



**Inquiry into Environment Protection Reform
Bill 2025 and six related bills
Environment and Communications Legislation
Committee**

Submission by the
Invasive Species Council

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About the Invasive Species Council

The Invasive Species Council was formed in 2002 to advocate for stronger laws, policies and programs to keep Australian biodiversity safe from weeds, feral animals, exotic pathogens and other invaders. It is a not-for-profit charitable organisation, funded predominantly by donations from supporters and philanthropic organisations.

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Introduction

Will the proposed reforms of the EPBC Act help prevent extinctions and reverse biodiversity decline? These are crucial questions by which to assess the effectiveness of the Environment Protection Reform Bill 2025 and associated bills.

Most reforms in the EP Reform Bill focus on the assessments and approvals regime and its governance. If well implemented, they will strengthen protection of matters of national environmental significance (MNES), mainly by preventing some habitat destruction.

As many submitters to this inquiry have pointed out, the proposed reforms will do little to help prevent climate change or destructive forest logging. **Our submission highlights other gaps: the proposed reforms also neglect the mega-threat of invasive species.**

Invasive species have caused more Australian animal extinctions than any other threat and continue to push hundreds of native species toward extinction (Box 1). The Australian Government should seize this opportunity to strengthen EPBC Act provisions that help prevent and mitigate invasive species threats.

We urge the members of the Legislative Environment and Communications Committee to recommend reforms to strengthen other parts of the EPBC Act – threat abatement and live import provisions – to help prevent and mitigate other major threats to nature.

We make 31 recommendations to:

1. strengthen processes to identify and tackle threats to nature
2. strengthen the regulation of live imports
3. close loopholes and constrain ministerial discretion
4. clarify the role and functions of Environment Protection Australia
5. clarify the role and functions of Environment Information Australia
6. strengthen First Nations peoples' role in decision-making.

We welcome the opportunity to discuss these recommendations with the committee.

Box 1. The invasive species mega-threat

Invasive species have been the major driver of extinctions in Australia (Figure 1), particularly of animals, including in modern times (Figure 2). They have been the primary cause of all except one of 7 animal extinctions since the advent of the EPBC Act in 1999¹ and are the most prevalent significant threat (medium or high impact) to nationally listed threatened species.²

Extinctions are potentially looming not only from long-established invaders such as cats, foxes and trout, but because of recent biosecurity failures. Sixteen native plant species are at high risk of imminent extinction (within just one plant generation) due to myrtle rust, first detected only in 2010.

¹ Northern tinker frog (chytrid fungus), white-chested white-eye (black rats), Christmas Island pipistrelle (wolf snake), Bramble Cay melomys (sea-level rise), Christmas Island forest skink (wolf snake), blue-tailed skink (extinct in the wild, wolf snake), Lister's gecko (extinct in the wild, wolf snake).

² Based on the number of high-impact and medium-impact threats to listed threatened species as analysed by Ward M, Carwardine J, Yong CJ, et al. 2021. A national-scale dataset for threats impacting Australia's imperiled flora and fauna. *Ecology and Evolution* 11: 11749–761.

Figure 1. Extinctions and probable extinctions – primary drivers³

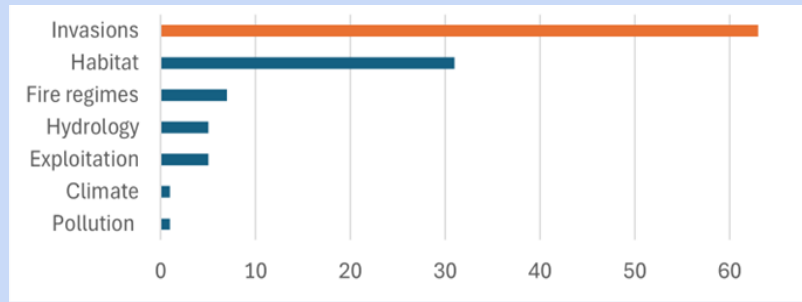


Figure 2. Extinctions and probable extinctions since 1960⁴

1960s	1970s	1980s	1990s	2000s	2010s
Yallara	Desert bandicoot	Christmas Island shrew	Sharp-snouted day frog	Northern tinker frog	Christmas Island forest skink
Central hare-wallaby	Little mulgara	Southern gastric brooding frog	Mountain mist frog	White-chested white-eye	Blue-tailed skink*
	Northern mulgara	Northern gastric brooding frog	Derwent River seastar	Christmas Island pipistrelle	Lister's gecko*
	Southern day frog		Pedder galaxias*		
	Lake Pedder earthworm	Gravel-downs ctenotus	Kuchling's turtle	Bramble Cay melomys	
			Kangaroo River perch		

Invasive species were the primary driver of extinction for the species in orange font.

* indicates 'extinct in the wild'.

³ For data, see <https://tinyurl.com/57xpv9w4>. Primary drivers are major contributors to an extinction (>30% contribution).

⁴ Low T, Booth C. 2024. GONE: Australian animals extinct since 1960. Invasive Species Council. <https://invasives.org.au/wp-content/uploads/2024/11/Gone-Report-Updated-2024.pdf>

Recommended amendments and actions

1. Strengthen processes to identify and tackle threats to nature

Recommendation 1: Require the comprehensive listing of all key threatening processes on the advice of the Threatened Species Scientific Committee or an equivalent independent scientific body or process. Maintain the public nomination process to supplement threat listings.

Recommendation 2: Allow threats to all MNES – including threatened species and ecological communities, World Heritage properties, National Heritage places and wetlands of international significance – to be listed as KTPs. Alternatively, amend section 188(4) of the EPBC Act to enable the listing of threats that adversely affect species and ecological communities (not only those that are threatened) within:

- a World Heritage area
- a National Heritage place
- a Ramsar wetland
- a Commonwealth Marine Area.

Recommendation 3: Institute an ‘emerging threatening process’ (ETP) category of threat to facilitate urgent or precautionary interventions to prevent emerging threats from becoming entrenched threats. Require regular horizon scanning by the Threatened Species Scientific Committee (or equivalent) to identify such threats.

Recommendation 4: List invasive species and develop regulations under section 301A of the EPBC Act where this will facilitate nationally coordinated abatement of key threatening processes and threats of national environmental significance.

Recommendation 5: Amend section 301A of the EPBC Act to clarify that in addition to prohibiting the trade in certain non-native species, regulations may be made for the purposes of creating lists of non-native species unlikely to threaten biodiversity in the Australian jurisdiction (i.e., permitted lists).

Recommendation 6: Amend item 382, section 270A of the EP Reform Bill to clarify that nothing in that section prevents the Minister from making more than one threat abatement plan for different parts of a listed key threatening process.

Recommendation 7: Require the preparation of a Threats Standard to provide clear guidance on the identification, listing, prioritising, abatement and review of key threats, and include horizon scanning to identify emerging threats.

Recommendation 8: Amend the EPBC Act to require the Threats Standard to be applied in relevant decisions (e.g., the listing of KTPs, decisions concerning TAPs etc.).

Recommendation 9: Amend the bioregional planning provisions introduced by item 322, Part 12A of the EP Reform Bill to align those provisions more closely to Samuel Review recommendations, including by:

- inserting robust requirements for upfront environmental assessment to inform bioregional plans

- giving much greater consideration and implementation of threat abatement and recovery plans in the preparation of plans
- strengthening protections for conservation zones and tightly constrain allowable impacts of priority actions in development zones
- providing greater opportunities for public engagement and comment on draft plans
- ensuring NES are given effect in all plans.

2. Live imports: strengthen protection for nature at the border

Recommendation 10: Define a ‘regulated live specimen’ to be comprehensive of all live organisms except for pathogens – therefore inclusive of live animals, plants and non-pathogenic fungi, algae and protists. Also specify that a live specimen permitted for import can exclude any new taxa, hybrids or genetic variants of that specimen.

Recommendation 11: Specify an objective for the live import functions along the lines of the following: Prevent the importation of live organisms to Australia that could:

- (a) adversely impact native biodiversity; or
- (b) facilitate or exacerbate the adverse impacts of other introduced organisms on native biodiversity.

Recommendation 12: Define the level of protection that should be applied to the consideration of a ‘specimen suitable for live import’ – for example:

A specimen suitable for live import has:

- (a) a negligible risk of establishing in the environment and adversely impacting on native biodiversity or facilitating the risk of another invasive species adversely impacting the environment; or
- (b) a very low risk of adversely impacting native biodiversity and will have a net environmental benefit.

Recommendation 13: Require all live import assessments and decisions – including those undertaken by Department of Agriculture, Fisheries and Forestry (**DAFF**) – to apply relevant EPBC Act objects and standards, and be subject to periodic review.

Recommendation 14: Complement the lists of live specimens assessed as suitable for live import with a prohibited list – taxa, species, subspecies or variants assessed as unsuitable for live import.

Recommendation 15: Include provisions requiring public consultation on all applications to add organisms to the Live Import List.

Recommendation 16: Establish a process to enable the removal of taxa from the live import list, including by application from the public. The decision-maker should have the power to stop imports of particular taxa on the live import list in response to an immediate risk such as emergence of a new disease.

Recommendation 17: Public mechanisms should be established to trigger a review of any listed taxa for which there is information warranting an assessment (for taxa not previously assessed under the EPBC Act) or reassessment, including:

- information about its invasiveness elsewhere that may indicate an unacceptable or higher risk than previously assessed
- information about a new or emerging disease risk

- information about altered conditions in Australia that alter a risk profile.

