Submission to the Senate Standing Committees on Environment and Communications in response to

Inquiry into the Environment Protection Reform Bill 2025 and six related bills

prepared by Environmental Justice Australia

13 November 2025

The *Environment Protection Reform Bill 2025* and six related bills (together, **the Bills**) are a once in a generation opportunity to meaningfully address critical issues with the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). We welcome the Government's commitment to improving and updating the EPBC Act.

Key aspects of the Bills have the potential to make positive, enduring systems change and must be retained. These include a new National Environmental Protection Agency (**NEPA**), stronger penalties for those who break the law, definitions within the EPBC Act of "unacceptable impact" and "critical habitat" and the initial steps towards a system grounded in National Environmental Standards (**NES**).

However, the Bills must be amended in five essential areas, if they are to ensure that our national environment laws are fit-for-purpose and can protect nature, climate and people. These amendments are known, clear and already prepared.

1. The Bills are unacceptably weakened by discretionary and non-mandatory drafting - they must be amended to **increase certainty and reduce discretion in decisions** including:
    a. to ensure **objective decision-making** and make the test for compliance more prescriptive.
    b. to **remove the rulings power**, or subjecting it to substantive and procedural safeguards.
    c. to ensure that **protection statements complement** and cannot override or diminish recovery plans, conservation advices and threat abatement plans, including requirements to not act inconsistently with these documents.
    d. for **strategic assessments** – to remove or constrain 'minor variations', retain public consultation and objectively apply environmental protections.
    e. to **retain existing reconsideration request provisions**.
    f. to **remove the new 'national interest proposal' exemption power**, or constrain this power and the existing **national interest exemption**.

2. The Bills fail to address Australia's deforestation crisis – amendments must be made to **close deforestation and land clearing loopholes** including:
    a. Removing the Regional Forest Agreement (**RFA**) exemption or comprehensively apply NES to logging in RFA areas, while improving monitoring, reporting and accountability.
    b. Removing or sufficiently constraining the outdated exemption for continuations of use (s43B EPBC Act).

3. The Bills would entrench outdated regulatory decision-making about new fossil fuel projects and the climate crisis – amendments must be made to **embed and respond to climate change** including:

a. Adding climate mitigation and adaptation to the purpose of the law, and embedding clear, enforceable climate tests in every decision.
b. Requiring projects to report scope 1, 2 and 3 emissions, be assessed against future climate scenarios, and align with Australia's international obligations.

4. The Bills propose inappropriate devolution of Commonwealth government responsibility to the States and Territories – amendments must be made to **ensure the Commonwealth Government is responsible for national laws** including:
    a. The Federal Government retaining responsibility for project approval decisions, and **assessment accreditation** only being allowed where strict, objective tests are met.
    b. Removing changes proposed to the **water trigger**, so that it remains exempt from devolution.
    c. Requiring appropriate environmental assessment and consultation for projects in the **streamlined assessment pathway**, which must be limited to low risk and impact projects.
    d. Proper assessment of, and protection being guaranteed by, **bioregional plans**.
    e. Removing the proposed new section Part 4 Division 2A (Actions covered by Ministerial declarations and **NOPSEMA** management or authorisation frameworks).

5. The Bills would create a risky offsets scheme without sufficient safeguards to ensure environmental outcomes for threatened species and their habitat – amendments must be made to **ensure an offsets scheme with integrity** including:
    a. Removing the pay-to-destroy offsets fund.
    b. Removing the option to pay restoration contribution charges in lieu of offsets.
    c. Embedding transparency and accountability in the offsets scheme.

About Environmental Justice Australia

Environmental Justice Australia is a public interest environmental law practice, based in Melbourne and undertaking work across our areas of expertise throughout Australia. We provide legal advice and support to the community on public interest environmental issues, advocate for better environmental laws, and provide legal education to the community on environment matters. We act primarily for community organisations, Traditional Owners groups and NGOs on matters concerning environment and natural resources law and policy.

We acknowledge the Awabakal, Bunurong, Gadigal, Larrakia, melukerdee, Ngambri, Ngunnawal, punnilerpanner, Wadawurrung and Wurundjeri peoples, the Traditional Owners of the lands on which the Environmental Justice Australia team lives and where our office is located. We pay our respects to Elders past and present, and recognise that sovereignty has never been ceded. This land always was and always will be Aboriginal and Torres Strait Islander land. Environmental justice is inseparable from First Nations justice.

Further details may be provided

This submission has been prepared in the limited time available. Environmental Justice Australia may make a further submission on specific matters prior to the closing time for submitting to this Inquiry. We are available to provide detailed amendments and/or drafting options to improve the Bills to transform our national environment laws into the EPBC Act that Australia needs.

For further information on this submission, please contact:

1 Increase certainty and reduce discretion in decisions

1.1 Stronger statutory language

Many key aspects of the reforms: (a) are framed as subjective and discretionary (e.g. 'to the satisfaction of the Minister'); and/or (b) involve a weaker test of being 'not inconsistent' with set criteria, rather than a positive test such as 'in accordance with' or 'complies with'.

The Second Independent Review of the EPBC Act (**Samuel Review**) found that a fundamental shortcoming of the current EPBC Act is that it does not provide sufficient constraints on discretion and this considerable and unfettered discretion in decision making has resulted in uncertainty and poor environmental outcomes.[1] The Bills would exacerbate, rather than resolve, these existing flaws, increasing discretion and subjectivity in decision-making.

The First Independent Review of the EPBC Act (**Hawke Review**) found that the use of double negatives, such as 'not inconsistent', weakens provisions significantly and recommended this language be replaced with stronger tests.[2] In practice, 'not inconsistent' has been interpreted as lowering the threshold of decision-making obligations.[3]

For example, the National Environmental Standards (**NES**) are intended to be the centrepiece of the reforms but there is significant discretion throughout the assessment and decision-making process - for example the Minister must 'be satisfied' the NES will promote the objects of the EPBC Act and 'not be inconsistent' with relevant international agreements. How and which NES are to be applied in Ministerial decisions is subject to the Minister's satisfaction rather than an objective test. Regulations will prescribe how and when NES will apply to other decisions.

This statutory drafting risks undermining the intended reforms and must be amended to ensure better decision-making to deliver environmental outcomes.

> **Recommendation 1:** The Bills must be amended to change to an objective decision-making frame that sets out the decision-maker's obligations in fact, rather than opinion, and to strengthen tests for compliance, making them more prescriptive than the proposed 'not inconsistent' threshold.
>
> **Annexure 1** lists key provisions that should be amended and substituted with stronger drafting.

