Environmental Defenders Office

Historic environment reforms

What happened in Parliament and what comes next?

Environmental Defenders Office

Always was, always will be, Aboriginal and Torres Strait Islander land

What's changed in the EPBC Act?

1. New institutions
2. National Environmental Standards
3. New safeguards
    a) Unacceptable impacts
    b) Net gain
4. Improving failures in current Act
    a) Phasing out RFA exemption in 18 months
    b) Tightening land clearing loopholes
5. Offsets: introduction of "pay to destroy" framework
6. More fast-tracking and devolution
    a) Bilateral agreements
    b) Streamlined assessment
    c) Bioregional plans
    d) National interest proposals
7. Other changes
    a) Protection statements
    b) Ministerial rulings
    c) Reconsideration requests
8. Unfinished business: Addressing climate change

What are the next steps to make it stronger?

New institutions – NEPA and EIA

National Environmental Protection Agency (NEPA)

- **Responsible for compliance and enforcement**
- **Minister retains assessment and approval functions** – can be delegated to NEPA or Department
- **Improvement in penalties and compliance measures** compared to current Act
  - New auditing powers
  - Environmental protection orders ('stop orders') – to address urgent illegal environmental harm
  - Increased maximum penalties

Environment Information Australia

- Legislated, part of Department
- Established to provide access to high quality information and data relating to the environment

The NEPA Act and EIA Act and EPBC Act powers of CEO NEPA will commence on 1 July 2026.

National Environmental Standards

Minister may only approve an action or class of actions, strategic assessments, bioregional plans, or devolution - **if *satisfied* the decision is *consistent* with any National Environmental Standards prescribed for that decision.**

Minister has power to make Standards (but not a requirement).

- Legislative instruments – will need to be tabled in parliament, after public consultation on draft.
- Regulations to prescribe *which* Standards will apply to each decision.

Standards required to be reviewed within 18 months of commencing, then every 5 years after that.

No regression principle applies when Standards are varied/revoked (but not for the first 18 months).

Provisions commenced 2 December 2025.

Unacceptable impacts

- Actions must not be approved unless Minister satisfied the action will not have an **unacceptable impact** (except for 'national interest' exemptions)

- Also apply to strategic assessments, bioregional plans and accreditation

- **Unacceptable impacts** defined – criteria for each type of matter of national environmental significance (s 527F), for example:

subsection 18(2)	a listed threatened species in the critically endangered category	a significant impact that: (a) seriously impairs the viability of the listed threatened species; or (b) causes serious damage to critical habitat of the listed threatened species where the habitat is irreplaceable and necessary for the listed threatened species to remain viable in the wild

- Definition weakened in last week's amendments: removed "likely to have" – may change the level of certainty of impact required.

Net gain

- Actions that have **residual significant impacts** on MNES can only be approved if the Minister is satisfied the approval will pass the **'net gain' test** (new s136C and s527K)
- Can be met through conditions requiring **offsets** – either real or via new 'restoration contribution charge'
- Baseline is status of environmental matter at time of decision
- Regulations can prescribe the net gain required for a MNES, otherwise at the Minister's discretion
- Exemptions to net gain test via national interest exemptions or also can be made in Regulations

RFA forestry operations no longer exempt from EPBC Act

Activities under Regional Forestry Agreements (RFAs) to come under EPBC Act in 18 months – **1 July 2027** ***(Congratulations all who worked on this!)***

After this, RFA forestry operations will be subject to the EPBC Act (including Standards)

Government has stated intention for EPBC regulation of RFA activities to be accredited- could also be regulated via bioregional plans or strategic assessments

No requirement for an assessment bilateral agreement to be in place before approval bilateral agreement (cf all other approvals bilaterals, as secured in upper house amendments)

Land clearing loopholes tightened

“Continuation of use" exemption does not apply to certain types of vegetation clearing. ***Congratulations all who worked on this!***

Great Barrier Reef catchment

- vegetation within 50m of watercourse, wetland or drainage line; and
- in the Great Barrier Reef catchment

Vegetation over 15 years

- the vegetation has not been cleared for 15 years or more;
- is not a forestry operation;
- anywhere in Australia.

These amendments commenced on 2 December 2025, to avoid panic clearing.

