



Environmental  
Defenders Office

**Submission to the Inquiry into the Environment  
Protection Reform Bill 2025 and six related bills**

**18 November 2025**

## About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

**Successful environmental outcomes using the law.** With over 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

**Broad environmental expertise.** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

**Independent and accessible services.** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

[www.edo.org.au](http://www.edo.org.au)

### **Submitted to:**

Committee Secretary  
Senate Standing Committees on Environment and Communications  
Emailed to: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

### **For further information on this submission, please contact:**

Revel Pointon  
Managing Lawyer  
T: (02) 9262 6989  
E: [revel.pointon@edo.org.au](mailto:revel.pointon@edo.org.au)

Rachel Walmsley  
Deputy Director, Policy & Law Reform  
T: (02) 9262 6989  
E: [rachel.walmsley@edo.org.au](mailto:rachel.walmsley@edo.org.au)

## **Acknowledgement of Country**

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

## **A note on language**

We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

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## Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Environment Protection Reform Bill 2025 and six related bills (**Bills**). We understand that the Bills may come back on for debate in the next sitting of the Senate at the end of November. For this reason, we are providing this submission earlier than the due date to assist in informing deliberations on the Bills. Due to this, we have not had capacity to review the Bills relating to charges for the purpose of this submission<sup>1</sup> and we may seek to provide a supplementary submission prior to the end of public consultation.

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) reforms are an opportunity to deliver strong, science-based protections for nature and restore public trust in environmental decision-making and deliver on many of the recommendations made by the 2020 Independent Review of the EPBC Act (**Samuel Review**).<sup>2</sup>

The Bills introduced as part of the EPBC Act reform package on 30 October 2025 contain many positive features, which could be a step forward for environmental regulation. However, they are not adequate in their current form to protect nature. Amendments can easily be made to address all issues undermining the Bills currently so that they are truly a step forward.

### **Based on our expert analysis, the reform package needs to do two things:**

- (1) Address, not exacerbate, the failings of the current Act; and
- (2) Strengthen the proposed amendments that will finally ensure we have national laws that will effectively protect our iconic matters of national environmental significance and deliver outcomes for nature, community, a safe climate and future generations.

### **First, we must ensure the laws don't continue to fail.**

Everyone agrees the EPBC Act is not working, so we need to ensure that the reforms do not repeat or exacerbate the failings of the current Act. This means we need amendments to do the following:

- 1. Strictly limit any devolution of federal responsibilities and ensure the water trigger is not devolved.** Accreditation of assessment frameworks must only occur if strong Standards are introduced and the frameworks meet these Standards. Amendments are needed to retain federal oversight for final decisions – not devolve it. The current EPBC Act prevents any devolution of the water trigger to ensure protection of precious water resources – this exemption should remain.

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<sup>1</sup> Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Bill 2025; Environment Protection and Biodiversity Conservation (General Charges Imposition) Bill 2025; Environment Protection and Biodiversity Conservation (Customs Charges Imposition) Bill 2025; Environment Protection and Biodiversity Conservation (Excise Charges Imposition) Bill 2025.

<sup>2</sup> <https://www.dcceew.gov.au/environment/epbc/our-role/reviews/epbc-review-2020>

**2. Strictly limit ‘restoration contribution’ payments that are a ‘pay to destroy’ option.**

The reform package must ensure offsets deliver real, measurable environmental outcomes, and do not allow proponents to pay to destroy, which undermines any improvement in the framework.

**3. Do not increase subjective Ministerial discretion and exemptions in decision making.**

This means we need to:

- (a) **Amend the Bills to ensure key decisions are based on objective, accountable tests, rather than** discretionary, subjective consideration of whether the Minister is ‘satisfied’.
- (b) **Limit all national interest exemptions and remove the national interest proposal exemption.** National interest proposal exemptions should otherwise be limited to introduce safeguards consistent with Recommendation 3(c) of the Samuel Review, which proposed that this exemption be confined to national emergencies. In contrast, the Bills extend this application to broad ‘strategic interests’ and international agreements of any kind.
- (c) **Remove the new power for the Minister and the CEO of the National Environmental Protection Agency (NEPA) to make ‘rulings’** as to how the Standards should be applied and to partially accredit frameworks without going through the full accreditation process. At the very least, the Bills should constrain circumstances in which rulings can be used e.g. for improving environmental protection measures, ensure consistency with unacceptable impacts, objects of the Act and Standards.

**4. Strengthen the assessment and approval pathways and ensure objective, transparent and accountable decision making, including by:**

- (a) **Appropriately limiting the new streamlined assessment pathway** by including specific requirements for environmental impact assessment and public consultation and ensuring that only low risk activities can move through a streamlined assessment pathway.
- (b) **Strengthening bioregional planning zones** by establishing clear, thorough assessment requirements for preparing bioregional plans, comprehensively protecting matters of national environmental significance in conservation zones, requiring certain at risk matters of national environmental significance to be protected via conservation zones, providing limits on the level of risk of priority actions that can be fast tracked, and excluding the water trigger from bioregional planning to ensure Federal oversight remains for each project.
- (c) **Strengthening strategic assessment processes by removing or tightening the new provisions allowing ‘minor variations’ to strategic assessment.** Retain public consultation on terms of reference for the Strategic Assessment to ensure assessment is robust and covers all relevant issues for the area. Strengthen how new environment protections (e.g. Standards) apply to strategic assessments. Provide NEPA with oversight of strategic assessments.
- (d) **Removing the NOPSEMA accreditation option and strengthening offshore petroleum regulation.** Remove standalone NOPSEMA accreditation provisions and

tighten amendments to the strategic assessment framework. Alternatively, 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).

- (e) **Preventing impacts prior to approval** – Remove this new power under the Bills to ensure activities cannot commence prior to being granted approval.

5. **Protect and recover our threatened species** - We need the Bills to continue to ensure that decisions cannot be made that are inconsistent with recovery plans and threat abatement plans. The Bills should be amended to:

- (a) **Safeguard the use of protection statements for good environmental outcomes:** require protection statements that provide equal or greater protection than recovery plans and conservation advices; prevent protection statements from being used to undermine recovery plans and conservation advices, including by ensuring existing requirements to not act inconsistently with recovery plans or threat abatement plans remain.
- (b) **Mandate requirements to make conservation planning documents, such as recovery plans and threat abatement plans:** mandate the registration of critical habitat; require decision makers to consider new listings in project assessments; establish a mechanism for responding to emergency events (like bushfire and floods); and strengthen reporting on progress on achieving threatened species and ecological community recovery.
- (c) **The provisions amending reconsideration request powers should be removed to ensure that this important power remains effective.** This is a critical avenue to review existing approvals that are leading to unpredicted or unassessed unsustainable outcomes due to changes in the circumstances they are operating under.

6. **Remove existing exemptions that have failed to protect habitat:** Remove the exemption for activities under Regional Forest Agreements from EPBC Act assessment or at least require that the exemption is subject to limitations allowing conditioning of these activities and the application of the National Environmental Standards. Repeal the continuous use and prior authorised actions exemption.

**Second, we need to make sure that the potential new elements of the Act are set up to be effective and turn around the trajectories of decline.** This means we need the reforms to:

1. Establish a **strong independent national EPA** as the primary decision-maker that can make objective decisions based on national environmental standards and free from political influence.
2. **Ensure the suite of necessary National Environmental Standards are made, and are applied consistently and objectively to all projects;** and that monitoring, enforcement and reporting ensure that standards are being met and environmental outcomes are being delivered.

3. Ensure a **strong, clear and enforceable definition of unacceptable impacts** on matters of national environmental significance.
4. Clarify the definition of net gain to **ensure absolute net gain is achieved**
5. **Retain the proposed increased penalties and enforcement powers** to ensure the Act is complied with and upheld.
6. **Expand the climate disclosure** requirements to include disclosure of scope 1, 2 and 3 (direct and indirect) emissions and **require these emissions to be considered** in decision-making.

A summary of the recommended amendments is provided in an **Appendix** to this submission.

This submission provides further detail on these key issues and recommendations in two parts:

**Part One: Recommendations to ensure the Bills address, not exacerbate, the failings of the current Act**

**Part Two: Amendments to strengthen the critical new elements and address the gaps.**

## Introduction

This is the biggest reform of Australia's federal environment laws undertaken in decades – we need to get it right. For this reason, we implore the Senate to scrutinise these Bills closely and to make the amendments outlined in this submission needed to ensure the EPBC Act will be able to achieve its objects.

### **Lack of public consultation on reforms is a risk to integrity and quality of the framework**

Given the importance of these reforms, the lack of public consultation undertaken by the federal government on the proposed reforms within this term of government has been disappointing and risks the quality and public confidence in these reforms. These risks are exacerbated further by the speed at which the government has stated it wishes to see the Bills passed, regardless of the Senate Inquiry timeline. Selectively consulting with a very small group of chosen stakeholders, as has occurred this term of government, does not represent meaningful consultation.

### **Meaningful consultation needed with First Nations to truly improve protection of First Nations knowledge, culture and rights**

True reform means First Nations' rights, knowledge and culture are central to environmental planning and decisions, with self-determination and Free, Prior and Informed Consent entrenched in the legislation. The Australian Government has adopted the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), which includes these and many other important principles to improve recognition and power of First Nations, and to make them central to decision-making that impacts their interests.

Current environmental laws, including the EPBC Act, do not uphold the principles of UNDRIP and do not adequately respect the views and interests of First Nations. This can lead to devastating impacts on the cultural heritage and wellbeing of First Nations. The Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia report delivered in October 2021<sup>3</sup> stated that: *'The EPBC Act does not, and did not, protect cultural heritage from destruction like that at Juukan Gorge. It is this, together with the gaps left by the ATSIHP Act, which creates a situation that leaves cultural heritage vulnerable to desecration at a national level.'*<sup>4</sup>

The Samuel Review outlined various recommendations for strengthening the protection of the rights, knowledge and interests of First Nations under the EPBC Act, noting: *'The operation of the EPBC Act has failed to harness the extraordinary value of Indigenous knowledge systems that have supported healthy Country for over 60,000 years in Australia. A significant shift in attitude is required, so that we stop, listen and learn from Indigenous Australians and enable them to effectively participate in decision-making. National-level protection of the cultural heritage of Indigenous Australians is a long way out of step with community expectations. As a nation, we must do better.'*

The Samuel Review further found that *'the settings of the EPBC Act and the resources afforded to implementation are insufficient to support effective inclusion of Indigenous Australians in the processes for implementing the Act.'*

Some of the Samuel Review recommendations have been implemented in the Bills, including a process for seeking First Nations input into an engagement Standard for First Nations specifically. Broadly, the Samuel Review recommended the co-design of policy and implementation to improve outcomes for Indigenous Australians. All of the recommendations therefore require meaningful consultation with First Nations across Australia to be effectively implemented. We understand that such consultation has not occurred in the preparation of this reform package. Without meaningful consultation with First Nations on the reforms, the Bills risk being tokenistic and ineffective.

While we understand the government is working on a Standard on First Nations engagement and participation in decision-making, in our view there appears to be little in the current Bills that would meaningfully strengthen the role of First Nations in environmental decision making under the EPBC Act, let alone embed the principles of UNDRIP. Nor does it appear that the Bills include appropriate safeguards of Indigenous Cultural and Intellectual Property (ICIP).

This is a lost opportunity to strengthen participation of First Nations in decisions that impact their Country and Cultural Heritage, and risks perpetuating the exclusion of First Nations from EPBC Act processes. EDO defers to the expertise of First Nations stakeholders in respect of specific recommendations for amendments to the Bill to address these broad observations.

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[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024757/toc\\_pdf/AWayForward.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024757/toc_pdf/AWayForward.pdf;fileType=application%2Fpdf).

<sup>4</sup> Ibid, para 6.29, p 160.

## **Part One: Recommendations to ensure the Bills address, not exacerbate, the failings of the current Act**

EDO is seriously concerned that features of the Bills as currently drafted are a regression on the current EPBC Act and require amendment to ensure the Bills do not take environmental protection backwards. Six key issues that need to be fixed are listed below.

### **1. Devolution of EPBC powers must be limited, including for the water trigger**

The Bills facilitate increased devolution of Commonwealth Government powers under the EPBC Act for assessment and approval to state and territory governments and other entities, either via declaration or bilateral agreement.

The EPBC Act was established as a way for the federal government to meet its international obligations through conventions and agreements it is a party to.

The Act is also known to have arisen out of a dispute in which the Tasmanian Government wanted to dam the World Heritage listed Franklin River, and the federal government saw the need to step in and ensure that this destruction of such precious environment did not occur.

The Queensland Bjelke-Peterson Government approved petroleum exploration leases over much of the Great Barrier Reef in 1969. This caused the federal government to legislate power over offshore areas and the *Great Barrier Reef Marine Park Act 1975* (Cth) to ensure protection of this phenomenal area that was later granted World Heritage listing.