1.2 Introduce appropriate safeguards on new powers

The Bills also introduce several new powers which, as drafted, do not have appropriate safeguards to ensure misuse or misapplication by future governments.

A **new rulings power** provides significant discretion to the Minister and National Environmental Protection Agency (**NEPA**) CEO to declare how laws should be interpreted. This power risks

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[1] Samuel Review, p 48, 43, 3
[2] Hawke Review, p 233
[3] For example, the Court has said that 'a statutory imperative to act "not inconsistently with" is intended by Parliament to be to some extent a softer requirement than an imperative to act "in accordance with"' (*Friends of Leadbeater's Possum Inc v VicForests* (2018) 260 FCR 1 (construing s 139) at [215])

infringing upon the role of the judiciary and as drafted, it is inappropriate for the Minister responsible for the EPBC Act to be exercising this role.

> **Recommendation 2:** The Bills should be amended to remove the rulings power (remove new Part 19C). If this is not done, the rulings power must be subject to substantive and procedural safeguards including appropriate consultation, transparency, and published statements of reasons for rulings. The legislation should prescribe matters for consideration in the making of rulings and ensure that rulings do not undermine other core aspects of the Bills, for example, by clearly stating that rulings cannot authorise or facilitate unacceptable impacts or outcomes that are inconsistent with the new NES.

New **protection statements** grant the Minister broad discretion to interpret conservation planning documents (recovery plans, threat abatement plans and conservation advices). As drafted, protection statements can be of less scientific rigour and content than recovery plans (for example, there are minimal mandatory content requirements and no requirement to consult with the Scientific Committee). Protection statements risk undermining long-standing requirements in the EPBC Act that align conservation planning with decision making and require that Ministerial decisions are not inconsistent with recovery plans. This is particularly concerning when combined with amendments allowing recovery plans to be made for only part of a species or ecological community. This would mean that recovery plans may not provide the same holistic protection for a threatened species as currently required**.** See **Annexure 2** for further detail.

> **Recommendation 3:** Protection statements must complement, not override or diminish the role of existing conservation planning documents. Existing provisions in the EPBC Act that require the Minister to not act inconsistently with a recovery plan and have regard to a conservation advice must retain their force. The Bills must be amended to require that protection statements have objective consistency with relevant NES and provide equal or greater protection than recovery plans, threat abatement plans and conservation advices.

The Bills amend the **strategic assessment** framework by creating broad new powers to make and vary strategic assessments without proper oversight and accountability, and with significant Ministerial discretion. A new process will allow for new ‘minor’ variations to a policy, plan or program.

> **Recommendation 4:** Remove or constrain provisions allowing ‘minor variations’ to strategic assessment to ensure transparency and accountability. Retain public consultation on terms of reference for strategic assessments. New environmental protections in the Bills (no inconsistency with NES, no unacceptable impact, no residual impact without net gain) should apply to strategic assessments and drafting should be amended to be objective (see **Annexure 1**).

The **reconsideration of controlled action decisions** framework in the current EPBC Act (Ch 4, Part 7, Div 3) provides an important safeguard allowing the Minister to respond to substantial new information or substantial changes in circumstances in the s 75 process of determining whether an action is a controlled action. The Bills wind back these provisions by introducing new time limit and criteria that will effectively render reconsideration requests so limited they cannot meet the intended purpose as a safeguard. A new provision (new s79E) allows for controlled actions to continue during the assessment process following reconsideration, in clear opposition to the scheme of the legislation. See **Annexure 3** for detailed recommendations.

> **Recommendation 5:** Amendments to reconsideration request provisions should be removed from the Bills.

The Bills introduce new powers for the Minister to declare a proposal a "**national interest proposal**", meaning that a project is not required to comply with the key safeguards in the Bills (no inconsistency with NES; no inconsistency with unacceptable impacts; net gain test). The Bills do not constrain the current s158 **national interest exemption** provision, contrary to the recommendation of the Samuel Review.

> **Recommendation 6:** Remove the proposed new 'national interest proposal' exemption power. If this is not done, introduce safeguards consistent with Recommendation 3(c) of the Samuel Review that confine all national interest exemptions to national emergencies, with time-limitation and requirement for written reasons.

The Samuel Review recommended prioritising, as a matter of urgency, the National Environmental Standard for Indigenous engagement and participation in decision-making.[4] We understand the **NES for First Nations Engagement and for Community Engagement and Consultation** won't be released for consultation until 2026. These NES should provide essential constraints on ministerial power and contain elements that will require substantial integration with the regulatory systems of the EPBC Act.

> **Recommendation 7:** Prioritise proper consultation on strong First Nations Engagement and Community Engagement and Consultation national environmental standards so that these standards are ready to go when the new laws commence.

2 Close deforestation and land clearing loopholes

Deforestation and land clearing are the biggest drivers of extinction in Australia. Yet these drivers are effectively exempt from Federal oversight under the current EPBC Act. Regional Forest Agreements (**RFAs**) and the "continuation of use" exemption means that critical habitat can be destroyed without EPBC Act assessment and approval. Weak monitoring and poor compliance means illegal land clearing, particularly clearing for agriculture, often goes unchecked.

Australia's environment laws must curb deforestation by removing special exemptions that let logging and land clearing avoid national protections. Laws must be backed by stronger compliance, monitoring and enforcement to stop illegal clearing and habitat destruction.

2.1 Repeal the Regional Forest Agreement (RFA) exemption

The RFA exemption should be removed.[5]

If this is not done, the NES must apply to logging under RFAs. Logging in RFA areas must be subject to regular and publicly available monitoring and reporting, and accountability measures (NEPA and third parties can remedy or restrain breaches of the EPBC Act). State and territory conflicts of interest, including due to profits from forestry operations, must be protected against.

In addition, if required, the RFA exemption could be amended to sunset within a set timeframe from the Bills coming into force. This would ratchet down the applicability of the exemption, enabling

[4] Samuel Review Appendix B2
[5] See e.g, drafting in Schedule 1 of the Ending Native Forest Logging Bill 2023, previously introduced by Senator Rice

industry and the NEPA to transition into referral, assessment and approval of forestry operations. It could be coupled with a legislated transition plan or package.

