



Tas Larnach
Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
By email to: ec.sen@aph.gov.au

12 November 2025

Dear Mr Larnach

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

For 60 years, the Australian Marine Conservation Society (AMCS) has worked through science-informed advocacy, policy reform, community engagement and education to protect Australia's ocean and coasts for current and future generations. We represent over 300,000 Australians from all walks of life. AMCS welcomes the opportunity to provide the Senate Standing Committee on Environment and Communications with a submission to the inquiry on the Environment Protection Reform Bill 2025 and six related bills.

AMCS has a particular focus on Australia's World Heritage listed ecosystems, such as the Great Barrier Reef and Ningaloo, the conservation of Australia's unique marine biodiversity and ocean habitats, and the protection of ocean wildlife and habitats from climate change, unsustainable fishing, coastal development and pollution, including from plastics.

A strong, enforceable national environment law, overseen by the Commonwealth Government, is critical in ensuring our natural environment and the biodiversity of Australia's ocean and coasts are protected, particularly when facing the increasing challenges of a warming climate and the resulting intensity of disasters including underwater heatwaves, fires, droughts and floods. The current Bills include a number of positive new features, including a definition of unacceptable impacts, National Environmental Standards (Standards), a National Environment Protection Agency and a broader suite of compliance and enforcement tools.

However, many of these positive aspects are compromised by the high levels of ministerial discretion littered throughout the bills. There is also a risk that any improvements made through the positive features will be undermined by other aspects of the reform package such as weaker offsetting rules, fast-tracked development pathways, relaxed devolution and national interest exemptions which

significantly increases decision-maker discretion, including for example, allowing the Minister to make decisions that are inconsistent with a Recovery Plan. The reforms still fail to address climate change, and remove exemptions that allow deforestation in the Great Barrier Reef catchments, and allow threatened and protected species such as turtles, whales and dolphins to be killed in shark net programs.

With political will, all of these problems are fixable and AMCS appends a summary of the missing elements and regressive reforms requiring amendment. Changes must be made to deliver the transformational change required to ensure these reforms deliver outcomes for nature.

Yours sincerely

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Alexia Wellbelove
Acting Co-Campaigns Director

The need for law reform in the midst of an extinction crisis

The 2021 State of the Environment Report¹ laid bare the dire state of nature in Australia. Despite successive Australian Governments committing to preventing extinctions and recovering threatened species, Australia does not yet have effective laws or systems in place to deliver these commitments. Since the establishment of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), at least five species have become extinct after they were listed, 64 species have been up-listed to higher threat categories (e.g. Endangered to Critically Endangered), only 10 species have been down-listed to lower risk categories, and only 6.5% of listed species have recovered such that they no longer meet the eligibility criteria for listing as threatened. This reflects a broader trend of decline.

Where monitoring of Australia's threatened species populations is occurring, it is demonstrating steep and ongoing declines. Monitoring data are available for only around 8% of Australia's threatened species through the Threatened Species Index and shows that Australia's threatened species populations have fallen by an average of 61.5% since 2000².

On the 30th October 2020, Professor Graeme Samuel delivered his Final Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 to the Government (the Samuel review)³. The report found that:

"Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat. The environment is not sufficiently resilient to withstand current, emerging or future threats, including climate change. The environmental trajectory is currently unsustainable."

"The EPBC Act is outdated and requires fundamental reform. It does not enable the Commonwealth to effectively fulfill its environmental management responsibilities to protect nationally important matters."

AMCS was deeply involved in the Samuel Review and welcomed Professor Samuel's comprehensive and scathing assessment of the EPBC Act's implementation. We are supportive of the central theme of pursuing 'outcome-based law' based on strong, legally enforceable Standards and a framework that provides assurance that outcomes are being met. However, the Bills currently before Parliament fall significantly short of the reforms outlined in Professor Samuel's recommendations.

Key elements missing from the package of EPBC Bills before Parliament

Proactive conservation planning and mandatory identification of critical habitat

Australia's nature laws are failing to curb threatened species decline. In contrast, the US *Endangered Species Act 1973* and supporting programs are highly effective, with more than 100 marine and non-marine species delisted or having their threat status downgraded due to recoveries. Effective aspects of the US *Endangered Species Act 1973* (ESA) that could be applied in Australia to improve outcomes include: 1) all listed threatened species have a mandatory allocation of funding for recovery actions, 2) transparent public annual reporting of spending on each threatened species and 3) critical habitat protection. Designation of critical habitat is required for

¹ <https://soe.dcceew.gov.au/>

² Biodiversity Council and Australian Marine Conservation Society (2025). The cost of preventing extinctions in Australia's marine environment. March 2025. Report. Melbourne, Australia.