Recommendation 18: Require preparation of a Live Imports Standard to provide clear guidance on the objectives, outcomes and processes for live imports assessments and decisions.

Recommendation 19: Amend the EPBC Act to require the Live Imports Standard to be applied in relevant decisions (including for decisions made by DAFF).

3. Close loopholes and reduce ministerial discretion

Recommendation 20: Remove or tightly constrain the new Part 13 exemptions introduced by item 432 of the EP Bill by clearly listing the types of circumstances these exemptions would operate in the 'national interest'.

Recommendation 21: Amend proposed section 302F - Notice of Part 13 exemption, delete subsection (2).

Recommendation 22: Remove or tightly constrain the new Part 19C - rulings powers.

Recommendation 23: Amend section 514YK - Using national environmental standards, to provide that all relevant decisions and processes must be consistent with NES.

Recommendation 24: Amend section 514YG - No regression principle, to remove the words 'the Minister must be satisfied that' from subsection (1), and remove subsections (2) and (4).

4. Clarify the role and functions of the National Environment Protection Agency

Recommendations 25: Require a governing board of suitably qualified, independent people to appoint and oversee a skills-based EPA CEO, and play a role in setting the strategy of the EPA.

Recommendation 26: Amend section 13 of the NEPA Bill to insert a new function for the CEO of NEPA to 'monitor, audit and report on the performance of the Commonwealth, States and Territories, and other accredited parties in implementing National Environmental Standards and progress in achieving the prescribed outcomes'.

5. Clarify the role and functions of Environment Information Australia

Recommendation 27: Amend Section 3 - Objects, subsection (c) to remove the phrase 'government policies and programs' and replace it with 'government policies, programs and funding'.

Recommendation 28: Amend Section 5 - Definitions, 'protected information' to delete '(b) prejudice the effective working of government'.

Recommendation 29: Amend Section 10 - Functions conferred on the Head of the EIA to include:

- identify categories of environmental information held by governments that should be published in the public interest
- develop standards for the reporting of environmental information, including by the recipients of public funding for environmental projects
- identify priority gaps in environment data and information
- facilitate the timely addition to and correction of information and data used by the government

- report to Parliament on an annual basis on the implementation of conservation planning instruments, including threat abatement plans, and the expenditure of associated government funding (if any).

Recommendation 30: Amend Section 14 – National Environment information assets, subsection (1) by replacing ‘critical’ with ‘important’.

Recommendation 31: In consultation with First Nations groups, establish a role of an independent, Indigenous Commissioner for Country in the EPBC Act (or similar), to be appointed by the Environment Minister for a minimum term of 4 years. Provide the role with appropriate staff and resourcing.

1. Strengthen processes to identify and tackle threats to nature

In this section we recommend reforms to a critical part of the EPBC Act for stopping extinctions and reversing declines to biodiversity – the threat abatement provisions in Part 13, Division 4. Threat abatement functions can be strengthened by ensuring a more comprehensive listing of threats, instituting mechanisms for listing emerging threats, developing standards for identifying and abating threats and ensuring that threat abatement is integrated into bioregional plans.

One of the most important tasks under the EPBC Act is to identify and list big threats to native species and ecological communities – known as key threatening processes (KTPs) – and to develop threat abatement plans (TAPs) to eliminate or reduce the threats to nature. This is particularly important for threats like invasive species and adverse fire regimes that mostly cannot be mitigated through regulation.

Threat abatement is necessary to:

- **Prevent new threatened species:** Unless threats are identified and abated, Australia's list of threatened species will continue to grow and their threat status will continue to decline.
- **Prevent extinctions:** Unless threats are identified and abated, new extinctions are inevitable, including of species not even known to be threatened (e.g. the Kangaroo River perch).
- **Recover threatened biodiversity:** Many species and ecological communities cannot be recovered without more effective or comprehensive threat abatement (e.g. more effective methods for feral cat control is needed to enable some threatened species to exist outside fences).
- **Foster resilience:** The most effective approach to strengthen resilience to unavoidable threats such as climate change and H5 bird flu is to minimise other threats.
- **Prevent or contain emerging threats:** Stopping or containing new threats before they become entrenched avoids harm and is typically the most cost-effective intervention.

In the 25-year history of the EPBC Act, no threats have been delisted and few threats have been abated to any significant degree. Systemic problems in threat identification and abatement have been identified in several inquiries and reports.⁵ The Samuel review found that 'threats are not well managed':

Provision in the EPBC Act for managing threats – such as the listing of key threatening processes (KTPs) and the development and implementation of threat abatement plans – were designed to support a coordinated and strategic approach to dealing with threats that cause the majority of extinctions and declines in Australia. However, these mechanisms are not achieving their intent and many threats in Australia are worsening.⁶

Despite this, the EP Reform Bill provides few substantive changes to processes for threat abatement – neglecting a generational opportunity to strengthen Australia's capacity to tackle major threats to Australia's wildlife.

⁵ For example: Threats to Nature project. 2022. Averting extinctions: The case for strengthening Australia's threat abatement system. Invasive Species Council, Bush Heritage Australia, BirdLife Australia, the Australian Land Conservation Alliance and Humane Society International. The Senate Environment and Communications References Committee. 2019. Australia's faunal extinction crisis. Interim report.

⁶ Samuel G. 2020. Independent Review of the EPBC Act - Final Report. p 128.

<https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>

1.1. Comprehensive listing of threats

A comprehensive list of major threats to biodiversity is an essential foundation for systematically prioritising and instigating threat abatement action. But the current KTP list, which relies on an onerous and resource-intensive process of threat nomination and assessment, contains significant gaps – for example, changed surface and ground water regimes, forestry and macropod overgrazing (examples of potential KTPs assessed as threats to dozens of threatened species⁷). The exclusions have in effect included many other threats for which threat abatement plans are not feasible due to the KTP category being too broad. This is particularly so for the umbrella ‘novel biota’ KTP listing (see 1.4 below), which has impeded threat abatement planning for many high-impact invasive species, including invasive fish, most feral ungulate species and myrtle rust.

It should be a matter of scientific endeavour to systematically identify the major threats to Australian biodiversity and to regularly review the KTP list to ensure it remains up to date. The public nomination process should be retained to fill gaps and help ensure the currency of the list.

Given the Commonwealth's responsibility for all matters of national environmental significance (MNES), there is no good reason to limit listings only to threats to threatened or potentially threatened species and ecological communities. Abating the threats to relevant MNES is essential for achieving their protection, and consistent with the objectives of the EPBC Act. Assessing the impacts of a threat on all relevant MNES is a better measure of the scale of a threat than just the impacts on particular species or ecological communities. If such changes cannot be made to the Act in this round of reforms, at a minimum, amendments allowing for the listing of threats that adversely affect species and ecological communities (not only those that are threatened) within spatially defined MNES should be made.

Recommendation 1: Require the comprehensive listing of all key threatening processes on the advice of the Threatened Species Scientific Committee or an equivalent independent scientific body or process. Maintain the public nomination process to supplement threat listings.

Recommendation 2: Allow threats to all MNES – including threatened species and ecological communities, World Heritage properties, National Heritage places and wetlands of international significance – to be listed as KTPs. Alternatively, amend section 188(4) of the EPBC Act to enable the listing of threats that adversely affect species and ecological communities (not only those that are threatened) within:

- a World Heritage area
- a National Heritage place
- a Ramsar wetland
- a Commonwealth Marine Area.

1.2. Emerging threats

Early action on looming or emerging threats is far more efficient and cost-effective than responding once a threat is entrenched. While the existing KTP criteria allow for the listing of emerging threats

⁷ Ward M, Carwardine J, Yong CJ, et al. 2021. A national-scale dataset for threats impacting Australia's imperiled flora and fauna. *Ecology and Evolution* 11: 11749–761.

such as red imported fire ants, they have to be assessed as a threat to particular species or ecological communities, which can be difficult when a threat has not yet manifested or when there has not been time to gather sufficient evidence of the likely impacts. The current listing process is onerous and does not facilitate a rapid response.

The listing of emerging threats could be modelled on the provisions under the EPBC Act for a Minister to rapidly list Commonwealth Heritage or National Heritage if it is under immediate threat (ss. 324JL, 341JK). To facilitate timely interventions, the process for assessing and listing emerging threatening processes (ETPs) should be rapid and have a lower burden of proof than other threats, because evidence may be scarce and time may be short to intervene – for example, if a new wildlife disease is spreading. A formal ETP listing could be helpful to:

- provide a rationale for intervention and to seek funding for that intervention
- support the rapid development of a plan, in collaboration with relevant state and territory governments
- potentially trigger the use of s301A to support an intervention (e.g. to ban the interstate trade and movement of a potential vector of an emerging wildlife disease) or fast-track other EPBC approvals or permits required for the action by linking into national interest exemptions (as currently provided for by the EPBC Act).

The Threatened Species Scientific Committee, or another specially appointed expert panel, should be required to conduct and publish an annual analysis of whether there are emerging threats to the Australian environment not covered by the existing regulatory regime. This should be supplemented by an expedited nomination process to enable the immediate assessment of threats potentially requiring a rapid response.