> **Recommendation 8:** Remove the RFA exemption so forests covered by RFAs are fully subject to the EPBC Act and NES. Drafting options are at **Annexure 4.**

2.2 Repeal or constrain the continuation of use exemption

The exemption for continuations of use in s 43B of the EPBC Act undermines the ability of the Act to protect matters of national environmental significance (**MNES**) and should be repealed or constrained. The state of the environment and of many MNES has declined markedly since the commencement of the Act in 2000. Therefore, actions that fall within the exemption are likely to have a far greater impact on MNES than they would have at the commencement of the Act. Assessment of the likely impacts of these actions is necessary to properly understand and manage the threats to MNES today. In addition, the very existence of the exemption provided for by s 43B (and also that at s 43A) creates significant uncertainty for the community, proponents, and the regulator as to the operation of the Act.

> **Recommendation 9:** Repeal or significantly narrow the section 43B "continuation of use" exemption, which allows outdated approvals to persist even when they would not pass today's standards. Drafting options are at **Annexure 5**.

2.3 Enhance compliance, monitoring and enforcement of land clearing

Despite the EPBC Act currently prohibiting actions likely to have a significant impact on threatened species, clearing for agricultural purposes regularly occurs without referral under the Act. This is notwithstanding the mandatory obligation to refer actions that a person thinks may, or are likely to, have a significant impact on threatened species.

Between 2014-2021 in likely relevant EPBC Act areas in Queensland and the Northern Territory less than one quarter (22%) of clearing was referred under the EPBC Act.[6] Between 2000 – 2017, just 7% of habitat for threatened species, migratory species and threatened ecological communities that was subject to deforestation was referred to the Federal Government for assessment. [7] This chasm between the obligation to refer and the near total failure to do so in practice in the agricultural sector, over the life of the EPBC Act, demonstrates that the existing controls are inadequate and require targeted reform that deals explicitly and directly with deforestation.

EJA welcomes the creation of the NEPA. The NEPA must, as a matter of priority, focus on enhancing compliance with the EPBC Act by enforcing referral of land clearing for agriculture where it is likely to significantly impact MNES.

3 Embed and respond to climate change

Climate change is an existential threat to every species, ecosystem and place protected by the EPBC Act, yet neither the current Act nor the proposed reforms provide a clear pathway for the

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[6] Thomas, H., Ward, M., Simmonds, J., Taylor, M. and Maron, M. (2024). Poor compliance and exemptions facilitate ongoing deforestation, Conservation Biology, 2024;e14354. DOI: 10.1111/cobi.14354
[7] Ward, M. and ors, 'Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia', Conservation Science and Practice, 8 Sep 2019, https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/csp2.117

Federal Government to assess and manage the substantial contribution made by Australian industry to global climate change.

Actions assessed and approved under the EPBC Act make a globally significant contribution to climate change, both directly and by supplying fossil fuels to other nations. Every tonne of long-stored CO_2 emissions released by Australia's extraction and use of fossil fuels contributes to climate change and the impacts of climate change on MNES; as the global carbon budget shrinks, each additional tonne of CO_2-e has a greater proportionate effect.

Australian industry's contribution to climate change is, in any commonsense interpretation of the phrase, an impact of that industry on the environment. Yet, there is no clear indication of how this component of proposed actions' impacts on MNES should be factored into decision-making under the Act, resulting in legal uncertainty.

The Bills do not fix this gap. In particular:

- There is, still, no clear pathway for how emissions information is to be factored into decision-making under the EPBC Act.
- While the Bills make emissions disclosure an explicit requirement for referred actions, it is limited to 'scope 1' and 'scope 2' emissions, omitting any downstream or 'scope 3' emissions (whether produced in Australia or overseas), providing an incomplete picture of actions' actual contribution to climate change and consequential impacts on MNES. This is inconsistent with Professor Samuel's recommendation,[8] with State and Territory requirements, and with the Federal Government's own corporate disclosure laws.[9]
- There is no provision to ensure that projects' emissions estimates and 'plans and strategies' for managing emissions are robust and accurate.

The Federal Government has defended its exclusion of climate change impacts from the Act by reference to the Safeguard Mechanism and the Paris Agreement. Neither of these instruments negates the need to consider GHG emissions in the EPBC Act. The Safeguard Mechanism is a partial emissions trading scheme applicable to a subset of Australian industries; it is not an impact assessment framework and there is no avenue for any responsible Minister or regulator to reject or impose conditions on covered facilities by reference to their environmental impact.[10] The International Court of Justice, meanwhile, has recently advised that state obligations under the Paris Agreement (and the United Nations Framework Convention on Climate Change) cover the licensing and exporting of fossil fuels, as well as the assessment of *all* emissions associated with the production of fossil fuels – including downstream.[11]

The EPBC Act is the framework through which the Federal Government assesses whether the potential harm to nationally and internationally significant species and ecosystems resulting from proposed actions is or is not acceptable. Every additional tonne of CO_2, no matter where it is produced, contributes to the existential threat posed by climate change to Australia's protected species and ecosystems. These reforms provide a crucial opportunity to provide clarity about how

[8] Samuel Review, 5, 26, 48
[9] AASB S2 – Climate-related Disclosures, applicable to corporate entities covered by the reporting obligations in Part 2M of the *Corporations Act 2001* (Cth)
[10] See https://envirojustice.org.au/safeguard-or-smokescreen/
[11] See https://envirojustice.org.au/what-the-icj-ruling-means-for-australias-environment-laws/

and where the climate harms of proposed projects will be assessed by the decision-makers responsible for protecting Australia's environment.

> **Recommendation 10:** Add climate mitigation and adaptation to the purpose of the law, and embed clear, enforceable climate tests in every decision.

> **Recommendation 11:** Require full emissions disclosure, extending to scope 1, 2 and 3 emissions, and including an assessment against future climate scenarios and Australia's domestic and international emissions reduction obligations.

4 Commonwealth government responsible for national laws

The core constitutional basis of the EPBC Act is the external affairs power, and the Act has a corresponding mandate to implement Australia's obligations and commitments under international environmental agreements, including the Convention on Biological Diversity.[12] The Commonwealth should not step away from its responsibilities which form the very basis of the legislation.

Several aspects of the Bills weaken Commonwealth responsibilities and create risks of overlap, conflict or dangerous gaps with State and Territory systems.

EJA notes with concern that the Bills **weaken requirements for accreditation and bilateral agreements**, thereby facilitating less rigorous impact assessment and remove the extra layer of protection afforded by Commonwealth oversight via the EPBC Act. Allowing accreditation of non-law documents reduces oversight and accountability.