These examples demonstrate the important role for ensuring that impacts to matters of national environmental significance are under the scrutiny and decision-making power of two levels of government. Steps can be taken to facilitate more efficiency via shared quality assessment processes. However, handing over assessment and approval powers to one level of government risks state or territory governments abusing this power to gain more short-term profit for their jurisdiction, at the expense of matters of national environmental significance.

There are existing powers in the current EPBC Act to devolve assessment and approval powers. However, the devolution of approval powers (the riskiest part of devolution) has never been used, due to legal ambiguities with existing provisions. Accreditation of assessment processes has occurred under the current EPBC Act and is operational in many states. There are question marks as to whether the accreditation of these assessment frameworks has in fact led to any considered improvement on the standards of the relevant accredited laws, as opposed to being led by rushed processes when the political appetite was high. Clarification of the authority to devolve EPBC Act approval powers has been attempted multiple times by various governments, and each time it has failed to pass parliament due to the significant risks posed to integrity and environmental protections in decision making.

The Commonwealth Government has an obligation to maintain responsibility for the protection of matters of national environmental significance, in accordance with Australia's international

agreements and the fact that the protected matters are important to all Australians. Accreditation is a devolution of this responsibility. There are too many risks in accrediting states and territories with approval powers at a time when Australia needs strong federal leadership and strengthened environmental laws.

### ***Water trigger must remain in federal hands to protect Australia's water resources***

The Bills also remove the important exemption that has applied preventing devolution of the water trigger for unconventional gas and large-scale coal mining. The water trigger has only relatively recently been incorporated into the EPBC Act as a controlling provision in 2013, and then expanded to include unconventional gas in 2023, in response to significant concerns raised with respect to the impacts of coal and gas activities.

As the driest continent on Earth, it is fundamental that water resources are well managed across all water users, landscapes and borders. Water is of particular importance to First Nations for their spiritual, social and economic wellbeing.

The failures of states and territories, such as Western Australia and the Northern Territory, to meet the terms of the National Water Initiative, a framework and principles for managing Australia's water sustainably which was agreed to by all states and territories, demonstrates further the need for ultimate decision-making power around impacts to water resources.<sup>5</sup> The NT and WA contain some of Australia's last pristine free-flowing rivers, including the Martuwarra Fitzroy River in the Kimberley and the Roper and Daly Rivers in the Top End of the NT.

Surface and groundwater resources across both jurisdictions are under increasing pressure from development, including hydraulic fracturing, intensive irrigated agriculture, and mining. In addition, climate change will have substantial effects on water resources. The Central Australian region across NT and WA is projected to experience greater warming than coastal regions.<sup>6</sup> First Nations people living on Country in regional and remote communities in these regions are likely to experience disproportionate impacts caused by climate change.<sup>7</sup>

Despite these pressures on water resources, there are significant deficiencies in water laws in each of these jurisdictions. In our view, water laws in the NT and WA are the weakest in the country.<sup>8</sup> Not surprisingly, the Productivity Commission's Assessment of National Water Initiative implementation progress report (2017–2020) raised a number of concerns with the implementation

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<sup>5</sup> See EDO submission to the Productivity Commission National Water Reform 2024 here for more detailed information: <https://www.edo.org.au/wp-content/uploads/2024/03/240221-EDO-Submission-to-Productivity-Commission-National-Water-Reform-2024.pdf>

<sup>6</sup> IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Regional Fact Sheet- Australasia) 2 available here:

[https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC\\_AR6\\_WGI\\_Regional\\_Fact\\_Sheet\\_Australasia.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Australasia.pdf).

<sup>7</sup> Natalie Teasdale and Peter Panegyres, 'Climate change in Western Australia and its impacts on human health' (2023) 12 The Journal of Climate Change and Health 6.

<sup>8</sup> Environmental Defenders Office, October 2022 Update: Deficiencies in the existing water law and governance framework in the Northern Territory (24 October 2022).

of the NWI in WA and the NT including, for example, the failure to enact legislation required to create secure, NWI-consistent water access entitlements for consumptive uses.

There are no signs that the National Environment Standards, nor unacceptable impact definitions or the net gain principle will provide any greater protection of water resources to make accreditation against these criteria, as the Bills introduce, an effective safeguard. The water trigger simply must not be able to be devolved; it is too risky.

**Suggested amendments:**

- Retain strong federal oversight for final decisions by only allowing accreditation of assessment and not approval powers. This change will have the biggest impact in processing time while reducing the risks of accrediting other entities to undertake all elements of assessment and approval with no role for the federal government agencies or Minister.
- The exemption to prevent devolution of the water trigger to ensure protection of precious water resources should remain.

**2. The proposal to introduce ‘restoration contribution payments’ must be removed or integrity introduced**

The EPBC reform package will introduce a new legislative framework for ‘Restoration Actions’ and ‘Restoration Contributions’ (**Offsets Framework**). This will replace the existing Environmental Offsets Policy.

The Framework will be implemented via direct amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), including a new Part 12B to establish a Restoration Contributions Holder and Restoration Contributions Special Account, and provisions across the EPBC Act that will require that, in relation to certain decisions:

- the mitigation hierarchy must be ‘considered’ in assessment decisions (which states offsets are a last resort after action to avoid, mitigate and repair impacts);
- offsets cannot be used to overcome unacceptable impacts; and
- offsets adequately compensate for residual significant impacts to deliver a net gain.

It is also proposed to make a new National Environmental Standard for Environmental Offsets.<sup>9</sup>

As proposed, the Offsets Framework contains too much flexibility, including a new option to pay a ‘restoration contribution charge’ in lieu of securing direct, upfront offsets and inadequate accountability measures. The ability to pay money into a fund is not offsetting; it is essentially ‘payment for destruction’ and is a regression from the current policy.

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<sup>9</sup> A Draft National Environmental Standard (Environmental Offsets) 2025 is currently out for public comment until 30 January 2026, see <https://www.dcceew.gov.au/about/news/hys-draft-national-environmental-standards>

Lessons have been learnt from jurisdictions, particularly New South Wales and Queensland, where payment into a fund is available to discharge offset obligations. Notably, the use of an offsets fund:

- exacerbates time-lags between ecological impact and compensation
- increases the risk that ecologically equivalent offsets will not be delivered
- can result in ‘shortfalls’ where there are underestimates in the amount of money needed to deliver offsets
- weakens the price signals intended to deter impacts on valuable biodiversity assets, particularly where offsets markets are in use

In NSW, the Independent Pricing and Regulatory Tribunal (IPART) has recommended the phasing out of the Biodiversity Conservation Fund, and the NSW Government is taking steps to limit the use of the Fund.

Further, offsetting should not be seen as commensurate with restoration. Restoration contribution charges must be used for the specific task of ‘compensating’ for impacts of a specific action, separate to broader restoration that is needed to restore landscapes and ecosystems damaged by decades of overuse and mismanagement.

More broadly, significant questions have been raised about the effectiveness of environmental offsets and their ability to deliver environmental outcomes that genuinely compensate for the negative impacts of projects. It is therefore important that any framework allowing environmental offsets is designed in accordance with best practice principles to ensure that offsets can achieve real environmental outcomes that compensate for the impacts of projects.

The Samuel Review noted the importance of bringing integrity to offsets under the EPBC Act. The Review found that the Environmental Offsets Policy “*contributes to environmental decline rather than active restoration*”.

In its current form, the Offsets Framework proposed to be embedded in the EPBC Act will allow projects to be approved with no real guarantee that genuine offsets will be delivered or that environmental outcomes will be achieved. Amendments are needed to tighten up the proposed framework to ensure it delivers genuine environmental outcomes and does not simply ‘green light’ destructive development under a false pretence of environmental benefit. While some of these matters may be addressed in the anticipated National Environmental Standard for Environmental Offsets, embedding specific requirements in the Act itself would provide greater certainty that these become core elements of the framework.

**Suggested amendments:**

- Remove the option allowing the payment of restoration contributions charges in lieu of offsets.
- If restoration contributions charges remain as part of the framework, there must be:

- Stronger upfront restrictions on the use of restoration contribution charges, including, for example:
  - o an upfront requirement to confirm whether a suitable offset is possible for the matter (e.g. require this to be a consideration prior to setting conditions requiring payment of restoration contribution charges); and
  - o a regularly updated list or register of a list of matters for which a restoration contribution charge is not suitable/available (e.g. due to scarcity or because a matter is to be able to be recreated or restored).
- Requirements for the Restoration Contributions Holder to spend restoration contribution charges consistent with all offset principles (i.e. general restoration actions must be consistent with the Offsets Standards); and greater transparency and accountability on the use of alternative restoration actions (e.g. require public notification if no general restoration action is available; require specific numbers and skills of people on the Restoration Contributions Advisory Committee).
- Embed key transparency and accountability measures in the legislation, including in relation to:
  - *Security* (e.g. require legal protection of offset sites (e.g. through land management agreements), where relevant.
  - *Transparency* (e.g. legislate a requirement for an Offsets Register (in addition to the proposed requirement for the Restoration Contributions Holder to establish a register for Restoration Contributions); requiring details of all alternative restoration actions in the Holder's annual report including the residual significant impact and approval that the alternative restoration action relates to and the reasons why a like-for-like offset was not considered feasible).
  - *Enforcement* (e.g. mechanisms for enforcing the Offsets Standard; legislative requirements including monitoring and reporting etc.).

### 3. Safeguards needed on fast-tracked approval mechanisms to ensure integrity in environmental assessment and community oversight

The Bills introduce and amend various pathways to allow fast- tracked decisions for proposed activities. Concerningly, there are no limits on the scale of risk of activities that can be fast-tracked through the new pathways, limited consultation and no guidance on what level or quality of information should be considered sufficient to allow the fast-tracked pathways to be used. These options risk weakening environmental assessment and reducing public consultation and oversight, which may lead to worse environmental outcomes than the current Act.

a) **Streamlined assessment**

The Bill drafting introduces a new assessment approach ‘Streamlined assessment’ (New Division 5A). This pathway is introduced with the removal of three assessment pathways: referral information, preliminary documentation and public environmental report. The assessment pathways of environmental impact statement, accredited assessment process and public inquiry are to remain in the Act.

Streamlined assessment can be chosen as the assessment approach when the Minister is satisfied (after considering the matters in s87(3)), that:

- the approach will allow the Minister to make an informed decision whether or not to approve under Part 9, for the purposes of each controlling provision, the taking of the action; and
- the greenhouse gas emissions information for the action has been provided (amending s87).

There is nothing in proposed new s87(3) which specifies consideration of the scale, nature and certainty of the impacts and environmental record of the proponent, nor the public concern with regard to the action. There is nothing specifying the level of environmental impact assessment that must be in an application for the Minister to be satisfied they have enough information, and no requirements around public consultation of that impact assessment. There is a requirement to consider matters specified in a Regulation, but no indication has been made as to what, if any, this criteria may be.

A ‘designated report writer’ (which can be the EPA CEO or Secretary of the Department) must prepare and give the Minister a recommendation report relating to the action ‘as soon as practicable’ after the Minister decides that the referral will be assessed via streamlined assessment (new s100B). The Minister must make their decision as to whether to approve or reject a referral application and any conditions on an approval within 30 days of the assessment approach decision (amending s1309(1B)). Typically, this decision period only starts when the recommendation report has been finalised, rather than from when the assessment approach decision is made.

There will be public consultation on whether the referred application will have an impact or likely impact on any matter of national environmental significance to warrant EPBC Act assessment (EPBC Act s74(3)) (i.e. the referral decision), which is only 10 business days. There will not be consultation at any other stage of a streamlined assessment process. In the 10 business day referral consultation it will be necessary for the public to have to get across potentially voluminous environmental impact assessments, try to seek expert assistance in their review, and provide helpful submissions. There is no requirement at this stage that detailed submissions on the application be taken into consideration, given the consultation is limited to whether the project needs EPBC Act assessment and what matters are controlling provisions for it.

***Streamlined assessment is weaker and subject to less accountability and transparency than any other assessment in the existing EPBC Act***

All of the three assessment pathways that streamlined assessment will replace provide for greater accountability and transparency. The weakest environmental assessment option in the EPBC Act is assessment by ‘referral information’ (Part 8, Division 3A), which rests assessment on the information provided at the time of referral and does not require any further environmental impact assessment work to be done. Referral information assessment currently can only be chosen if the Minister is satisfied the criteria in the Regulation are met (EPBC Act s87(4A) applying EPBC Reg 5.03A), being:

- (a) the potential scale and nature of the relevant impacts of the action can be predicted with a high level of confidence;
- (b) the relevant impacts are expected to be short term, easily reversible or small in scale;
- (c) adequate information is available about relevant impacts on the matters protected;
- (d) the action is likely to have a significant impact on only a small number of protected matters or elements of each relevant protected matter;
- (e) if the information is available—the person proposing to take the action has a satisfactory record of responsible environmental management and compliance with environmental laws;
- (f) the degree of public concern about the action is, or is expected to be, moderately low.

