



7 October 2025

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Committee Secretary,

**Inquiry Into Environment Protection and Biodiversity Conservation Amendment
(Board of Management Functions) Bill 2025**

1. This submission has been prepared by the Australian Environment and Planning Law Group (**AEPLG**) of the Law Council of Australia's Legal Practice Section.
2. The AEPLG welcomes the opportunity to make a submission to the Senate Environment and Communications Legislation Committee in relation to its inquiry into the Environment Protection and Biodiversity Conservation Amendment (Board of Management Functions) Bill 2025 (Cth) (the **Bill**).
3. On its face the Bill presents a practical solution to a practical problem. However, allowing a Board of a Commonwealth Reserve (a **Board**) to make decisions based on an expired management plan without any mechanisms to require updating that plan could risk decision-making and managerial practices based on outdated science. Given the rapid evolution of environmental science and its considerable impacts on land management, the AEPLG submits that the proposed amendments, although beneficial, could be improved to mitigate potential risks of reliance on outdated science and support best practice under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

Context of the proposed amendments

4. The EPBC Act provides that, where a Board is in place, the preparation of management plans for Commonwealth reserves is a joint exercise undertaken by the Board 'in conjunction with' the Director of National Parks (the **Director**).¹ Together, the Board and the Director must prepare reserve management plans to ensure a plan is in operation as soon as practicable after the Board is established and at all times after a plan for managing the reserve first takes effect after the establishment of the Board.

¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**), s366(3).

5. If a management plan expires, and no new plan is in operation, the Director is required to exercise their powers and perform their functions in accordance with the Australian IUCN reserve management principles.² Because there is presently no mechanism under the EPBC Act for the Board to make decisions in these circumstances, the Bill would ensure that, despite the expiry of a management plan, a Board's decision-making function would continue.

Schedule 1—item 2

6. Item 2 of Schedule 1 to the Bill would enable a Board to make decisions consistent with the most recent management plan in place for a reserve, where that plan has expired and no new management plan has come into operation. This would effectively allow a management plan for a Commonwealth reserve to continue to have effect following its statutory expiry period (being 10 years after it took effect, unless it has already been revoked).
7. Whilst the Director retains existing powers under section 357 of the EPBC Act to act in accordance with Australian IUCN reserve management principles, the amendment does not include an obligation on the Board and Director to prepare an updated management plan on the expiry of an old plan. We acknowledge, however, that there is an existing requirement in section 366(3) of the EPBC Act to try to ensure that there is a management plan in operation at all times for a Commonwealth reserve.
8. The AEPLG is concerned that allowing a Board to rely on an expired management plan could mean its decisions reflect land management practices that are based on outdated science.
9. The AEPLG submits that the Bill could address this concern by including a requirement for any Board relying on an expired management plan to confirm, in conjunction with the Director, when a new plan will be delivered, a review period for all decisions made under expired plans and/or supplementary written explanation of the steps the Board has taken to inform themselves of the most up-to-date science and practices. The Minister could then intervene, for example, if commitments to deliver updated management plans are not met.

Schedule 1—item 1

10. Item 1 of Schedule 1 to the Bill inserts a new requirement on the Director to inform the Minister if the Director believes a decision of a Board for a Commonwealth reserve is contrary to the most recent management plan that was in operation for the reserve.
11. This amendment provides the Director with a clear standard by which to assess Board conduct, promoting consistency in Director/Board decision-making and ensuring that decisions of the Board reflect the requirements of a plan of management for the relevant reserve.
12. However, the AEPLG is concerned that a decision by a Board that is consistent with the most recent management plan in operation may still not reflect best practice or current science. Consequently, the 'quality assurance' mechanism proposed by item 1 may be undermined where the management plan, on which a decision of a Board is based, was created more than 10 years earlier.

² EPBC Act, s 357(1)(a).

13. As outlined above for item 2, the AEPLG submits that this concern could be addressed by including a requirement for any Board relying on an expired management plan to confirm, in conjunction with the Director, when a new plan will be delivered.