Recommendation 3: Institute an ‘emerging threatening process’ category of threat to facilitate urgent or precautionary interventions to prevent emerging threats from becoming entrenched threats. Require regular horizon scanning by the Threatened Species Scientific Committee (or equivalent) to identify such threats.

1.3. Policy measures for abating invasive threats of national environmental significance

For some invasive species listed as key threatening processes, the threat is facilitated or escalated by inadequate or inconsistent regulation by states and territories. That has been the case particularly for escaped garden plants and aquatic weeds (the current focus of a threat abatement plan in preparation). It also impedes the abatement of other invasive threats, such as ornamental fish and invasive pasture species.

While state and territory governments could agree to regulate the sale, transport and use of invasive species assessed national as threats to biodiversity – as was done for some weeds of national significance – that has proven inefficient and inconsistent. It would be more efficient – and consistent with the national responsibility for KTPs – for nationally consistent approaches to listed invasive threats to be agreed and, where aided by regulation, to be implemented under s301A regulations, and then legislatively mirrored by the states and territories. The 2009 Hawke review of the EPBC Act noted that reforms of this nature ‘should engender a high return on the investment’.⁸

⁸ Hawke A. 2009. Report of the Independent Review of the EPBC Act.
<https://www.dccew.gov.au/environment/epbc/our-role/review/epbc-review-2008>

For these reasons, the Invasive Species Council supports the retention of the power to make regulations concerning non-native species under s301A of the EPBC Act, and we strongly encourage its use. We also propose some minor changes to the provision to clarify the extent of these powers so that regulations may also create a 'permitted list' of non-native species that may be traded. Making clear what is permitted as well as what is prohibited can be helpful for clarity and compliance, and is consistent with the approach taken at the national border.

Recommendation 4: List invasive species and develop regulations under section 301A of the EPBC Act where this will facilitate nationally coordinated abatement of key threatening processes and threats of national environmental significance.

Recommendation 5: Amend section 301A of the EPBC Act to clarify that in addition to prohibiting the trade in certain non-native species, regulations may be made for the purposes of creating lists of non-native species unlikely to threaten biodiversity in the Australian jurisdiction (i.e., permitted lists).

1.4. Multiple threat abatement plans per KTP

One design flaw of the EPBC Act that has long stymied threat abatement planning for many invasive species threats is that only one threat abatement plan is allowed for each key threatening process. This has meant that the novel biota KTP listing – intended to avoid the need to assess numerous more nominations for invasive species KTPs – has ended up impeding rather than facilitating threat abatement planning on high-priority species not separately listed.

We welcome the government's intention to rectify this in the EP Reform Bill. However, we are concerned that the proposed amendments may continue to prevent the creation of TAPs for components of umbrella KTPs, like novel biota.

We understand that the drafting of the amendments in item 382 section 270A in the Bill were directed at preventing the creation of overlapping threat abatement plans addressing the same part or parts of a key threatening process, which might occur, for example, if section 270A(1)(b) referred to the making of 'a threat abatement plan or plans'. The policy rationale seems to have been administrative clarity – ensuring only one active TAP exists per process at a time (whether for the whole process or a subset).

The proposed section 270(1A) remains of concern as it has the potential to reduce clarity for threat abatement planning and the flexibility required to deal with complex threats such as invasive species. For example, this provision may prevent the creation of separate TAPs respectively addressing overlapping parts of the novel biota KTP, like invasive aquarium fish and fish diseases.

The Invasive Species Council obtained legal advice on the proposed amendments to section 270A from a barrister with extensive experience with the operation of the EPBC Act. Dr McGrath's advice is attached to this submission – **Appendix 1**.

In summary, that advice concurs that different interpretations of proposed section 270A are open on the face of the Bill. In the advice, Dr McGrath proposes a simple fix to remove any doubt about how the provisions are to operate. We recommend this change to remove any doubt that multiple plans can be made for a single KTP.

Recommendation 6: Amend item 382, section 270A of the EP Reform Bill to insert a note below subsection (1A) to the effect that ‘ Nothing in this section prevents the Minister from making more than one threat abatement plan for different or overlapping parts of a listed key threatening process. Each plan may address different or overlapping aspects or threats associated with the process.’

1.5. Provide consistent, logical standards for threat identification and abatement

The current list of KTPs is a hodge-podge of threats of different scales and severity, ranging from the very particular listing for beak and feather disease to the all-encompassing novel biota KTP. A logical scheme for threats will facilitate (a) systematic threat identification, (b) threat prioritisation and (c) tracking of threat abatement progress and reporting. It will facilitate identification of and responses to new threats and delisting of threats when abatement is achieved.

Although the EP Reform Bill does not directly address these issues, the Invasive Species Council believes that establishing robust and enforceable national environmental standards (NES) could offer a genuine solution through the development of a Threat Standard.

We recommend a Threat Standard be required to be prepared under law and establish:

- processes for comprehensively identifying, listing, prioritising and reviewing key threats, and include horizon scanning to identify emerging threats
- a hierarchical threat classification schema, akin to the IUCN Threats Classification Scheme, but adapted for Australia. This would help address the current discrepancy between high-level KTPs (like novel biota) and more specific KTPs (like *Phytophthora cinnamomi*)
- processes to optimise decisions about the most appropriate threat responses. This should include an initial statement from the Scientific Committee upon the proposed listing of a nationally significant threat about the measures needed – e.g. management actions, law/policy reform, research – to achieve abatement (and delisting) of the threat or the maximum level of abatement that is feasible. This statement would inform decisions about the preparation of threat abatement plans/strategies, and law/policy reform and research priorities.
- processes for the joint making of threat abatement strategies and plans with states and territories, and the development and funding of complementary jurisdictional plans that give effect to the national strategy or plan
- monitoring and reporting of progress against actions and targets in threat abatement plans or strategies.

To ensure the threat standard is given effect in relevant decisions, we recommend amendments be included in the EP Reform Bill to ensure it is explicitly referenced in relevant sections of the EPBC Act, and the NEPA is provided with a clear function of assuring the application of the standard in relevant decisions (see recommendation 26 below).

Recommendation 7: Require the preparation of a Threats Standard to provide clear guidance on the identification, listing, prioritising, abatement and review of key threats, and include horizon scanning to identify emerging threats.

Recommendation 8: Amend the EPBC Act to require the Threats Standard to be applied in relevant decisions (e.g. the listing of KTPs, decisions concerning TAPs etc.).

1.6. Better incorporate conservation plans, including threat abatement plans, into proposed bioregional plans

The Samuel Review identified a high-priority need for comprehensive regional landscape plans to halt environmental decline and boost restoration efforts. Samuel's recommendations emphasised Regional Recovery Plans as a key mechanism for coordinating threat mitigation and ensuring accountability for MNES. Strategic assessments and ecologically sustainable development plans were intended to follow and be consistent with these recovery plans.

The Invasive Species Council broadly supported the review's proposals for expanding conservation planning to include strategic national and regional recovery plans, in addition to threat abatement plans. Unfortunately, the EP Reform Bill provisions concerning 'bioregional plans' do not align with the Samuel Review's recommendations.

Together with other groups, the Invasive Species Council believes that the proposed bioregional plans primarily serve to expedite development. We share concerns about the absence of requirements for upfront strategic environmental assessments, specific criteria for development zones and conservation zones, the limited opportunities for public engagement and optional application of NES.

Critically, we are concerned that these plans lack provision for identifying and strategically addressing threats to MNES – for example:

- KTPs and TAPs are not mentioned in the list of matters to which the Minister must have regard in deciding whether to make a bioregional plan (see proposed section 177AM).
- Under proposed section 177AQ there is a need for the Minister to be satisfied a plan is not inconsistent with a TAP, to the extent the Minister considers the TAP is relevant, but there are no requirements for the TAP to be given effect or implemented for the plan area.
- There are no criteria for the identification of priority classes of actions and proposed section 177AP(b) explicitly excludes consideration of threats associated with those actions before the Minister, including whether those actions may contribute to or exacerbate existing threats in the area. This could include developments that exacerbate weed threats or intensify fire threats in sensitive areas.
- There are no criteria for the identification of restricted actions for conservation zones or explicit requirements that those actions be identified in consideration of the threat(s) posed by them.

In consideration of these significant issues, the Invasive Species Council recommends changes be made to the bioregional planning provisions in the EP Reform Bill to align them more closely to Samuel Review recommendations.

Recommendation 9: Amend the bioregional planning provisions introduced by item 322, Part 12A of the EP Reform Bill to align those provisions more closely to Samuel Review recommendations, including by

- inserting robust requirements for upfront environmental assessment to inform bioregional plans
- giving much greater consideration and implementation of threat abatement and recovery plans in the preparation of plans
- strengthening protections for conservation zones and tightly constrain allowable impacts of priority actions in development zones
- providing greater opportunities for public engagement and comment on draft plans
- ensuring NES are given effect in all plans.

2. Live imports: strengthen protection for nature at the border

In this section we focus on reforms of live import provisions of the EPBC Act (Part 13A) that provide an essential defence against deliberate introductions of invasive species. Current decisions on importing live organisms are subject to less stringent standards and scrutiny than many other decisions under the Act. We recommend changes to expand the scope of regulated specimens, adopt an objective grounded in the precautionary principle, and require all assessments to be consistent with EPBC Act standards, regardless of the agency conducting them. We recommend establishing a prohibited list, formalising public transparency, and creating a mechanism for the review and removal of risky species to improve the currency and effectiveness of the Live Import List.

