



Briefing: Have your say to improve laws for EPBC Act devolution and climate considerations

Submissions due: Friday 5 June.

The devil is in the detail – and now is your chance to have a say on the detail!

Consultation is open on the [draft Regulations](#) which relate to key elements of reform of the federal *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) framework.

The draft Regulations will provide more detailed rules and requirements across three broad themes:

1. National EPA

- National EPA powers and penalties
- New Audit arrangements
- National EPA rules for transparency

2. More certainty for projects and environment protection

- Protection statements
- Rulings
- Unacceptable impacts
- Minor or preparatory works
- Reconsiderations
- Lapsing not-controlled actions
- Other minor changes

3. Reducing duplication

- Bilateral agreements
- Commonwealth accreditation
- NOPSEMA declaration
- Greenhouse gas reporting

These Regulations will support the commencement of Tranche 2 of the EPBC Act reforms on 1 July 2026 and preparatory work ahead of the full suite of reforms commencing later this year. Further Regulations will also be prepared at that time.

This is a key opportunity to raise the bar for how the EPBC Act will operate to help ensure reforms lead to improvements to environmental outcomes. The Regulations will address key elements of the EPBC reforms, including:

1. What are the criteria that decision-makers will need to consider to have federal EPBC Act assessment and approval powers devolved to state and territory governments.
2. When will greenhouse gas information be required to be disclosed by proponents under the EPBC Act.
3. Will proponents be allowed to start impacting protected matter prior to even having their activity assessed or approved.
4. Defining of net gain to provide a threshold for meeting the offset and net gain requirements
5. What additional matters will protection statements be required to address

Three Consultation Papers and the Exposure Draft of the EPBC Regulations, [available here](#), are open for consultation, providing proposed amendments to the EPBC Regulation, which sits under the EPBC Act and helps operationalise the Act's provisions.

Sadly the National Environmental Standards are proving to be at risk of not at all fulfilling the stated commitments of the federal government nor of Professor Sameul AC's recommendations in how to improve the EPBC Act. For this reason it is more integral than ever that attention is put on strengthening the Regulations to ensure that this reform process is not a backwards step for the environment.

EDO's key recommendations for helping to improve environmental outcomes under the Regulations are as follows:

1. Strengthening criteria to reduce risks of devolution of EPBC Act powers to states and territories ([Consultation Paper 3](#), Part 2.4)

The EPBC Act reforms clarify laws empowering the federal government to give its assessment and/or approval powers to state and territory governments (as well as Commonwealth entities like NOPSEMA). This has been known also as 'devolution' or 'one stop shop'.

The risks in devolving EPBC Act powers to other entities are significant, and must be safeguarded against through mandatory criteria which ensure that the accredited frameworks provide for quality environmental assessment, decisions and processes that do not compromise Australia's environmental values of national significance and accountable, transparent governance.

The EPBC Act reforms provide some additional criteria for consideration in approving accredited frameworks for devolution, including the unacceptable impact definitions, the net gain test and the National Environmental Standards.

Under the Act reforms, further criteria can be mandated via the EPBC Regulation to help lift the standard of laws being accredited for devolution – which is being consulted upon here.

We recommend the following criteria could be added to the EPBC Regulation to help reduce the risks of environmental decline inherent in devolution of EPBC Act powers:

- adequate compliance and enforcement is undertaken by the applicable regulator to ensure that laws are complied with in the jurisdiction;
- the framework provides access to justice, accountability and transparency in assessment and decision-making to ensure quality decisions that are in the public interest;
- the framework ensures consideration of the public interest and human rights in assessment and decision-making;
- the framework is sufficiently resourced to ensure that it operates effectively in achieving environmental protection and community rights;
- there are processes in place to ensure that any decision-makers or consultants involved in assessment and decision-making do not have real or perceived conflicts of interest.

This is prime opportunity to strengthen environmental outcomes under the reforms, where the drafts of the National Environmental Standards released to date, being for Offsets and Matters of National Environmental Significance, will do little to nothing in ensuring improved environmental outcomes across Australia’s protected environmental values.

Submissions are open currently on the latest drafts of the:

- **MNES Standards** – until 29 May – see EDO’s submission guide [here](#).
- **Offsets Standard** – until 9 June – see EDO’s submission guide [here](#).