> **Recommendation 12:** The Federal Government must retain responsibility for assessment of controlled actions and approval of decisions. If assessment accreditation is allowed, States and Territories should only be accredited where strict, objective tests are met. This includes removing the 'Minister is satisfied' drafting in new ss 33, 34B, 34BA, 34C and 34E. Accredited frameworks must be objectively consistent with NES and international obligations. Regular quality assurance review requirements should be required with mandatory criteria, recommendations, and response.

The Bills also remove **the exemption from devolving the "water trigger"**. Devolving responsibility for approving actions subject to the water trigger to the States/Territories may result in inadequate assessment of impacts of coal and gas projects on inter-state and important water resources.

> **Recommendation 13:** Ensure the water trigger (s24D & E EPBC Act) remains exempt from devolution.

The Bills introduce a new **streamlined assessment** pathway, which could be used to fast-track high-risk projects without adequate assessment or public participation. The Minister can assess a proposed project via streamlined assessment without considering the scale, nature or impact of the action, the environmental record of the proponent or public concerns. There is nothing specifying the level of environmental impact assessment that must be in an application for the Minister to be satisfied they have enough information, and no requirements around public consultation of that

[12] Explanatory Memorandum to the *Environment Protection and Biodiversity Conservation Bill 1998* at [49], available at: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs182%22

impact assessment. There is a requirement to consider matters specified in a Regulation, but such matters are yet to be drafted. Streamlined assessment is weaker and subject to less accountability and transparency than any other assessment in the existing EPBC Act and should be subject to appropriate safeguards.

> **Recommendation 14:** Ensure streamlined assessment pathway includes appropriate environmental assessment and consultation. The Bills should be amended to limit streamlined assessment to actions with a level of risk and impact commensurate with the scrutiny offered by that assessment pathway.

The Bills introduce new provisions for **bioregional planning** at a landscape or seascape scale, so that zones for development and conservation can be mapped. Amendments to the Bills are required if bioregional plans are to achieve the genuine environmental outcomes intended by this aspect of the reforms. As drafted, broad discretion and lack of robust legislative criteria for making of bioregional plans mean that conservation zones lack integrity, and high-risk/harmful projects could be specified as priority actions and exempt from EPBC Act assessment and approval. As a starting point, there should be robust requirements for environmental assessment in the making of bioregional plans. The Bills should ensure that conservation zones meet their intended purpose by providing comprehensive protection for species and habitat. Priority actions in development zones must be subject to guardrails and limited to low-risk activities.

> **Recommendation 15:** Require clearer upfront assessment in preparation of bioregional plans. Conservation zones should comprehensively protect MNES, including requiring certain MNES to be protected via conservation zones. Priority actions that can be fast-tracked should be subject to appropriate limitations and guardrails. The water trigger should be exempt from bioregional planning to ensure Federal oversight remains.

The proposed reforms allow the Environment Minister and the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) to disregard key safeguards for offshore gas and petroleum projects, paving the way to weaken consultation with First Nations communities and undermining proper environmental assessment.

> **Recommendation 16:** The Bills must be amended to remove the proposed new section Part 4 Division 2A (Actions covered by Ministerial declarations and NOPSEMA management or authorisation frameworks).

5 An offsets scheme with integrity

The new offsets framework in the Bills is deeply flawed in design, is extremely risky, and will undermine the objects of the Act. In particular, the option to pay a ‘restoration contribution change’ instead of securing actual direct offsets is highly speculative and uncertain. This is effectively a “pay to destroy” scheme. The Bills would allow projects to be approved without any guarantee that genuine offsets will ever be delivered or real environmental outcomes will be achieved. Companies could simply pay “restoration contributions” into an offset fund instead of actually restoring or protecting habitat.

In New South Wales, a similar scheme has been criticised for collecting money that could not be spent because no suitable offset exists. Without strong safeguards, this model risks becoming a pay-to-destroy system that normalises nature loss instead of preventing it. Having previously had a similar scheme, NSW is now overhauling their offsets laws following findings that this scheme was found to be easily gamed and largely ineffective. The ability for developers to pay into the offsets

fund compromised the scheme because money was continuously paid into the fund without the offsets being sourced.[13] The overall scheme has resulted in devastating biodiversity losses.[14]

Offsets should only ever be a last resort – never a substitute for strong laws that stop destruction before it starts.

Recommendation 17: Amend the proposed offsets scheme to:

- Remove the pay-to-destroy offsets fund: Any offsets must deliver real, like-for-like outcomes for nature.
- Remove the option to pay restoration contribution charges in lieu of offsets: If these charges remain, there must be strong upfront restrictions on when and how “pay-to-destroy” offsets can be used.
- Embed transparency and accountability: Key reporting, monitoring and enforcement measures must be built directly into the legislation

6 Annexures

1. Discretion
2. Protection statements
3. Reconsideration requests
4. RFAs
5. Continuous use

[13] Independent Review of the Biodiversity Conservation Act 2016 p 7. Report No 16 – PC 7 – Planning and Environment – Integrity of the NSW Biodiversity Offsets Scheme; Submission
[14] Gibbons, P., Macintosh, A., Constable, A. L., Hayashi, K. Outcomes from 10 years of biodiversity offsetting, Global Change Biology, (2017). https://doi.org/10.1111/gcb.13977

Annexure 1: Priority reforms for strengthening decision-making and removing discretion

The following priority amendments are necessary to strengthen decision-making by shifting subjective provisions towards an objective decision-making framework.

