



Australian Government

**Department of Climate Change, Energy,
the Environment and Water**

Environment Protection Reform Bill 2025 and six related bills

Supplementary submission to the Senate Environment
and Communications Legislation Committee inquiry
into Environment Protection Reform Bill 2025 and six
related bills

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Purpose of this submission

The Department of Climate Change, Energy, the Environment and Water (the department) is pleased to provide this further submission to the Senate Environment and Communications Legislation Committee (the committee) to assist its inquiry into the Environment Protection Reform Bill 2025 (the Reform Bill) and six related bills (the reform package).

This submission was requested by the committee to supplement the department's previous submission with further detail and clarification on the operation of aspects of the reform package.

Further clarification on the reform package

This section builds upon the information provided in the previous submission, expanding upon the discussion in the section titled '*Clarifying aspects of the reform package*'. It offers additional detail and further clarification on aspects of the reform package.

Many of these aspects relate to the application of three new environmental protections that the Reform Bill applies to key decisions across the EPBC Act. These are:

- National Environmental Standards,
- unacceptable impacts, and
- compensation to net gain.

National Environmental Standards

National Environmental Standards can only be made following commencement of the new laws, which include a standards making framework to allow the Minister to make, vary, revoke and apply Standards. Individual Standards will be made as disallowable legislative instruments following commencement of the new standards making power.

Two draft National Environmental Standards have been developed alongside the legislation to enable stakeholders to understand how the standards would operate in the context of the reforms. The draft Standard for Matters of National Environmental Significance and the draft Standard for Environmental Offsets are available on the department's website for consultation until 30 January 2026.¹

Further revisions to these draft Standards will consider feedback received through the consultation process and will need to account for, and be consistent with, any parliamentary amendments to the reform package.

A subsequent round of consultation on the draft Standards will be held following the passage of the reform package through Parliament as part of the formal statutory consultation process.

¹ DCCEEW, 2025, URL: <https://consult.dcceew.gov.au/natl-environmental-standards-mnes>

Other National Environmental Standards being developed include:

- First Nations Engagement, and
- Data and Information.

Public consultation on these standards will occur before the reforms commence.

Unacceptable impacts

The EPBC Act currently refers to unacceptable impacts in several places, and 15 projects have been deemed clearly unacceptable at the referral stage. However, the Act does not define what an unacceptable impact is. There are no criteria for how a Minister would form a view about which actions would have unacceptable impacts, leading to considerable discretion and uncertainty.

The Reform Bill provides that the Minister must be satisfied that an impact is not unacceptable before approving an action, class of actions or making a relevant decision in relation to a bioregional plan, Commonwealth declaration or bilateral agreement.

For example, new Subsection 136B(1) has the effect that the Minister can only approve the taking of an action if they are satisfied that, 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. In determining whether this is the case, the Minister must take into account any conditions to be attached to the approval.

This means that before the Minister can approve the taking of an action, the Minister would need to satisfy themselves that any likely impacts of the action on a matter protected by a provision of Part 3 that is a controlling provision for the action either:

- do not, of themselves, reach the level of an unacceptable impact on the protected matter; or
- are avoided or mitigated below the level of unacceptable impact on the protected matter.

In making this decision, the Minister is required to take into account a range of information about the protected matter, as well as project information and other information and relevant advice received during the assessment. The Minister would also be able to reach the required level of satisfaction by attaching conditions to the approval that require the approval holder to avoid or mitigate any such impacts below the unacceptable impacts threshold for the relevant protected matter.

Subsection 134(3AA) of the Reform Bill ensures that unacceptable impacts cannot be offset to make them acceptable.

The term unacceptable impacts is defined in new section 527F, with criteria specific to each matter protected by a provision of Part 3 that may be a controlling provision. The intent is to give greater certainty about the requirements for approval and other decisions to enable faster, more consistent decisions.

For threatened species and ecological communities, the two unacceptable impact criteria that are defined in the Reform Bill are significant impacts that:

- a) seriously impairs, will seriously impair, or is likely to seriously impair, the viability of the listed threatened species; or
- b) causes, will cause, or is likely to cause, serious damage to critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for the listed threatened species to remain viable in the wild.

Many of the criteria are repeated, so they can apply to protected matters with different circumstances, like different listing categories for threatened species and communities. For example, section 527F of the Bill provides that the same 2 unacceptable impact criteria above apply to all categories of listed threatened species and communities that are protected matters for the purposes of Part 3 of the EPBC Act. This is a requirement for legislation. While this makes the criteria look long in legislation, each protected matter – like threatened species and ecological communities, only has a single set of criteria.