³ <https://epbcactreview.environment.gov.au/>

all species listed under the ESA. Listing provides protection by prohibiting US federal agencies from permitting, funding, or carrying out actions that “adversely modify” critical habitat. Numerous independent analyses have shown that the ESA has led to impressive recovery for many species protected by it. The underperformance of critical habitat provisions across Australia reflects the need for mandatory identification of critical habitat.

We strongly support the inclusion of unacceptable impact definitions and proposed definitions of critical habitat in the Environment Protection Reform Bill. However, the term ‘seriously impair’ (used in the definition of unacceptable impacts) is vague and without an identifiable threshold. We therefore consider that this definition must be strengthened to address this concern.

The reforms also fail to address vagueness about implementation of recovery plans, and AMCS recommendations to mandate allocations to fund recovery actions for every EPBC Act listed threatened species to ensure species’ recovery⁴.

Climate considerations

Our rapidly warming oceans, ocean acidification, rising sea levels and more extreme weather events are already having devastating impacts on biodiversity, coastal and marine habitats, and coastal communities. Yet there is a path forward. To secure a safe future for humans and nature we must reduce our emissions, build resilience into our natural systems, and provide additional protection for habitats that store and sequester carbon. Reducing emissions is the number one priority for tackling climate change. AMCS calls on the government to more urgently reduce emissions. This includes an end to fossil fuel developments, including new offshore oil and gas exploration, a swift and just transition to a clean renewable energy future for all Australians. The International Court of Justice has affirmed that states have obligations under international law to prevent significant environmental and climate harm. This means governments cannot ignore the climate impacts of their decisions, including approving projects that contribute to greenhouse gas emissions. For Australia, this underscores the need for the reformed EPBC Act to require assessment of both direct and exported emissions to ensure compliance with international obligations. Australia’s national environment legislation must include a mandatory consideration of all climate impacts in assessment and approval processes, and clearly establish the link between EPBC Act approvals and the Safeguard Mechanism.

Removal of exemptions that threaten the Great Barrier Reef and iconic marine life

Current EPBC Act exemptions undermine the Commonwealth’s ability to protect Matters of National Environmental Significance and honour its international agreements.

The Great Barrier Reef’s scientific, cultural and environmental values are world-renowned. However, the Reef is currently facing unprecedented challenges. A recent AMCS report⁵ shows that deforestation across the Reef’s catchments remains a major driver of sediment run-off and poor Reef water quality. Between 2018 and 2022, about 684,000 hectares were cleared across the Reef’s catchments, with 88% of this clearing for livestock grazing. This large-scale deforestation—especially along

⁴ Biodiversity Council and Australian Marine Conservation Society (2025). The cost of preventing extinctions in Australia’s marine environment. March 2025. Report. Melbourne, Australia.

⁵ <https://www.marineconservation.org.au/tree-clearing-gbr-catchments-report/>

creeks and erosion-prone land—continues to wash sediment and nutrients into Reef waters, undermining water-quality targets and threatening coral and seagrass recovery. The World Heritage Committee has repeatedly requested that the Australian Government address deforestation within the Reef's catchments. Our analysis shows that our laws are not adequately controlling tree clearing and water quality targets are nowhere near being met in the most polluting catchments. Deforestation must be constrained to address water pollution and improve the Reef's health so it can better cope with the increasingly frequent and intense marine heatwaves driven by climate change.

EPBC reforms must remove the exemption that currently allows clearing in Great Barrier Reef catchments to ensure Australia meets its international obligations to protect one of the greatest natural wonders of the world.

This same exemption that allows shark control programs in NSW and Qld to kill threatened and migratory marine species such whales, dolphins, marine turtles, sharks and rays, must be removed.

New elements that need amendments to ensure they deliver for nature

Make the National Environmental Standards legally enforceable

The centerpiece of the Samuel Review was the setting of clear outcomes through legally enforceable National Environmental Standards 'that set the boundaries for decision-making to deliver the protections needed'⁶.

