



Environmental
Defenders Office

**Submission on Exposure Draft of EPBC Regulations and
Consultation Papers:**

- 1. A smooth transition to the National Environmental
Protection Agency**
- 2. More certainty for projects and environment
protection**
- 3. Reducing Duplication**

5 June 2026

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.

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Lodged online: <https://consult.dccew.gov.au/environment-protection-reform-consultation-subordinate-legislation>

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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.

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Executive Summary

1. Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the next stage of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) reforms, including the Exposure Draft EPBC Regulations (**Exposure Regulations**) and accompanying three Consultation Papers.
2. Our submission is structured in line with the Consultation Papers:
 1. **A smooth transition to the National Environmental Protection Agency**
 2. **More certainty for projects and environment protection**, which includes guidance around protection statements, rulings, unacceptable impacts, minor or preparatory works and reconsideration requests.
 3. **Reducing Duplication**, which covers the devolution of EPBC Act powers including via bilateral agreements and NOPSEMA declaration, and the reporting of greenhouse gas emissions.
3. We do not address each section of the Consultation Papers and Exposure Regulations but instead focus on areas where we think the Regulations can be strengthened to improve transparency and accountability and deliver improved environmental outcomes.
4. In particular we highlight the following key issues:
 - The risks in devolving EPBC Act powers to other entities are significant, and must be safeguarded against through sufficient criteria to ensure that the accredited frameworks provide for quality environmental assessment and governance. Further criteria can and should be provided in the Exposure Regulations to help lift the standard of accredited frameworks. This is particularly necessary where the drafts of the National Environmental Standards released to date (Offsets and Matters of National Environmental Significance) fail to set clear and objective standards that would deliver improved environmental outcomes across Australia's nationally protected environmental values.
 - The policy settings adopted in the Exposure Regulations do not require all applicants to disclose greenhouse gas emissions in their application. This fails to address a key weakness in the assessment of impacts to protected matters under the EPBC Act. A threshold for emissions to be required to provide information is not required under the EPBC Act reforms, and should not be introduced via the Exposure Regulations. The Regulations should also prescribe a method for estimating emissions.
 - As drafted, the Exposure Regulations would allow minor and preparatory works to be undertaken in a way that may impact protected matters prior to any assessment and decision. This is a significant risk, not only with the impact not having been properly assessed, but also with the possibility of greater than expected impacts occurring without proper assessment or conditions to manage those impacts. Minor and preparatory works should only be allowed where no impact occurs to protected matters.

Key recommendations

This submission makes specific suggestions for strengthening the Exposure Regulations as provided in marked-up amendments in Appendices. Please refer to our submission for an indication of recommendations and corresponding Appendices.

Other recommendations, including in relation to timing and process, are highlighted in the submission.

Consultation Paper 1: A smooth transition to the National Environmental Protection Agency

5. This part of our submission addresses aspects of Consultation Paper 1 and corresponding parts of the Exposure Regulations dealing with:
 - New audit arrangements; and
 - Rules to ensure transparency of National Environmental Protection Agency (NEPA) decisions and compliance outcomes

New audit arrangements

6. New audit arrangements could be strengthened by including additional requirements in the Exposure Regulations as follows.

Auditor registration application process (Consultation Paper 1, Section 5.3)

7. The Exposure Regulations propose to prescribe the manner, form and context of applications for auditor registration. This includes, under proposed subregulation 14.01Q(1)(b)(vi), that applications for auditors must include ‘circumstances that could impact the applicant’s independence as a registered auditor under the EPBC Act’. We support this inclusion but **recommend** this should more clearly specify a requirement on the applicant to note any possible real or perceived conflicts of interest that may arise in their work as an auditor under the EPBC Act. This would include a resume of where they have been employed to date, projects and companies they have consulted to, and any other connections with companies or projects that could give rise to a real or perceived conflict in undertaking work as an independent auditor under the EPBC Act.
8. We **support** the proposed requirements under proposed subregulation 14.01M(1)(a) that the applicant hold a university level qualification. The requirements around experience could be strengthened to ensure that they have a least 5 years of experience as an auditor, including some experience occurring in the immediate preceding 5 years. We further suggest that the application be required to include the skills and experience of the applicant as an auditor, to allow consideration of what types of activities it would be appropriate for the applicant to undertake as an auditor if accepted.
9. See **Appendix A** for recommended amendments to the Exposure Regulations.

