



AUSTRALIAN CLIMATE AND
BIODIVERSITY FOUNDATION

Committee Secretary
Environment and Communications Legislation Committee
ec.sen@aph.gov.au

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Australian Climate and Biodiversity Foundation submission to the Environment and Communications Legislation Committee Inquiry into the Environment Protection Reform Bill and related Bills.

Who we are.

This submission is provided on behalf of Australian Climate and Biodiversity Foundation, the ACBF. The ACBF is a not-for-profit founded in 2021 to help decision-makers find means of protecting and securing the restoration of Australia's natural environment, which is critical to a thriving 21st century economy.

We in this organisation bring together leaders from business and environmental organisations, together with subject matter experts, to develop economically rational policy approaches to securing Australia's net zero climate goals, and Australia's commitment to the Global Biodiversity Framework's goal to halt and reverse the loss of nature by 2030.

Summary

The comprehensive EPBC reform package recently passed by the House of Representatives, which includes amendments to the existing Act, various money Bills and the Bills to establish the National Environment Protection Agency and Environment Information Australia, is a faithful and comprehensive response to the suite of recommendations for reform provided to Government in the landmark 'Independent Review of the EPBC Act' overseen by Graeme Samuel and released in October 2020.

In some important areas, the Bills strengthen and build upon Samuel's recommendations which are welcomed and strongly supported, although several important exemptions and loopholes - which act against the goals of a consistent, transparent, and repeatable application of a new regime - remain in place and require further consideration and reform.

Furthermore, the success of the new reforms will ultimately depend on the allocation of long term and reliable funding to support the operation of the new system, to encourage State and Territory Government compliance and support for the new system, and to complement private sector investment into restoration activities into the long term.

Strengths

At the outset, it is important to acknowledge the extraordinary amount of work undertaken by the Minister and officials from DCCEEW over the past several months in bringing forward a such a comprehensive and far-reaching set of reforms before the Australian Parliament.

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It is also important to note the good will and cooperation across many stakeholders, with different backgrounds, perspectives, and interests, in debating and discussing the strengths and weaknesses of the detailed reforms in a robust process of stakeholder engagement overseen by the Minister and DCCEEW.

This package may not be perfect but if enacted, will represent a sea change in the effectiveness of the laws to meet the seemingly competing needs of the environment and the economy. Whilst we at the ACBF argue that this is in fact a false dichotomy, in so far as if the environment loses, so does the economy, it has been notable that stakeholders have worked hard to find common ground where possible in the face of competing interests and perspectives.

These reforms seek to achieve several outcomes which with diligent and adaptive implementation, will strengthen the protection and options for restoration of the primary goal of this legislation – the protection, ongoing management and restoration of Matters of National Environmental Significance (MNES).

This is critical given the protection, management, and restoration of MNES is the primary responsibility of the Australian Government, courtesy of Australian Government endorsement of several important international agreements and treaties that provide the primary constitutional remit for Australian Government action.

MNES is a technical term but what it encompasses are many of the most important environmental values and assets found in Australia including World and National Heritage sites, the protection of listed threatened species and ecological communities, migratory bird habitats, ancient and life sustaining groundwater supplies and wetlands of international significance.

These proposed reforms strengthen the Australian Government's role in the protection, management and, where possible, restoration of MNES in the following ways:

First, create a binding Ministerial power to make standards that protect matters of national environmental significance. Because this power does not presently exist, the Australian government is often toothless in attempting to meet its international obligations in its interactions with developers and states and territories.

The creation of this requirement in legislation is critical to bind the decision maker, whether the Minister or the proposed CEO of the National Environment Protection Agency, to act in a manner that is not inconsistent with the binding guidance provided by the Standards.

Second, a statutory definition of an 'unacceptable impact' and criteria to support a 'quick no' and a 'quicker yes.'

This is a fundamentally important reform that deviates in a positive sense from one of the recommendations of the Samuel review in placing the definition and detailed criteria against which the definition will be interpreted against each of the individual MNES within the primary legislation, rather than in the Standards.

This reform provides much needed clarity for both business and the community about what types of development are clearly inconsistent with the Australian Government's



responsibilities, and which should not proceed beyond first base. Conversely the understanding of what development will not have a 'unacceptable impact' on MNES should provide confidence for business to proceed with some confidence in preparing Environment Impact assessments.