We strongly support the introduction of powers in the legislation to make National Environmental Standards (Standards) as legislative instruments, enabling parliamentary oversight, requiring public consultation and including a principle on non-regression. However, without amending the discretionary language in the Bills, the introduction of Standards will not fix the problems they are designed to solve. Samuel recommended Standards to improve 'on the status quo where opaque rules and unfettered discretion in decision-making can result in poor environmental outcomes'.

However, instead of requiring that activities and decisions are objectively consistent with the Standards, the Bill allows the Minister to approve a development or accredit a framework if they are satisfied (a subjective test) that it is not inconsistent with any prescribed Standards. This shifts the test from objective compliance to subjective discretion, reducing transparency and external accountability.

The Bill introduces wide-ranging powers for the Minister to exempt certain proposals from meeting the Standards, going well beyond the "rare" and "demonstrably justified" exemption power recommended by the Samuel Review. And rather than each Standard applying to all relevant decisions, the Bill allows regulations to specify which Standard applies to each decision.

A core feature of the Standards recommended by the Samuel Review is that they must be legally enforceable—allowing decision-makers to be held accountable for compliance. It is difficult to ensure accountability when the test is subjective.

⁶ Samuel, G 2020, Independent Review of the EPBC Act – Final Report, Department of Agriculture, Water and the Environment, Canberra. epbcactreview.environment.gov.au.

Amendments are needed to ensure objective decision-making that sets out the decision-maker's obligations in fact, rather than opinion.

The Samuel Review recommended that the only exception for decisions to be consistent with Standards was when it is in the 'national interest' to do so and that this should be rare and exceptional. However, within the current Bills a new 'national interest proposal' specifies strategic interests and international agreements as being in the national interest, opening the door to more politically-based rather than science-based, objective decision-making.

Outcome-based law and assurance

The topline message of the Samuel Review was that Standards would enable the Commonwealth to rebuild trust and 'step up its efforts to deliver nationally important outcomes for the environment by setting clear outcomes through new, legally enforceable Standards, measuring the effectiveness of implementation and adjusting where needed to achieve outcomes'.

Samuel noted that strong Standards alone would not be enough as 'they need to be supported by strong and independent oversight of the performance of all parties ...to meet the Commonwealth's outcomes as prescribed in the Standards.⁷

The Australian National Audit Office (ANAO) has also been highly critical of the Australian Government's lack of outcome-level performance measurement and reporting, and its inability to determine how its decisions related to outcomes for matters of national environmental significance (MNES). Samuel strongly recommended performance audits to provide annual reporting, tabled in Parliament, on performance of Commonwealth and accredited parties against National Environmental Standards. Whilst the Bills will introduce architecture for an MNES Standard in the Act there is currently no requirement that the Standard includes measurable environmental outcomes.

The National Environment Protection Agency Bill (NEPA), currently includes no requirement for the agency to track performance against outcomes in the MNES Standard. Furthermore, AMCS have advocated for an independent NEPA, with a governance model that ensures accountability, expertise and transparency in functions, independent from the Minister, including through an independent board. Whilst we are very supportive of the efforts to ensure better compliance and stronger enforcement, the NEPA should be responsible for assessments, approvals and assurance, as well as compliance and enforcement. The NEPA's object and function should ensure substantive public participation in decision making.

The Environment Information Australia Bill should also require that the agency gather and provide information that tracks performance of Act against outcomes in the MNES Standard.

An outcome of 'absolute' net gain should be embedded in the Act, or in the very least the Standards, as a mandatory outcome for all approval decisions, to counter existing environmental decline. The concept of net gain has been introduced in the Bills, but only for 'residual significant impacts', and this is relative (not absolute) net gain as it is measured against a declining baseline which will lock in downward trajectories.

First Nations participation in decision making

⁷ Samuel, G 2020, Independent Review of the EPBC Act – Final Report, Department of Agriculture, Water and the Environment, Canberra. epbcactreview.environment.gov.au

We strongly support Traditional Owners' rights and aspirations to own, manage and protect Sea Country. We note that the EPBC Act does not enshrine the principles of the United Nations Declaration on the Rights of Indigenous Peoples, to which Australia is a signatory. We defer to First Nations voices in self-determining approaches to consultation and decision making under the EPBC Act.