Review of registration (Consultation Paper 1, Section 5.5)

10. Subregulation 14.01S of the Exposure Regulations specifies review requirements for auditor registration. A list of examples of when a review must be required should be provided in the Exposure Regulation to guide the decision maker on when a review must be commenced. This will improve the quality of auditing as well as public confidence in the auditors by removing the complete discretion of the CEO of the NEPA in choosing to undertake the review if there are good reasons for review being necessary.

11. This list should be non-exhaustive and should include:
 - (a) where a conflict of interest has become apparent, and
 - (b) where there are any indications or complaints that the quality or ethics of the auditor's work are in question.
12. See **Appendix B** for recommended amendments to the Exposure Regulations.

Suspension and deregistration (Consultation Paper 1, Section 5.6)

13. Subdivision 14.1B.5 of the Exposure Regulations set out when the CEO may suspend or deregister a registered auditor. Specifically:
 - Regulation 14.01T deals with suspension of registration
 - Regulation 14.01V deals with deregistrationBoth regulation 14.01T and 14.01V specify matters the CEO can have regard to by cross-referencing the requirements for registration at 14.01M, rather than listing specific reasons for suspending or deregistering an auditor, and in doing so fail to specifically incorporate all of the reasons set out in the Consultation Paper,¹ although the intent is generally aligned.
14. We note it is at the CEO's discretion to suspend or deregister an auditor. We **recommend** the Exposure Regulations be amended to require the CEO to issue a show cause notice for deregistration under regulation 14.01V should the auditor no longer meet the requirements in 14.01M. This would remove elements of discretion in issuing a show cause notice where a person is no longer eligible to be registered as an auditor.
15. See **Appendix C** for recommended amendments to the Exposure Regulation to this effect.

Rules providing for publication requirements for registrable decisions and prescribed matters

16. We **support** the proposal to create Rules under the *National Environmental Protection Agency Act 2025* requiring improved disclosure of registrable decisions and prescribed matters, particularly for matters related to compliance and enforcement actions. This is a fundamental way of building trust in the community that NEPA, as the regulator, is taking action and how when compliance issues arise. This transparency also demonstrates to all authority holders that the regulator is undertaking their job of ensuring compliance, and therefore increases the likelihood of compliance by all authority holders.
17. Section 6.3 of Consultation Paper 1 outlines which decisions of the CEO of the NEPA will be required to be published on the Register of Registrable Decisions. We **support** the list of

¹ Consultation Paper 1 states:

New regulations will provide that the CEO EPA may suspend or deregister an auditor for specified reasons, including:

- *no longer meeting the registration requirements*
- *providing false or misleading information*
- *being convicted of an offence involving fraud and dishonesty*
- *being investigated or disciplined by a relevant licencing, registration or professional body*
- *no longer being considered a fit and proper person because of the quality of the auditor's work.*

decisions the register will publish, however it is unclear why infringement notices under the EPBC Act have been excluded from the register, given it is usual practice to publish these.

18. We **recommend** the issue of an infringement notice under the EPBC Act be included in the register.
19. It appears that draft Rules have not been included in the package of materials currently on public consultation. We **recommend** consultation on draft Rules before they are made.

Consultation Paper 2: More certainty for projects and environment protection

20. This part of our submission addresses aspects of Consultation Paper 2 and corresponding parts of the Exposure Regulations dealing with:
 - Protection Statements
 - Rulings
 - Unacceptable Impacts
 - Minor and Preparatory Works
 - Reconsideration Requests

Protection Statements

21. The EPBC Act reforms introduce provisions into the EPBC Act that will allow the Minister to make protection statements. Protection statements have the potential to be a useful tool for clarifying what a decision maker must consider during the approval of actions in protecting threatened species or ecological communities, in order to achieve improved outcomes for those entities.

Early commencement of the provisions for protection statements (Consultation Paper 2, Section 2.1.2)

22. We generally **support** the proposal to bring forward commencement of provisions relating to the making of protection statements to 1 July 2026, to allow the Minister to prepare protection statements ahead of the full suite of reforms commencing and to support bilateral agreement negotiations, noting that decisions will not need to consider protection statements until the full suite of reforms commence, which will be on or before 1 December 2026.
23. We strongly encourage the government to prioritise and resource the making of protection statements. These are important tools that will provide greater clarity and direction for how impacts on threatened species or ecological communities should be addressed, and put important guardrails on inappropriate actions. To date, the Government has committed to piloting protection statements for species. This work must be done expediently, and the government must move quickly to put protection statements in place for other species, including those at greatest risk of further decline or extinction.