	Current drafting	**Suggested amendment (References are to first print version of the Bill)**
Implementation of National Environmental Standards (NES)	The key provision that an approval must not be inconsistent with the NES is subject to the Minister's satisfaction and broad consideration of any conditions that may be applied. Further, a Regulation will prescribe which NES apply to which decisions rather than all NES needing to be applied as relevant.	Schedule 1, item 237, p 99, lines 5-9: The Minister must not approve the taking of an action unless ~~the Minister is satisfied that, taking into account any conditions to be attached to the approval~~, the approval of the taking of the action is not inconsistent with any relevant national environmental standards ~~prescribed for the purposes of this subsection~~.
Making NES	The making, of NES is subject to the satisfaction of the Minister, who can have regard to any matter they consider relevant.	Schedule 1, item 571, p315, line 16 - 21: ~~Before making~~ a national environmental standard must~~, the Minister must be satisfied that:~~ (a) ~~the standard would~~ promote the objects of this Act; and (b) ~~the standard would~~ not be inconsistent with Australia's obligations under the international agreements specified in subsection 520(3).
Varying and revoking NES	The varying or revocation of NES is subject to the satisfaction of the Minister, who can have regard to any matter they consider relevant.	Schedule 1, item 571, p315, line 16 - 21: ~~Before varying or revoking~~ When varied or revoked, a national environmental standard or revocation must~~, the Minister must be satisfied that:~~ (a) ~~the standard as varied, or the revocation~~, promote~~s~~ the objects of this Act; and (b) ~~the standard as varied, or the revocation, is~~ be not inconsistent with Australia's obligations under the international agreements specified in subsection 520(3).
No regression principle	The no regression principle is subject to the satisfaction of the Minister.	Schedule 1, clause514YG(1) Before varying or revoking a national environmental standard, ~~the Minister must be satisfied that~~ the variation or revocation must: (a) ~~does~~ not reduce protections of the

		environment; and … (etc.) Delete subsection (2) and (3).
Using NES	The NES are only required to be used in decisions (other than assessment decisions) in a way which are to be prescribed by regulations (yet to be seen) and are otherwise optional.	Schedule 1, item 514YK Subsection (1) should be amended to clarify that NES apply to all relevant decisions (e.g. MNES Standard to apply to decisions relating to MNES). In addition, amended discretion as follows: (2) For the purposes of paragraph (1)(b), the regulations must ~~may~~ prescribe ~~the following ways~~ that a national environmental standard is to be applied by a person making a decision~~:~~ ~~(a) by the person being satisfied~~ so that the decision is not inconsistent with the standard. Delete 2(b) and (c).
Unacceptable impact	The provision that an action must not have an unacceptable impact is subject to the Minister's satisfaction.	Schedule 1, item 136B The Minister must not approve the taking of an action unless, ~~the Minister is satisfied that,~~ taking into account any conditions to be attached to the approval, the taking of the action will not have or be likely to have an unacceptable impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action.
Net gain	The provision requiring approvals to pass the net gain test is subject to the satisfaction of the Minister or the drafting of unseen Regulations which may also be discretionary.	Schedule 1, item 136C The Minister must not approve the taking of an action that will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action unless, ~~the Minister is satisfied that,~~ taking into account any conditions to be attached to the approval, the approval passes the net gain test in relation to the residual significant impact on the matter.
Application of NES to declarations	Provisions allowing accreditation of frameworks should be amended so that the consistency of declarations with NES is an objective standard.	Schedule 1, item 33(3) (3) The Minister must not accredit a management or authorisation framework for the purposes of a declaration under subsection (1) unless ~~the Minister is satisfied that~~:... (aa) the framework is not inconsistent with any national environmental standard prescribed for the purposes of this paragraph; and (ab) approving an action in accordance with the framework will not be inconsistent with any national environmental standard prescribed for the purposes of this paragraph; and…

Application of NES to suspension, variation and revocation of declarations	Consistent with accrediting frameworks, proposed amendments, suspension, variation and revocation of accredited agreement declarations should be an objective standard.	Schedule 1, item 35(1) 1) If, in relation to a declaration in force under section 33, ~~the Minister reasonably believes that a~~ situation mentioned in subsection (2) exists or will arise, or ~~is satisfied~~ that any requirements prescribed by the regulations for the purposes of this subsection are met, the Minister ~~may~~ must, by written instrument…
Applications of NES to requirements for accrediting management or authorisation frameworks	Accrediting management or authorisation frameworks should be required to be objectively consisted with NES.	Schedule 1, item 46(3) (3) The Minister must not accredit a management or authorisation framework for the purposes of a bilateral agreement with a State or self-governing Territory unless ~~the Minister is satisfied that~~: (aa) the framework is not inconsistent with any national environmental standard prescribed for the purposes of this paragraph; and (ab) approving an action in accordance with the framework will not be inconsistent with any national environmental standard prescribed for the purposes of this paragraph; and…
Making of bioregional plans	Making a bioregional plan should be framed as an objective test to ensure outcomes and consistency with instruments.	Schedule 1, item 177AP The Minister must not make a bioregional plan for a region unless ~~the Minister is satisfied of the following~~:.... Schedule 1, item 177AQ H18: The Minister must not make a bioregional plan unless ~~the Minister is satisfied that making~~ the bioregional plan would not be inconsistent with any of the following:...
Bilateral agreements	Criteria for approval of an accredited arrangement should be framed as objective requirements to ensure outcomes and consistency (rather than the current subjective test which is based on the Minister's state of mind).	Remove "the Minister is satisfied that" to apply an objective test of whether an accredited framework is not inconsistent with each of these important criteria: ● in new s33(3) - the NES and other criteria; ● in new s34B(2) - the relevant World Heritage requirements; ● in new s34BA(2) - National Heritage requirements; ● in new s34C(2) - the declared Ramsar wetland requirements; and ● in new s34E(2) – relevant international conventions or agreements. For suspension, variation and revocation of declaration of an accredited framework, remove in new s35(1): "the Minister reasonably believes that" and "is satisfied that'.

		Remove reference to Ministerial satisfaction when approving accreditation of NOPSEMA, for example in s36H.
Streamlined assessment	Criteria for deciding whether a streamlined assessment approach is appropriate should be objective.	Schedule 1, part 1 s 194 at new s 87(5) should be amended as follows: (5) The Minister may decide on an assessment by streamlined assessment if only if the Minister is satisfied (after considering the matters in subsection (3)) that: (a) the approach will allow the Minister to make an informed decision whether or not to approve under Part 9, for the purposes of each controlling provision, the taking of the action; and (b) the greenhouse gas emissions information for the action has been provided. Additional considerations in new s 87A should similarly be amended to objective frames.
Strategic assessments	The proposed changes to current strategic assessment include powers to vary current and new approvals for classes of actions following strategic assessment.	Section 146DI and s 146DJ regarding minor variations and variations of approvals should be an objective test. The following proposed sections should also be objective: ● Section 146FA (no inconsistency with NES) ● Section 146FB (no unacceptable impact) ● Section 146FC (no residual significant impact without net gain
Grounds for grant of national interest exemption and new power to declare national interest proposal	Consideration of what is in the national interest for an exemption from the EPBC Act requirements to apply should be constrained to limit the considerations that the Minister can take into account when determining the national interest. The new power for the Minister to declare a national interest proposal should be removed.	Remove schedule 1,part 1, div 2A Schedule 1 items 157C(2) (if remaining), 157L(3), 302D remove: ~~This does not limit the matters the Minister may consider.~~ If national interest proposals are remaining, amend considerations in item 157C(2) to be in line with other national interest exemptions.