Most mega-threats to nature – habitat loss, adverse fire regimes, climate change, pollution – are the result of a multitude of decisions over long periods of time. But many major invasive threats come from single decisions resulting in the deliberate or accidental introduction of a new species to Australia. That’s why the live import provisions are among the most pivotal of the EPBC Act. Poor decisions about which species to permit as live imports can result in more environmental harm than permitting any major development. A single introduction can result in extinctions or major species declines.

Currently, live import decisions are subject to less defined assessment standards and scrutiny than most other decisions under the EPBC Act. The live import provisions were not considered by the Samuel Review of the EPBC Act, except from a CITES perspective.

In a renewed EPBC Act, live import provisions should now be given attention proportional to their importance for biodiversity conservation, for the following reasons:

- **High-risk:** Australia has already suffered enormous damage from the deliberate introduction of live biota. Since the advent of the EPBC Act, several new invasive species have established in Australia, including those that arrived as permitted live imports (e.g. Siamese fighting fish).
- **Irreversibility:** Given the often irreversible nature of most species introductions and their potential for severe to catastrophic environmental impacts, live import decisions require the highest standards of environmental protection.
- **International targets:** Strengthening live imports is important for Australia to achieve target 6 of the Global Biodiversity Framework – to reduce by 50% the rates of introduction and establishment of known or potential invasive alien species.

- **Cost-effectiveness:** Live import regulation is Australia's first and most cost-effective line of defence against invasive species threats. It is far more efficient to prevent harmful species introduction than to attempt eradication or management after establishment.

Given the high risks of species introductions, including up to extinctions, and the inherent unpredictability of many environmental impacts, strengthening and expanding the scope of EPBC Act's live import provisions offer the potential to significantly improve environmental protection, including for matters of national environmental significance.

2.1. Objectives and scope for live import decisions

The current provisions are not explicit about the objective of regulating live imports and do not specify acceptable outcomes. Therefore, it's not clear what 'suitable for live import' means in practice.

We recommend that new objects be inserted into Division 4, Part 13A of the Act to:

- explicitly recognise that some invasive species may not directly cause harm but facilitate or exacerbate the harm caused by existing or potential invasive species (e.g. as a vector, pollinator or food source)
- reflect (a) the lack of knowledge of many potential invaders and (b) the increasing cumulative impacts of invasive species and growing susceptibility of Australian biota by providing a 'negligible risk' standard for live import
- align with article 8(h) on the Convention on Biological Diversity which states, '[e]ach contracting Party shall, as far as possible and as appropriate, prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species'.

These recommended objects would help give effect to the precautionary principle for live import decisions. They would be aligned within the range of risk to the range implied by the Appropriate Level of Protection specified in the Biosecurity Act 2015, which is 'aimed at reducing biosecurity risks to a very low level, but not to zero'.

Also to better align with the Biodiversity Convention, we recommend expanding the scope of decision-making to apply more broadly to biodiversity. The definition of a live specimen in the EPBC Act is currently restricted to 'a live animal or a live plant', although in effect live plants are also excluded (because any plant permitted under the Biosecurity Act 2015 is permitted under the EPBC Act). Plants and animals represent only a proportion of biodiversity – just 2 of life's taxonomic kingdoms. Given the potential harm of invasive fungi, algae and other organisms, we recommend that live import functions under the EPBC Act are inclusive, at least, of live animals, plants, and non-pathogenic fungi, algae, chromists and protists.

Even if some categories of species are delegated for assessment under the Biosecurity Act, the decision-maker under the EPBC Act should ensure that the assessment methodologies are consistent with the EPBC Act objectives and standards before accepting their findings – as recommended in the following section (2.2).

Recommendation 10: Define a 'regulated live specimen' to be comprehensive of all live organisms except for pathogens – therefore inclusive of live animals, plants and non-pathogenic fungi, algae and protists. Also specify that a live specimen permitted for import can exclude any new taxa, hybrids or genetic variants of that specimen.

Recommendation 11: Specify an objective for the live import functions along the lines of the following:

Prevent the importation of live organisms to Australia that could:

- (a) adversely impact native biodiversity; or
- (b) facilitate or exacerbate the adverse impacts of other introduced organisms on native biodiversity.

Recommendation 12: Define the level of protection that should be applied to the consideration of a 'specimen suitable for live import' – for example:

A specimen suitable for live import has:

- (a) a negligible risk of establishing in the environment and adversely impacting on native biodiversity or facilitating the risk of another invasive species adversely impacting the environment; or
- (b) a very low risk of adversely impacting native biodiversity and will have a net environmental benefit.

2.2. Require all live import assessments and decisions to be consistent with the EPBC Act objects and standards

Without bright lights in the form of objectives to guide assessments and decisions, and bright lines to clearly demarcate administrative and jurisdictional responsibilities, there is great potential for inconsistent and less-than-rigorous decision-making. In this domain of decision-making about which organisms to permit into Australia, single poor decisions can have devastating, irreversible consequences for biodiversity.

Live import decisions are potentially undermined by:

- a lack of clear objectives (see 2.1)
- a lack of administrative and jurisdictional clarity about the respective responsibilities of the environment and agriculture departments
- inconsistent legislative requirements and assessment approaches.

The Inspector-General of Biosecurity recently highlighted such deficiencies in the live import assessment arrangements between Biosecurity Act and EPBC Act:⁹

- *No formal joint decision-making framework:* The Acts do not mandate concurrent assessments or consultation, leading to sequential processes and delays.
- *Delayed priorities and decision-making:* Live Import List amendments (EPBC Act) and Import Risk Analyses (Biosecurity Act) often occur one after the other, causing lengthy approval timelines.
- *Inefficient risk assessment:* Environmental and biosecurity risks are assessed separately, with no unified guidelines, resulting in duplication and **inconsistent standards** [bolding added].

⁹ Inspector-General of Biosecurity. 2025. Environmental biosecurity—management and policy implementation. 30-31. https://www.igb.gov.au/sites/default/files/documents/igb-environmental-biosecurity_report.pdf

- *Lack of [Australian Chief Environmental Biosecurity Officer (ACEBO)] representation:* The ACEBO has no formal role in Import Risk Analyses, limiting environmental input in early stages.
- *Governance ambiguity:* Reliance on informal arrangements creates unclear roles and accountability gaps; and undermines transparency.

Examples of ‘inconsistent standards’ include the following:

- On whether to allow the importation of live animals (e.g. parrots and aquarium fish), a decision under the EPBC Act – focused on the invasiveness of the species itself – requires the application of the precautionary principle. But the precautionary principle is not required for a decision under the Biosecurity Act – focused on the pathogens and parasites potentially vectored by the species.
- On whether to allow the importation of hybrids, all proposals to import hybrid animals (e.g. Bengal cats) must be assessed under the EPBC Act. But hybrid plants, assessed under the Biosecurity Act, do not require assessment if the parent species are permitted (even though the invasiveness of hybrids can be different from that of their parent species).

The Samuel Review made the following observations about other cross-agency arrangements:¹⁰

The EPBC Act operates in a way that seeks to recognise other Commonwealth environmental regulatory and management frameworks. The interplay between the Act and these other frameworks is complex. It is often more onerous than it needs to be, which leads to inefficiencies. **At times the arrangements are not supported by robust systems and processes, which can compromise effectiveness in achieving intended environmental outcomes** [bolding added].

While live import assessments were not a focus of the Samuel Review, these observations are apt, as is Samuel’s recommended approach requiring other agencies to meet relevant standards:

The accreditation model recommended by the Review can equally be applied to other Commonwealth agencies where they can meet the National Environmental Standards.

The advantages of utilising EPBC Act strategic assessments and accreditations are reduced time and expense, enhanced predictability, and the assurance of environmental outcomes being considered upfront. Despite these benefits, live import assessments and decision making have not been the subject of previous strategic assessments under the EPBC Act. Moreover, the EP Reform Bill proposes no amendments to the live imports provisions to address these issues.

We recommend harmonising current arrangements for the assessment and permitting of live imports to require consistent application of EPBC Act objects and standards (including the precautionary principle). This would align live imports with other areas where there are multiple responsible Commonwealth agencies, like fisheries.

Recommendation 13: Require all live import assessments and decisions – including those undertaken by Department of Agriculture, Fisheries and Forestry (DAFF) – to apply relevant EPBC Act objects and standards and be subject to periodic review.

¹⁰ Samuel G. 2020. Independent Review of the EPBC Act - Final Report. p 15.

2.3. Establish prohibited lists for live imports

The EPBC Act currently only allows for the listing of permitted specimens for live import, which means that applications for imports previously assessed and refused or known to be unsuitable have to be assessed. To prevent the waste of public resources assessing applications and to provide clarity for those wishing to import species, we recommend the establishment of a permitted list.

The inclusion of a prohibited list is consistent with the approach under the Biosecurity Act, and with a recommendation in the 2009 Hawke Review to facilitate quick refusals:¹¹

Currently, a specimen that may pose an unacceptable level of risk to the Australian environment if imported into Australia is required to go through a full environmental risk assessment. Full assessment requires significant resources. A streamlined process for screening of applications, with the option of a 'quick no' to listing proposals, should be pursued. Species that are considered to have an unacceptable level of risk could be refused for import without having to undergo a full risk assessment. This would minimise costs to applicants whose proposals are unlikely to be approved.