Further, in making a decision on an assessment on referral information, the Minister must not consider financial or economic factors (EPBC Reg 5.03A(2)).

Assessment on referral information also provides a public consultation requirement on the recommendation report provided as to whether the application should be approved and what conditions should be placed on it, where streamlined assessment does not currently provide for any of these criteria.

#### ***What are the risks with streamlined assessment?***

This new assessment pathway could apply to any development - including any fossil fuel project - posing any intensity of risk or public concern, as long as the Minister is satisfied that they have sufficient information at the time of referral to assess the application. There is no constraint as to what level of environmental impact assessment must be provided for the Minister to be satisfied. Without certainty of what would be put in the Regulation as the criteria needing to be considered, there can be no certainty as to how easily this assessment pathway can be applied to any proposed activities.

There is no public consultation on the decision on assessment approach (this doesn't exist under the current Act), nor will there be consultation on the recommendation report, reducing accountability and transparency around these projects.

The short time frame of 30 business days from the decision on assessment approach will put enormous strain on the assessing officers and risks undermining the environmental assessment of potentially high-risk projects.

Under the drafting proposed, a large coal mine proponent could put forward a pre-prepared environmental impact statement (**EIS**) of many thousands of pages, potentially of questionable quality and accuracy, without undertaking any consultation on the EIS, and this could be waved through the streamlined assessment process with just 10 business days consultation on whether the project should be referred. A bureaucrat will then need to review the EIS and prepare a decision with conditions, if approved, in less than 30 business days to meet the decision deadline.

There are a raft of serious issues with this pathway as drafted, but they are easily fixed by safeguards being put in place.

#### **Suggested amendments:**

- Require provision for and consideration of a Community Consultation Standard, First Nations Participation and Engagement Standard and Environmental Impact Assessment Standard which will specify the requirements for pre-referral consultation and environmental assessment for the Minister to be able to be satisfied that streamlined assessment should apply.

- Limit the level of risk and complexity of a project able to be assessed by streamlined assessment. This could be via integration into the Act of criteria similar to that provided for referral information in EPBC Reg 5.03A – which refers to level of risk and public concern amongst other things.

b) **Bioregional planning**

A new framework for Bioregional Planning will be embedded into the EPBC Act via changes to existing section 176 and a proposed new Part 12A.

There will be two types of plans under an amended Act:

- Bioregional guidance plans made under amended section 176. These plans will have no regulatory function.
- Bioregional plans made under a new Part 12A. The plans will have a regulatory function, including establishing development zones and priority actions, conservation zones and restricted actions, and bioregional restoration measures.

This will replace the current provisions relating to bioregional plans in the Act (currently in Chapter 5, Part 12, Division 2).

Regional planning, as a form of upfront strategic land-use planning, when done well, can be a useful tool for managing land use conflicts, identifying and protecting high conservation areas from the impacts of inappropriate development, addressing key threats, and identifying priority areas for restoration.

The Samuel Review found that to halt and reverse the current trajectory of environmental decline, there must be planning on a regional landscape scale, as well as significant investment in restoration. The Samuel Review recommended Regional Recovery Plans as a key tool in coordinating action to address threats to MNES and identifying accountability for implementation. Only then did it recommend that strategic assessments or ecologically sustainable development (ESD) plans be made, and that they be consistent with the Regional Recovery Plan. The recommended landscape approach was for these tools (Regional Recovery Plans and ESD Plans) to work in concert.

However, the framework proposed to be embedded in the Act falls far short of this. As designed, it will not provide comprehensive upfront strategic planning and assessment and conservation outcomes but rather is simply another pathway under the Act to fast-track development.

In particular, we are concerned that:

- There is no legislative requirement for a robust upfront strategic assessment to inform the making of a bioregional plan.
- Conservation zones won't operate as 'no go zones' in the expected way. As proposed:
  - Conservation zones will not provide holistic protection of a prescribed set of values.

- Not all actions are restricted in conservation zones (only those that are prescribed).
- There are wide powers for the Minister to exempt certain actions from being restricted actions, undermining the role of conservation zones.
- With respect to development zones:
  - There are no specific criteria setting out what can and can't be prescribed as a priority action for a development zone - these zones could be used to 'fast-track' high impact development.
  - There is no public consultation in relation to registering a project as a priority action project.
- It is intended that the proposed National Environmental Standard (NES) for Environmental Offsetting will apply to bioregional restoration measures set under bioregional plans, but exactly how that Standard will require offsets rules to apply to bioregional plans is still under consideration.
- There is no assurance framework (e.g. oversight by the new National Environment Protection Agency (NEPA)).

The bioregional planning framework must be strengthened to ensure that it is able to deliver improved environmental outcomes (e.g. through better management of cumulative impacts, landscape scale conservation and restoration, identification and protection of areas needed for connectivity and climate refugia), and not simply be a tool for fast-tracking development at the expense of the environment.

**Suggested amendments:**

- Insert robust requirements for upfront environmental assessment to inform bioregional planning. For example, insert a new requirement to prepare a *bioregional plan strategic assessment report*. The specific requirements for the assessment report can be prescribed in the regulations. The report should be included in the materials available during the public consultation process.
- Enhance public consultation requirements, for example, by:
  - Extending public consultation period for requirements for making and varying bioregional plans from 30 business days to 60 business days (e.g. at s176C(1)(b), s177AL(1)(b), s177AY(3)(b), s 177BH(2)(c) and (3)(b), and s177BW).
  - Mandating the making of a Community Engagement Standard (e.g. under new powers to make National Environmental Standards), and this Standard should be applied to the making (and varying and revoking) of bioregional guidance plans and bioregional plans.
- Put limits on what activities can be fast-tracked as priority actions (e.g. limit to low-risk activities). This could include:
  - Excluding activities protected by the 'water trigger' under section 24D, namely unconventional gas and large coal mining.

- Allowing for the regulation to preclude certain actions from being priority actions.
- To be most effective, the EPBC Act should outline a list of values that must be protected in conservation zones. As an alternative, the proposed framework could be strengthened by requiring that conservation zones must be identified having regard to the conservation and restoration priorities identified in the relevant *bioregional plan strategic assessment report* (see above) and to also require the boundary of a conservation zone to have regard to critical habitat.
- Remove or tighten exemptions for restricted activities in conservation areas. For example, by either omitting proposed 177AK and Part 12A, Division 6, or making amendments to Part 12A, Division 6 to limit the scope of restricted activity exemptions (e.g. by more clearly defining 'exceptional circumstances').
- The new National Environment Protection Agency (**NEPA**) should have oversight of bioregional plans (e.g. audit or assurance functions), including a mandatory regular review function.

c) **Strategic assessment**

Part 10 of the EPBC Act currently provides for strategic assessment - landscape scale assessment, and approval of an action or classes of actions. If a strategic assessment approval is in place, individual project assessment is not required.

Strategic assessments are intended to provide upfront assessment of impacts of actions and address cumulative impacts at the landscape scale. Under the current Act, the process is generally as follows:

- The Environment Minister and the strategic assessment partner (usually a state or territory, or local government) agree (in writing) to undertake a strategic assessment of a policy, plan or program.
- The draft terms of reference (for the strategic assessment) are prepared and made available for public comment for at least 28 days before the Minister finalises them.
- The strategic assessment partner prepares a draft strategic impact assessment report, and a draft policy, plan or program document. These draft documents are available for public review and comment for at least 28 days.
- The Minister considers public feedback and may recommend changes to these draft documents. The Minister decides whether or not to endorse the policy, plan or program document.
- The Minister may also approve classes of actions undertaken in accordance with the endorsed policy, plan or program (and attach conditions).

**Proposed changes introduced by these reforms**

The EPBC reform package will:

- Retain Part 10 - Strategic Assessments and make amendments so that new environmental protections (e.g. National Environmental Standards, Unacceptable Impacts etc.) apply to strategic assessments.
- Remove the ‘terms of reference’ process (including public consultation on draft terms of reference); and replace this with ‘requirements’ for a draft report. Specifically, current s146(1B) of the EPBC Act will be repealed, and instead the written agreement to undertake a strategic assessment must include requirements that a draft report on the impacts to which the agreement relates must satisfy (see proposed new s146(2)(aa)). There will be no public consultation on those requirements.
- Introduce a new process to allow (for the first time) ‘minor’ variations to a policy, plan or program. Minor is defined as:
  - the adverse impacts (if any) on (protected matters) as proposed to be varied, would not be greater than the adverse impacts on those matters of actions under the policy, plan or program as in force at the time of the request;
  - the measures in the policy, plan or program, as proposed to be varied, to mitigate, repair, or compensate for, damage to matters protected by a provision of Part 3 would not be reduced as compared with such measures in the policy, plan or program as in force at the time of the request.

The Minister is to be satisfied that the proposed variation is minor. There is no public consultation for a minor variation of a policy, plan or program (precluding any input as to whether the variation is indeed minor). There would be consultation if the Minister subsequently decided to amend the approval to an action or class of actions.

In relation to these proposed changes, we are concerned that:

- The requirement to consult on terms of reference for a strategic assessment is important integrity measure and should be retained. Allowing public review and input into the terms of reference for a strategic assessment assists in ensuring the assessment covers all relevant matters and the process is subject to accountability and transparency. Removal of this requirement opens the strategic assessment process up to misuse and lowers the quality of the outputs, which is particularly concerning given this process can be used to exempt applications from EPBC Act assessment.
- There is significant discretion sitting with an applicant (i.e. ‘responsible person’) in choosing to make a minor variation application (as opposed to a new application) and the Minister in approving an application, as to whether the variation is ‘minor’. There is no opportunity for public input into this decision, meaning there is limited accountability. While the Minister is explicitly required to provide reasons to the applicant if the variation is refused, there is no similar explicit requirement for the Minister to provide reasons for approving a variation. While we understand the rationale for seeking to introduce a variation process for strategic assessments, the variation process must include transparency and accountability

safeguards. This should include public consultation on a variation application and a requirement for the Minister to provide reasons on variation approval. Further, minor variations should not be allowed where there is any regression in community rights, including public consultation or access to information. This would not undermine the premise behind a simplified process for minor variations, as it is still less burdensome than creating an entirely new agreement for strategic assessment.

- It is important that the application of new environmental protections to Part 10 strategic assessment is rigorous, so that these new mechanisms can deliver the intended outcomes. In particular:
  - New environmental protections (e.g. unacceptable impacts, net gain, Standards) will apply to the Minister's decision under section 146B to grant approval of the taking of an action or a class of actions in accordance with an endorsed policy, plan or program, as required by the following provisions. However, it appears that these new provisions do not apply to variations to strategic assessments, and this should be rectified.
  - Proposed new provisions that apply new environmental protections to strategic assessments are drafted with significant discretion ('the Minister is satisfied'). This undermines the ability of these new protections to achieve meaningful outcomes.
  - There are no amendments (in either the Environment Protection Reform Bill 2025 or National Environmental Protection Agency Bill 2025) that require oversight of Part 10 strategic assessments by the proposed new National Environment Protection Agency (**NEPA**) (e.g. audit or assurance functions). This should be rectified by making amendments that provide NEPA with oversight functions in relation to Part 10 strategic assessment approvals including a mandatory regular review function.

We note that the Bill also introduces a new stand-alone division (Chapter 2, Part 4, Division 2A) that deals with actions covered by Ministerial declarations and NOPSEMA (*National Offshore Petroleum Safety and Environmental Management Authority*) management or authorisation frameworks. NOPSEMA's environmental management authorisation process is subject to strategic assessment approval under Part 10 issued in 2014. See our specific analysis of the proposed new NOPSEMA provisions below.

#### **Suggested amendments:**

- Retain the 'terms of reference' process for strategic assessments (specifically retain EPBC Act s146(1B), which the Bill seeks to repeal via clause 248 in Schedule; and consequently, omit Schedule 1, Item 249, which is intended to replace terms of reference with written agreements).
- Introduce safeguards into the minor variation process. This should include:
  - public consultation on a variation application;
  - a requirement for the Minister to provide reasons on variation approval; and
  - minor variations should not be allowed where there is any regression in community rights, including public consultation or access to information.

- Strengthen the application of new environmental protections to Part 10 strategic assessments. Specifically:
  - Ensure new safeguards apply to variations to strategic assessments. This could be done by amendments to sections 146FA, 146FB and 146FC so that they apply to variation decisions made under section 146DJ and section 146DK.
  - Remove discretionary drafting (e.g. “the Minister is satisfied”)
  - Item 271 – s 146CA(1)(c) should be removed. It should not be up to the Minister to determine whether the taking of the action or class of actions is likely to have a significant impact on water resources. This is the role of the IESC.
- Make amendments that provide NEPA with oversight functions in relation to Part 10 strategic assessment approvals including a mandatory regular review function.

d) **NOPSEMA**

The Bills propose to move regulation of offshore petroleum to an accredited framework, moving away from the strategic assessment that currently applies. This risks undermining existing procedural rights which have been assured under the current framework, particularly for First Nations, and leaves future regulation of offshore oil and gas activities at risk of backsliding against the EPBC Act.