Making a protection statement (Consultation Paper 2, Section 2.1.3)

24. It is proposed that the Exposure Regulations will prescribe:
- criteria that the Minister must be satisfied of when making a protection statement (under new Section 298A(2)(b) of the EPBC Act); and
 - additional matters that the Minister must have regard to when making a protection statement new Section 298A(3)(e) of the EPBC Act.
25. These provisions in the Exposure Regulations are important for ensuring that protection statements are prepared based on the best available information and having regard to all relevant matters.
26. We generally **support** the criteria proposed in the Exposure Regulation but **recommend** they are strengthened by requiring that a protection statement is consistent with the best available data and science (rather than simply “to the extent practicable, on accurate and high quality information”).

Content of protection statements (Consultation Paper 2, Section 2.1.4)

27. It is proposed that the Exposure Regulations will prescribe additional information that may be included in the content of the Protection Statement (under new Section 298B(2)(e)) of the EPBC Act).
28. We generally **support** the criteria proposed in the Exposure Regulation, but **recommend** they are strengthened by also prescribing the following information as being required to be included in protection statements:
- information relevant to whether a particular impact of an action on the species or community (or relevant part of the 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; and,
 - identification of habitat spatially or by reference to other attributes where impacts must be avoided. To be effective in guiding decision making, and ensuring genuine protection for threatened species and communities, protection statements should be able to set clear parameters, such as identifying impacts that must be avoided.

Review of protection statements (Consultation Paper 2, Section 2.1.5)

29. It is proposed that the Exposure Regulations will prescribe the matters to consider during the review of any Protection Statement (under new Section 298H(4)(a) of the EPBC Act).
30. We generally **support** the proposed matters set out in the Exposure Regulation, but **recommend** they could be strengthened by requiring the review to consider:
- The current conservation status and any risks or threats relevant to the listed threatened species or ecological community that is the subject of the protection statement; and

- The extent to which the protection statement is supporting the conservation and recovery of the threatened species or ecological community.

31. It is important that the review of a protection statement consider not only the terms of the protection statement itself, but also the status of the listed threatened species or community that is the subject of the protection statement and 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.
32. See **Appendix D** for recommended amendments to the Exposure Regulation in relation to protections statements.

Rulings

33. EDO has ongoing concerns about the introduction of Rulings into the EPBC Act framework. Part 19C of the EPBC Act creates new discretionary and open-ended powers for the Minister and the CEO of NEPA to make binding Rulings as to the application of the law (either generally or specifically). 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.²
34. Despite this, where Rulings are made, we welcome the review of their use and impact, consistent with the matters prescribed under proposed regulation 19.03. However, we **recommend** the matters prescribed also include whether application of the Ruling led to environmental outcomes consistent with the objects of the Act. Further, where a National Environmental Standard (**Standard**) was made, or where amendments to a Standard or any other instrument made under the Act were made, the review should also address whether any Rulings are consistent with these. These additions will ensure an important check on the use of the Rulings powers, given the concerns above they are at risk of over-reach.
35. See **Appendix E** for recommended amendments to the Exposure Regulation.

Unacceptable impacts

Commencement of unacceptable impacts should start for all actions in July 2026

(Consultation Paper 2, Section 4.1.2)

36. Section 4.1.2 of the Consultation Paper proposes that the unacceptable impact definitions will not apply to individual approvals for actions or classes of actions until the full suite of reforms commences later in the year. It is however proposed to apply the definition to bilateral agreement negotiations with the states and territories and the making of any protection statements.

² Our concerns are set out in more detail on our submission to the Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills: EDO, [Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills](#), November 2025.

37. The unacceptable impacts definitions are of significant importance to the reforms, being one of the only few reforms which are clearly focused on seeking to improve environmental outcomes from decisions under the EPBC Act. It is therefore important that the definitions are commenced as soon as possible. In particular, this will reduce the likelihood of proponents of activities that are likely to have unacceptable impacts making their applications early to avoid these new different definitions.
38. The Government appears to be taking an unbalanced approach to commencement, with provisions aimed at facilitating development (such as the minor and preparatory work provisions – see below) earmarked to commence, whereas safeguards are being unnecessarily delayed. We **recommend** the unacceptable impact definitions are commenced as soon as possible.

