



EPBC Act Review - Summary of recommendations

Part One

Recommendations on evidence and trends

- This review incorporates analysis of extreme weather, climatic and health trends.
- This review undertakes a broader examination of costs, including consideration of the value of ecosystem services.
- A National Ecosystem Assessment be undertaken to underpin legislative reform and to establish a comprehensive suite of indicators to ensure a new (or substantially amended) Act is effective in achieving its objects.

Part Two

1. Recommendations regarding objects and principles:

- An overarching object to protect Australia's environment and biodiversity.
- Secondary objects to support national environmental leadership, biodiversity stewardship and fair decision-making.
- Clear statutory duties and mechanisms to implement and fulfil the objects.
- A modernised framework to achieve Ecologically Sustainable Development (ESD), including new principles to support high environmental standards, non-regression and continuous improvement, and resilience to threats.
- A strengthened set of reform principles.

2. Recommendations regarding scope of the Act:

- Retain existing matters of national environmental significance triggers.
- Add new triggers for:
 - the National Reserve System (terrestrial and marine protected areas);
 - Ecosystems of National Importance (including High Conservation Value vegetation, Key Biodiversity Areas and wetlands of national importance);
 - Vulnerable ecological communities (alongside other threatened species and ecological communities);
 - Significant land-clearing activities;
 - Significant greenhouse gas emissions, (including prohibiting specified greenhouse gas emitting activities that are in exceedance of Australia's carbon budget); and
 - Significant water resources (expanded beyond large coal and coal seam gas impacts).
- Include a regulatory power to add new triggers.
- Review exemptions for regulating offshore petroleum by NOPSEMA, forestry under Regional Forest Agreements, and activities under the national interest exemption.

3. Purpose of the Act - Recommendations for delivering environmental outcomes include:

- The Act and relevant plans should establish clear outcomes, standards and reporting indicators, that can be amended over time in light of scientific evidence.
- Sustainability Commission reporting to be tabled in Parliament on the State of the Environment and National Sustainability Outcomes.
- Require Commonwealth, State and Territory governments to respond to State of the Environment and National Sustainability Outcomes reports.
- Mandatory monitoring and reporting requirements on matters of national environmental significance.
- A set of National Environmental Accounts that track natural assets and their extent, condition and threat status over time.

- An online monitoring and reporting hub for comparative analysis; easy access to public registers; and transparent, up-to-date information about environmental outcomes across Australia.
- Mandatory public inquiries into the extinction of threatened species.

4. Role of the Commonwealth

Recommendations for improved governance and institutions include:

- Enforceable duties on decision-makers to use their powers to achieve the Act's objects.
- Clear criteria and public accountability for key stages of decision-making, including requirements for objective, science-based outcomes assessment.
- A new national Environmental Protection Authority (EPA) – to assess, approve or refuse projects, monitor project-level compliance and take enforcement action.
- A new National Sustainability Commission – to coordinate national plans and actions, set national environmental standards, provide high-level oversight and give strategic advice and oversight to Ministers, agencies and the wider community.
- Establish expert advisory Councils and task forces where needed.

Recommendations relating to standards

- The new Sustainability Commission should set national goals to achieve positive environmental outcomes under rolling National Environment and Sustainability Plans (National Plans).

Recommendations for bioregional planning

- Key elements for bioregional planning processes are set out in the Act.

Recommendations regarding accreditation, streamlining and de-regulation:

- Simplify and clarify the referral and assessment process.
- Improve environmental impact assessment (EIA).
- Improve certainty and efficiency by setting clear thresholds, rules and guidance upfront on unacceptable impacts.
- Establish clear referral duties and powers for relevant Ministers and agencies, the National EPA, and the public to formally request an action be referred.
- Strengthen criteria for conducting strategic environmental assessment to support and complement (but not replace) project assessment.
- Retain accreditation where there is evidence of environmental outcomes being achieved – for example, accreditation of fisheries.
- Revoke accreditation where there is no evidence of environmental outcomes being achieved – for example, Regional Forestry Agreements.
- Establish a system for the accreditation of consultants and experts who prepare EIA reports.
- Undertake a review of current self-regulatory schemes in terms of whether they achieve environmental outcomes.
- Improve effectiveness and efficiency by improvements to data coordination, sharing, transparency (including by establishing a National Ecosystem assessment, environmental accounts, data hub, and requirements to publicise EIA information).

Recommendations regarding compliance and enforcement include:

- A consolidated part in the Act on compliance and enforcement, penalties and tools.
- Explicit powers for a new national EPA as chief environmental regulator.
- A comprehensive suite of investigative powers for authorised officers.
- Open standing for the community to seek judicial review of erroneous decisions, civil enforcement of breaches, and performance of non-discretionary duties by the Minister or other decision-makers under the Act.
- A full range of best-practice criminal, civil and administrative sanctions.
- Harmonised federal-state regulation based on the most stringent standards and clearly assigned responsibilities.
- Cost recovery provisions.
- Adaptive management and ability to strengthen approval conditions over time in response to the best available science.