The National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) currently assesses and approves offshore petroleum activities under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (**OPGGS Act**) framework, which was the basis for a strategic assessment approval under Part 10 of the EPBC Act, made in 2014.

While not perfect, the current arrangement provides for particular important features, including:

- the accreditation excludes devolution of decisions on carbon capture and storage (**CCS**) activities or activities likely to impact the Great Barrier Reef;
- assurance that NOPSEMA must act consistently with the whole suite of conservation planning instruments (eg. recovery plans, conservation advice) and international agreements on similar terms to the Minister; and
- clear requirements around public consultation, and assurances around consultation rights of local and First Nations communities and conservation groups.

The Bills propose that the regulation of offshore petroleum activities transfer instead to a declared special accredited arrangement for NOPSEMA, under new Part 4 Division 2A. This would also accredit NOPSEMA with EPBC Act assessment and approval functions however it would be a completely new framework based on a declaration by the Minister in respect of a NOPSEMA assessment and approval system. Under the new framework, in order to make a declaration the Minister must be ‘satisfied’ that the framework is not inconsistent with any prescribed National Environmental Standards, the unacceptable impacts definitions, and other matters.

The amendments are of concern for the following key reasons:

- (a) the new framework is subject to potentially fewer and weaker procedural and substantive guardrails compared to other forms of accreditation under the Bills;
- (b) the new framework will make it easier for the Minister for Resources to amend NOPSEMA's processes while maintaining EPBC Act accreditation without public oversight- opening up potential for amendment at the whim of the politics of the day to weaken environmental protections and community rights;
- (c) there has been no clear justification provided in the reforms as to why there is a need or special provisions that apply just to offshore oil and gas activities;
- (d) the accreditation of the new framework is subject to the subjective Minister's 'satisfaction' test, along with uncertainty as to which, if any, Standards will be prescribed as relevant to the NOPSEMA accreditation. This hinders the ability to hold a decision-maker to account in ensuring strong environment and community consultation criteria form part of the new framework;
- (e) there is no requirement for the Minister to apply the 'net gain' principles in declaration decisions;
- (f) The NEPA is empowered to review the operation of a declaration, but is not required to undertake any review – unlike other forms of accreditation.

**Suggested amendments:**

- Remove standalone NOPSEMA accreditation provisions and tighten amendments to the Part 10 strategic assessment framework.
- Alternatively, introduce stronger upfront and ongoing protections of procedural rights and environmental protection (including an objective test for making a declaration, mandatory assurance, and mandatory suspension where non-compliant).

e) **Minor preparatory works**

The Bills propose to allow activities to commence on a site subject to a referral prior to an approval being granted if considered minor or preparatory. This is a concerning proposal where facilitating this under the law risks undermining environmental impact assessment activities, assumes approval and undermines respect for environmental laws.

Allowing works to commence during the assessment process may impact the integrity of environmental impact assessments which are occurring on site or which may be needed in response to further unpredicted information requests or assessments required.

Allowing works to commence prior to approval may also increase the difficulty in undertaking enforcement action for any activities that occur outside of the allowed pre-approval activities. Proponents should have factored in assessment times when developing their business plan, as a necessary element of obtaining approval – this is not a surprise and upholding respect for the assessment and approval process ensures greater regard for the integrity of environmental laws.

**Suggested amendment:** Remove this power under the Bills to ensure activities cannot commence prior to being granted approval.

#### 4. Discretion and exemptions must be reduced to ensure accountability and transparency are upheld

##### a) **Discretion overall**

The Bills propose some positive new protection mechanisms, but they are undermined by the level of discretion, exemptions and loopholes throughout the Bills.

The Bills provide a subjective test of ‘Ministerial satisfaction’ throughout all environmental protection decision making. This creates uncertainty and undermines all decision points, makes it difficult to hold decision makers to account, and leaves EPBC Act decisions at the mercy of political imperatives and lobbying power. This is particularly risky on key decisions as to whether the Standards have been met, accreditation of frameworks, rulings, protection statements, bioregional planning, strategic assessments, and streamlined assessments. All broad powers for these critical decisions need guardrails to ensure they are not used inappropriately.

Where new safeguards are introduced, they are often undermined by discretionary exemptions, such as exemptions to restrict activities in conservation zones and broad national interest exemptions with no limit on what can be considered ‘in the national interest’.

The Samuel Review found that a fundamental shortcoming of the EPBC Act is that it does not provide sufficient constraints on discretion, and this considerable discretion in decision making has resulted in uncertainty and poor environmental outcomes.

In our view, the proposed amendments may exacerbate existing flaws in the EPBC Act identified by the Samuel Review by entrenching and extending discretionary decision-making powers of the Minister and their delegates. It is disappointing to see that the government has not used this important opportunity to implement recommendations to increase accountability and integrity.

Most provisions, including the application of the National Environmental Standards to decisions on development proposals and accreditation of other frameworks to take over EPBC assessment or approval powers, involve a weaker test of ‘not inconsistent’ with criteria, rather than a positive test such as ‘in accordance with’ or ‘complies with’. The First Independent Review of the EPBC Act (the Hawke Review) found the use of double negatives, such as ‘not inconsistent’ weakens provisions significantly and recommended this language be replaced with stronger tests. In practice, ‘not inconsistent’ has been interpreted as lowering the threshold of decision-making obligations.

These terms are used throughout the current EPBC Act and constitute the ‘discretion’ that the Samuel Review points to as a failing of the Act.

**Suggested amendment:** Amend the Bills to ensure key decisions are based on objective, accountable tests and not discretionary, subjective consideration of whether the Minister is ‘satisfied’.

b) **National interest**

The Samuel Review recommended that there be one exemption to the overarching requirement for decisions under the Act to be consistent with Standards, where it is in the ‘national interest’ to do so, stating:

*“The Act should include a specific power for the Minister to exercise discretion to make a decision that is inconsistent with the National Environmental Standards. **The use of this power should be a rare exception, demonstrably justified in the public interest and accompanied by a published statement of reasons which includes the environmental implications of the decision.**”* (our emphasis)

The Bills instead:

- extend the existing national interest power;
- creates new, broader exemptions under ‘national interest proposals’; and
- reduces transparency over the use of these exemptions.

These national interest exemptions allow the Minister to exempt activities from the requirement to be assessed and obtain approval under the Act, including any application of the many new environmental protection criteria (National Environmental Standards, ‘unacceptable use’ definitions, etc.).

The Bills place no limit on things the Minister can designate as being in the national interest, as occurs problematically under the current Act. The new ‘national interest proposal’ provides an even broader definition than the existing national interest exemption, specifying ‘strategic interests’ and international agreements as relevant.

Although there is a requirement for the Minister to publish a statement of reasons for determining that a project is a national interest proposal, this requirement is entirely undermined by a requirement that if the Minister considers that publishing certain aspects of those reasons is not in the national interest, the Minister must not publish those matters. There is no requirement for the environmental implications of the decision to be addressed in the statement of reasons. This is contrary to the Samuel Review, which focused on the need for reliance on the national interest exemption to be limited and transparent.

There is a strong need for amendments to place safeguards on the national interest exemptions, to ensure they are not misused under future governments.

**Suggested amendments:**

- Provide a limit on all national interest exemptions that refines what can be considered to be the ‘national interest’ to apply the exemption, specifically to national emergencies.
- Remove the national interest proposal exemption, where existing national interest exemptions are sufficient and there has not been sufficient demonstrable need for the national interest proposal. If this doesn’t occur, national interest proposal powers must otherwise be limited to introduce safeguards consistent with Recommendation 3(c) of the Samuel Review which proposed that this exemption be confined to national emergencies, removing particularly any reference to broad ‘strategic interests’ and international agreements.

c) **Rulings**

The Bill introduces a new discretionary and open-ended power to the Minister and the CEO of EPA to make binding rulings as to the application of the law (either generally or specifically).

The Bill proposes to introduce a new power into the EPBC Act for the Minister and the CEO of the EPA to make 'rulings' about how the Act is to be applied in particular circumstances (new Part 19C, s 514YM, s 514YN).

This power was not recommended by or considered in the Samuel Review.

Rulings can be of general application, relate to classes, or relate to a specific person, action, application, MNES, circumstances, or any other matters prescribed by regulation (s 514YM(1); s 514YN(1)).

In our view, rulings should not be able to be made with respect to individual actions, applications, or persons - this is what individual decisions are for. Removing the ability for Ministerial rulings to be made with respect to individual matters also reduces incentives for inappropriate political lobbying by proponents.

Of particular concern, rulings may be made by the Minister about the consistency of a management or authorisation framework (or any component of such) with a National Environmental Standard or part of a Standard (s 514YME(5)). This pre-judges mandatory considerations for decisions on accreditation elsewhere in the Act, without the safeguards built into those provisions, and therefore facilitates accreditation by stealth and without safeguards. There are a number of substantive tests a framework must meet in order to be accredited (such as consistency with Standards, assessment of impacts and likelihood of unacceptable impacts, the net gain test: see new s33(3)). There are no substantive tests for rulings. There is a review requirement for rulings every 5 years (s514YS), compared to the review and oversight mechanisms for accredited frameworks which include tabling and opposition in the Parliament (s33A), review within 3 years of a framework being accredited, and every 5 years thereafter (s36C).

The Bill states that decisions must be made consistently with a ruling, unless the decision-maker considers that it would be inappropriate to do so. If the decision maker makes a decision inconsistent with a ruling, reasons must be provided (s514YT).

The Bill provides that rulings (and instruments amending or revoking them) are not legislative instruments, and there is therefore no parliamentary oversight of them (s514YM(8); s514YN(7); 514YP(6); 514YR(6)). There is considerable discretion provided in this power:

- There are no substantive safeguards or constraints on its exercise (e.g. there is nothing in the Bill drafting specifying outcomes a ruling must or must not have, such as compliance with a National Environmental Standard or other criteria).
- There is one procedural safeguard: public consultation (s514YO and s514YQ), however there is no minimum timeframe given for this, and no requirement for transparency around the intended effect of the ruling, or why the ruling is being made (e.g. who applied for the ruling).

As drafted, the power is not limited in its application (a ruling does not have to be consistent with a national environmental standard or the unacceptable impacts provisions) and the only safeguard of public oversight by consultation has no time limit for this consultation. Rulings can also be used to make findings about the consistency of a framework with National Environmental Standards. This risks prejudging a significant component of the decision to accredit frameworks without any of the safeguards provided through the accreditation requirements.

Due to the lack of limitations on the application of this power, it risks further politicisation of the Act, may undermine public confidence in the framework, and runs counter to the recommendations of the Samuel Review for clear rules and outcomes, and less discretion in the Act. This power also arguably transgresses the separation of powers, with a member of the executive interpreting the meaning of legislation (a judicial role) or determining further rules without parliamentary oversight.

We understand that the inspiration for this power is rulings given by the ATO under the *Taxation Administration Act 1953* (Cth). However, this is an inappropriate power in the EPBC Act, which is distinguishable from the tax system in that the purpose of the EPBC Act is the public interest - to preserve (among other things) matters of significance to all Australians. That is, rulings do not only affect individual interests (which is the case for tax rulings, even those applying to classes) but have an impact on the public good and matters held in public trust. Additionally, ATO rulings are made by the independent, expert, Commissioner of Taxation, not the responsible Minister.

The division replaces current s520A of the Act which provides a power for the Minister to issue statements about the way in which the Minister considers that provisions of the Act or the regulations apply or would apply to persons generally or a class of persons or persons generally or a class of persons in relation to particular circumstances. To our knowledge, this section is not used. Policy guidance on the operation of the Act (e.g. the Significant Impact Guidelines) exists and is used without statutory force.

**Suggested amendments:**

- The Bill should be amended to remove the power to make rulings.
- If this is not possible, robust substantive and procedural safeguards must be placed on the power. For example:
  - Safeguards about the outcome of rulings, for example: Rulings must not authorise or facilitate unacceptable impacts, or actions that do not comply with National Environmental Standards, rulings cannot be made to facilitate certain industries (for example, fossil fuels), rulings cannot be made with respect to individual actions, applications, or persons.
  - Safeguards about the making of rulings, for example: The Minister/CEO must consult on proposed rulings, variations or revocations for a specified period of time (at least 30 business days), must provide an explanation of the purpose and intended effect of the ruling, must disclose if the ruling has been requested by any third party, and must provide reasons for the rulings.
  - Matters for consideration and matters that are prohibited considerations for the making of rulings should be prescribed.