The Reform Bill also includes definitions of key terms used in the criteria such as ‘critical habitat (subsection 207A(4)), ‘seriously impair’ (section 527H), ‘irreplaceable’ and ‘viability’ (section 528).

Recovery plans, conservation advices, and new protection statements will support the assessment of impacts against the criteria for individual threatened species and communities. For example, recovery plans will identify critical habitat and may contain information about impacts that would threaten the viability of the species in the wild. New protection statements will clarify the key information for a decision-maker including where critical habitat is irreplaceable and necessary for a listed threatened species to remain viable in the wild.

These criteria have been designed in consultation with scientists, environmental and business stakeholders.

Environmental offsets

Net gain

The Reform Bill requires that any residual significant impacts to protected matters of an action, or class of actions, be offset to a net gain, and allows the Minister to accredit a Commonwealth, State or Territory process only if satisfied any residual significant impacts will be offset to a net gain.

Currently, arrangements for offsets are set out in policy, which the Samuel Review found is inconsistently applied, leading to poor environmental outcomes and uncertainty for proponents. The new net gain requirement will address this by embedding offset requirements directly in legislation for the first time.

The Reform Bill allows the Minister to determine the amount of net gain required for a protected matter, or for it to be prescribed in regulations.

The intent is that the regulations will prescribe the net gain required for different protected matters. The purpose of the provision allowing the Minister to determine the amount of net gain in the absence of a prescribed amount is intended to deal with a situation where a regulation prescribing the amount is not in effect so that a net gain can still be required in relation to any residual significant impacts.

In the absence of a regulation prescribing the amount of required net gain, the amount could be specified in policy guidance or – subject to the standards-making framework – in the Environmental Offsets Standard to provide greater clarity for proponents.

Restoration contributions

Significant work has been undertaken to understand identified failures and areas for improvement in similar schemes in other jurisdictions and incorporate the lessons learned. The department meets regularly with state and territory government representatives to share learnings across environmental regulation.

Similar schemes in other jurisdictions have resulted in accrued funds that are unable to be expended due to overly restrictive requirements on expenditure, or charges being set at a level that does not reflect the true cost of delivery. The department is confident that the findings of reviews from similar state schemes will allow the new scheme to be designed in a way that will avoid such limitations.

The reforms will require the Restoration Contributions Holder to consult with an expert advisory committee to determine the best expenditure of funds that cannot feasibly be spent on general ('like-for-like' style) restoration actions, ensuring no contributions go unspent and are still used to achieve a net gain for a protected matter or matters. The Restoration Contributions Holder also must advise the Minister where this has occurred.

Rulings will enable the Minister to prevent future contributions in similar circumstances where there is a demonstrated inability to deliver general restoration actions for a particular protected matter. This could also be achieved by making Regulations for the purpose of section 134(3AC), which would prevent the Minister from attaching certain compensation conditions. These mechanisms will create a 'feedback loop', where information that general restoration actions are not feasible for a particular matter is factored into and constrains future decision making.

The charge calculation methodology has been informed by learnings from similar schemes in other jurisdictions.

Regular statutory reviews will be undertaken to ensure that the Restoration Contribution charge calculation methodology is sufficient and working as intended. The first review will occur two years after commencement, with subsequent reviews every five years. The charge calculation methodology and select Restoration Contribution system requirements will be in Regulations to enable updating.

Delivery of restoration actions may occur through other State, Territory or national schemes only where these schemes are able to meet the requirements of the restoration contributions system (such as net gain, strategic delivery, feasibility and reporting requirements).

Assessment pathways

As outlined in the previous submission, the Reform Bill rationalises the six existing assessment pathways, as recommended by the Samuel Review.

Streamlined assessment pathway

The assessment on referral information and assessment on preliminary documentation pathways are to be replaced with a new streamlined assessment pathway.

As outlined in the previous submission, the streamlined assessment pathway is a faster and more efficient process than the current pathways, that rewards proponents for clear upfront information. The streamlined assessment pathway could be accessed for all types of projects requiring approval regardless of size, complexity, or type of project. Whether or not a project is eligible for the streamlined assessment pathway depends entirely on the sufficiency of the information provided upfront. As is the case now, more complex projects would need to provide a greater level of information to enable the Minister to make an informed decision. A system that incentivises and assists proponents to provide better information on the likely environmental impact of their projects up front in a transparent manner benefits everyone.