Recommendations for funding

- Increase Commonwealth funding for implementation of the Act including better resourcing and foresight for agencies, conservation programs and natural resource management, including multi-sector investment in ecosystem services, databases and new tools.
- The Act should require the Environment Minister to consult on, approve and coordinate implementation of a National Biodiversity Conservation and Investment Strategy (NBCIS).

5. Recommendations relating to Indigenous self-determination and relationships to country and sea country include:

- Any changes relating to the role of Indigenous peoples under the Act must be subject to effective consultation with Indigenous peoples, communities and organisations.
- 'Free, prior and informed' consent of Indigenous communities becomes a mandatory operational principle within the Act.
- A specific governance mechanism (a body such as a Commissioner or agency) be established to operationalise 'free, prior and informed' consent.
- 'Free, prior and informed' consent is particularly required for any decision that will impact Indigenous heritage values or Indigenous Protected Areas.
- Indigenous peoples, communities and organisations should be provided with the opportunity to conduct independent Environmental Impact Assessments.
- Indigenous Protected Areas (IPAs) be recognised as a matter of national environmental significance.
- Improve joint management structures around Commonwealth reserves to ensure there is self-determination and appropriate decision-making power on the part of Traditional Owners.
- Indigenous knowledges should be taken into account in all decision-making in ways that appropriately safeguard Indigenous communities and peoples.

6. Recommendations for public participation, transparency and access to justice include:

- Strong and iterative community engagement and public participation provisions at all key stages of the Act, from strategic planning to project assessment and compliance monitoring, reporting and enforcement.
- Rights for interested community members to seek merits review of key decisions under the Act (such as when a nominated entity or place is declined for listing; on the adequacy of an approved recovery plan; or whether a proposed action requires Commonwealth assessment; along with for approvals granted under the Act).
- Easily accessible, timely public information on actions and decisions.
- 'Open standing' for the community to seek judicial review of legal errors.
- 'Open standing' to pursue civil enforcement for a breach of the Act or regulations.
- Protective costs orders for legal actions brought in the public interest.

7. Specific tools

Recommendations relating to markets and offsetting

- Any biodiversity offsetting must be based on clear scientific principles and limits.
- Carbon farming should meet clear criteria for additionality and abatement.

Recommendations relating to restoration, incentives and private land conservation

- Critical habitat declarations should trigger private conservation funding under agreement with affected landholders.
- Establish a Capital Funds Conservation Program to receive capital contributions, and reinvigorate a national 'stewardship payments' fund for private landholders to achieve priority outcomes for national and bioregional biodiversity conservation.

Recommendations relating to listing threatened species and other protected matters include:

- Independent Scientific Committee to assess and directly list threatened species, ecosystems for national protection.
- Simpler and faster nomination and listing processes, and strong, non-regressive common standards for assessment across the Commonwealth, states and territories.
- All valid nominations to be assessed within statutory timeframes.

- Stronger protections for threatened species, important populations, ecological communities and critical habitat across Australia.
- Vulnerable ecological communities be a 'trigger' for impact assessment and approval (via existing matters of national environmental significance).
- Emergency listing provisions for threatened species and ecological communities and critical habitats.
- Permitting nomination and listing of important populations of a species.
- Applying the precautionary principle to listing decisions.
- Requiring decisions affecting species and ecological communities are consistent with approved conservation advices, recovery plans, threat abatement plans and international agreements.
- Impacts on critical habitat must be refused and conservation agreements sought with landowners. The Act should include a conservation covenanting mechanism.
- Critical habitat must be identified, mapped and included on the Critical Habitat Register at the time a species or ecological community is listed.
- Extending critical habitat protections beyond Commonwealth areas.
- New threat categories to reflect international (IUCN) standards, including for near-threatened and data-deficient species and ecological communities.
- Mandatory requirements for recovery plans and threat abatement to be developed and implemented in a coordinated manner across Australia.
- Mandatory goals to be addressed in recovery plans.

Recommendations relating to heritage provisions include:

- Establish an Independent Australian Heritage Committee to assess and directly list natural and cultural heritage places for national protection.
- Provide for Indigenous Cultural Heritage to be primarily identified and assessed by Indigenous representatives, with new laws to replace the outdated 1984 indigenous heritage legislation. Listing of Indigenous cultural heritage should include the ability to list the intangible heritage value of a site.
- The Act should expressly protect World Heritage properties as well as World Heritage values.
- Simpler and faster heritage nomination and listing processes, and strong, non-regressive common standards for assessment across the Commonwealth, states and territories.
- All valid nominations to be assessed within statutory timeframes.
- Emergency listing provisions national heritage places.
- Applying the precautionary principle to listing decisions.

Additional Issues

- The review consider additional issues not raised in the Discussion Paper relating to:
 - Climate change
 - Regulation of wildlife trade
 - Integrated oceans management

For detailed analysis and evidence for these recommendations, please see the EDO full submission at <https://www.edo.org.au/publication/submission-10-year-review-epbc-act/>.