## 5. **Strengthen conservation planning and species recovery obligations**

Much of the focus of the 2025 EPBC Act reforms has been on project assessment pathways, however the EPBC Act also plays a key role in conservation planning, including processes for listing species and ecological communities as threatened, and requirements for conservation planning documents, including recovery plan, threat abatement plans conservation advices and wildlife conservation plans.

The Bills do not propose any substantial amendments to these parts of the EPBC Act; and the few changes that are proposed risk undermining the existing framework. While the intention of the government for these reforms has been stated as including strengthening environmental protection, the key instruments which set out actions needing to be undertaken to improve environmental outcomes – conservation planning documents - risk being weakened. Further, amendments to reconsideration requests risk making the power ineffective.

### a) **Protection statements**

The EPBC Act reforms will introduce provisions that will allow the Minister to issue ‘Protection Statements’. It is intended that Protection Statements will be the ‘default primary document’ used to clarify what a decision maker must consider during the approval of actions in protecting threatened species or ecological communities.

Concerningly, proposed amendments will modify existing requirements that the Minister not act inconsistently with a recovery plan and must have regard to conservation advices. Instead, they require only that the Minister must not act inconsistently with Protection Statements (while still being able to consider recovery plans and conservation advices). This is a backwards step. This is particularly concerning when combined with the amendments proposed to recovery plans, including provisions allowing recovery plans to be made for only part of a species or ecological

community. This would mean that recovery plans may not provide the same holistic protection for a threatened species as currently required.

Protection statements could be a useful tool that support the implementation of new environmental protection mechanisms in the Act. For example, these statements will provide information about a threatened species or ecological community that can help determine whether there are unacceptable impacts (as defined in section 527F). But the introduction of protection statements for this purpose does not justify winding back long-standing requirements in the Act that align conservation planning with decision making and require the Minister to make decisions not inconsistent with recovery plans.

Protection Statements must complement, not override or diminish the role of existing conservation planning documents, such as recovery plans, threat abatement plans and conservation advices. Existing provisions in the EPBC Act that require the Minister to not act inconsistently with a recovery plan and have regard to a conservation advice must be retained.

**Suggested amendments:**

- Existing requirements for the Minister to not act inconsistently with a recovery plan or threat abatement plan and have regard to any approved conservation advice must be retained. These reforms also provide the opportunity to strengthen the Act by requiring the Minister to not act inconsistently with conservation advices\_(compared to simply have regard to considering conservation advices as currently required).
- Protection statements should align with and provide equal or greater protection than recovery plans or conservation advices. To align new protection statements with existing requirements, the Bill should require:
  - the Minister to consider recovery plans and conservation advices when making or varying protection statements
  - that protection statements must provide equal or greater protection than set out in a recovery plan or conservation advice
  - where there are any inconsistencies, protection statements prevail to the extent of the inconsistency
- There should also be a requirement to not be inconsistent with Threat Abatement Plans, which are also important conservation planning documents.
- Consultation with the Scientific Committee (e.g. in s 298D) should be mandatory rather than optional to ensure the scientific basis and integrity of protection statements.
- The process for varying protection statements should mirror the process for making protection statements, given a varied protection statement will have the same effect as the original protection statement.
- Revocation of protection statements should be subject to public consultation and mandatory consultation with the Scientific Committee as the decision to revoke a protection statement

could impact how decisions relating to the approval of actions impact threatened species or ecological communities.

### **b) Reconsideration requests**

The Bills introduce significant restrictions on the power for communities to seek reconsideration of decisions where circumstances have changed or new information has come to light.

The amendments propose to limit any reconsideration request for controlled action decisions to 28 days from the decision (where there is no time limit currently in the EPBC Act), and introduce a very high onus on the quality of evidence to support the reconsideration. These amendments render the reconsideration request power effectively obsolete – as it will be difficult for the evidentiary burden to be met, and it is unlikely that any change in context or information will come to light within 28 days of the decision.

The current EPBC Act provides power for the Minister (at s 78) to reconsider (and then vary or revoke) controlled action decisions (being decisions made under s 75 of the Act) both as to whether an activity needs to be assessed and approved under the EPBC Act, as well as if so, what matters of national environmental significance are relevant to the assessment. The Act also provides for third parties to make requests for this power to be exercised (s78A). A reconsideration request can be made for example where:

- substantial new information has become available about the impacts the action may have on a protected matter which warrants reconsideration of the decision; or
- there has been a substantial change in circumstances since approval which changes the impacts of the action; or
- the controlled action decision was made pursuant to a bilateral agreement, s 33 declaration or bioregional plan which no longer applies.

This is an essential power to ensure that regulation of impacts can be responsive to the changing environment and improvements in scientific understanding. This framework is important for environment groups and the community to raise the need for reconsideration of a decision if the circumstances or information has changed around the approved activity such that there is a need to reconsider how it is being regulated.

This power also represents an important safeguard by providing the Minister with an opportunity to correct mistakes that may have occurred in the s 75 process of determining whether an action is a controlled action.

The Environment Protection Reform Bill 2025 (Cth) (the Bill) seeks to limit the power to seek reconsideration in ways that hinder the utility of the reconsideration power. All proposed changes to the reconsideration framework are regressive and are a step backwards.

We are particularly concerned about the following regressive changes:

***Limiting the timeframe to make a reconsideration request to 28 days for controlled action decisions (new s78A(2)):***

Currently under the Act, there is no time limit for seeking reconsideration of a decision (except that it must be before a decision on an EPBC referral or before the decision is acted upon). EPBC assessment can take a number of months to years depending on the complexity of an application and its potential impacts, and in that time, circumstances can change, warranting reconsideration. The draft Bill proposes to limit the timeframe for reconsideration requests to 28 days after a controlled action decision has been made (Schedule 1, clause 181 of the Bill, amending s78A(2)), undermining the ability for the reconsideration provisions to play the role intended.

This time limit for making a request was amended earlier this year to limit reconsideration for actions being taken where it was decided it is not a controlled action if taken in a particular way in accordance with a management arrangement, and the action is being taken and the way in which the action is being taken has been ongoing or recurring for at least 5 years. This limitation remains under the Bill.

***Higher threshold for reconsideration requests for controlled action decisions (new s78A(2)-(2B)):***

The Bills propose that a valid reconsideration request must now include substantial information/substantial change in circumstances that demonstrates, with a ‘high degree of certainty associated with the quality and accuracy of the information’, that the impacts the action has, will have or is likely to have on an MNES are or are likely to be different from the impacts as assessed for the first decision. If it’s a substantial change in circumstances, the request also needs to set out satisfactory reasons for the circumstances not being foreseen.

In our view, these two amendments are so onerous and limiting that they are likely to effectively foreclose reconsideration requests for controlled action decisions and undermine the intent and purpose of the reconsideration power. The purpose of the provisions is to allow for the Minister to fix potential errors and ensure all relevant information is considered at this stage of the assessment process which has been acknowledged as a triage process rather than a final one - no substantial information is likely to arise a mere 28 days after the controlled action decision, particularly any information that could meet this threshold. Further, this proposed amendment is directly contrary to the precautionary principle.

We recommend that these proposed amendments are rejected and current requirements in the Act are maintained.

**Suggested amendment:** The provisions amending reconsideration request powers should be removed to ensure that this important power remain effective. This is a critical avenue to review existing approvals that are leading to unpredicted or unassessed unsustainable outcomes due to changes in the circumstances they are operating under.

### c) Conservation planning

Disappointingly, the reform package does not propose any substantial changes to strengthen the existing conservation planning framework. This is a missed opportunity to rectify long standing concerns about EPBC Act failings, including that recovery plans are lacking for many threatened species and ecological communities, threat abatement planning is ineffective, critical habitat is not adequately protected, new threatened species listings are often disregarded in decision making and there are no mechanisms that support action in response to emergency situations (like bushfires and floods).

A new, uniform definition of critical habitat, as proposed, will be helpful, but without requirements to mandate the identification of critical habitat (e.g. via mandatory recovery plans for all listed threatened species) or comprehensively protect critical habitat in conservation zones (e.g. in bioregional plans), the level of protection provided to these areas will remain limited.

A single-minded reform agenda, that focuses on assessment and approval pathways only, fails to recognise the important role conservation planning needs to play in meeting the Government's international and national commitments to reverse biodiversity decline.

There are a number of key areas where the Bills could be strengthened. In particular:

- Strengthen the role of conservation planning documents (Conservation Advices, Recovery Plans, Threat Abatement Plans, Wildlife conservation plans for migratory species). For example:
  - Require the Minister to ensure there is an approved Recovery Plan in place for all threatened species and ecological communities in the critically endangered, endangered, vulnerable or extinct in the wild categories. The Minister may approve a Recovery Plan for threatened species in the conservation dependent category, migratory species, marine species or cetaceans.
  - Maintain the requirement for decision makers under the Act 'not act inconsistently with' recovery plans; or better still, strengthen the requirement to require decision makers to 'act consistently with' recovery plans.
  - Strengthen the status of conservation advices by providing them equivalent legal status to recovery plans i.e. 'must not act inconsistently with'; or better still, as recommended below 'act consistently with'.
  - Amend s268 to require Commonwealth agencies to comply with Conservation Advices.
  - Add a requirement for conservation advices to include advice on habitat critical to survival (to support the requirement in s270(2)(d) which requires critical habitat to be identified in a Recovery Plan).
  - Strengthen the status of threat abatement plans by providing them equivalent legal status to recovery plans i.e. 'must not act inconsistently with' or better still, 'act consistently with'.
  - Clarify that the Act allows the Minister to make more than one threat abatement plans for the whole or part of a key threatening process, including overlapping parts. This could be achieved, for example, via a note at section 270A.

- Strengthen the status of wildlife conservation plans by providing them equivalent legal status to recovery plans i.e. ‘must not act inconsistently with’, or better still, ‘act consistently with’.

### ***Mandate the identification and protection of critical habitat***

As noted above, a new, uniform definition of critical habitat, as proposed, will be helpful, but without requirements to mandate the identification of critical habitat (e.g. via mandatory recovery plans for all listed threatened species) or comprehensively protect critical habitat in conservation zones (e.g. in bioregional plans) the level of protection provided to these areas will remain limited.

Notably, critical habitat protections are necessary to protect intrinsic ecological values, whereas other mechanisms (such as unacceptable impact provisions) are intended to respond to impacts of a specific project. Comprehensive protection of critical habitat will be crucial to ensuring that an amended EPBC Act is able to fulfill the commitment to no new extinctions, turning around nature decline and restoring the environment.

Further information is available in EDO’s report *Bushfires, Bureaucracy and Barriers - How poorly implemented critical habitat frameworks risk failing the survival and recovery of threatened species and ecological communities*.<sup>10</sup>

### ***Require decision makers to consider new listings***

Section 158A of the EPBC Act allows the Minister to disregard new ‘listing decisions’ when making certain decisions under the EPBC Act, once a controlled action decision has been made. Section 158A was introduced to provide certainty to project proponents during the assessment process, however broad restrictions preventing listing events to be considered hinder the ability of environmental legislation to effectively protect threatened species. This is contrary to what most people would fairly expect to apply, particularly if species previously considered extinct are rediscovered, or if ecological conditions change rapidly (for example, following a major event like bushfire or flood) and highly valuable and irreplaceable species and ecosystems are at risk of being destroyed.

Section 158A must be reformed to ensure that the most up-to-date information is before decision makers when making decisions, and appropriate intervention is allowed when warranted. At the same time, it is recognised that a balance needs to be achieved so as not to cause undue hardship to project proponents.

For more information see section 2.1.2, and specifically recommendations on page 34, of EDO’s report *Wildlife Can’t Wait: Ensuring timely protection of our threatened biodiversity*.<sup>11</sup>

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<sup>10</sup> <https://www.edo.org.au/wp-content/uploads/2024/05/240508-WWF-EDO-Critical-habitat-report-FINAL.pdf>

<sup>11</sup> <https://www.edo.org.au/publication/discussion-paper-wildlife-can-t-wait-ensuring-timely-protection-of-our-threatened-biodiversity/>

### ***Establish mechanisms for responding to emergency events (like bushfire and floods)***

The aftermath of the 2019-2020 Black Summer bushfires highlighted the inadequacies of our environmental laws to respond rapidly to emergency events, putting MNES at risk. As Professor Graeme Samuel acknowledged in the Independent Review of the EPBC Act:

- “*(a)s a result of an inefficient, drawn out listing process, there is no avenue for quickly listing newly threatened species in response to natural disasters such as the 2019–20 Black Summer bushfires*”
- “*(s)tandsards should be subject to both regular reviews and reviews in response to changing, unforeseen or emergency situations, such as the 2019-20 Black Summer bushfires*”

New provisions should be introduced into the EPBC Act to support rapid responses to emergency events (like bushfire and floods) to conserve and restore MNES. For example:

- Provisional listing provisions should be inserted into the EPBC Act: Provisional listing provisions could be a useful tool in protecting threatened species on a provisional basis following a major event, until such time as a proper assessment is carried out and decision can be made as to whether a species should remain listed. This would be consistent with the precautionary principle, which provides that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. Section 4.23 of the NSW Biodiversity Conservation Act provides an example of how this could be done.
- New provisions should be introduced that trigger a review of relevant rules relating to threatened species protection following a major event: Protections or policy settings may require revision following an emergency event that impacts on MNES. For example, there are no legal requirements compelling a review of threatened species protections (e.g. listing, recovery plans etc.) meaning that protections may be outdated. Inadequate protections can undermine recovery efforts and put species at a greater risk of extinction. More information is available in section 2.3 of EDO’s report *Wildlife Can’t Wait: Ensuring timely protection of our threatened biodiversity*.<sup>12</sup>

### ***Strengthen reporting on progress on achieving threatened species and ecological community recovery***

A notable gap in current reporting obligations is a requirement to monitor and evaluate the development and implementation of conservation planning documents under the EPBC Act and provide an annual report to Parliament on progress.