Consultation under streamlined assessment pathway

Consultation on assessment information for projects proceeding under the streamlined assessment pathway will occur at the referral stage. This is because, since all the information has been provided upfront, the public will be able to review and provide comment on the full details of the project at that time.

The Minister would be able to make an informed decision on the project assessment based on the referral information and must consider all public comments received during the referral period.

As with all other assessment pathways, before making a decision whether to approve a project the Minister must invite comments from the proponent on the proposed decision and conditions. The Minister may invite comments from other Commonwealth Ministers, and the public.

EIS pathway

For projects without sufficient information available upfront, an improved environmental impact statement (EIS) assessment pathway will be available. The Reform Bill merges the EIS pathway with the current public environmental report (PER) assessment pathway, as timeframes and process for these pathways are the same.

The EIS pathway has been improved to ensure transparency, flexibility and scalability of the assessment that can be adapted for the complexity and the level of guidance needed for the project. Proponents who currently use the PER pathway will be better off under the improved EIS pathway.

Transition to new pathways

The department expects that over time, with greater clarity on requirements through better standards and guidance, more and more projects would be able to provide enough information up front to utilise the streamlined pathway.

The government will work with stakeholders to set an appropriate transition period, providing opportunity for proponents to become familiar with the new pathways before the old ones are removed and ensuring procedural fairness for proponents.

Landscape scale approaches

Bioregional planning

Impact assessment

The Reform Bill proposes a new pathway for bioregional plans with regulatory zones (conservation zones and development zones). These plans are a tool to better manage the cumulative impacts of a priority class of action (such as housing, renewable energy or critical minerals projects) at a landscape or seascape scale.

Contrary to the suggestion made in some submissions to the inquiry, bioregional plans will be underpinned by an assessment of the impact of the priority class of action on protected matters. Such an assessment is necessary to satisfy various tests and requirements specified in the Reform Bill for the making of a bioregional plan. These include the requirements for bioregional plans to specify each protected matter impacted by priority actions and for the Minister to be satisfied that the bioregional plan will achieve a net gain.

The development of bioregional plans will also involve the consideration of additional threats. Before making a bioregional plan, the Minister must be satisfied that:

- threats to protected matters in the region, being threats arising other than from priority actions, have been identified and addressed as appropriate;
- the bioregional plan includes consideration of the expected impacts of climate change and appropriate adaptation and resilience measures.

Bioregional plans will also be subject to the same new tests introduced by the Reform Bill (e.g. net gain and no unacceptable impacts) and national environmental standards as other approval pathways. The current draft National Environmental Standard for Matters of National Environmental Significance outlines how cumulative impacts will be considered for landscape scale reforms.

Conservation zones

Conservation zones are areas identified in a bioregional plan where specified classes of action ('restricted actions') will be prohibited. Together with development zones, conservation zones function to guide development in a given sector away from areas of higher environmental sensitivity toward areas of lower environmental sensitivity.

Conservation zones are not offsets and will not be counted when assessing whether a bioregional plan will deliver a net gain for impacted protected matters. They are an additional mechanism that can be used to shield environmentally sensitive areas from development

impacts. Bioregional plans are the only pathway under the Act that require this additional protection.

The prohibitions in a conservation zone are subject to exemptions. Powers to grant exemptions are expected to be exercised only rarely. These powers are, however, necessary to guard against unintended outcomes associated with the rigid application of the prohibitions in the conservation zone. For example, an exemption may need to be granted to allow the referral for assessment and approval of activities to manage bushfire risks.

Exemptions can be granted by the Minister via an application process or prescribed in regulations. Where an exemption is in place, it does not authorise development. Rather, where an exemption is in place, the prohibition on referring the exempted action for assessment and approval is lifted. If the action is referred for assessment and approval, the decision-maker must have regard to the bioregional plan, including the environmental values information that justified the designation of the conservation zone in the first place.

The granting of exemptions is subject to safeguards that limit their use. Applications for exemption can only be granted in exceptional circumstances or in the national interest. Unless necessary to prevent a serious and imminent threat to human health or the environment, the Minister must provide the public with at least 30 business days to comment on any proposed exemption.

Before deciding whether to grant an exemption, the Minister must have regard to factors including whether the exemption would be consistent with the objectives of the bioregional plan. Before prescribing an exemption via regulations, the Minister must be satisfied that prescribing the exemption would not be inconsistent with the objects of the Act, the objectives of any bioregional plan, and relevant international obligations.

Strategic assessments

Strategic assessments enable assessment and approval of a class of actions at the landscape scale, subject to bespoke arrangements under a policy, plan or program (PPP).