Definition of ‘critical habitat’ and aligning regulations with changes to the Act (Consultation Paper 2, Section 4.1.3)

39. We understand that the proposed amendments to Division 7.4 of the Exposure Regulation are intended to align with the updated definition of ‘critical habitat’ introduced in new section 207A(4) of the EPBC Act. The newly defined term ‘critical habitat’ also replaces the term ‘habitat critical to the survival’, providing consistency across the Act and the Regulations.
40. To make this abundantly clear, we **recommend** changing the heading of regulation 7.09 of the Exposure Regulation from ‘Identification of critical habitat’ to ‘Register of critical habitat’, as regulation 7.09 deals with consideration of whether critical habitat should be listed on the Register (and not whether habitat is critical habitat in the first place).
41. See **Appendix F** for recommended amendments to the Exposure Regulation.

Minor and Preparatory works

Minister’s decision on Minor and Preparatory works (Consultation Paper 2, Section 5.1.4)

42. The Exposure Regulation introduces criteria to prescribe the information that must be provided as part of an application to undertake minor or preparatory works and criteria to be considered by the Minister in agreeing that a person can take a controlled action.
43. New section 74AA(2A) of the EPBC Act allows for such minor or preparatory works to occur where “the **action** is a minor or preparatory component of a larger action” (emphasis added).
44. The Consultation Paper indicates that the primary consideration is whether the works are ‘minor and repairable’. The actual wording in the Exposure Regulation is whether “any **impacts** the proposed action will have, or is likely to have, on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action are minor and repairable” (emphasis added).
45. We **do not support** this approach of considering whether **impacts** are minor and repairable. It is inconsistent with the Act which does not allow a consideration of the impacts of the

proposed works, but rather consideration of the action (or works) themselves, and whether they are minor and preparatory.

46. Where minor and preparatory works have impacts, they should not be allowed; if works are having an impact they cannot be said to be minor. It is entirely inappropriate for the Minister to be allowing works to proceed if they are likely to have impacts, before those impacts are properly assessed and if approved, managed by appropriate approval conditions. Further, the term 'repairable' is undefined and could capture a broad range of activities, without any certainty as to how effective any 'repair' would be to remedy the impacts. This is a dangerous and unnecessary step for the regulation of environmental impacts in Australia which should not go forward.
47. We **recommend** that the Exposure Regulation is amended to remove reference to the term 'repairable' in regulation 4.05 and make it clear that works with impacts cannot be considered minor. The applicant should still be required to provide evidence that the proposed action will not have, or is not likely to have, any impacts on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action in order to inform the Minister's decision about whether the works are minor; not whether the impacts are minor and repairable.
48. We also express concern regarding subregulation 4.05(2)(f), which allows proponents to include in their application 'information about why the person considers the proposed action needs to be taken prior to the assessment and approval of the larger action'. This could allow for financial and business considerations to be considered by the Minister when deciding to approve minor or preparatory works. While these considerations may be of importance to the proponent, they do not relate to the objects of the EPBC Act and must not outweigh the Minister's primary consideration in whether to allow minor or preparatory works: that there are no impacts on protected matter.
49. We also note that there is inconsistency between Consultation Paper 2 and the Exposure Regulation:
 - Consultation Paper 2 states: "*The application must not be made until the Minister has determined that the minor and preparatory works relate to a controlled action*"
 - The Regulation provides:

4.05 Requirements to obtain Minister's agreement to take minor or preparatory action
(1) For the purposes of paragraph 74AA(2A)(b) of the Act, the requirements for obtaining the Minister's agreement are:
(a) the proposed action for which the Minister's agreement is sought is a component of a larger action that the Minister has:
(i) decided, under subsection 75(1) of the Act, is a controlled action; or
*(ii) **not yet made a decision, under subsection 75(1) of the Act, is a controlled action;***

50. If the policy intent is that an application must not be made until the Minister has determined that the minor and preparatory works relate to a controlled action we **recommend** 4.05(1)(a)(ii) is deleted.
51. We **support** the requirement that the Minister give written notice of the decision to the applicant and publish a copy of the notice on the Department's website. This promotes transparency and accountability. We **recommend** that the notice be required to include an explanation of why the works concerned are minor and preparatory and will not have an impact on protected matters
52. We note there is a drafting error in regulation 4.05. As drafted it contains two subregulation (7).
53. See **Appendix G** for recommended amendments to the Exposure Regulation.