This function could be given to the new Environment Information Australia (EIA).

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<sup>12</sup> <https://www.edo.org.au/publication/discussion-paper-wildlife-cant-wait-ensuring-timely-protection-of-our-threatened-biodiversity/>

Specific legislative provisions could include:

- Requirements for the EIA to monitor and evaluate the development and implementation of conservation planning documents and their success, or otherwise, in facilitating recovery of threatened species and ecological communities.
- Requirements for EIA to prepare and publish an annual report on the status of conservation planning and for the reports to be tabled in Parliament.

**Suggested amendments:**

- Strengthen the role of conservation planning documents (Conservation Advices, Recovery Plans, Threat Abatement Plans, Wildlife conservation plans for migratory species), including by requiring that approval decisions are not inconsistent with conservation planning documents.
- Mandate the identification and protection of critical habitat.
- Require decision makers to consider new listings (e.g. by amending section 158A of the EPBC Act).
- Establish mechanisms for responding to emergency events (like bushfire and floods).
- Strengthen reporting on progress on achieving threatened species and ecological community recovery.

## 6. Remove outdated exemptions for deforestation, clearing and other environmental impacts

There are ongoing concerns that outdated exemptions in the EPBC Act allow unsustainable, impacting activities to continue around Australia without oversight under a modernised EPBC Act.

### a) Prior authorisation and ‘continuation of a use’ provisions

The EPBC Act currently contains specific provisions that deal with actions that are covered by prior authorisation or a continuing use. In summary:

- Section 43A provides that a person may take an action, if prior to the commencement of the EPBC Act, it was **authorised by a specific environmental authorisation**. Specific environmental authorisation is one that a) identifies the particular action by reference to acts and matters uniquely associated with that action; or b) was issued or granted following a consideration of the particular action by reference to acts and matters uniquely associated with that action.
- Section 43B provides that a person may take an action if it is **a lawful continuation of a use** that was occurring immediately before the commencement of the EPBC Act.

The exemptions for prior authorisations or continuations of a use have been relied on by proponents of certain activities, such as agricultural deforestation or the use of shark nets, to continue without federal assessment and approval – even where these activities have increasingly significant impacts on matters of national environmental significance (MNES). In the case of land clearing, there are concerns that section 43B in particular is being misapplied by rural and agricultural landholders to clear land without referring the matter for approval under the EPBC Act.

To improve certainty for persons undertaking actions in reliance on these sections, provisions could be inserted into the EPBC Act to allow those persons to seek certification from the Minister that an action is a continuous use.

**Suggested amendments:**

- Continuation of a use and prior authorised actions exemptions should be repealed.
- Alternatively, tighten the legal drafting in sections 43A and 43B to narrow and/or clarify the scope of the provision and reduce misapplication. This could include explicitly providing (e.g. at section 43B(3)) that continuation of a use does not include:
  - a use that has increased in severity or significance;
  - a use that impacts on new or different MNES, listed threatened species, listed migratory species, or listed threatened ecological communities
  - an intermittent, periodic, irregular or variable use of land, sea or seabed;
  - a passive use of land, sea or seabed;
  - any use prescribed in the regulations to not be a continuation of use of land, sea or seabed for the purposes of this section; or
  - is likely to have an unacceptable impact.

To address specific concerns about the misuse of clause 43B to undertaken land clearing, amendments could also be made to clause 43B to ensure it is not used to clear regrowth vegetation or where it may have an impact on the Great Barrier Reef Marine Park.

- Insert provisions into the EPBC Act to allow those persons to seek certification from the Minister that an action is a continuous of a use.

b) **Regional Forest Agreements (RFAs)**

Regional Forest Agreements (**RFAs**) are long-term agreements between the Australian federal government and state governments intended to guide the management and conservation of forests in a specific region. An original set of agreements were signed between 1997 and 2001 with renewal of various agreements happening between 2017 and 2020.<sup>13</sup>

Chapter 2, Part 4, Division 4 of the EPBC Act provides that Part 3 of the EPA (which provides that actions with significant impacts on MNES require approval) does not apply to an RFA forestry

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<sup>13</sup> <https://www.agriculture.gov.au/agriculture-land/forestry/policies/rfa>

operation that is undertaken in accordance with an RFA. That is, forestry operations under an RFA do not require EPBC Act approval.

There are ongoing concerns that RFAs are no longer fit for purpose, particularly in the absence of evidence that they are achieving the required environmental outcomes. These concerns were exacerbated by the continuation of the RFAs without proper assessment of the impacts of 2019-2020 black summer bushfires.

The Samuel Review found that “*the environmental considerations under the RFA Act are weaker than those imposed elsewhere for MNES and do not align with the assessment of significant impacts on MNES required by the EPBC Act*”. It also acknowledged that there is “*great concern that the controls on logging within forests have not adequately adapted to pressures on the ecosystem such as climate change or bushfire impact*”. The Samuel Review recommended that RFAs must be required to “*demonstrate consistency with the National Environmental Standards to avoid the need for an EPBC Act assessment and approval*”.

To better protect threatened species habitat, the Samuel Review recommended that the EPBC Act be amended to replace the current exemption Chapter 2, Part 4, Division 4, and that the accreditation model as recommended in the Samuel Review be adopted for RFAs, with a requirement for consistency with Standards and mandatory Commonwealth compliance and enforcement oversight. This, the Samuel Review noted, would require amendments to both the EPBC Act and the RFA Act.

In its *Nature Positive Plan*,<sup>14</sup> the Federal government committed to work with stakeholders and relevant jurisdictions towards applying National Environmental Standards to RFAs. Minister Watt has confirmed that this remains the Government’s position.<sup>15</sup>

However, the Bill does not make amendments that would apply National Environmental Standards to RFAs. Because it does not make any changes to provisions exempting forestry operations covered by a RFA from the Act’s operative provisions, there is nothing for Standards to apply to, as they are mandated for (some) decision making under the Act, and no decisions under the Act are required for actions under an RFA. Other safeguards (such as unacceptable impacts) also have no application to RFAs.

If the Bill in its current form is enacted, the current exemption from the requirement for EPBC Act approval will remain in place for RFAs. Our understanding is that no additional requirements will be placed on RFA operations to comply with National Environmental Standards, to avoid unacceptable impacts, or otherwise provide any additional Commonwealth oversight on these operations.

**Suggested amendments:**

- Remove the RFA exemption for activities under Regional Forest Agreements from the EPBC Act (and repeal the *Regional Forest Agreements Act 2002*). This would mean controlled actions that are forestry operations will require approval under the EPBC Act.
- Alternatively, at the least, apply the National Environmental Standards to RFAs and impose other necessary limitations and safeguards.

<sup>14</sup> <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>

<sup>15</sup> <https://minister.dcceew.gov.au/watt/transcripts/doorstop-canberra>

## **Part Two: Strengthen the critical new elements**

The Bills contain positive features which could be a step forward for federal environmental regulation. Unfortunately, the current legal drafting of the Bills builds in significant discretion, various exemptions and loopholes that undermine the strengthened protection that the reform package is seeking to achieve, as outlined below. Amendments are needed to ensure trust is restored in the EPBC Act and that it delivers on the core principles of stronger environmental protection, and greater accountability and transparency in environmental decision-making, now and under future governments.

Six key amendments are set out below.

### **1. A new National Environment Protection Agency (NEPA)**

The Bills seek to create a new national environmental regulator, the National Environmental Protection Agency (**NEPA**). The proposal to create the NEPA is very similar to the framework for Environment Protection Australia proposed but not passed in the Nature Positive package in 2024.

The Bills introduce the NEPA as a stand-alone federal agency with powers to regulate and enforce the EPBC Act and other legislation including the *Environment Protection (Sea Dumping) Act 1981*, *Hazardous Waste (Regulation of Exports and Imports) Act 1989*, *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995*, *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995*, *Product Emissions Standards Act 2017*, *Recycling and Waste Reduction Act 2020* and *Underwater Cultural Heritage Act 2018*.

The Bills create the NEPA as a listed entity for the purpose of the *Public Governance Performance and Accountability Act 2013*. They also create the office of the NEPA CEO. NEPA, through its CEO, will be responsible for compliance and enforcement of several national environmental laws, including the EPBC Act and those listed above. NEPA's CEO will be directly vested with permitting powers, including in relation to the wildlife trade, offshore carbon capture and storage under the *Environment Protection (Sea Dumping) Act 1981* (Cth).

The NEPA will not have final controlled action approval powers under the EPBC Act unless they are delegated. The Minister will retain EPBC Act assessment and approval functions but can delegate these to the NEPA CEO. A key difference to the 2024 proposal, and one that significantly undermines the independence of decisions made by NEPA under delegation, is a provision that delegated decision makers are subject to the direction of the delegator. This means that NEPA would have to abide by any directions made by the Minister if making delegated decisions.

The Minister will be able to continue to delegate powers to the Department of Climate Change, Energy, the Environment and Water.

NEPA will not be governed by an independent board, and so it is not subject to the level of independence from political interference as EDO has recommended to ensure integrity in environmental decision-making.

NEPA has also not been given wide ranging powers to carrying out an assurance role (e.g. auditing) across all aspects of the EPBC Act reforms. For example, elsewhere in our submission we

recommend that NEPA be given assurance functions in relation to bioregional planning and Part 10 strategic assessments.

EDO has long advocated for an independent and empowered national environment protection regulator. Establishing the NEPA is, in our view, a step in the right direction. However, there are some significant deficiencies in the design of the proposed NEPA, deficiencies that will potentially undermine its independence and reduce its accountability. These deficiencies do not inspire confidence that NEPA will be the tough cop on the beat the government claims and nature desperately needs and should be amended if this is the aim of the reforms, as it needs to be.

**Suggested amendments:**

- To ensure NEPA's regulation is independent of political interference, the Bills should be amended to provide for governance of NEPA by an independent board. If this approach is not adopted, appointment of the CEO must be in accordance with a transparent legislative process; and
- NEPA should be granted powers directly to undertake assessment and approvals, rather than their powers be subject to discretionary delegation from the Minister – who can choose delegation to either NEPA or the Department under the Bills which creates confusion, uncertainty and further potential for political interference.

**2. A power to make National Environmental Standards a feature of decision-making criteria, with the principle of no regression built into the making of Standards**

The lynchpin of the recommendations made by the Samuel Review was the introduction of National Environmental Standards containing clear, enforceable outcomes that must be met by all actions, decisions, etc. made under the EPBC Act.

Commendably, the Bill introduces the power to make these Standards, which will be legislative instruments (enabling parliamentary oversight and disallowance), and which require public consultation before they are made.

Further, a 'no regression' principle is introduced which requires that when Standards are varied or revoked, they cannot lower the level of environmental protection and community consultation provided by previous Standards. EDO recommends that the no regression principle be amended to ensure that Standards that are varied or revoked must still meet the same criteria as when Standards are first made, particularly consistency with international agreements.

However, the Bills do not provide for the Standards to be implemented in the manner recommended by the Samuel Review.

First, there is no clear requirement that Standards be made, or requirements setting out the matters that mandatory Standards should address. The Samuel Review recommended that a full suite of specific Standards was needed and emphasised that "All the Standards are necessary to improve decision-making by the Commonwealth and to provide confidence that any agreements to accredit States and Territories will contribute to national environmental outcomes not just streamline development approvals."

Crucially, the Samuel Review was clear that the EPBC Act should “require that activities and decisions made by the Minister under the Act, or those under an accredited arrangement, be consistent with National Environmental Standards”. The Bills weaken this requirement in the following ways:

- Rather than requiring that activities and decisions are (objectively) consistent with Standards, the Bill provides that for decisions on whether or not to approve a development, or whether to accredit another framework the Minister must be satisfied (a subjective test) that it not be inconsistent with any prescribed Standards. This turns the test from an objective one of whether or not the proposal complies, into a subjective matter based on what the Minister personally thinks. This inserts significant discretion into the decision, and makes external accountability of the decision very difficult.
- Inserting broad powers for the Minister to exempt certain proposals from meeting the standards, which go beyond the ‘rare’ and ‘demonstrably justified’ exemption power recommended by Samuel (see further discussion on exemptions below).
- Rather than the Standards each applying to every decision as relevant, the Bill provides that a regulation will specify which particular Standard applies to each decision. Further the Bill specifies that a regulation can specify the way the Standard must be applied in the decision, potentially weakening the requirement to a decision-maker simply ‘having regard’ to the Standard for some decisions.