A second important reform associated with this proposal is the strengthening within the Act and within the draft Standard for Matters of National Environment Significance of a definition to enable the identification and protection of 'critical habitat' of listed threatened species and ecological communities where the habitat is irreplaceable and necessary for a threatened species or ecological community to remain viable in the wild.

Ultimately, the successful implementation of this reform will require a considerable uplift in the availability of high-quality environmental data and mapping as proposed through the creation of an Independent Environment Information Australia.

Third, reform of the system of offsets to target a 'net gain', moving the dial from no net loss toward restoration and inclusion in the legislation of the need to enforce the mitigation hierarchy to avoid, mitigate, repair, and offset significant residual impacts of development.

These are critical reforms that constrain the automatic use of offsets through creating a legislative requirement that both developers and decision makers must demonstrate real efforts to avoid and minimise residual significant impacts (i.e. not unacceptable impacts) on MNES through the mitigation hierarchy before considering offsets. The proposed reforms also create a legislative requirement that offsets should deliver a 'net gain' to MNES rather than the existing regime which simply requires 'no net loss'.

These new, stronger provisions are also contained and expanded upon in the draft Standards for Offsets released for public comment on the 11/11/2025.

Fourth, the independent National Environmental Protection Authority, which will have both a range of delegated powers from the Minister and broad powers to ensure the new rules are enforced. Right now, the Australian Government does not have either the power or mandate to make sure the system is working.

Confidence in the system and transparent decision making were key recommendations of the Samuel review and these are proposed through a range of important functions and powers provided directly to the proposed NEPA including expanded powers and penalties, including Protection Orders, to ensure ongoing compliance and enforcement functions and to ensure the NEPA has powers to monitor and audit any accredited systems and processes and bioregional plans.

The power of the Minister to also delegate decision making in respect to project assessments and approvals is welcomed, although a commitment to review whether these powers should ultimately be transferred to the NEPA after three years is recommended.

Fifth, an independent Environment Information Australia (EIA), charged with maintaining high quality environmental information and tracking progress in a transparent manner.



A 'single source of truth' is critical to ensuring everyone is working off the same set of readily available information and these reforms create the framework for the establishment of an Independent CEO of the EIA to procure and produce a range of critical national environmental assets, more regular reporting of progress in achieving the goals of the reforms through 2 yearly State of Environment Reports and finally the production of detailed environmental economic accounts to track long term progress.

Sixth, proposed reforms to conservation planning provide the opportunity to overhaul the patently broken conservation planning system of recovery plans and conservation advices through the proposed creation of new Conservation Protection Statements that will enable the development of simpler and clearer conservation planning documents and advice directly applicable to the enforcement of the proposed Standard for MNES and related concepts such as unacceptable impacts and Net gain offset reform.

Furthermore, the strengthened definition of 'critical habitat' mentioned in point two above will provide much more precision and clarity in implementation of the requirements of all conservation planning tools.

Seventh, regional planning reforms will provide far greater incentives for all parties to support planning of conservation measures and development opportunities at the landscape and bioregional level, consistent with National Standards and management of cumulative impacts of multiple development proposals and with the incentive for quicker approval of compliant developments through the up-front identification of conservation zones and development zones. This is a key recommendation of the Samuel review and should be treated as the preferred future pathway for delivery of the goals of a reformed EPBC system.

Weaknesses

First, the expansion of the circumstances in which the 'national interest' can be triggered to enable non-compliance with the operation of key reforms including National Environment Standards, does not promote consistency in the implementation of the reforms. This will create further uncertainty and political contestation regarding what circumstances warrant a 'national interest' exemption.

National interest should be limited to those matters that are genuinely a national emergency or very rarely when national security requirements trump the consistent and constant operation of a clear set of rules.

Second, there is a compelling case for taking the opportunity to deal with the well-known logging and deforestation loopholes in the present Act.

At present there is no obligation upon landholders to refer proposals to clear native vegetation for assessment and approval, even when Matters of National Environmental Significance may be significantly impacted if these activities have been authorised under existing state regimes or constitute a continuation of use from when the original legislation was enacted.



These loopholes are not addressed in the proposed reforms and must be if all activities and sections of the economy are to be treated in a consistent fashion.