Hawke recommended that a 'quick no' decision should be available when risks are well known (for example, when similar applications have been rejected), when information requirements are not met or when no cost effective or practical mitigation measures are available.

Recommendation 14: Complement the lists of live specimens assessed as suitable for live import with a prohibited list – taxa or variants considered unsuitable for live import.

2.4. Improve transparency and accountability for live import decisions

Commendably, DCCEEW chooses to invite public comments on most decisions and to publish at least some of the assessment materials for live import assessments despite there being no requirements under the Act for this to occur. Consistent with Samuel Review recommendations about improving transparency and accountability, we recommend public notification and comment on live import decisions be formalised in the Act.

Recommendation 15: Include provisions to require public consultation on all applications to add organisms to the Live Import List.

2.5. Establish processes for the review and removal of species from the live import list

Most species on the Live Import List – thousands of species – have not been assessed under the EPBC Act, for they were transferred from the previous legislation – Wildlife Protection (Regulation of Exports and Imports) Act 1982 – under which there were no formal requirements for assessments.

Despite the obvious risks of allowing imports of unassessed species, there has been no review of the risks of these legacy species to determine whether they remain 'suitable' for live import.

¹¹ Hawke A. 2009. Report of the Independent Review of the EPBC Act. p 221.

<https://www.dcceew.gov.au/environment/epbc/our-role/review/epbc-review-2008>

Furthermore, while the EPBC Act provides specific processes for the amendment of the live import list to add species – including at the Minister’s initiative and by application by third parties – no similar provision is made to provide a process for the removal of species from the list.

This does not prevent the removal of species, but that occurs infrequently and appears to be an onerous or prolonged process. In July 2023, precipitated by a draft DAFF intention to permit psittacine imports from countries in addition to New Zealand, DCCEEW proposed the removal of 30 (of 33) parrot and cockatoo species from the live import list because they had never been assessed under the EPBC Act. That removal has still not occurred.

The lack of a specified and efficient process for removal of species is especially problematic when there is new or emerging evidence that a species allowed for live import poses an unacceptable risk to Australia’s biodiversity – for example, when a species demonstrates invasiveness overseas or in Australia. Recent risk assessments of 259 aquarium fish species mainly for northern hemisphere regions rated 46% as high or very risk in at least one region, indicating the inherent risks of introducing fish species.¹² Information about invasion risks is constantly emerging as species are introduced to ever more countries, and the risks themselves are also dynamic as new genotypes are introduced or propagule pressures change.

To balance the ledger in favour of a more precautionary and risk-based approach, we recommend the establishment of a process for review and removal of species from the live import list, including by application from the public, and an expedited process when the risk is imminent.

Recommendation 16: Establish a process to enable the removal of taxa from the live import list, including by application from the public. The decision-maker should have the power to stop imports of particular taxa on the live import list in response to an immediate risk such as emergence of a new disease.

Recommendation 17: Establish public mechanisms to trigger a review of any listed taxa for which there is information warranting an assessment (for taxa not previously assessed under the EPBC Act) or reassessment, including:

- information about its invasiveness elsewhere that may indicate an unacceptable or higher risk than previously assessed
- information about a new or emerging disease risk
- information about altered conditions in Australia that alter a risk profile

2.6. Provide consistent, logical standards for live import assessments and decisions

The Invasive Species Council believes that establishing robust and enforceable Live Imports NES (Live Imports Standard) could provide a solution to the earlier identified problems concerning the lack of objectives and standards and role ambiguity (sections 2.1, 2.2).

A Live Imports Standard should:

- be required to be prepared under law

¹² Vilizzi L, Copp GH, Hill JE, et al. 2021. A global-scale screening of non-native aquatic organisms to identify potentially invasive species under current and future climate conditions. *Science of the Total Environment*. 788: 147868.

- affirm that EPBC Act objects (including those specific to Live Imports) and standards, such as the precautionary principle, must apply to all live import decisions.
- identify the outcome for live import assessments by reference to the applicable level of risk.
- outline the process for live import assessments, including information requirements for application documents, and the process for public notification and comments
- specify assessment methods (including scope) and require their periodic review to ensure they effectively meet EPBC objectives and standards
- outline a process for the removal of species from the Live Import List (if it is not feasible to amend the EPBC Act to provide for this)
- apply to all live import assessments and decisions, including those by DAFF (e.g., for plant imports) and relevant decisions under regulations equivalent to s301A.

Minor changes should also be made to the EPBC Act to:

- ensure that plants included on the live import lists are ‘not inconsistent with the *Biosecurity Act 2015* and any relevant national environmental standards’
- give the independent Environment Protection Authority (EPA) a role in ensuring compliance with the Live Imports Standards (recommendation 26 below).

These changes will assist with harmonising live import assessments, including those undertaken by other Commonwealth agencies, to ensure that decisions are made transparently and consistently with environmental principles. By giving an assurance role to the EPA for the Live Import Standards, these changes will also provide for better accountability in decision-making.

Recommendation 18: Require preparation of a Live Imports Standard to provide clear guidance on the objectives, outcomes and processes for live imports assessments and decisions.

Recommendation 19: Amend the EPBC Act to require the Live Imports Standard to be applied in relevant decisions (including for decisions made by DAFF).

3. Close loopholes and constrain ministerial discretion

In this section we identify problematic loopholes and exemptions in the EP Reform Bill, including expanded 'national interest' powers and controversial ruling powers. We recommend their removal or constraint to ensure consistent application of standards and other regulations.

The Samuel Review found the failure of the EPBC Act to achieve its objectives is due partly to the lack of clear outcomes for assessments and the provision of too much ministerial discretion.¹³ Instead of introducing reforms addressing these valid criticisms, the EP Reform Bill provides fresh regulatory escape hatches for environmentally destructive activities and builds in further ministerial discretion.

New exemptions, loopholes and rulings powers proposed in the EP Reform Bill have the potential to undermine threat abatement (e.g. regulations made under s301A) and the clout of NES, such as the

¹³ Samuel, Graeme. 2020. Independent Review of the EPBC Act - Final Report. p 2.

Threats Standard and Live Import Standards we propose, and erode environmental and conservation outcomes.

For example, we contemplate that the new ‘national interest’ exemptions to Part 13 could be exercised to allow the use and trade in highly invasive species for particular industries (e.g. biofuels¹⁴) – although we note there are no regulations as yet to which an exemption could be made. Or regulations may only require the Minister to ‘have regard to’ Live Import Standards (including objectives and assessment methods) in deciding whether to allow the import of certain organisms such as an invasive fish species desired for aquaculture.

In this section we make recommendations to either remove or tightly constrain these defects so the EPBC Act provides robust standards that are applied without fear or favour.

3.1. Remove or tightly constrain proposed new exemptions in the ‘national interest’

The EP Reform Bill expands the current ‘national interest’ exemption powers and introduces wider exemptions from the need for approvals for ‘national interest proposals’. The new exemptions allow the Minister to waive the need for actions to undergo assessment and approval under the Act, bypass national environmental standards and ‘unacceptable use’ provisions, and escape operation of Part 13 of the Act (which deals with threatened species and ecological communities). These exemptions are accompanied by changes that could diminish transparency and accountability by making the publication of information about the use of the powers subject to ministerial discretion.

While the Invasive Species Council does not support any of these new and expanded exemption powers, we are most concerned about the proposed exemption of actions in the ‘national interest’ as set out in the proposed new Division 7A, Part 13 (new Part 13 exemptions).

Although the EPBC Act already provides powers to exempt actions from Act in the ‘national interest’, those powers have been exercised rarely, and generally in genuine emergency circumstances.¹⁵ For example, exemptions under sections 158 and 303A were used to permit the capture and breeding of the threatened Christmas Island flying-fox. This required an exemption from the Part 13 requirement for a permit to take a threatened species from a Commonwealth area to prevent delays that might have resulted in its further decline.¹⁶

Given that current sections 158 and 303A of the EPBC Act have been used without incident to exempt activities which were indisputably in the national interest, we can only assume they are not the type of actions proposed to be the subject of the proposed expansion of the exemptions. Unfortunately, the explanatory memorandum provides no substantive information about the problem(s) the new Part 13 exemptions seek to address.

The Bill also includes concerning provisions to block transparency and accountability about the use of exemption powers – the opposite of what the Samuel Review recommended.¹⁷ The current section 303A(7)(a) requires the Minister to ‘publish a copy of the notice and his or her reasons for

¹⁴ See, for example, Invasive Species Council. 2007. Weedy truth about biofuels. <https://invasives.org.au/our-work/climate-change-old/project-weedy-biofuels/>

¹⁵ Refer to the EPBC Act exemptions and exemptions register accessed on the DCCEEW website [here](#).

¹⁶ Refer to Minister Greg Hunt’s Statement of Reasons for this decision [here](#).

¹⁷ Samuel, Graeme. 2020. Independent Review of the EPBC Act - Final Report. p 12. <https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>

granting the exemption in accordance with the regulations'. But proposed section 302F(2) in the Bill provides that the Minister must not publish so much of their reasons, if those parts of the reasons might be exempt from disclosure under the FOI Act trade secrets or business documents exemptions, or if the Minister believes it is in the national interest not to provide the reasons. We recommend the closure of this transparency and accountability loophole should these new exemptions be passed.