The Samuel Review

14. The Second Independent Review of the EPBC Act, conducted by Professor Graeme Samuel AC (the **Samuel Review**) found that the EPBC Act had failed to fulfil its objectives as they relate to Indigenous Australians. This is particularly relevant as the proposed amendment to section 376 falls under Division 4 Subdivision F of the EPBC Act: 'Boards for Commonwealth reserves on indigenous people's land' (emphasis added).
15. According to the Samuel Review, there are concerns with the unbalanced power relationship between the Director and Traditional Owners, leading to tension between Boards and the Director.³ It was reported that Indigenous Australians' traditional knowledge and views are not fully valued in decision-making and the EPBC Act does not meet the aspirations of Traditional Owners for managing their land.
16. The Samuel Review recommended that the Commonwealth Government, through the Director, should commit to working with Traditional Owners to co-design reforms for joint management, including policy, governance and transition arrangements. It was recommended that the Commonwealth Government should ensure that this process is supported by amending the EPBC Act when needed, and providing adequate resources.⁴
17. Noting that the Boards must be majority Indigenous persons nominated by the relevant Traditional Owners where the Commonwealth reserve consists wholly or mostly of Indigenous people's land,⁵ the amendment could be seen as a step towards this recommendation because it supports decision-making functions in matters relating to management of Country. We encourage ongoing attention to addressing the matters raised in the Samuel Review in conjunction with Traditional Owners.

Conclusion

18. The AEPLG is generally supportive of the Bill as a practical reform. However, the AEPLG suggests that the Committee could consider further amendments to limit Boards' reliance on expired management plans in decision-making and require a higher level of diligence for those Boards that do rely on expired management plans.
19. Allowing expired management plans to be applied without greater accountability may deliver poor environmental outcomes from reliance on outdated scientific, cultural, or land management practices.⁶ The introduction of basic reporting or accountability

³ Professor Graeme Samuel AC, *Independent Review of the EPBC Act* (Final Report, October 2020) 2.4.1 <<https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>> (**Samuel Review**).

⁴ Ibid Samuel Review, Recommendation 8, 28.

⁵ EPBC Act, s 377(4).

⁶ Note the Australian Government is separately consulting on the implementation of Australia's Strategy for Nature 2024-2030, which proposes as an outcome of one of its targets ('Priority degraded areas are under effective restoration by 2030') that 'Protected and conserved areas

requirements on those Boards that are relying on expired management plans will ensure the important purpose of the plans is maintained.

20. The AEPLG invites the Committee to consider:

- (a) including a requirement for any Board relying on an expired management plan to, in conjunction with the Director, explain why no new management plan is in place and confirm when a new plan will be delivered;
- (b) implementing a review period for all decisions made under expired plans and/or supplementary written explanation of the steps the Board has taken to inform themselves of the most up-to-date science and practices;
- (c) providing the Minister with the power to impose a timeline by which the Board and the Director need to agree on a new plan of management; and
- (d) including a requirement that Boards relying on expired management plans meet a higher standard of diligence to ensure best practice in environmental management, and that their decisions are based on current science.

Contact

21. For further assistance in relation to the matters raised in this submission, please contact Ms Charmian Barton, AEPLG Chair

Yours sincerely

Greg McIntrye SC
Section Chair

across land and see are effectively managed'. The Strategy recognises that systems of protected and conserved areas must be managed in a way that achieves positive outcomes for biodiversity. Continued refinement of management objectives and processes, along with appropriate resourcing, will be key to achieving effective conservation and management of protected and conserved areas. Improved methods for monitoring will also be important to ensure that management measures are effective in maintaining or enhancing conservation values within protected areas. Reliance on outdated management plans for protected areas, such as Commonwealth reserves, without safeguards could lead to management practices and monitoring measures that are inconsistent with this target and outcome.

See Australian Government, *Implementing Australia's Strategy for Nature 2024-2030* (Discussion Paper, September 2025) 7 <[https://storage.googleapis.com/files-au-climate/climate-au/p/prj37bd8b9d7c5a483557f18/page/Discussion Paper September 2025 Implementing Australia's Strategy for Nature.pdf](https://storage.googleapis.com/files-au-climate/climate-au/p/prj37bd8b9d7c5a483557f18/page/Discussion%20Paper%20September%202025%20Implementing%20Australia's%20Strategy%20for%20Nature.pdf)>.