A fundamental component of Standards as recommended by the Samuel Review is that they must be legally enforceable. This refers to the ability to hold decision makers to account in upholding them when making decisions under the Act. The Samuel Review stated: ‘The ability of the public to hold decision-makers to account is a fundamental foundation of Australia’s democracy.’

As long as the application of the Standards is to the Minister’s satisfaction, it will be difficult for the decision-maker to be held to account to ensure that the Standards are upheld in all decisions no matter who is in power.

Finally, the effectiveness of the Standards in improving environmental protection and outcomes under the EPBC Act will depend on what those standards require, how those requirements are framed, and whether there are processes in place to monitor and report on whether outcomes are being achieved.

#### ***Draft MNES Standard compared with the Samuel Review recommendations***

As mentioned above, the Federal Government has released the draft National Environmental Standard (Matters of National Environmental Significance) 2025 (**draft MNES Standard**) for public consultation, along with the draft Offsets Standard. While EDO will provide a formal submission to the consultation on these Standards, critique is provided here given the significant importance of these Standards as to whether the reforms lead to improved environmental outcomes.

The Samuel Review helpfully provided a recommended draft MNES Standard within the report ([from page 203](#)) (**Samuel MNES Standard**) to demonstrate clearly what was envisaged as necessary.

Unfortunately, the draft MNES Standard put forward by the government provides a weaker, less clear, and much less enforceable benchmark for projects and decisions to be held to and fails to meet the standard recommended by the Samuel Review.

Compared to the draft MNES standard provided in the [Samuel Review](#), the draft MNES Standard provides a weaker, less clear, and much less enforceable benchmark for projects and decisions to be held to. The Samuel MNES Standard contains clear, unqualified requirements for actions, decisions, plans and policies, whereas the draft MNES Standard qualifies requirements with phrases like 'if possible', 'where necessary'; or focused on procedural rather than substantive/on ground matters (for example 'appropriately consider and 'having regard to').

The Samuel MNES Standard formulation of requirements around both the application of the mitigation hierarchy, and for cumulative impacts assessment of proposed activities are stronger and clearer than those in the draft MNES standard.

As noted, the application of the draft MNES Standard is discretionary, where its implementation is subject to the Minister's 'satisfaction' and so it will be difficult for the public to hold a decision-maker to account where they fail to uphold the Standard meaningfully.

Further, the draft MNES Standard could be compromised easily in its efforts to protect environmental values from impacts by allowing proponents to pay money via restoration contributions to 'offset' those impacts, justifying the impacts without ensuring the impact is actually compensated.

The draft MNES Standard does not substantially add anything to what is already required under the Act, or proposed changes to the Act. For example:

- Principle 1 – Apply the mitigation hierarchy. *This will already be required by the amended Act.*
- Principle 2 – Consider the impacts. *This is already required in the current Act.* However, the MNES Standard provides a bit more guidance, particularly in relation to the consideration of circumstances and cumulative impacts.
- Principle 3 – Compensate residual impacts. *This will be required by the amended Act.*
- Principle 4 – Use data and consult people. *Generally required by the current Act. The Standard doesn't make those requirements any stronger.*
- The proposed draft MNES Standard objectives are quite similar to the descriptions of unacceptable impacts proposed to be inserted into the Act.

The draft MNES Standard introduces some requirements for how impacts to matters of national environmental significance should be assessed for proposed activities that are additional to those mentioned in the Bill. However, there is a need for more clarity and objectivity in the criteria to meet the Samuel Review recommendation that the Standards be enforceable and provide clear outcomes to protect nature.

The Samuel Review also noted '*[t]he development of a coherent framework to monitor and evaluate the effectiveness of the EPBC Act in achieving its environmental outcomes is needed. Key reforms recommended by this Review, particularly the establishment of National Environmental Standards, provide a solid foundation for this framework. Each Standard for MNES should have a monitoring and evaluation plan, and these plans should be underpinned by a National Environmental Standard for environmental monitoring and evaluation.'*

The Samuel Review called for ‘outcomes-focused law’ which *’requires the capacity to effectively monitor and report on these outcomes, and to understand the difference made by management interventions’*.

Specifically, the Samuel Review recommended setting clear outcomes through National Environmental Standards, and performance audits (like those of the Auditor General) and annual reporting on performance of Commonwealth and accredited parties against those National Environmental Standards. This report should be provided to the Environment Minister, to be tabled in the Australian Parliament in a prescribed timeframe. As drafted, the Bills do not provide for this.

The Bills also fail to establish broader monitoring and reporting requirements against the objects of the Act, or in relation to Australia’s progress on implementing the Global Biodiversity Framework.

This lack of monitoring and evaluation compromises the ability of decision-makers, and all stakeholders, to properly assess and apply the Standards and the unacceptable impacts definitions, which rely on an understanding of the baseline of the environment.

**Suggested amendments:**

- Ensure that the application of National Environmental Standards is subject to an objective test that a decision or framework is consistent with all relevant Standards.
- Remove the prescription of National Environmental Standards for each decision and make the Standards apply to all decisions as relevant.
- The no regression principle should be amended to ensure that Standards that are varied or revoked must still meet the same criteria as when Standards are first made, particularly consistency with international agreements.
- Require regular public reporting on environmental trends, and measurable outcomes in Standards with EPA to report against performance of Standards against outcomes and Act objects regularly.
- Require EIA to regularly report against Australia’s progress on the Global Biodiversity Framework.

**3. Requirements to refuse unacceptable impacts, with improved definitions provided for in the Act**

We strongly support the decision to include provisions in the EPBC Act that require that certain decisions cannot be made where there are or likely to be unacceptable impacts on a matter protected by a provision of Part 3 of the EPBC Act. This is an important safeguard that has the potential to deliver improved protection for matters of environmental significance. Proposed new section 527F sets out the impacts that are unacceptable impacts on each matter protected by a provision of Part 3.

We are however concerned that:

- As drafted, relevant operative provisions are subject to Minister subjectivity and discretion, which has the potential to undermine the application of these important provisions. Whether an action will or is likely to have an unacceptable impact should be an objective decision based on best evidence. See our comments on discretionary drafting above.

- Criteria and terminology in proposed section 527F are vague, narrow and will likely to be difficult to enforce, which may restrict the effectiveness of this new environmental safeguard. The definition of unacceptable impacts in section 527F should be updated to ensure criteria and terminology aligns with the best available science.

**Suggested amendments:**

- Amend relevant provisions to remove subjectivity and discretion in determining whether there are or will be unacceptable impacts.
- Update the table setting out unacceptable impacts in section 527F in line with the best available science.

**4. A new ‘net gain’ requirement for certain decisions should be defined to ensure environmental benefits**

In general, we support the proposal to insert new provisions into the EPBC Act that require actions approved under the Act to ‘pass the net gain test’. This is another important safeguard aimed at ensuring that actions carried out under the EPBC Act deliver overall improvements for nature.

We are however concerned that:

- As drafted, relevant operative provisions are subject to Minister subjectivity and discretion, which has the potential to undermine the application of the net gain test. Whether an action passes the net gain test should be an objective decision based on best evidence. See our comments on discretionary drafting above.
- As drafted, net gain refers to ‘relative net gain’, measured against a ‘business as usual’ baseline (i.e. the status of biodiversity at the time of the decision) which often includes a declining baseline. Net gain relative to a declining baseline may not overcome decline to deliver a gain overall (but instead might simply slow the rate of decline). To deliver genuine outcomes for the environment, net gain must be defined as absolute net gain, relative to a fixed baseline, to ensure there are improvements in biodiversity over time.
- Actions can ‘pass the net gain test’ by making ‘restoration contribution payments’. As outlined above, the ability to pay money into a fund is not offsetting; it is essentially ‘payment for destruction’ and is a regression from the current policy. There are risks with allowing payments to offset obligations and satisfy the net gain test, as there is no guarantee that genuine, equivalent offsets will be delivered. See our analysis and recommendations above regarding the use of restoration contribution payments.

**Suggested amendments:**

- Amend relevant provisions to remove subjectivity and discretion in applying the net gain test.
- Update provisions to require ‘absolute net gain’ (not relative net gain).
- Remove the option for restoration contribution payments from the Bill; or if restoration contributions charges remain as part of the framework, there must be stronger upfront restrictions on the use of restoration contribution charges (including measures that will

provide greater certainty that genuine offsets will be achieved and will be able to deliver net gain).

## 5. Retain the introduction of higher penalties, stronger enforcement powers

The proposed increases to penalties and the expansion of enforcement powers in the EPBC Act are necessary, proportionate, and long overdue. They directly address longstanding weaknesses in Australia's federal environmental law and will assist in improving protection of MNES by deterring breaches, strengthen industry compliance, and rebuild public trust.

The success of these reforms requires that the new national environmental regulator is adequately resourced, independent, and empowered to monitor activities and to act decisively. Strong penalties and enforcement tools are only effective when coupled with:

- sufficient staffing and ecological expertise;
- clear statutory independence from political influence; and
- transparent reporting of compliance activities and outcomes.

We therefore support the complementary establishment of a well-resourced national Environment Protection Agency, capable of administering these enhanced powers without fear or favour.

We strongly support the reforms which increase penalties and enforcement powers, and recommend that they are implemented alongside an independent, well-resourced national environmental regulator capable of exercising these powers effectively.

## 6. Require assessment and consideration of climate impacts and full emissions disclosure

The Bills introduce new requirements for proponents of activities involving greenhouse gas emissions above a certain threshold to disclose a prediction of their scope 1 and 2 emissions. There is also a requirement for these proponents to provide 'the strategies and measures the designated proponent will implement to manage those emissions', and how these strategies and measures are consistent with laws and relevant government policies.

There is no requirement for the predicted emissions to be considered in the assessment and final decision though, and no requirement to disclose scope 3 emissions (which are often the most significant emissions from fossil fuel projects). The Samuel Review specified that: "there is merit in mandating proposals required to be assessed and approved under the EPBC Act or by an accredited party (due to their impacts on nationally protected matters), to transparently disclose the full emissions profile of the development." (our emphasis). The limited climate disclosure required in the Bills therefore conflicts with the recommendations of the Samuel Review.

State environmental laws in New South Wales and Queensland require disclosure and assessment of all emissions, including scope 3 emissions. There is no reason why Australia's federal environmental laws, particularly as they undergo reform, should be inferior to the laws of subnational jurisdictions. These jurisdictions have understood the importance of assessing all

greenhouse gas emissions proposed by projects. It's time that the federal government came to this understanding also.

These reforms are contrary to the [Advisory Opinion of the International Court of Justice](#), which clarified that nations, including Australia, have a duty to prevent transboundary environmental harm, which includes regulating all greenhouse gas emitting activities and ensuring adequate environmental impact assessment is undertaken to understand and minimise emissions. The Bills fail to meet these requirements, and, if passed, may expose Australia to legal action to address this failure to meet international obligations.

Claims that the Safeguard Mechanism is adequately regulating greenhouse gas emissions in Australia are false and unfounded. The Safeguard Mechanism only comes into effect *after* activities are approved for those activities that meet the threshold. The mechanism does not prevent approval of emitting activities in the first place. See [our briefing note here](#) for more information. Significant reforms are needed to the Safeguard Mechanism for it to function to sufficiently reduce emissions in Australia.

**Suggested amendments:** To ensure Australia's carbon budget and emissions reduction targets are not further compromised by new projects being approved, it is essential that the EPBC Act requires assessment and avoidance of unsustainable greenhouse gas emissions.

## Appendix

### Summary of recommendations

#### Part One: Recommendations to ensure the Bills address, not exacerbate, the failings of the current Act

##### 1. Devolution of EPBC powers must be limited, including for the water trigger

- Retain strong federal oversight for final decisions by only allowing accreditation of assessment and not approval powers. This change will have the biggest impact in processing time while reducing the risks of accrediting other entities to undertake all elements of assessment and approval with no role for the federal government agencies or Minister.
- The exemption to prevent devolution of the water trigger to ensure protection of precious water resources should remain.