As outlined in the previous submission, the Reform Bill amends strategic assessment provisions to improve the flexibility and efficiency of the strategic assessment agreement, endorsement, approval and post approvals processes, as well as to improve consistency with other pathways. This includes new requirements to avoid unacceptable impacts, not be inconsistent with National Environmental Standards and deliver a net gain.

Public consultation

The Reform Bill removes requirements for a 'terms of reference' as part of a strategic assessment agreement. This change aligns with the Samuel Review's recommendation that the EPBC Act have a greater focus on outcomes, rather than the current overly prescriptive and process-focused system.

Some submissions to the inquiry raised concerns that this change will reduce or remove public consultation on strategic assessments, which is not the case. There will still be public consultation on strategic assessments. Public consultation on the draft impact assessment report must run for at least 28 business days, and all public comments must be addressed in the final report. Public consultation on the terms of reference can still occur, but will no longer be a mandatory requirement. The department considers that public consultation on the draft

impact assessment report is the best opportunity for meaningful engagement on the outcomes that would be achieved by the PPP.

Minor variations

Submissions have also raised concerns regarding the new power to make minor variations to an endorsed PPP and an associated strategic assessment approval.

Currently, endorsed PPPs cannot be changed at all, even for minor administrative changes, following endorsement. This creates real limitations in the functionality of strategic assessment approvals and has prevented their uptake at scale. The new minor variations power addresses this by enabling minor changes.

For a variation to be minor, there must be no greater impacts to protected matters, and no reduction in compensation measures. Section 146DH(4) ensures that compensation cannot be considered when determining whether there are greater impacts. These controls will ensure that environmental protections are not eroded post approval.

Any more-than-minor changes, including any increase in impacts or any reduction in compensation, could not be approved through a minor variation. Such changes could only go ahead subject to full environmental assessment under a new strategic assessment agreement, including public consultation.

Cumulative impacts

Strategic assessments enable assessment of cumulative impacts from a class of actions, rather than project by project assessment. Making strategic assessments more fit-for-purpose is intended to encourage their use and increase uptake, facilitating increased consideration of cumulative impacts under the EPBC Act.

National interest considerations

The national interest exemption and national interest approval have two different functions.

National interest exemption

The national interest exemption is an existing power under section 158 of the EPBC Act. It is rarely used and is intended for exceptional and emergency situations (including bushfire response and species capture). It has only been used 28 times since the commencement of the EPBC Act, the most recent examples of its application include:²

- 2025 - an exemption to complete emergency works prior to and during the 2025/26 Queensland summer storm season at the northern end of Bribie Island,
- 2024 - an exemption for firefighting activities, fire prevention activities and fire recovery activities in Victoria in response to bushfires during the 2024-2025 bushfire season, and
- 2023 - an exemption for the collection and captive management of Red Handfish, in anticipation of a predicted marine heatwave event.

² Refer EPBC Act exemptions and exemptions register, URL:
<https://www.dcceew.gov.au/environment/epbc/approvals/register-of-exemptions>

The Reform Bill makes changes to the exemption by making it more responsive and embedding a number of controls so that the Minister can apply conditions, impose a time period for which the exemption applies, and vary or revoke an exemption. The Minister will be able to grant an exemption on the own initiative. A charge can also be imposed on the granting of a national interest exemption, allowing the Commonwealth to compensate for the impacts of the exempt action on protected matters.

The Reform Bill does not make any substantive amendments to the criteria the Minister may consider for the purposes of determining the national interest for a national interest exemption.

National interest approval

The reforms put in place tougher new protections and clearly limit what can be approved by requiring projects to avoid unacceptable impacts, not be inconsistent with National Environmental Standards and deliver a net gain.

The national interest approval delivers on a recommendation of the Samuel Review to enable the Minister the ability to approve projects in cases where it is necessary for an action to be inconsistent with new tougher environmental protections in order to achieve an outcome in the national interest.

Requirements for national interest approvals

National interest approvals are still required to comply with Australia's international obligations and recovery plans, consistent with requirements for approval under the current system. Unlike national interest exemptions, projects designated as national interest proposals would still be subject to full environmental assessment, including public consultation.

This means that, contrary to the suggestions of some submissions, national interest approvals would not be a backwards step in protections – national interest approvals provide, at minimum, equivalent protections to current settings under the EPBC Act.