Rulings	The power to make rulings provides significant discretion to the Minister and EPA CEO to act in the place of the judiciary and parliament in declaring how laws should be interpreted and is a corruption risk.	Schedule 1, part 19C The Bill should be amended to **remove the power** to make rulings. If this is not possible, robust substantive and procedural safeguards must be placed on the power. For example: · Safeguards about the outcome of rulings, for example: Rulings must not authorise or facilitate unacceptable impacts, or actions that do not comply with NES. · Safeguards about the making of rulings, for example: The Minister/CEO must consult on proposed rulings, must provide an explanation of the purpose and intended effect of the ruling, must disclose if the ruling has been requested by any third party, and must provide reasons for the ruling. Matters for consideration and matters that are prohibited considerations for the making of rulings should be prescribed.

Offsets framework	As drafted, nearly all obligations on the Restoration Contributions Holder are framed as discretionary. Instead, offsets must be scientifically outcome-based in order to ensure that offsets can achieve real environmental outcomes that compensate for the impacts of projects. All obligations on the Restorations Contributions Holder should therefore be objective and non-discretionary.	Attaching offset conditions should be objective (s 134(3AB) such that the Minister may only attach an offset condition if it would objectively assist in mitigating or repairing damage. All obligations on the Restorations Contributions Holder should be objective, including: ● Constraints on spending on restoration actions (s 177CS(2) ● The availability of "alternative" restoration actions (s 177CS(4) and (5)) ● The option of using a combination of general restoration and alternative restoration actions (s 177CT) ● Finding that the primary impact has already been compensated for and that a restoration contribution charge therefore does not need to be spent under (s 177CU) ● Pooling amounts to cover multiple residual significant impacts (s 177CV(1)(b)) ● Consultation with the restoration contributions advisory Committee (s 177CW) ● Spending exemption amounts on restoration actions (s 177CY(1)(a)) ● Spending on bioregional restoration actions (s 177CZ) ● Spending top-up amounts (s 177DA) ● General spending requirements (s 177DC)

Annexure 2: Strengthening Protection Statements

Issue 1: Interaction between protection statements and conservation planning documents

Existing provisions in the EPBC Act require that the Minister not act inconsistently with a recovery plan or threat abatement plan, and must have regard to any approved conservation advice, must be retained (emphasis added).

The draft amendments will diminish this requirement and instead require (generally) only that the Minister must not act inconsistently with protection statements (while still being able to consider recovery plans and conservation advices). **This is a backwards step.** Recovery plans in their entirety are an important part of the regulatory framework. They are developed through rigorous scientific and community consultation processes set out in the Act. While we recognise that there may be efficiency in lifting important information into 'protection statements' to provide quicker guidance to decision makers and for protection statements to provide clarity in relation to new provisions (such as new provisions relating to unacceptable impacts), **the existing requirement that the Minister not act inconsistently with a recovery plan must be retained.** Protection Statements must complement, and must not be inconsistent with or override existing conservation planning documents.

The Bill proposes to make amendments to the existing requirements in relation to:

- Approvals under Part 9 – see proposed amendments to section 139
- Declarations under s 33 that actions do not need approval – see proposed amendments to section 34D
- Bilateral agreements and management or authorisation frameworks – see proposed amendments to section 53
- Strategic assessments – see proposed amendments to section 146K

The Bill replicates these changes in proposed new section 177AO (which deals with how bioregional plans need to consider protection statements, recovery plans and conservation advices).

The requirement that the Minister not act inconsistently with a recovery plan and have regard to conservation advices is one of the very few guardrails on Ministerial discretion in making approval decisions and must be retained. It has been particularly important in holding decision makers to account under section 139.

Recommendation: Existing requirements for the Minister to not act inconsistently with a recovery plan or threat abatement plan and have regard to any approved conservation advice must be retained.

These reforms also provide the opportunity to strengthen the Act by requiring the Minister to not act inconsistently with conservation advices (compared to simply have regard to considering conservation advices as currently required).

Issue 2: Making protection statements

Current drafting provides that:

- the Minister must not make a protection statement unless the Minister is satisfied that the protection statement is not inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph (s 298A(2)); and
- the Minister must have regard to any recovery plan for the species or community or a relevant part of the species or community; and any approved conservation advice for the species or community (s 298A(3) (our emphasis)

Recommendations:

Section 298A(2): The requirement to be consistent with relevant national environmental standards or other criteria prescribed by regulation should be an objective requirement (i.e. the language of "unless the Minister is satisfied") should be removed.

Section 298A(3): **Drafting should be amended to ensure protection statements provide equal or greater protection than recovery plans or conservation advices**.

To align new protection statements with existing requirements, the Bill should require:

- the Minister to consider recovery plans and conservation advices when making or varying protection statements
- that protection statements must provide equal or greater protection than set out in a recovery plan or conservation advice
- where there is any inconsistencies, protection statements prevail to the extent of the inconsistency

This would ensure protection statements do not replace or override recovery plans or conservation advices, including important existing requirements that the Minister to not act inconsistently with a recovery plan and have regard to a conservation advice, but that they can be used to enhance recovery plans and provide greater protection, particularly when a recovery plan may be out of date. These changes would need to be made across various provisions of the Act.

We consider that **consultation with the Scientific Committee** in s 298D should be mandatory rather than optional to ensure the scientific basis and integrity of protection statements.

There should also be a requirement to not be inconsistent with Threat Abatement Plans, which are also important conservation planning documents.

Finally, section 298B(3) provides the Minister **broad powers to input into decision-making** in a broad range of decisions (being applying an environmental law provision), which risks Ministerial direction of decision-making. This is an expansive power that should be removed, particularly given 298B(2)(d) and (e) would allow a broad range of information to be included in a protection statement. Section 298B(3) should be removed.

Issue 3: Varying protection statements

The draft provisions allow the Minister to vary protection statements, but requirements for making protection statements (in proposed section 298A) do not apply in the same way. Instead, proposed section 298F(2) provides that the Minister must have regard to relevant recovery plans, conservation advices, any advice received from in accordance with section 298D; and any relevant comments received in accordance with section 298E.