Reconsideration requests

54. New section 79A of the EPBC Act allows for a person to seek reconsideration of the manner in which the action is currently being undertaken, where the Minister has made a 'non-controlled action' decision on the basis that the action will be undertaken in a particular manner. Information to be provided by the person seeking a reconsideration of the identified manner will be prescribed in the Exposure Regulation and will include 'information about why the person considers the identified manner is no longer appropriate for the action'.
55. We **recommend** this section more clearly requires the proponent to provide information about whether an action can or will not be undertaken in a particular manner, rather than simply that it is no longer appropriate. For example, the proponent must provide information about whether there has been a change in circumstances which means the action can or will not be undertaken in a particular manner.
56. See **Appendix H** for recommended amendments to the Exposure Regulation.

Consultation Paper 3: Reducing duplication

57. This part of our submission addresses aspects of Consultation Paper 3 and corresponding parts of the Exposure Draft Regulations dealing with:
- Bilateral agreements and Commonwealth accreditation
 - Greenhouse gas emission reporting

Bilateral agreements and Commonwealth accreditation

Applying the Standards (Consultation Paper 3, Section 2.3 and Section 3.3)

58. We **support** the proposal to prescribe all Standards currently in development to the accreditation of bilateral agreements and Commonwealth accredited frameworks. We query why the NOPSEMA framework has been exempt from the offsets framework under the EPBC Act, where offshore gas and petroleum activities have significant impacts on environments. If

any further Standards are made these must also be applied to the accreditation of all frameworks.

59. We note with strong concern however that the current drafting of both the Standards for Offsets and Matters of National Environmental Significance are weak, process based and do not ensure that environmental outcomes are improved in Australia.³ There is a strong risk that application of these Standards will not ensure improvements to state and territory environmental assessment and decision laws, and may in some instances encourage states and territories to reduce the quality of their environmental laws to meet the lower standard that has been applied in the EPBC Act framework. This is a highly risky scenario given the declining quality of protected matter across Australia as it stands. We **strongly recommend** that the Standards be further revised to ensure that they are providing clear, outcomes focused standards which ensure that all assessment and decision processes lead to improved environmental outcomes. This is essential to stem the tide of extinction and degradation that is plaguing Australia's environments, ecosystems and species.

Considerations for bilateral agreements and Commonwealth accreditation (Consultation Paper 3, Section 2.4 and Section 3.4)

60. The Exposure Regulations include provisions that require the Minister to consider bioregional plans and guidance plans when accrediting a management or authorisation framework for the purposes of a bilateral agreement and via declaration of Commonwealth frameworks. We **support** this proposal.

61. Additional considerations could be included in the Exposure Regulations to increase the integrity of the bilateral agreement and accreditation processes. There are significant risks in devolving EPBC Act assessment and approval powers to other entities. The Commonwealth Government has a duty to ensure that the framework around devolution ensures that accredited frameworks are of the best quality to uphold environmental outcomes and good governance, and to ensure our international conservation obligations are met.

62. To that end, we **recommend** that the following further criteria should also be included in the Regulations:

- whether adequate compliance and enforcement is undertaken by the applicable regulator to ensure that laws are complied with in the jurisdiction;
- whether the framework provides access to justice, accountability and transparency in assessment and decision making to ensure quality decisions that are in the public interest;
- whether the framework ensures consideration of the public interest and human rights in assessment and decision making;
- whether the framework is sufficiently resourced to ensure that it operates effectively in achieving environmental protection and community rights;

³ See, for example, our submission on the exposure draft of the National Environmental Standard (Matters of National Environmental Significance 2026: Environmental Defenders Office, 'Submission on the exposure draft of the National Environmental Standard (Matters of National Environmental Significance 2026' (29 May 2026), available online at: [Submission on the exposure draft of the National Environmental Standard \(Matters of National Environmental Significance\) 2026 - Environmental Defenders Office](#).

- whether 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.

63. In the case of accrediting a management or authorisation framework for the purposes of an approval bilateral agreement, we **recommend** an additional criterion should be included, namely:

- whether a bilateral agreement has been entered into under section 47 of the Act, and whether such agreement has been implemented effectively to protect matters protected by a provision of Part 3 of the Act.

This would align with the requirement for an assessment bilateral agreement to be in place before an approval bilateral agreement is agreed to, and establish a mechanism for checking in on whether the assessment bilateral has been implemented effectively and has been able to protect MNES, before devolution of approval powers to states and territories.