2. Greenhouse gas emissions disclosure should be required for all proponents ([Consultation Paper 3](#), Part 5.2)

The Regulation reforms unnecessarily propose to limit the requirement for when greenhouse gas scope 1 and 2 emissions should be disclosed in EPBC Referral applications to proponents proposing emissions over 100,000T per year. This is the same as the Safeguard Mechanism threshold.

There is no need to limit the threshold for disclosure of greenhouse gas emissions in the EPBC Act considerations to any threshold. The EPBC Act is fundamentally focused on

environmental protection and is designed to guide fully informed decision-making on how proposed activities may impact protected matter. This is a fundamentally different framework to the operation of the Safeguard Mechanism, which only operates after a project is approved, at which point it places baselines on the emissions of facilities that produce 100,000T of carbon dioxide equivalent per year.

In a time when every tonne of greenhouse emissions counts in the race to decrease the risks of dangerous climate change, it is inappropriate that all EPBC Referral applications will not be required to disclose all greenhouse gas emissions. As stated repeatedly by many stakeholders to the federal government, this should include also scope 3 – downstream – emissions involved in burning Australia’s fossil fuels, which are the largest greenhouse gas emissions contribution from Australia. While scope 3 emissions can still be considered in assessment under the EPBC Act, there is no requirement to disclose them. Best practice proponents can and should still disclose their full emissions profile in their applications to ensure robust EPBC assessment can occur.

3. Works must not be allowed to commence which will impact protected matter without assessment or approval ([Consultation Paper 2](#), Part 5)

Under the EPBC Regulatory amendments, works under an EPBC Referral application could be allowed to commence prior to any assessment or approval in a way that can impact protected matters. These works would be limited to ‘minor and preparatory works’, yet the scope for activities that could come under this is subjective to the decision-maker.

This is a concerning risk, not only in the impact not having been assessed, but also in the risk of inadvertently higher levels of impact or accidents occurring. The fix is simple - minor and preparatory works should only be allowed where *no* impact occurs to protected matter. This will allow some activities to commence during assessment but will not compromise protected matter nor the integrity of the EPBC Act.

4. The Regulations must prescribe the definition of ‘net gain’ so this is not up to Ministerial discretion

Amendments to the EPBC Act introduce a new requirement for certain approvals and decisions to “pass the net gain test”. Section 527K of the Act sets out the “pass the net gain test” - indicating that net gain is prescribed by regulations, or is otherwise as the Minister is satisfied is appropriate. The government is not intending to prescribe regulations for this purpose but will instead issue policy guidance and develop an offsets calculator. In the absence of regulations, there is nothing in law that defines this important new test. At minimum, the Regulations should prescribe that net gain is to be determined in accordance with the government’s net gain policy and offsets calculator. In the absence of this, there is a regulatory gap and this important criteria will be left to Ministerial discretion.

5. Strengthen requirements for protection statements ([Consultation Paper 2](#), Part 2)

Protections Statements are new instruments intended to provide further clarity for decision makers when assessing impacts protecting threatened species or ecological communities under the EPBC Act.

It is proposed that the EPBC Regulations will prescribe additional criteria for the making, content and reviewing protection statements and for the content of protection statements.

This is a key opportunity to ensure that protection statements are robust documents that are informed by the best available data and science, and include key information to help decision makers assess impacts, including how to avoid and mitigating impacts and determining whether there are unacceptable impacts.

In addition to the criteria proposed, we recommend the following criteria could be added to the EPBC Regulation:

- that a protection statement is consistent with the best available data and science
- that protection statements include information about whether a particular impact of an action on a species or community is, or is likely to, impact irreplaceable habitat. This will help decision makers in determining whether an action is likely to have an unacceptable impact for the purpose of section 527F of the Act.
- that a review of a protection statement consider not only the terms of the protection statement itself, but also how the protection statement is contributing to the recovery of that species or community. This information is critical for evaluating the success or otherwise of the protection statement in delivering conservation outcomes.

Have your say:

- You can make a submission via the Department website by [taking the Survey](#) here, through which you can upload a written submission also.
- **Submissions are due by Friday 5 June, 11.59pm.**