This inability of the reforms to deal with the ongoing large scale clearing of native vegetation is a major problem, particularly when it poses a clear and well recognised threat to the health of one of Queensland's greatest assets, the Great Barrier Reef. Clearing in the catchments that empty into the Great Barrier Reef lagoon cause stress and damage to a system under grave threat from climate change.

The runoff of soil, chemicals and fertilisers associated with deforestation have most recently been recognised by the World Heritage Committee of UNESCO as a significant threat to the health of the Reef.

In a decision made in July this year, the Committee called on the Queensland Government to immediately strengthen protections to ensure that all remnant and high value growth areas are protected, including Category X vegetation (under the Queensland Vegetation Management Act), and other high priority areas, including riparian zones, lands vulnerable to degradation and areas contributing to sediment and nitrogen pollution.

It is shocking to note that between 2019/20 and 2022/23, 500 000 hectares of forests and woodlands were cleared in catchments running into the Great Barrier Reef. Habitat loss is a key driver of extinction for a range of species, including the endangered Koala.

The need for the national laws to address this problem is clear on environmental grounds alone. And the case is only amplified by the Reef being a significant generator of economic activity.

A recent Deloitte Access Economics study commissioned by the Great Barrier Reef Foundation, released last month, found that the Reef supports 77 000 jobs and contributes \$9 billion per annum to the Australian economy. If the Reef were an employer, it would be Australia's 5th largest.

Yet neither the present laws, nor the proposed reforms, provide the Australian Government with the ability to act to protect the Reef from irresponsible clearing, due to a 25-year-old loophole.

Of course, the climate case for closing the loophole is massive, with millions of tonnes of emissions released each year through both deforestation and native forest logging.

Reforms which require referral of proposed deforestation activities that may impact MNES against a threshold of vegetation age and risk is critical to close the loophole, as are measures to ensure the application of proposed reforms including unacceptable impacts criteria by a decision maker, whether the Minister or the CEO of the NEPA.

Likewise, the proposed reforms do not enable a legislative pathway to honour the recommendations made by Samuel in respect to the modernisation of remaining Regional Forest Agreements (RFA).



Recommendation 15 of the Samuel review sought to increase the level of environmental protection afforded in Regional Forest Agreements (RFAs) in two ways:

1. "That the Commonwealth should immediately require, as a condition of any accredited arrangement, States to ensure that RFAs are consistent with the National Environmental Standards.
2. In the second tranche of reform, the EPBC Act should be amended to replace the RFA 'exemption' with a requirement for accreditation against the National Environmental Standards, with the mandatory oversight of the Environment Assurance Commissioner."

The Review found that of all streamlining mechanisms under the EPBC Act, the provisions for RFAs are the most unacceptable and require immediate reform. Specifically, RFAs should be required to demonstrate consistency with the National Environmental Standards and have greater Commonwealth oversight.

These proposed reforms do not enable the legislative ability to implement these recommendations, and these represents a considerable oversight which should be addressed in this reform package.

Third, long term funding to support the implementation of the reforms is critical to ensure sustainable and consistent implementation of the reform package.

Whilst initial funding has been provided to enable the establishment of the NEPA and EIA and much more comprehensive package is required to achieve following activities:

- Support state and territory governments to modernise laws, systems, institutions, and processes consistent with the new system.
- Support and enable a rolling program of bioregional plans, including public and private funding streams, to support landscape scale restoration of MNES.
- Support and enable a rapid program of modernisation of existing and future conservation planning documents consistent with the proposed reforms.

Conclusion

This Parliament has an opportunity and responsibility to deliver once in a generation reforms which can deliver both environmental and economic gains and advances based on sensible and reasonable reforms that meet community and business expectations consistent with the 21st century realities of climate change, environmental degradation and increasing economic uncertainty.



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By closing the exemptions and loopholes and providing funding support to enable the delivery of the promise of these reforms, Australia is poised to deliver effective and world leading reforms.

We encourage the Parliament to seize these opportunities following the failings of the 46th and 47th Parliaments to grasp and implement the reforms proposed by Professor Samuel.

Yours Sincerely

Dr Ken Henry

Lyndon Schneiders

Chair

Executive Director

Australian Climate and Biodiversity Foundation