s17(2)) should add that the CEO must address the Minister’s instruction to the CEO on delegated powers and functions::

“(c) specifically address any expectations related to powers and functions delegated by the Minister.”

- B. Minister to guide the EPA CEO in balancing economic and social issues with the environmental for any delegated powers and functions only:

“515AAA Delegation to CEO or member of staff of NEPA

...

Directions to delegates

(5) A delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the delegator.

(6) Without limiting subsection (5), the Minister may give written directions to a delegate as to how the delegate is to approach, balance or weigh the considerations for approvals and conditions under Subdivision B of Division 1 of Part 9.”

- C. Amend the Termination of Appointment clause (s52) to insert that the CEO can be terminated for professional non-performance on delegated powers & functions:

“(aa) for poor performance of the CEO against any requirements, objectives, metrics or directions given by the Minister or provided in this Act or any other Act or the regulations, or provided in any instrument of delegation in relation to any delegated functions or powers.”

D. Amend s61 Periodic reviews of NEPA (s61(3 to 5) to allow for review every year against delegated responsibilities:

“Frequency of reviews

(3) The first review must be completed within 12 months after the commencement of this section (the first review).

(4) The second review must be completed within 3 years after the completion of the first review (the second review).

(5) The third review must be completed within 2 years after the completion of the second review (the third review).

(6) Each subsequent review must be completed within 5 years after the completion of the previous review.

(7) Notwithstanding subsections (3) – (6), a review must be completed no later than 3 months prior to the expiry of the period referred to in section 45(5).”

E. Amend s61 Periodic reviews of NEPA (s61(2)(c) to include a review of performance on delegated responsibilities:

“(d) whether, and to what extent, the CEO and NEPA have complied with or delivered against any requirements, objectives, metrics or directions given by the Minister, or provided in this Act or any other Act or the regulations, or provided in any instrument of delegation in relation to any delegated functions or powers.”

- 6. There is no transition period for review of these complex new rules** to make sure that any unintended consequences associated with the drafting of reform package are identified and resolved. There should be a review of any new requirement and provisions within the first 12-18 months of operation.

We are keen to discuss these issues with you at your earliest convenience.

Please do not hesitate to contact the UDIA National Head of Policy and Government Relations – Andrew Mihno on _____ to discuss this submission.

Yours sincerely

Oscar Stanley
UDIA National President