Recommendation: Given a varied protection statement will have the same effect as the original protection statement, it would be appropriate for the variation provisions to align with the provisions for making protection statements.

Issue 4: Revoking protection statements

Revocation of protection statements should be subject to public consultation and mandatory consultation with the Scientific Committee as the decision to revoke a protection statement could impact how decisions relating to the approval of actions impact threatened species or ecological communities.

Annexure 3: Reconsideration requests

The current EPBC Act provides power for the Minister (at s 78) to reconsider (and then vary or revoke) controlled action decisions (being decisions made under s 75 of the Act) both as to whether an activity needs to be assessed and approved under the EPBC Act, as well as if so, what matters of national environmental significance are relevant to the assessment. The Act also provides for third parties to make requests for this power to be exercised (s78A). A reconsideration request can be made for example where:

- substantial new information has become available about the impacts the action may have on a protected matter which warrants reconsideration of the decision; or
- there has been a substantial change in circumstances since approval which changes the impacts of the action; or
- the controlled action decision was made pursuant to a bilateral agreement, s 33 declaration or bioregional plan which no longer applies.

This is an essential power to ensure that regulation of impacts can be responsive to the changing environment and improvements in scientific understanding. This framework is important for environment groups and the community to raise the need for reconsideration of a decision if the circumstances or information has changed around the approved activity such that there is a need to reconsider how it is being regulated.

This power also represents an **important safeguard** by providing the Minister with an opportunity to correct mistakes that may have occurred in the s 75 process of determining whether an action is a controlled action. The Bills limit the power to seek reconsideration in ways that hinder the utility of the reconsideration power.

Changes to reconsideration requests

We are particularly concerned about the following**:**

- **Limiting the timeframe to make a reconsideration request to 28 days for controlled action decisions (new s78A(2)):**
  Currently under the Act there is no time limit for seeking reconsideration of a decision (except that it must be before a decision on an EPBC referral or before the decision is acted upon). EPBC Act assessment can take a number of months to years depending on the complexity of an application and its potential impacts, and in that time circumstances can change, warranting reconsideration. The Bill proposes to limit the timeframe for reconsideration requests to 28 days after a controlled action decision has been made (Schedule 1, clause181 of the Bill, amending s78A(2)), undermining the ability for the reconsideration provisions to play the role intended.
  This time limit for making a request was amended earlier this year to limit reconsideration for actions being taken where it was decided it is not a controlled action if taken in a particular way in accordance with a management arrangement, and the action is being

taken and the way in which the action is being taken has been ongoing or recurring for at least 5 years. This limitation remains under the Bill.

- **Higher threshold for reconsideration requests for controlled action decisions (new s78A(2)-(2B)):** The Bills propose that a valid reconsideration request must now include substantial information/substantial change in circumstances that demonstrates, with a "high degree of certainty associated with the quality and accuracy of the information", that the impacts the action has, will have or is likely to have on an MNES are or are likely to be different from the impacts as assessed for the first decision. If it's a substantial change in circumstances, the request also needs to set out satisfactory reasons for the circumstances not being foreseen.

In our view, these two amendments are so onerous and limiting that they are likely to effectively foreclose reconsideration requests for controlled action decisions and undermine the intent and purpose of the reconsideration power. The purpose of the provisions is to allow for the Minister to fix potential errors and ensure all relevant information is considered at this stage of the assessment process which has been acknowledged as a triage process rather than a final one - no substantial information is likely to arise a mere 28 days after the controlled action decision, particularly any information that could meet this threshold. Further, this proposed amendment is directly contrary to the precautionary principle.

We recommend that these proposed amendments are rejected and current requirements in the Act are maintained.

Amendment suggested: Remove Schedule 1, clause 181 of the Bill in its entirety to ensure that the reconsideration request power is able to still effectively operate.

Carrying out controlled actions during assessment process

- The Bill provides, at new s79E (Schedule 1, clause 187 of the Bill), a power for the Minister to determine that an action that was previously not a controlled action, but was subsequently decided to be a controlled action following a reconsideration, can **continue to be taken while being assessed under the EPBC Act.** This power undermines the assessment and approval regime of the Act and should be deleted.

We recommend that either:

- Section proposed new s79E is rejected, or alternatively; or
- Additional safeguards are added that require the Minister to be satisfied, before making a determination allowing an action to continue while an assessment is undertaken, that doing so would not be inconsistent with the objects of the Act, or any offence provisions.

Amendment suggested: Remove proposed new s79E in its entirety.
Alternatively amend s79E to limit the potential impacts that may be allowed to continue under this provision, by:

- Amendment ss79E(d) to add after ‘agreement’: ‘, or with any provisions in this Act, including but not limited to the objects’

Removal of reconsideration powers for bilateral agreements, s 33 declarations or bioregional plan

- The Bill proposes to remove provisions (via Schedule 1, clauses 176 and 177 of the Bill amending s78(1)) that currently allow for reconsideration where the controlled action decision was made pursuant to a bilateral agreement, s 33 declaration or bioregional plan. This would remove an important safeguard in circumstances where there is warrant to reconsider a decision made under an accredited framework or bioregional plan. Regardless of the fact that applications under accredited frameworks will no longer need to be referred under the reformed EPBC Act, allowing a reconsideration power for the accredited decision and bioregional plans is an important safety net for matters of national environmental significance. It will ensure that these decisions which are intended to uphold the EPBC Act are subject to the same power of review should circumstances or information with regard to matters of national environmental significance change.

We recommend that amendments be considered that would allow for reconsideration of decisions with respect to accredited frameworks and bioregional plans under the Bill, as a safeguard where there is more information, or circumstances have changed, with respect to the impacts to matters of national environmental significance of an action under these pathways.

Annexure 4: Removing or constraining the Regional Forest Agreement (RFA) exemption

A number of options exist for amending the EPBC Act to remove or constrain the RFA exemption.

1. **Repeal the Regional Forest Agreements Act 2002 and remove the RFA exemption from the EPBC Act**

See drafting in Schedule 1 of the Ending Native Forest Logging Bill 2023, previously introduced by Senator Rice.

2. **Condition the RFA exemption and apply NES**

Amendments shown below – deletions in ~~red strikethrough~~, additions in black underline.