The Department now has information online here.

Offsets – introduction of “pay to destroy” fund

- **Mitigation hierarchy now in the Act** - Minister required to *consider*: *has the proponent taken appropriate measures to avoid, mitigate or repair the impact or damage.*
- Existing Environmental Offsets Policy replaced with legislated framework for offsets via:
  - restoration **actions – offsets**
  - restoration **contributions – payment into a fund**
- **Draft Environmental Offsets Standard** (introduces principles and other operational provisions) - currently **open for comments until 30 January 2026**
- Calculator and supporting regulations to be developed
- Section 134AA declarations can identify matters that cannot be offset via payment into fund

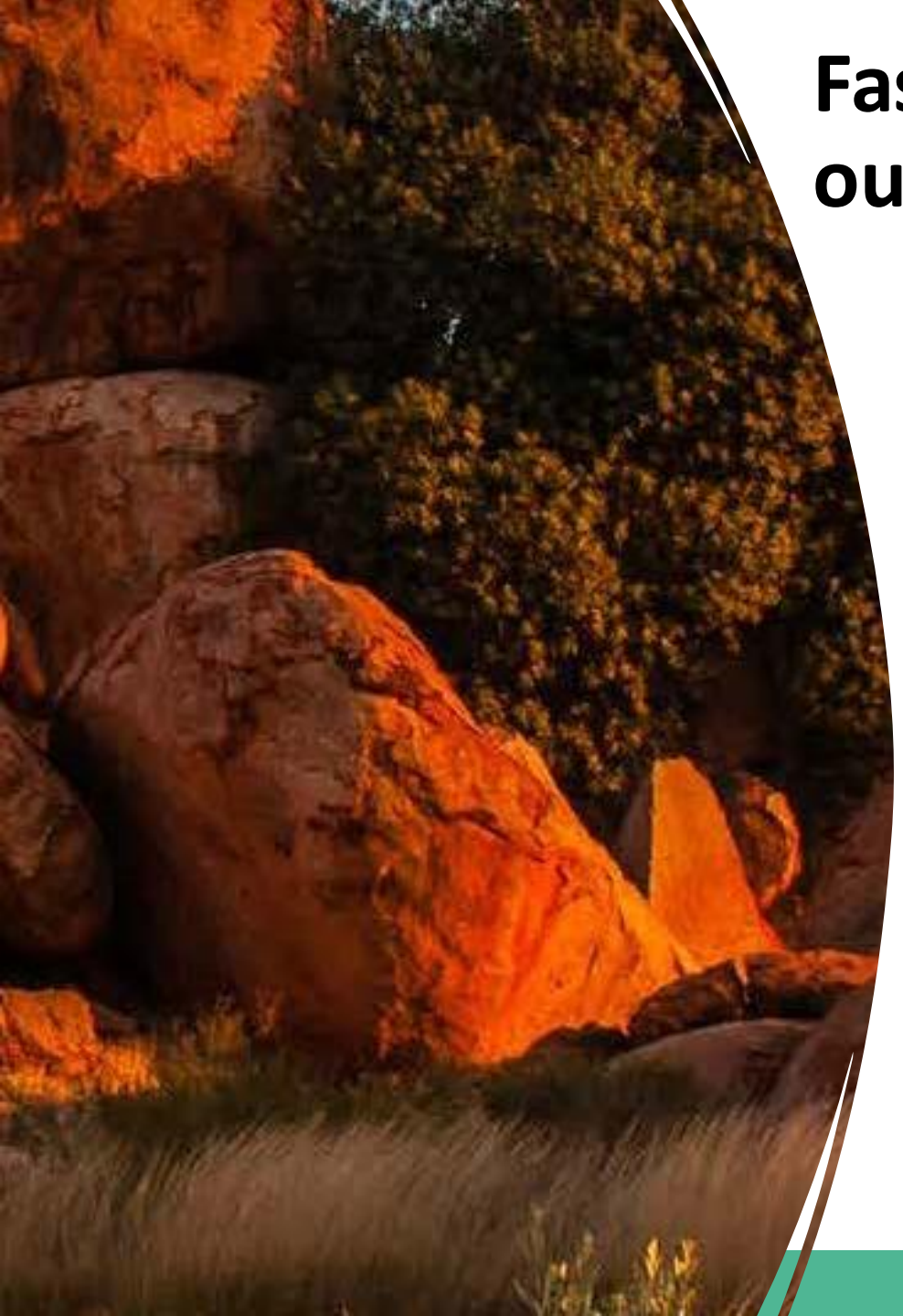
Offsets – Hypothetical case studies

Case study 1:

- Removal of nesting trees of the Carnaby's Black-Cockatoo
- The money is then used a year later to assist with weed management in the forests of south-west Western Australia.