64. **See Appendix I** for recommended amendments to the Exposure Regulation.

Greenhouse gas emissions

65. Greenhouse gas emission reporting requirements should be applied to all activities creating emissions – where every tonne counts in the effort to curb dangerous climate change.

66. New section 84A of the EPBC Act specifies what greenhouse gas information must be reported for the purposes of the EPBC Act. This includes when a controlled action is referred to the Minister for decision.⁴ There are two types of information that must be reported, for both scope 1 and 2 emissions, either:

- (a) the estimate of the likely amount of emissions of the action;⁵ or
- (b) if there is an amount prescribed by regulations, and the estimate is below that amount, then a statement the estimates are below that amount.⁶

67. The Consultation Paper 3 at section 5 says that section 84A ‘will require proponents over a certain threshold to disclose a ‘reasonable estimate’ of the scope 1 and scope 2 greenhouse gas emissions from their proposal, along with any strategies and measures for managing these emissions’. Section 5.2. then says the new laws ‘require proponents to disclose a ‘reasonable estimate’ of scope 1 and scope 2 emissions to provide greater transparency around emissions reporting. If a threshold amount is not provided then the provision will capture every project’.

68. We note that the drafting of Consultation Paper 3 section 5 is misleading, by suggesting that the setting of a threshold is a requirement of section 84A. This is not accurate: there is a choice as to whether a threshold is set for when greenhouse gas emissions information must be provided under s84A. The statement in section 5.2 that ‘if a threshold is not provided then the provision will capture every project’ is accurate, however contradicts the earlier section 5.

⁴ EPBC Act, sections 68, 69 and 71.

⁵ New section 84(2)(a)(i) and section 84(A(2)(b)(i).

⁶ New section 84(2)(a)(ii) and section 84A(2)(b)(ii).

69. It is EDO's position that no threshold should be set for reporting greenhouse gas emissions, so every action must report a reasonable estimate of the likely amount of scope 1 and 2 emissions under sections 84A(2)(a)(i) and 84A(2)(b)(i). This is because every tonne of greenhouse gas emissions counts in today's carbon budget. For every activity, proposed additional greenhouse gas emissions must be assessed and sought to be avoided and mitigated.
70. We also **recommend** that the method for estimating emissions should be prescribed in the regulations, not left to non-regulatory guidance.
71. If a threshold is set, we do not support the proposal under Division 5.1, section 5.01 of the proposed Exposure Regulations that set the threshold explained above at 100,000 carbon dioxide equivalent tonnes for a financial year. This is because, as explained in section 5.2 of the Consultation Paper, it is taken from the Safeguard Mechanism. In doing so, the Exposure Regulations conflate two different schemes with different objectives – the Safeguard Mechanism and EPBC Act. The EPBC Act is a project-by-project assessment as to whether the impacts of a proposed activity to protected matter should be allowed to go ahead. The Safeguard Mechanism has no application until the project is approved, and it does not regulate whether emissions and their related impacts to the environment should be allowed to occur in general. Conflating them undermines the environment protection objective of the EPBC Act.
72. Should a threshold be implemented over which the information will be required, it is inappropriate to make the threshold 100,000 tonnes of CO₂e per year. The science has made it clear that every tonne of greenhouse gas adds to global warming and exacerbates climate change, as demonstrated in the graph below.