Any means of subjecting RFAs to standards must also be subject to robust transparency, reporting (by states) and accountability measures to enable the NEPA to conduct ongoing compliance assurance and to provide visibility of trends and impacts for regulators and the public. Conflicts of interest must be avoided. Transparency measures should include regular and publicly available monitoring and reporting. Accountability measures should include the right of the NEPA and third parties to seek to remedy or restrain breaches of the Act or any relevant standards by operators.

Amend the EPBC Act as follows:

38 Part 3 not to apply to certain RFA forestry operations

~~(1) Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.~~

(1) Part 3 does not apply to an RFA forestry operation that is not likely to have an unacceptable impact and is undertaken in accordance with the terms of, and any requirements imposed by or through:

a. the applicable RFA;

b. the applicable state Forest Management System or Forest Management Framework referred to in the relevant RFA;

c. any Recovery Plan, Threat Abatement Plan, Conservation Advice or protection statement relevant to the forestry operation, or component thereof, including strategies, actions and advice; and

d. any National Environmental Standard relevant to the forestry operation.

Note: Recovery Plans, Conservation Advices, and protection statements relevant to a forestry operation include, but are not limited to, those for listed threatened species or listed threatened species habitat likely to occur in the area subject of the forestry operation, or

listed threatened species or listed threatened species habitat that may be impacted by the forestry operation.

Note: A National Environmental Standard relevant to a forestry operation includes, but is not limited to, a National Environmental Standard that relates to a matter of national environmental significance listed under Part 3, which is likely to be impacted by the forestry operation.

Note: See the definition of ***unacceptable impacts*** *in section 527F.*

42 This Division does not apply to some forestry operations

Subdivisions A and B of this Division, and subsection 6(4) of the Regional Forest Agreements Act 2002, do not apply to RFA forestry operations, or to forestry operations, that are:

(a) in a property included in the World Heritage List; or

(b) in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or

(c) incidental to another action whose primary purpose does not relate to forestry.

(d) in a listed threatened ecological community; or

(e) in critical habitat; or

(d) likely to have an unacceptable impact; or

(e) inconsistent with National Environmental Standards.

3. Condition the RFA exemption and provide for sunsetting

Legislate narrowing of the RFA exemption to take immediate effect as above, with sunsetting of the RFA exemption to occur within 18 months. This ratchets down the applicability of the exemption without an immediate cut-off, enabling both industry and the NEPA to transition into referral, assessment and approval of forestry operations. It could be coupled with a legislated transition plan or package, drawing on experience from other sectors and legislative schemes that set up an industry transition – this could also form a commitment rather than a legislated package.

Annexure 5: s43B continuations of use exemption

The exemption for continuations of use undermines the ability of the Act to protect matters of national environmental significance (MNES) and should be repealed or constrained. EPBC Act reform is an opportunity to ensure that all activities that have or are likely to have a significant impact on MNES, including land clearing, can be assessed under Commonwealth law.

S43B should be repealed in its entirety. Alternatively, s43B should be amended as detailed below to address misapplication and over-exploitation.

43B Actions which are lawful continuations of use of land etc.

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring <u>on that particular land, sea or seabed</u> immediately before the commencement of this Act.

(2) However, subsection (1) does not apply to an action if:

(a) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and

(b) at the time the action is taken, the specific environmental authorisation continues to be in force.

Note: In that case, section 43A applies instead.

(3) For the purposes of this section, <u>none</u> ~~neither~~ of the following is a continuation of a use of land, sea or seabed:

(a) an enlargement, expansion or intensification of use;

(b) <u>any use where, since the commencement of the Act:</u>

(i) <u>the impact of the use on a matter protected by a provision of Part 3 has increased in severity or significance;</u>

(ii) <u>the use impacts on new or different MNES, listed threatened species, listed migratory species, or listed threatened ecological communities.</u>

(c) either:

(i) any change in the location of where the use of the land, sea or seabed is occurring; or

(ii) any change in the nature of the activities comprising the use;

that results in a substantial increase in the impact of the use on the land, sea or seabed.

<u>(d) an intermittent, periodic, irregular or variable use of land, sea or seabed;</u>

<u>(e) a passive use of land, sea or seabed;</u>

(f) the clearing of woody vegetation which is at least 15 years of age;

drafting note: Regrowth habitat for threatened species should be protected, and not exempt. A 15 year median age threshold for woody vegetation regrowth to become viable as habitat for threatened species is identified in Thomas et al, 2025. This is a sensible threshold for regrowth woody vegetation to be excluded from the exemption and require referral and assessment before any clearing occurs.

(g) any use in or outside the Great Barrier Reef Marine Park in the Australian jurisdiction that has, will have or is likely to have, a significant impact on the environment in the Great Barrier Reef Marine Park;

(h) any use prescribed in the regulations to not be a continuation of use of land, sea or seabed for the purposes of this section; or

(i) is likely to havehave an unacceptable impact.

Note: See the definition of ***unacceptable impacts*** in section 527F.

Insert new s43C, as proposed here in underline:

43C Certification of actions which are lawful continuations of use of land

(1) A person may apply to [Environment Protection Australia/the Minister] for a certificate confirming that an action is a lawful continuation of use for the purposes of section 43B.

(2) [Environment Protection Australia/the Minister] must publish an application received under subsection (1) on the internet, invite public comments on the application for 60 days after the date of publication, and give proper consideration to any public comments received including an explanation of how [Environment Protection Australia/the Minister] took public comment into account;

(3) [Environment Protection Australia/the Minister] must, within 90 days of the closure of public comments on an application under subsection (1), decide the application and either issue or refuse the certificate.

(4) An application under subsection (1) must be made in a way, and include the information, prescribed by the regulations.

(5) [*a provision providing the [Environment Protection Australia/the Minister] with the ability to request further information equivalent to s76, including suspension of time in subsection (2)-(3) during such a request*]

(6) [Environment Protection Australia/the Minister] may only issue a certificate under subsection (1) if the action for which the certificate is sought is a lawful continuation of a use of land, sea or seabed within the meaning of this section, and must refuse to issue a certificate if not.

(7) A certificate issued under subsection (3) is binding upon Environment Protection Australia and the Minister.

Amend s 520 Regulations, as proposed here in underline:

(1) The Governor-General may make regulations prescribing all matters: (a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

…

(9) The Regulations may prescribe the documents required to be provided to [Environment Protection Australia/the Minister] by a person applying for a certificate under s43C of this Act.

(10) The Regulations may prescribe any action which is not a lawful continuation of a use of land, sea or seabed for the purposes of section 43B of this Act.