Changes that are a regression from the current regime

Devolution of Commonwealth Responsibilities

AMCS does not support the delegation of environmental approval powers to the states and territories. Analysis by the Environmental Defenders Office (EDO) in 2012, 2014 and 2020 has consistently shown that the environmental laws of these jurisdictions afford weaker protections to the environment than the EPBC Act. The EPBC Act manages Matters of National Environmental Significance (MNES), reporting to international conventions on progress and maintenance of this national oversight remains vital. AMCS supports a national, cohesive approach to the protection of the environment, not a piecemeal state-by-state approach for approval decisions.

Recovery and Bioregional Plans

AMCS acknowledges that the proposed new protection statements could be a useful tool, for example to help determine whether there are unacceptable impacts. However, the Bills will modify existing requirements that the Minister not act inconsistently with a recovery plan. There is no reason that the introduction of protection statements should be used to switch off or undermine recovery plans or conservation advices. Protection statements must complement, not override or diminish the role of existing conservation planning documents.

Similarly, under the Bills, Bioregional plans risk becoming another mechanism to streamline development through the designation of priority actions in development zones—without requirements to deliver environmental benefits. Any regional planning must be conservation-led and give effect to existing recovery instruments. As proposed by Samuel, regional recovery plans must support coordinated threat management and investment in restoration and recovery. The Bills propose reforms that will fast-track approvals without establishing accountability for the implementation of recovery or threat abatement plans.

Offset Contributions

The introduction of a Restoration Contribution framework represents a step backward from current EPBC Act settings. It creates a significant risk that payments could be used to justify impacts on matters of national environmental significance without any assurance that offsets will be delivered to genuinely compensate for impacts or that environmental outcomes will be achieved. Offsets are particularly complex in the marine environment as highlighted in an AMCS-commissioned report on the matter.⁸

⁸ Best practice principles for biodiversity offsetting in marine environments. A report prepared for the Australian

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The Restorations Contributions Holder will not be required to deliver 'like-for-like' offsets and can instead fund 'alternative restoration actions'. If funds can be directed at a completely different species than the one being impacted, the eventual result is that species that are difficult or expensive to recover are more likely to perish.

NOPSEMA

AMCS is concerned about the potential for weakening existing environmental protections and oversight of offshore petroleum and CCS activities. NOPSEMA currently assesses and approves offshore petroleum activities in accordance with an endorsed program and class approval under Part 10 of the EPBC Act. The proposal to insert a new Part 4 Division 2A to establish a special new accreditation arrangement should not be passed. We understand that responsibility for designing the offshore petroleum and CCS assessment process would effectively be transferred from the Environment to the Resources Minister under the new NOPSEMA accreditation and approval declaration mechanism. The new framework would also allow the declaration to be made, and any changes to the declaration without any formal assessment or consultation. Furthermore, NOPSEMA's existing Program prohibits it from approving an action that would be inconsistent with the World Heritage Convention, whilst the Bill requires that the Minister only needs to 'be satisfied' that NOPSEMA would be required to not act inconsistently with the World Heritage Convention - making this a subjective matter of opinion rather than an objective matter of fact. AMCS strongly assert that the new accreditation arrangement should not be passed. If the Government is determined to introduce this pathway, then at the very least the Bill should be strengthened to introduce stronger upfront and ongoing protections of procedural rights and environmental protection (including an objective test for accreditation, mandatory assurance, and mandatory suspension where non-compliant), and also to ensure public consultation and include a principle of non-regression.

Conclusion

The Bills require significant amendments to limit discretionary language and ensure the legislation provides for the stated intent of stronger environmental protections. To be effective, the legislation needs to ensure that critical habitat is identified and protected, with unambiguous definitions of what are considered unacceptable impacts providing certainty around what can not be destroyed. Central to Professor Samuel's recommendations the National Environmental Standards must have a clear focus on environmental outcomes and be embedded in a legislated framework that monitors performance and provides assurance that stated outcomes are being met. Exemptions, such as allowing deforestation in the Great Barrier Reef's catchments, must be removed or constrained so that the Australian Government can honour its international commitments to protect globally important places and species found nowhere else on earth.