##### 2. The proposal to introduce ‘restoration contribution payments’ must be removed or integrity introduced

- Remove the option allowing the payment of restoration contributions charges in lieu of offsets.
- If restoration contributions charges remain as part of the framework, there must be:
  - Stronger upfront restrictions on the use of restoration contribution charges, including, for example:
    - an upfront requirement to confirm whether a suitable offset is possible for the matter (e.g. require this to be a consideration prior to setting conditions requiring payment of restoration contribution charges); and
    - a regularly updated list or register of a list of matters for which a restoration contribution charge is not suitable/available (e.g. due to scarcity or because a matter is to be able to be recreated or restored).
  - Requirements for the Restoration Contributions Holder to spend restoration contribution charges consistent with all offset principles (i.e. general restoration actions must be consistent with the Offsets Standards); and greater transparency and accountability on the use of alternative restoration actions (e.g. require public notification if no general restoration action is available; require specific numbers and skills of people on the Restoration Contributions Advisory Committee).
- Embed key transparency and accountability measures in the legislation, including in relation to:
  - *Security* (e.g. require legal protection of offset sites e.g. through land management agreements), where relevant.
  - *Enforcement* (e.g. mechanisms for enforcing the Offsets Standard; legislative requirements including monitoring and reporting etc.).
  - *Transparency* (e.g. legislate a requirement for an Offsets Register in addition to the proposed requirement for the Restoration Contributions Holder to establish a register for Restoration Contributions; requiring details of all alternative restoration actions in the Holder's annual report including the residual significant impact and approval that the alternative restoration action relates to and the reasons why a like-for-like offset was not considered feasible).

**3. Safeguards needed on fast-tracked approval mechanisms to ensure integrity in environmental assessment and community oversight**

**a) Streamlined assessment**

- Require provision for and consideration of a Community Consultation Standard, First Nations Participation and Engagement Standard and Environmental Impact Assessment Standard which will specify the requirements for pre-referral consultation and environmental assessment for the Minister to be able to be satisfied that streamlined assessment should apply
- Limit the level of risk and complexity of a project able to be assessed by streamlined assessment. This could be via integration into the Act of criteria similar to that provided for referral information in EPBC Reg 5.03A – which refers to level or risk and public concern amongst other things.

**b) Bioregional planning**

- Insert robust requirements for upfront environmental assessment to inform bioregional planning. For example, insert a new requirement to prepare a *bioregional plan strategic assessment report*. The specific requirements for the assessment report can be prescribed in the regulations. The report should be included in the materials available during the public consultation process.
- Enhance public consultation requirements, for example, by:
  - Extending public consultation period for requirements for making and varying bioregional plans from 30 business days to 60 business days (e.g. at s176C(1)(b), s177AL(1)(b), s177AY(3)(b), s 177BH(2)(c) and (3)(b), and s177BW).
  - Mandating the making of a Community Engagement Standard (e.g. under new powers to make National Environmental Standards), and this Standard should be applied to the making (and varying and revoking) of bioregional guidance plans and bioregional plans.
- Put limits on what activities can be fast-tracked as priority actions (e.g. limit to low-risk activities). This could include:
  - Excluding activities protected by the ‘water trigger’ under section 24D, namely unconventional gas and large coal mining.
  - Allowing for the regulation to preclude certain actions from being priority actions.
- To be most effective, the EPBC Act should outline a list of values that must be protected in conservation zones. As an alternative, the proposed framework could be strengthened by requiring that conservation zones must be identified having regard to the conservation and restoration priorities identified in the relevant *bioregional plan strategic assessment report* (see above), and to also require the boundary of a conservation zone to have regard to critical habitat.
- Remove or tighten exemptions for restricted activities in conservation areas. For example, by either omitting proposed 177AK and Part 12A, Division 6, or making amendments to Part 12A, Division 6 to limit the scope of restricted activity exemptions (e.g. by more clearly defining ‘exceptional circumstances’).
- The new National Environment Protection Agency (NEPA) should have oversight of bioregional plans (e.g. audit or assurance functions), including a mandatory regular review function

**c) Strategic assessment**

- Retain the ‘terms of reference’ process for strategic assessments (specifically retain EPBC Act s146(1B), which the Bill seeks to repeal via clause 248 in Schedule; and consequently, omit

Schedule 1, Item 249, which is intended to replace terms of reference with written agreements).

- Introduce safeguards into the minor variation process. This should include:
  - public consultation on a variation application;
  - a requirement for the Minister to provide reasons on variation approval; and
  - minor variations should not be allowed where there is any regression in community rights, including public consultation or access to information.
- Strengthen the application of new environmental protections to Part 10 strategic assessments. Specifically:
  - Ensure new safeguards apply to variations to strategic assessments. This could be done by amendments to sections 146FA, 146FB and 146FC so that they apply to variation decisions made under section 146DJ and section 146DK.
  - Remove discretionary drafting (e.g. “the Minister is satisfied”)
  - Item 271 – s 146CA(1)(c) should be removed. It should not be up to the Minister to determine whether the taking of the action or class of actions is likely to have a significant impact on water resources. This is the role of the IESC.
  - Make amendments that provide NEPA with oversight functions in relation to Part 10 strategic assessment approvals including a mandatory regular review function

**d) NOPSEMA**

- Remove standalone NOPSEMA accreditation provisions and tighten amendments to the Part 10 strategic assessment framework.
- Alternatively, introduce stronger upfront and ongoing protections of procedural rights and environmental protection (including an objective test for making a declaration, mandatory assurance, and mandatory suspension where non- compliant).

**e) Minor preparatory works**

- Remove this power under the Bills to ensure activities cannot commence prior to being granted approval.

#### 4. Discretion and exemptions must be reduced to ensure accountability and transparency are upheld

##### a) Discretion overall

- Amend the Bills to ensure key decisions are based on objective, accountable tests and not discretionary, subjective consideration of whether the Minister is ‘satisfied’.

##### b) National interest

- Provide a limit on all national interest exemptions that refines what can be considered to be the ‘national interest’ to apply the exemption, specifically to national emergencies
- Remove the national interest proposal exemption, where existing national interest exemptions are sufficient and there has not been sufficient demonstrable need for the national interest proposal. If this doesn’t occur, national interest proposal powers must otherwise be limited to introduce safeguards consistent with Recommendation 3(c) of the Samuel Review which proposed that this exemption be confined to national emergencies, removing particularly any reference to broad ‘strategic interests’ and international agreements

##### c) Rulings

- The Bill should be amended to remove the power to make rulings.
- If this is not possible, robust substantive and procedural safeguards must be placed on the power. For example:
  - Safeguards about the outcome of rulings, for example: Rulings must not authorise or facilitate unacceptable impacts, or actions that do not comply with National Environmental Standards, rulings cannot be made to facilitate certain industries (for example, fossil fuels), rulings cannot be made with respect to individual actions, applications, or persons.
  - Safeguards about the making of rulings, for example: The Minister/CEO must consult on proposed rulings, variations or revocations for a specified period of time (at least 30 business days), must provide an explanation of the purpose and intended effect of the ruling, must disclose if the ruling has been requested by any third party, and must provide reasons for the rulings.
  - Matters for consideration and matters that are prohibited considerations for the making of rulings should be prescribed.

#### 5. Strengthen conservation planning and species recovery obligations

##### a) Protection statements

- Existing requirements for the Minister to not act inconsistently with a recovery plan or threat abatement plan and have regard to any approved conservation advice must be retained. These reforms also provide the opportunity to strengthen the Act by requiring the Minister to not act inconsistently with conservation advices (compared to simply have regard to considering conservation advices as currently required).
- Protection statements should align with and provide equal or greater protection than recovery plans or conservation advices. To align new protection statements with existing requirements, the Bill should require:
  - the Minister to consider recovery plans and conservation advices when making or varying protection statements
  - that protection statements must provide equal or greater protection than set out in a recovery plan or conservation advice
  - where there are any inconsistencies, protection statements prevail to the extent of the inconsistency

- There should also be a requirement to not be inconsistent with Threat Abatement Plans, which are also important conservation planning documents.
- Consultation with the Scientific Committee (e.g. in s 298D) should be mandatory rather than optional to ensure the scientific basis and integrity of protection statements.
- The process for varying protection statements should mirror the process for making protection statements, given a varied protection statement will have the same effect as the original protection statement.
- Revocation of protection statements should be subject to public consultation and mandatory consultation with the Scientific Committee as the decision to revoke a protection statement could impact how decisions relating to the approval of actions impact threatened species or ecological communities.

**b) Reconsideration request amendments make this important power ineffective and should be removed**

- The provisions amending reconsideration request powers should be removed to ensure that this important power remain effective. This is a critical avenue to review existing approvals that are leading to unpredicted or unassessed unsustainable outcomes due to changes in the circumstances they are operating under.

**c) Conservation planning**

- Strengthen the role of conservation planning documents (Conservation Advices, Recovery Plans, Threat Abatement Plans, Wildlife conservation plans for migratory species), including by requiring that approval decisions are not inconsistent with conservation planning documents.
- Mandate the identification and protection of critical habitat.
- Require decision makers to consider new listings (e.g. by amending section 158A of the EPBC Act).
- Establish mechanisms for responding to emergency events (like bushfire and floods).
- Strengthen reporting on progress on achieving threatened species and ecological community recovery.

**6. Remove outdated exemptions for deforestation, clearing and other environmental impacts**

**(a) Prior authorisations and continuation of a use**

- Continuation of a use and prior authorised actions exemptions should be repealed.
- Alternatively, tighten the legal drafting in sections 43A and 43B to narrow and/or clarify the scope of the provision and reduce misapplication. This could include explicitly providing (e.g. at section 43B(3)) that continuation of a use does not include:
  - a use that has increased in severity or significance;
  - a use that impacts on new or different MNES, listed threatened species, listed migratory species, or listed threatened ecological communities
  - an intermittent, periodic, irregular or variable use of land, sea or seabed;
  - a passive use of land, sea or seabed;
  - any use prescribed in the regulations to not be a continuation of use of land, sea or seabed for the purposes of this section; or
  - is likely to have an unacceptable impact.

To address specific concerns about the misuse of clause 43B to undertaken land clearing, amendments could also be made to clause 43B to ensure it is not used to clear regrowth vegetation or where it may have an impact on the Great Barrier Reef Marine Park.

- Insert provisions into the EPBC Act to allow those persons to seek certification from the Minister that an action is a continuous of a use.

**(b) Regional Forest Agreements (RFAs)**

- Remove the RFA exemption for activities under Regional Forest Agreements from the EPBC Act (and repeal the *Regional Forest Agreements Act 2002*). This would mean controlled actions that are forestry operations will require approval under the EPBC Act.
- Alternatively, at the least, apply the National Environmental Standards to RFAs and impose other necessary limitations and safeguards.

**Part Two: Strengthen the critical new elements**

**1. A new National Environment Protection Agency (NEPA)**

- To ensure NEPA's regulation is independent of political interference, the Bills should be amended to provide for governance of NEPA by an independent board. If this approach is not adopted, appointment of the CEO must be in accordance with a transparent legislative process: and,
- NEPA should be granted powers directly to undertake assessment and approvals, rather than their powers be subject to discretionary delegation from the Minister – who can choose delegation to either NEPA or the Department under the Bills which creates confusion, uncertainty and further potential for political interference.

**2. A power to make National Environmental Standards a feature of decision-making criteria, with the principle of no regression built into the making of Standards**

- Ensure that the application of National Environmental Standards is subject to an objective test that a decision or framework is consistent with all relevant Standards.
- Remove the prescription of National Environmental Standards for each decision and make the Standards apply to all decisions as relevant.
- The no regression principle should be amended to ensure that Standards that are varied or revoked must still meet the same criteria as when Standards are first made, particularly consistency with international agreements.
- Require regular public reporting on environmental trends, and measurable outcomes in Standards with EPA to report against performance of Standards against outcomes and Act objects regularly.
- Require EIA to regularly report against Australia's progress on the Global Biodiversity Framework.

**3. Requirements to refuse unacceptable impacts, with improved definitions provided for in the Act**

- Amend relevant provisions to remove subjectivity and discretion in determining whether there are or will be unacceptable impacts.
- Update the table setting out unacceptable impacts in section 527F in line with the best available science

**4. A new 'net gain' requirement for certain decisions should be defined to ensure environmental benefits**

- Amend relevant provisions to remove subjectivity and discretion in applying the net gain test.
- Update provisions to require 'absolute net gain' (not relative net gain)
- Remove the option for restoration contribution payments from the Bill; or if restoration contributions charges remain as part of the framework, there must be stronger upfront restrictions on the use of restoration contribution charges (including measures that will

provide greater certainty that genuine offsets will be achieved and will be able to deliver net gain).

**5. Retain the introduction of higher penalties, stronger enforcement powers**

- We strongly support the reforms which increase penalties and enforcement powers, and recommend that they are implemented alongside an independent, well-resourced national environmental regulator capable of exercising these powers effectively.

**6. Require assessment and consideration of climate impacts and full emissions disclosure**

- To ensure Australia's carbon budget and emissions reduction targets are not further compromised by new projects being approved, it is essential that the EPBC Act requires assessment and avoidance of unsustainable greenhouse gas emissions.