Recommendation 20: Remove or tightly constrain the new Part 13 exemptions introduced by item 432 of the EP Bill by clearly listing the types of circumstances these exemptions would operate in the 'national interest'.

Recommendation 21: Amend proposed section 302F - Notice of Part 13 exemption, delete subsection (2).

3.2. Remove ministerial and NEPA CEO power to issue rulings

Despite being described in the explanatory memorandum as 'transparency, consistency and certainty' measures, the proposed new Part 19C powers for the Minister and CEO of NEPA to issue rulings on the interpretation of the law (introduced by item 572 of the EP Bill) are a major new loophole.

The Invasive Species Council is concerned that these powers allow for significant wriggle room if, for example, an NES has an politically undesirable impact, a ministerial ruling could 'clarify' it was not intended to have that result. While rulings could be issued to strengthen environmental protections, other ministerial discretions under the Act have mostly not operated that way.

We are particularly concerned that the rulings powers could be used to partially accredit other assessment and approval frameworks without the need for those frameworks to be properly vetted and subject to the safeguards under the relevant parts of the Act. In particular, section 514YM(5) provides that the Minister may issue a ruling on 'the consistency of a management or authorisation framework, or any component of a management or authorisation framework, with a national environmental standard or part of a national environmental standard.'

To our knowledge, the power to issue rulings is not a feature of any other environmental laws in Australia. Nor was it recommended by the Samuel Review. We believe that including these powers in the Act risks further politicisation and uncertainty in the application of the EPBC Act and are unwarranted.

Recommendation 22: Remove or tightly constrain the new Part 19C rulings powers.

3.3. Close loopholes relating to NES

The Invasive Species Council strongly supports the introduction of strong and enforceable NES to provide a strong backbone to the reforms. However, the EP Reform Bill includes discretions and loopholes that could undermine their effectiveness and, at times, render them spineless.

The Samuel Review was clear that the EPBC Act should ‘require that activities and decisions made by the Minister under the Act, or those under an accredited arrangement, be consistent with National Environmental Standards’. However, the EP Reform Bill substantially weakens this requirement in the following ways:

- Proposed section 514YK allows regulations to prescribe both when and how NES are applied in decisions. This means there may be certain decisions that are not required to apply relevant NES at all.
- Under section 514YK, when a decision is required to apply an NES, or a part of an NES, it may not be mandatory (i.e. the regulations can provide that a decision is not inconsistent with the standard, the decision-maker should have regard to the standard, or that the standard be applied in ‘any other way’).
- Where a relevant NES is not explicitly required to be applied to a decision by the Act, section 514YK provides that ‘a failure by a person to have regard to or apply a national environmental standard does not affect the validity’ of that decision. This means where the application of NES have not been explicitly mentioned in the relevant decision-making provisions, section 514YK builds in a great deal of discretion about how and when NES will be applied in decision making. So much so, that it may not have any legal implications if a relevant NES is considered or applied at all.
- The test for whether an NES can be varied or revoked under proposed section 514YG – whether the ‘Minister is satisfied’ it does not reduce protections etc – is not an objective test.
- In deciding whether the variation or revocation meets the tests outlined in subsection (1) of 514YG, the Minister does not need to consider the content of materials that have been adopted or incorporated by reference in the NES. This potentially opens the door to NES being reduced by stealth (e.g., if another agency or authority reduced protections in a document that was incorporated by reference in the NES).
- There is also a risk that subsection (4) of 514YG will lead to NES protections being weakened within the first 18 months of them being made – during a period in which the Minister is likely to be intensely lobbied by those opposing them.
- The power to use regulations to prescribe when and how NES are applied to decisions under proposed section 514YK, provides another mechanism through which regression of standards can occur.

We propose amendments to the EP Reform Bill to address these issues.

Recommendation 23: Amend section 514YK - Using national environmental standards, to provide that all relevant decisions and processes must be consistent with NES.

Recommendation 24: Amend section 514YG - No regression principle, to remove the words ‘the Minister must be satisfied that’ from subsection (1), and remove subsections (2) and (4).

4. Clarify the role and functions of the National Environment Protection Agency

The Invasive Species Council welcomes the commitment to establish a strong independent National Environment Protection Agency (NEPA). Here, we recommend amendments to establish a governing board of independent experts and, critically, to assign the NEPA CEO the responsibility for monitoring, auditing, and reporting annually to Parliament on the performance of all parties against the National Environmental Standards.

An effective NEPA will provide essential oversight of the implementation of federal environment laws and functions such as threat abatement and conservation planning. While this important reform is welcome, we are concerned that, in its present form, the proposed NEPA is not clearly science based or adequately independent and that this will undermine its effectiveness.

We support amendments to improve independence and checks and balances including:

1. ensuring senior decision-making delegated positions are independent
2. provisions for the appointment of an independent board
3. stronger mechanisms for non-compliance to be reported and addressed.

Consistent with Samuel Review recommendations, we have already highlighted the critical need for independent assurance, including annual reporting, of the performance of Commonwealth and accredited parties against NES (section 1.5). But the current bills appoint no person or agency to the role.

For this reason, we urge amendments be made to the NEPA Bill to assign that function to the CEO of NEPA. Ensuring that the EPA reports independently to parliament on the implementation of NES will ensure increased transparency and improved accountability of the EPBC Act.

Recommendations 25: Require a governing board of suitably qualified, independent people to appoint and oversee a skills-based EPA CEO, and play a role in setting the strategy of the EPA.

Recommendation 26: Amend section 13 of the NEPA Bill to insert a new function for the CEO of NEPA to ‘monitor, audit and report on the performance of the Commonwealth, States and Territories, and other accredited parties in implementing National Environmental Standards and progress in achieving the prescribed outcomes’.

5. Clarify the role and functions of Environment Information Australia

The Invasive Species Council welcomes the creation of the Environment Information Australia (EIA) to collect, maintain and report on environmental data. Here we propose amendments to improve its oversight and accountability function for the implementation and funding expenditure of conservation planning instruments (like threat abatement plans), and to ensure a robust public interest focus by clarifying its mandate to identify and publish information.

A well resourced and empowered EIA can do much to improve conservation in Australia, including by:

- compiling data to inform prioritisation for threat abatement
- identifying emerging threats to nature
- increasing our knowledge of the extent of invasive threats
- improving monitoring of and reporting on government-funded projects.

One of the weaknesses of the EPBC Act is a lack of oversight mechanisms for threat abatement and other conservation planning, as highlighted by the Australian National Audit Office in 2022:

The department does not currently track or support the implementation of most conservation plans, threat abatement plans or recovery plans by other Commonwealth entities, states and territories, or non-governmental groups and individuals.¹⁸

This could be improved by:

- including as one of the objects of the EIA Act ‘to improve accountability in relation to matters affecting the environment, including government policies, programs and funding, through regular, comprehensive and transparent reporting’
- expanding the proposed remit of the Head of the EIA to include an oversight role to evaluate and report to the Parliament (on an annual basis) regarding the implementation of conservation planning instruments, including threat abatement plans, and the expenditure of associated government funding.

We are concerned that the broad definition of ‘protected environmental information’ in section 5 of the EIA Bill includes information that would ‘prejudice the effective working of government’, and the associated proposed restrictions on its use and disclosure by the EIA under sections 35 and 36. These broad loopholes in the publication and reporting of critical environmental information is not in keeping with the Samuel Review findings concerning the lack of community trust in the system and recommendation 11 and could have the effect of reducing transparency and further eroding public confidence in our national environmental law.

Recommendation 27: Amend Section 3 - Objects, subsection (c) to remove the phrase ‘government policies and programs’ and replace it with ‘government policies, programs and funding’.

Recommendation 28: Amend Section 5 - Definitions, ‘protected information’ to delete ‘(b) prejudice the effective working of government’.

Recommendation 29: Amend Section 10 - Functions conferred on the Head of the EIA to include:

- identify categories of environmental information held by governments that should be published in the public interest
- develop standards for the reporting of environmental information, including by the recipients of public funding for environmental projects
- identify priority gaps in environment data and information

¹⁸ Australian National Audit Office. 2022. Management of Threatened Species and Ecological Communities under the Environment Protection and Biodiversity Conservation Act 1999. https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2021-22_19.pdf

- facilitate the timely addition to and correction of information and data used by the government
- report to Parliament on an annual basis on the implementation of conservation planning instruments, including threat abatement plans, and the expenditure of associated government funding (if any).

Recommendation 30: Amend Section 14 – National Environment information assets, subsection (1) by replacing ‘critical’ with ‘important’.

6. Strengthen First Nations peoples’ role in decision-making

The EP Reform Bill lacks mechanisms to meaningfully involve First Nations peoples in environmental decision-making. To rectify this, we recommend the establishment of a statutory, independent Commissioner for Country (or similar role).

Caring for Country and its plants and animals is deeply embedded in First Nations peoples’ culture. Despite increasing acknowledgement of Indigenous knowledge and expertise, Australia is sorely lacking First Nations voices in environmental policy- and decision-making.