The national interest approval provisions (at sections 136A(2), 136B(2) and 136C(2)) are drafted to ensure that the new stronger protections are met as far as possible, and that any inconsistency with the new tougher tests is limited to what is necessary to achieve the national interest outcome.

Ministerial discretion and direction

Ministerial discretion in decision making

The EPBC Act protects a diverse range of matters and environments, from built National Heritage like the Sydney Opera House, to species facing unique threats like the Tasmanian Devil. The Act is used to assess impacts to this broad range of matters from an equally broad range of projects and developments.

Legislative tests need to be applicable across this wide range of circumstances, requiring some degree of discretion on a case-by-case basis.

The existing approval tests in the current EPBC Act remain, including not being inconsistent with Australia's international obligations and recovery or threat abatement plans. The Reform bills add new additional tests (related to standards, unacceptable impacts and net gain) that need to be met over and above the current tests.

Each of the new approval tests require the Minister to be satisfied of a particular circumstance, based on the information before them.

A degree of discretion is required to reflect the dynamic and evolving nature of environmental information and to address concerns regarding legal challenge.

As is the case for decisions made under the current Act, a decision to approve an action on the basis that the Minister was satisfied of the matters in section 136A, 136B, or 136C can be challenged on grounds like unreasonableness, or failure to comply with other administrative law principles. Ministerial accountability for decision making under the Act is strengthened through the new requirement for recommendation reports to be published on the department's website.

Independence of the National EPA

The National EPA will be established as an independent statutory agency with a Chief Executive Officer (CEO) appointed under the National EPA Bill.

The CEO will be appointed by the Governor General on the recommendation of the Minister, which is standard practice for other independent Commonwealth regulators such as the National Anti-Corruption Commission (NACC) and the Fair Work Commission.

Establishing the National EPA as a separate agency led by a CEO will provide greater independence in decision-making and resource allocation, and embed vested, independent compliance and enforcement functions. It will also enhance accountability and transparency in decisions while establishing clear mechanisms to prevent perceived or actual conflicts of interests.

The National EPA Bill includes provisions to balance the appropriate role of the Minister for the Environment with the independence of the CEO. These provisions outline how the Minister would issue the CEO with a Statement of Expectations, which must not direct the CEO or the National EPA, and require the CEO to respond to any Statement of Expectations with a Statement of Intent. This is analogous to other Commonwealth regulators, who follow the same process.

Regular and accurate information about the National EPA will be ensured through several provisions in the National EPA Bill including establishing and maintaining registers of decisions to promote transparency, annual reporting and undertaking and publishing of independent reviews of the agency's administration at least every five years.

In addition to undertaking their functions in accordance with all national environmental laws (and other relevant Commonwealth laws, as a non-corporate Commonwealth entity, the National EPA will be subject to the governance, performance and public resource management requirements of the *Public Governance, Performance and Accountability Act 2013*. While the National EPA will develop its own operational policies, the Minister will retain responsibility for setting environmental policy and national environmental law.

Delegation

Compliance, enforcement, permitting and licensing powers will be vested in the CEO of the National EPA. This means these powers cannot be revoked from the CEO of the National EPA except by changes to the legislation. When acting under powers directly vested on the CEO, the CEO cannot be directed by the Minister.

However, other functions under the Act, such as assessments and decision-making about development proposals, including approval conditions, will be able to be delegated by the Minister to the CEO of the National EPA.

Subsection 515AAA(5) of the Reform Bill explicitly provides that a delegate is subject to the directions of the delegator. This means that where the CEO is exercising assessment or approval powers under delegation from the Minister, the CEO would be subject to the directions of the Minister. An instrument of delegation is also able to be revoked.

Independence of EIA

As outlined in the previous submission, the EIA Bill will establish the Head of Environment Information Australia (EIA) as a new statutory office holder in the department with functions to collect, produce and provide clear, high-quality environment data and information and independent reporting.

The Head of EIA's reporting functions are independent as they are important for transparency and accountability. These functions include the preparation and publishing of bi-yearly State of the Environment reporting and the establishment and maintenance of environmental economic accounts. This means that the Head of EIA cannot be directed by the Minister, the Secretary or anyone else in performing these functions. EIA staff would be subject to the Head of EIA's directions for the delivery of these functions.

The Head of EIA's functions to collect, produce and provide high-quality data and information are not independent. The statutory data functions would not change ownership of national environmental data and information. The EIA Bill recognises the important leadership role that the Head of EIA would have in working with data partners to improve data accessibility and availability. As a division in the department, EIA would continue to have a role within the department to collect, manage and curate data under its responsibilities.