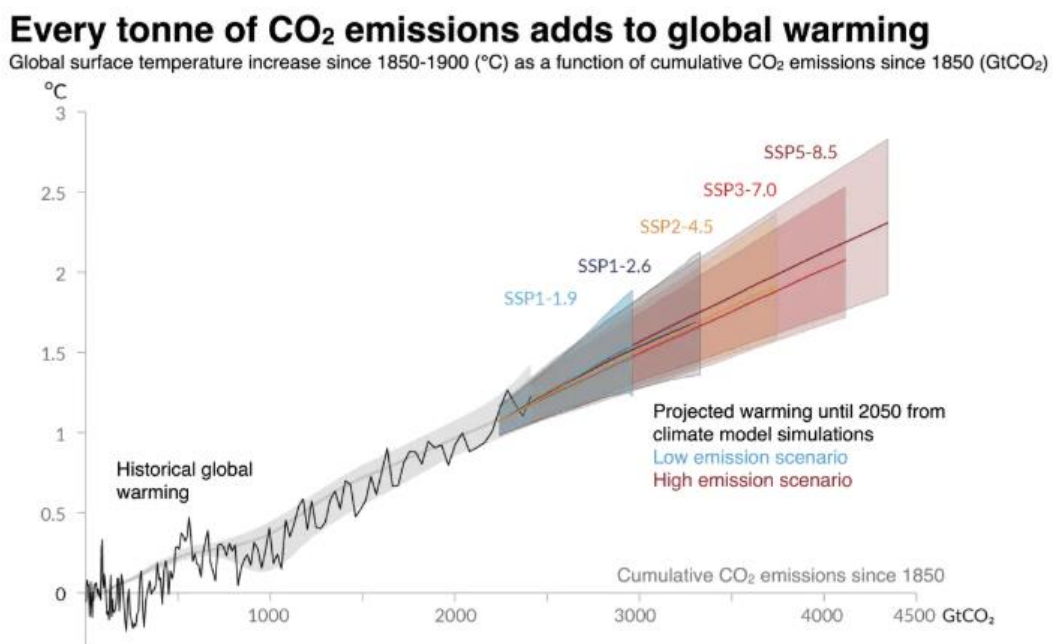


Figure 1 Graphic adapted from IPCC AR6 WG1 Summary for Policymakers by Benjamin Stoker, <https://geco-group.org/post/every-ton/> demonstrating the more CO₂ is emitted, the more the mean global temperature rises.

73. Further, we note the requirements under section 84A only require reporting of scope 1 and 2 emissions. We repeat concerns that scope 3, also known as downstream, emissions have not been required to be disclosed under the new EPBC Act reforms.⁷ These are often the most significant emissions from fossil fuel projects, and disclosure is required in state environmental laws in New South Wales and Queensland. Further, failure to require Scope 3 emissions reporting is 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. There are therefore limitations in only requiring scope 1 and 2 emissions be reported under the Exposure Regulations, and we continue to **recommend** that the EPBC Act requires Scope 3 emissions reporting.
74. Finally, we repeat that any 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 EDO's briefing note here for more information. Significant reforms are needed to the Safeguard Mechanism for it to function to sufficiently reduce emissions in Australia.
75. See **Appendix J** for recommended amendments to the Exposure Regulation.

⁷ Environmental Defenders Office, 'Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills' (18 November 2025), available at: [251118-EDO-submission-to-EPBC-reforms-package-1.pdf](#), page 44.

Appendices

Appendix A – Suggested amendments to regulations 14.01M and 14.01Q of the Exposure Regulations

14.01M Requirements for registration of auditor

(1) For the purposes of subparagraph 462G(2)(b)(ii) of the Act, the following matters are prescribed:

- (a) whether the individual has a bachelor degree, a masters degree or a doctoral degree (or equivalent) that:
 - (i) is conferred by a university or an equivalent institution of higher learning; and
 - (ii) is relevant, in the opinion of the CEO, to functions performed by registered auditors under the Act;
- (b) whether the individual has appropriate knowledge of:
 - (i) Commonwealth, State or Territory laws relating to the environment; and
 - (ii) auditing practice and procedure in relation to environmental issues;
- (c) whether the individual has experience and proficiency in conducting environmental audits under a Commonwealth, State or Territory law relating to the environment **during for at least the 5 years, including some experience in conducting environmental audits in the 5 years** immediately preceding the day the individual applied for registration as an auditor;
- (d) whether the individual has the competencies necessary to:
 - (i) properly conduct an audit under the Act; and
 - (ii) prepare reports in relation to an audit under the Act;
- (e) whether the individual has been convicted of an offence, or been ordered to pay a pecuniary penalty for a contravention of a civil penalty provision, against a Commonwealth, State or Territory law involving fraud or dishonesty;
- (f) whether the individual is the subject of a current or pending investigation or disciplinary action by a licensing body.

14.01Q Manner, form and content of applications for registration

(1) For the purposes of paragraph 462G(4)(c) of the Act, an application for registration as an auditor must:

- (a) be made in the approved form;
- (b) include the following information:
 - (i) the name of the individual making the application (the applicant);
 - (ii) the applicant's date of birth;
 - (iii) the applicant's business address (not being a post office box) or, if the applicant does not have a business address, the applicant's residential address;
 - (iv) the applicant's contact details, including phone number and email address;
 - (v) if the applicant is registered (however described) as an auditor under a Commonwealth, State or Territory law relating to the environment—details of that registration;

- (vi) details of any circumstances, including details of any real or perceived conflicts of interests, that could impact the applicant's independence or objectivity as an auditor;
- (vii) details of any licence, registration, accreditation or certification (however described) issued or granted to the applicant by a licensing body;
- (viii) if the applicant has been issued or granted a licence, registration, accreditation or certification (however described) by a licensing body—details of any current or pending investigation or disciplinary action in relation to the applicant by that body.
- (iv) details of the skills and experience of the applicant as an auditor.