The Samuel Review recognised this when it found that ‘the EPBC Act is not fulfilling its objectives as they relate to the role of Indigenous Australians in protecting and conserving biodiversity, working in partnership with and promoting the respectful use of their knowledge’.¹⁹

Although we understand the government is working on an NES on First Nations engagement and some changes are proposed to the functions of the Indigenous Advisory Committee, there is nothing in the current bills that strengthens the inclusion of First Nations people in environmental decision-making under the EPBC Act.

An alliance of First Nations-led and conservation groups, including the Invasive Species Council, have previously recommended a statutory Commissioner for Country to be appointed by the Environment Minister, with responsibilities that include the following (see **Appendix 2** for more details):

- support First Nations people to care for Country
- be an advocate for biodiversity and culturally significant species
- have a formal role providing advice on decisions under the EPBC Act that impact Indigenous people, particularly regarding caring for Country
- progress Indigenous-led solutions to environmental problems and inform environmental policy and program design
- ensure culturally appropriate and co-designed governance arrangements for Indigenous participation and engagement in decision-making.

We urge the Senate Committee to consult with First Nations groups, including the Indigenous Advisory Committee, regarding the proposal and its operation.

¹⁹ Samuel G. 2020. Independent Review of the EPBC Act - Final Report. p 57.

<https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>

Recommendation 31: In consultation with First Nations groups, establish a role of an independent, Indigenous Commissioner for Country in the EPBC Act (or similar), to be appointed by the Environment Minister for a minimum term of 4 years. Provide the role with appropriate staff and resourcing.

Appendix 1. Advice on improving the clarity and certainty of amendments to s 270A of the EPBC Act proposed as part of the Environment Protection Reform Bill 2025

DR CHRIS MCGRATH

BARRISTER

LLB(Hons), BSc, LLM, PhD

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14 November 2025

Dr Carol Booth
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Katoomba NSW 2780

Dear Carol,

Re: Advice on improving the clarity and certainty of amendments to s 270A of the EPBC Act proposed as part of the *Environment Protection Reform Bill 2025*

INTRODUCTION

1. I have been asked to advise on improving the clarity and certainty of amendments to s 270A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) proposed as part of the *Environment Protection Reform Bill 2025* (**Reform Bill**). The Bill passed the House of Representatives on 6 November 2025 and is currently being considered by the Senate.¹ It was referred to the Senate's Environment and Communications Legislation Committee on 30 October 2025, which is due to report on 24 March 2026.
2. Specifically, I am asked to advise on improving the clarity and certainty of the proposed amendments to s 270A of the EPBC Act authorizing the Minister making more than one threat abatement plan (**TAP**) for any key threatening process (**KTP**).
3. My expertise to provide this advice stems from the facts that:
 - (a) I am an Australian barrister specializing in environmental law with over 25 years of practice experience;
 - (b) I have acted as a barrister in many Federal Court cases involving the EPBC Act, including seminal cases such as *Booth v Bosworth* (the **Flying Fox Case**)² and the Nathan Dam Case;³ and
 - (c) I have published numerous articles on the interpretation and operation of the EPBC Act.⁴

¹

² *Booth v Bosworth* [2001] FCA 1453; (2001) 114 FCR 39; (2001) 117 LGERA 168. A case study of this litigation is available on my website at <http://envlaw.com.au/flying-fox-case/>.

³ *Queensland Conservation Council Inc v Minister for the Environment and Heritage* [2003] FCA 1463; (2004) 139 FCR 24.; *Minister for the Environment and Heritage v Queensland Conservation Council Inc* [2004] FCAFC 190; (2004) 139 FCR 24; (2004) 134 LGERA 272. A case study of this litigation is available on my website at <http://envlaw.com.au/nathan-dam-case/>.

⁴ Including: Chris McGrath, "Key concepts of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)" (2005) 22 *Environmental and Planning Law Journal* 20-39; and Chris McGrath, "Flying foxes, dams

BACKGROUND AND CONTEXT

4. TAPs are one of the tools provided for conservation of threatened species and communities in the EPBC Act by responding to a KTP declared under s 183 of the Act. Many of the KTPs listed under s 183 relate to invasive species.⁵
5. The powers to make and revoke TAPs are located with recovery plans in Chapter 5 (Conservation of biodiversity and heritage), Part 13 (Species and communities), Div 5, Subdivision A (Recovery plans and threat abatements plans), ss 267-284 of the EPBC Act.
6. Relevantly, s 270A currently provides:

270A Decision whether to have a threat abatement plan

Decision

- (1) The Minister may at any time decide whether to have a threat abatement plan for a threatening process in the list of key threatening processes established under section 183. The Minister must do so:
 - (a) within 90 days of the threatening process being included in the list; and
 - (b) within 5 years of the last decision whether to have a threat abatement plan for the process, if that decision was not to have a threat abatement plan for the process.

Basis for decision

- (2) The Minister must decide to have a threat abatement plan for the process if he or she believes that having and implementing a threat abatement plan is a feasible, effective and efficient way to abate the process. The Minister must decide not to have a threat abatement plan if he or she does not believe that.

Consultation before making a decision

- (3) Before making a decision under this section, the Minister must:
 - (a) request the Scientific Committee to give advice within a specified period; and
 - (b) take reasonable steps to request any Commonwealth agency, any State, any self-governing Territory, and any agency of a State or self-governing Territory, that would be affected by or interested in abatement of the process to give advice within a specified period;on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

Consulting others

- (4) Subsection (3) does not prevent the Minister from requesting any other person or body to give advice within a specified period on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

and whales: Using federal environmental laws in the public interest” (2008) 25 *Environmental and Planning Law Journal* 324-359.

⁵ e.g. “The reduction in the biodiversity of Australian native fauna and flora due to the red imported fire ant, *Solenopsis invicta* (fire ant)”. The list of KTPs is available at <https://www.environment.gov.au/cgi-bin/sprat/public/publicgetkeythreats.pl>

Request may be made before listing

- (5) A request for advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process may be made before or after the process is included in the list of key threatening processes established under section 183.

Time for giving advice

- (6) The Minister must not make a decision whether to have a threat abatement plan for the process before the end of the period within which he or she has requested a person or body to give advice on the feasibility, effectiveness or efficiency of having and implementing a threat abatement plan to abate the process.

Considering views expressed in consultation

- (7) When the Minister is making a decision under this section, he or she must consider the advice that a person or body gave on request within the period specified in the request.

Publishing decision and reasons

- (8) The Minister must publish in accordance with the regulations (if any):
- (a) a decision whether or not to have a threat abatement plan for a key threatening process; and
 - (b) the Minister's reasons for the decision.

Special rules for processes included in original list

- (9) Subsections (3), (4), (5), (6) and (7) do not apply in relation to a decision about a process included in the list under section 183 as first established.

7. Items 382-387 of the Reform Bill proposed a series of amendments to s 270A as follows:

382 Subsections 270A(1) and (2)

Repeal the subsections, substitute:

Decision

- (1) For each threatening process in the list of key threatening processes established under section 183, the Minister may at any time decide to:
- (a) have a threat abatement plan for the whole process; or
 - (b) have a threat abatement plan for one or more parts of the process; or
 - (c) not have a threat abatement plan at all for the process.
- (1A) If the Minister decides to have a threat abatement plan for one or more parts of the key threatening process, the Minister is taken to have also decided not to have a threat abatement plan for any other part of the process.
- (1B) The Minister must make a decision under this section:
- (a) within 90 days after the process is included in the list; and
 - (b) within 5 years after the last decision under this section in relation to the process, unless that decision was to have a threat abatement plan for the whole process.

Note: A process may be included in the list of key threatening processes by combining or separating other processes (see paragraph 184(ca)).

Basis for decision

- (2) The Minister must decide to have a threat abatement plan for the whole process if the Minister believes that having and implementing such a plan is a feasible, effective and efficient way to abate the whole process.
- (2A) The Minister must decide to have a threat abatement plan for a part of the process if:
 - (a) the Minister believes that having and implementing such a plan is a feasible, effective and efficient way to abate that part of the process; and
 - (b) the Minister does not believe that having and implementing a threat abatement plan for the whole process is a feasible, effective and efficient way to abate the whole process.
- (2B) The Minister must decide to not have a threat abatement plan for the whole process, or any part of the process, if the Minister does not believe that having and implementing a threat abatement plan for the whole process, or the part of the process, is a feasible, effective and efficient way to abate the whole process or the part of the process.

383 Paragraph 270A(3)(b)

After “interested in abatement of”, insert “any part of”.

384 Subsections 270A(3), (4) and (5)

After “threat abatement plan to abate”, insert “the whole or any part of”.

385 Subsection 270A(6)

After “threat abatement plan for”, insert “the whole or any part of”.

386 Subsection 270A(6)

After “threat abatement plan to abate”, insert “the whole or any part of”.

387 Paragraph 270A(8)(a)

Repeal the paragraph, substitute:

- (a) a decision under this section; and

- 8. The relevant part of the *Explanatory Memorandum* to the Reform Bill in the House of Representatives⁶ explain that the amendments allow threat abatement plans to address the whole or any part of a listed key threatening process (in contrast to the current Act, which does not allow the Minister to have a TAP for only part of a KTP.) However, they do not confirm or clarify that multiple TAPs may be made for a KTP.
- 9. The Threatened Species Council (**Council**) is concerned the proposed amendments, particularly the new s 270(1A), may be interpreted as preventing the Minister making more than one TAP for any KTP. The Council is concerned to ensure the Minister has flexibility to make more than one TAP for a KTP if that is the most appropriate and effective approach to take in the context of KTPs affecting many parts of the Australian environment in complex and diverse ways.