Case Study 2:

- Clearing for grazing land of a large area of vegetation that is habitat for multiple threatened species, including the greater glider, is approved if payment made into the restoration contributions fund as 'offsets'.
- After approval it was established that offsets are not possible for greater glider habitat, yet the habitat has now been cut down.



Fast-tracking, devolution, and carve-outs

- New "streamlined assessment" pathway
- Facilitating devolution of EPBC powers - including for approvals
- Accreditation of other approvals pathways, including new NOPSEMA accreditation pathway
- New bioregional planning pathways
- New "national interest proposals" exemptions
- Strategic assessments able to be varied more easily

‘Fossil fuel actions’ excluded from all of these pathways except devolution - however water trigger cannot be devolved.

Streamlined assessment

- Minister must be satisfied there is **sufficient information** for each applicable MNES to decide application
- No further public consultation after Referral
- Recommendation report must be drafted ‘as soon as possible’
- Decision within 30 business days
- No limit on type of action or level of impact that streamlined assessment can apply to – except cannot be fossil fuel actions.

Regulation can provide criteria on what needs to be considered in choosing this pathway – to be developed

Streamlined assessment – Hypothetical case study

McMansion Mines *want to develop a* ***critical mineral mine*** *next to a* ***national park*** *and a* ***drinking water catchment.***

They want it approved quickly *to get into the market before competitors.* ***The state and federal governments also want it approved quickly,*** *keen for the promised jobs and royalties.*

The mining company puts together a 5,500 page environmental impact statement (EIS) *- largely reports copied from other projects or created by ChatGPT – no real environmental assessment is undertaken. The economic assessment is made up to make the numbers look big.*

- ***The EIS is referred under the EPBC Act for assessment.***
- ***The public has just 10 business days*** *to comment on possible impacts to MNES.*
- ***Minister allows assessment via streamlined assessment.***
- *A recommendation report is drafted in 2 weeks. No consultation on this.*

The Minister approves the application 30 business days *after deciding on the streamlined assessment process.*

Devolution of EPBC powers

Accreditation of state/territory or other entities *assessment* and *approval* processes allowed where:

- framework and approvals are 'consistent' with Standards
- decisions will not lead to unacceptable impacts
- net gain is provided for, and other criteria

- Accreditation of *assessment* process must be in place before accreditation of *approval* powers (except for RFA activities)
- Ministerial 'call in' power to be required in bilateral agreements
- Regular review and assurance review requirements

Need to ensure suite of Standards and regulations are in place prior to accreditation of any framework

Bioregional planning

Two new types of bioregional plans:

- **Bioregional guidance plans** (no regulatory function)
- **Bioregional plans** (regulatory function: development zones, conservation zones and bioregional restoration measures).

Development zones ('go zones'):

- 'Priority actions' will be allowed in development zones under criteria in bioregional plans, without EPBC Act assessment.
- Proponents must put in a registration request (which can be approved/refused by Minister).
- Can consider environmental record of proponent.
- No public consultation.
- Fossil fuel actions cannot be priority actions.

Conservation zones ('**no go zones**'): Restricted actions cannot be undertaken in conservation zones (except an exemption can be sought). Other actions can still be developed.