⁶ *Environment Protection Reform Bill 2025 – Explanatory Memorandum*, 2025, pp 382-384.

10. As all Commonwealth and state legislation, the EPBC Act is interpreted according to settled rules of statutory construction – though these “settled” rules can be very difficult and controversial to apply in practice for complex legislation such as the EPBC Act. The High Court has repeatedly emphasized the process begins and ends with the text of the legislation understood in context.⁷ Recently, in *Palmanova Pty Ltd v Commonwealth of Australia* [2025] HCA 35 (*Palmonova*), Gageler CJ, Gordon, Jagot, and Beech-Jones JJ summarized the modern approach to statutory construction at [4]-[5] (footnotes in original):

[4] Statutory construction is the process of attributing meaning to statutory text.⁸ The construction of a statutory provision begins and ends with the statutory text understood in context⁹ and in light of the statutory purpose – being what the provision is designed to achieve in fact¹⁰ – insofar as that purpose is discernible from the statutory text and context.¹¹ In the construction of a provision of a Commonwealth statute, the meaning that would best achieve the statutory purpose so discerned is to be preferred to each alternative meaning.¹²

[5] That being the nature of the task to which the process is directed, the “modern approach” to statutory construction, as was explained nearly 30 years ago in *CIC Insurance Ltd v Bankstown Football Club Ltd*¹³ in a statement repeated and endorsed many times since:¹⁴ “(a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses ‘context’ in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means ... , one may discern the statute was intended to remedy”. Use of extrinsic material in the construction of a provision of a Commonwealth statute is guided but not governed by a non-exhaustive list of categories of material statutorily recognised to have potential to illuminate the statutory context.¹⁵

11. The *Acts Interpretation Act 1901* (Cth) (*AIA*) provides important general rules of interpretation for Commonwealth legislation, including:

23 Rules as to gender and number

In any Act:

- (a) words importing a gender include every other gender; and
- (b) words in the singular number include the plural and words in the plural number include the singular.

12. However, the AIA itself provides that its application is “subject to a contrary intention” in any Act,¹⁶ which itself generates uncertainty and the potential for conflicting interpretations between the AIA and any Act. Referring to the Queensland equivalent of the AIA in *Queensland v Mr Stradford (a pseudonym)* [2025] HCA 3 at [126], Gageler CJ, Gleeson, Jagot, and Beech-Jones JJ stated (footnotes in original):

⁷ *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503 at 519 [39]; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at 46-47 [47].

⁸ *Thiess v Collector of Customs* (2014) 250 CLR 664 at 671 [22].

⁹ *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503 at 519 [39]; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at 46-47 [47].

¹⁰ *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137 at 157 [40].

¹¹ *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1 at 12 [16]; 419 ALR 457 at 468.

¹² Section 15AA of the *Acts Interpretation Act 1901* (Cth).

¹³ (1997) 187 CLR 384 at 408.

¹⁴ eg, *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85 at 112-113; *Network Ten Pty Ltd v TCN Channel Nine Pty Ltd* (2004) 218 CLR 273 at 280-281 [11]; *Australian Finance Direct Ltd v Director of Consumer Affairs (Vic)* (2007) 234 CLR 96 at 113 [39]; *Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corporation Ltd* (2008) 232 CLR 314 at 332 [45].

¹⁵ Section 15AB(2) of the *Acts Interpretation Act 1901* (Cth).

¹⁶ AIA, s 2.

[126] The *Acts Interpretation Act* provides that its application "may be displaced, wholly or partly, by a contrary intention appearing in any Act".¹⁷ The identification of a contrary intention is to be undertaken using both "judge-made rules of construction"¹⁸ and the rules of construction specified in statutes, including the *Acts Interpretation Act* itself. Such rules include the necessity to construe the legislation as a whole in context¹⁹ and the necessity to construe the legislation so as to give effect to its object or purpose.²⁰ ...

PROPOSED CLARIFICATION

13. In this context, I agree with the Council that it is desirable clarify the proposed amendments to s 270A of the EPBC Act allow the Minister to make more than one TAP for the whole or part of a KTP. This is desirable both for avoiding potential future litigation (though this may be considered a low risk) and providing clarity for the Minister and departmental staff responsible for future administration of the Act.
14. I add that, considering the complex nature of many KTPs and how they impact the environment, it is foreseeable that TAPs might overlap in their operation. In my opinion, it is also worth clarifying that multiple TAPs may validly overlap.
15. While there are multiple ways the amendments might be clarified, a simple way to do so is to add a note clarifying these matters to either s 270A(1) or (1A). Notes are routinely used in other sections of the EPBC Act and one is proposed in the new s 270A(1B) (as extracted above at [7]).
16. The form of the note I recommend adding to either s 270A(1) or (1A) is as follows:

Note: Nothing in this section prevents the Minister from making more than one threat abatement plan for different or overlapping parts of a listed key threatening process. Each plan may address different or overlapping aspects or threats associated with the process.
17. Adding this note to either s 270A(1) or (1A) will clarify the amendments allow the Minister to make more than one TAP for a KTP and that TAPs may overlap.
18. The purpose of the note could be confirmed in a further explanatory memorandum in due course but it is unnecessary to do so as the note is self-explanatory.
19. Please contact me if you require any further advice on this or other matters.

Yours faithfully

Dr Chris McGrath

¹⁷ *Acts Interpretation Act*, s 4.

¹⁸ *DRJ* (2020) 103 NSWLR 692 at 720-721 [115].

¹⁹ See, eg, *Schmidt v Government Insurance Office of New South Wales* [1973] 1 NSWLR 59 at 67.

²⁰ See, eg, *Acts Interpretation Act*, s 14A(1).

Appendix 2. Voice of Country: Proposal for a Commissioner for Country

Voice of Country: Commissioner for Country

June 2024

Anangu Country, NT. Image: Jaana Dielenberg

Urgent submission to establish a Commissioner for Country at the federal level. This submission is led by a collective group of Aboriginal and Torres Strait Islander representatives from the Biodiversity Council, Wentworth Group of Concerned Scientists, Invasive Species Council, Australian Conservation Foundation, the North Australian Indigenous Land and Sea Management Alliance, the Indigenous Desert Alliance and the WWF Australia.

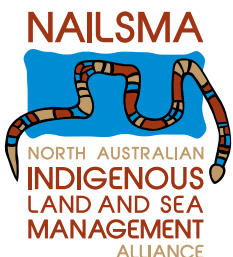
**We are seeking an independent, authoritative First People's voice
to protect Australia's biodiversity.**

Since colonisation, Australia has lost over 100 native plants and animals to extinction; these species are gone forever. Valuable Traditional Ecological Knowledge is lost when a species disappears. Aboriginal and Torres Strait Islander people lived in harmony with this Country and the species that evolved here for thousands of years. Our culture understands the importance of caring for Country. We are calling for a voice of Country to end this ongoing damage to Country.

The lack of consideration for Indigenous knowledge in decision-making is why there is a strong need for an independent, authoritative Indigenous voice that

guides the protection and management of natural and Indigenous cultural heritage values protected under national law.

The Commissioner for Country will be an empowered public champion that provides a geographical voice to protect, restore, manage invasive species, and repair Country – a voice of Country. This voice does not replace or supersede the voice of Aboriginal and Torres Strait Islander communities but elevates and empowers those seeking to care for Country. This voice is for Country, working toward healing Country.



Key responsibilities:

- Support First Peoples as land managers with information and navigating Federal Government agencies
- Provide resourcing opportunities to ensure First Peoples have the resources required to care for Country.
- Provide uplift and capacity building for Indigenous groups underpinned by cultural knowledge exchanges through connecting communities.
- Be an advocate for biodiversity and culturally significant species within government and with the general public.
- Provide advice on decisions under national law that impact Indigenous people, particularly regarding Caring for Country.
- Progress Indigenous-led solutions in the environmental sector and inform environmental policy and program design.
- Ensures Cultural Authority through Culturally appropriate and co-designed governance arrangements for Indigenous participation and engagement in decision-making.

Budget:

Indigenous Advisory Body

(10 members, 4 annual meetings).

\$100,000 per annum

Commissioners Office and Commissioner

11 FTE. \$2m per annum

Caring for Country Funding Program

\$40m per annum

Proposed governance:

- An Identified position established in statute with roles and responsibilities defined in law, appropriately resourced with an office and ongoing funding to ensure effectiveness.
- Appointed by the Environment Minister for a fixed term (no less than four years) with a formal governance relationship to the EPBC Act via the Indigenous Advisory Committee*
- Guided by an Indigenous Advisory Board to be established and resourced to ensure geographical representation.
- Under the Minister's Call in powers, the Environment Minister must consider the Commissioner's advice on matters that impact Indigenous People.
- This position will be an independent voice outside of existing departmental structures but can be supported by departmental staff, similar to the Threatened Species Commissioner.
- Provide annual reports to parliament on the protection of natural and cultural heritage values and will appear at Senate estimates.
- Provide oversight of a recurring funding allocation that supports effective Indigenous-led care for Country projects.
- Be a conduit for two-way communication between the Indigenous community and the Minister, bringing grassroots concerns to the Minister or conveying the Commissioner's advice from the ground up.