National interest proposals

- New power - Minister can declare an action's outcome is in the **national interest** and is therefore a **'national interest proposal'**
- ***What's in the national interest?*** Minister may consider (but is not limited to) Australia's defence, security or strategic interests; or Australia's obligations under an agreement with one or more other countries.
- Proponent can apply for a declaration, or the Minister can make one on their own initiative
- National interest proposals are exempt from needing to meet the EPBC Act requirements e.g. relating to National Environmental Standards, unacceptable impacts, and net gain test

Image credit:
Chris Tzaros, Birds Bush and Beyond. Sourced from National Recovery Plan for the Swift Parrot

National interest proposals – Hypothetical case study

Proposed critical mineral mine and processing facility

*Impacts of the proposal include removing the final significant stand of habitat in Tasmania of the critically endangered **Swift Parrot** (meaning the species will be unlikely to survive in the wild)*

*Impacts do not meet National Environmental Standards, and certain impacts (such as the likely extinction of the Swift Parrot) meet the definition of **unacceptable impact***

*The Minister considers Australia's strategic interests, and international trade agreements Australia has signed with countries including the United States, and decides the project is a **national interest proposal***

This means the Minister can still approve the proposal, despite it having an impact defined in the Act as unacceptable, and being inconsistent with Standards

Much of the statement of reasons for the determination is redacted so the community does not know why the determination was made

Other changes

Reconsideration requests severely curtailed

- New time limit of 28 days for requests for reconsideration of controlled action decisions + very high evidentiary requirement

Rulings

- New power for the Minister or CEO of NEPA to make a ruling setting out their opinion on the way in which provisions of environmental law should apply.
- Decisions under the Act must be consistent with rulings, unless the decision-maker considers it would be inappropriate.

Protection statements

- New power to make ‘protection statements’ for listed threatened species and listed threatened ecological communities: decisions must be not inconsistent with them (and recovery plans and approved conservation advices need only be considered)

Addressing climate change

The reforms introduce:

- Requirement to **disclose only scope 1 and 2** emissions above a certain (unspecified as yet) threshold.
- A proponent with emissions above a threshold will need to provide **strategies and measures to 'manage emissions**' where above a threshold.

- No requirement to assess or seek advice on the emissions *(but nothing preventing the decision-maker from doing so).*
- Amendments secured in Senate to exclude "fossil fuel actions" from fast-tracking beneficial.

Review of the Safeguard Mechanism coming next year…

What’s next?

Next steps

- Ongoing Senate inquiry
- Key elements needed to support implementation:
  - National Environmental Standards
  - Updated (and new) Regulations
  - Offsets ‘charges’ methods
  - Accreditation / devolution of powers (including RFA activities)
- Using new mechanisms and applying the laws:
  - e.g. protection statements
  - e.g. test cases

Senate inquiry into Environment Protection Reform Bill 2025 and six related bills

- Bills referred to senate inquiry on 30 October 2025, with public submissions due 5 December 2025, and reporting date of 24 March 2026
- Senate Inquiry likely to now consider Standards and Regulations
- Submissions now closed but may reopen in new year with change to Inquiry. (Otherwise extensions may be possible also – contact the Committee Secretary)

National Environmental Standards

- First set of Draft National Environmental Standards are currently open for consultation until **5pm, Friday 30 January 2026**:
  - **Draft MNES Standard** – to provide more guidance on the assessment of impacts to matters of national environmental significance; and
  - **Draft Offsets Standard** – focused on providing improved criteria for offsets, to ensure they are effective at achieving their aims. This draft also introduces criteria around the new restorations contribution fund.
- Other Standards expected to be developed, including:
  - First Nations consultation standard
  - Community consultation standard

Government should be encouraged to finalise National Environmental Standards prior to accrediting any frameworks under the reforms - including for Regional Forest Agreement activities.

Updated (and new) Regulations

- Significant policy detail to be included in Regulations, including, for example:
    - What Standards apply to what decisions? And how to be applied for some decisions.
    - What constitutes ‘net gain’
    - Safeguards around streamlined assessment
    - Further criteria for accreditation of other frameworks

Offsets ‘charges’ methods

- These will be developed under the Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025
- Used to calculate restoration contributions charges etc.

Using new mechanisms

For example: Protection Statements; scrutiny of land clearing

Applying the law

For example: Test cases - With the introduction of the new unacceptable impacts definitions and National Environmental Standards, along with other criteria and decision points, there may be opportunities for applications for judicial review if decisions are not made in accordance with the new criteria and processes.

EDO will publish regular updates on our progress and ongoing role in ensuring the new laws deliver outcomes for nature: www.edo.org.au

Thank you.
Q&A

Environmental Defenders Office

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