Appendix B – Suggested amendments to regulation 14.01S of the Exposure Regulations

14.01S Review of registration

- ~~(1)~~ For the purposes of paragraph 462G(4)(f) of the Act:
- (1) ~~¶~~The CEO may, at any time after an individual is registered in the register of auditors kept under section 462G of the Act, review the registration of the individual (the **registered auditor**).
- (2) Reasons the CEO may review the registration of the registered auditor include, but are not limited to:
- (i) where a conflict of interest has become apparent;
 - (ii) where there are any indications or complaints that the quality or ethics of the auditor's work are in question.
- ~~(2)~~(3) If the CEO intends to review a registered auditor's registration, the CEO must give written notice of that intention to the registered auditor.
- ~~(3)~~(4) The notice must set out:
- (a) the reasons for the review; and
 - (b) the scope of the review; and
 - (c) the information and documents (if any) that the registered auditor is required to provide for the review.
- ~~(4)~~(5) The CEO may include a requirement in the notice for the registered auditor to respond to the notice within the period specified in the notice, which must be at least 21 days after the day the notice is given.
- ~~(5)~~(6) On receiving the notice, the registered auditor must provide all reasonable facilities and assistance to the CEO for an effective review

Appendix C – Suggested amendments to regulation 14.01V of the Exposure Regulations

14.01V Deregistration

CEO may deregister an auditor

- (1) For the purposes of paragraph 462G(4)(h) of the Act, the CEO may, by notice (the **deregistration notice**) in writing given to an individual registered as an auditor, deregister the individual if the CEO reasonably believes any of the following:
 - (a) that it is appropriate to do so, having regard to the following:
 - (i) the matters prescribed by subregulation 14.01M(1);
 - (ii) any other matter the CEO considers relevant to the individual's suitability to be a registered auditor;
 - (b) that the individual has failed to adequately and properly conduct one or more audits under the Act.
- (1A) The CEO must issue a show cause notice for deregistration under subregulation (2) if the CEO reasonably believes a registered auditor no longer meets the requirements of subregulation 14.01M(1).

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Appendix D – Suggested amendments to regulations 8AA.01 – 8AA.04 of the Exposure Regulations

8AA.01 Criteria for protection statements for listed threatened species and listed threatened ecological communities

For the purposes of paragraph 298A(2)(b) of the Act, the following criteria are prescribed:

- (a) that the protection statement provides effective guidance for decision makers;
- (b) that the protection statement is likely to improve the protection of the listed threatened species or listed threatened ecological community, or relevant part of that species or community;
- (c) that the protection statement is ~~based, to the extent practicable, on accurate and high quality information.~~ **consistent with the best available data and science.**

Note: For the purposes of paragraph (b), see the definition of improve the protection in the Dictionary.

8AA.02 Additional matters for making protection statements

For the purposes of paragraph 298A(3)(e) of the Act, the following matters are prescribed:

- (a) any unacceptable impacts (within the meaning of section 527F of the Act) for the species or community;
- (b) if one or more annual reports have been prepared under subsection 177DI(1) of the Act that identifies the species or community, or relevant part of it, as an impacted protected matter for which a general restoration action was not available under paragraph 177DI(2)(h) of the Act—the most recent annual report containing that information.

8AA.03 Other information to be included in protection statements

For the purposes of paragraph 298B(2)(e) of the Act, the following information is prescribed:

- information about whether an impact that an action will have, or is likely to have, on the species or community or relevant part of that species or community is a significant impact;
- **information relevant to whether a particular impact of an action on the species or community (or relevant part of the species or community) is, or is likely to impact irreplaceable habitat**
- information on best practice for surveys or measures to avoid or mitigate impacts on the species or community or relevant part of that species or community;
- **identification of habitat spatially or by reference to other attributes where impacts must be avoided;**
- information on restoration or compensation priorities, including any priority restoration actions, for the species or community or relevant part of that species or community.

8AA.04 Matters to be considered in a review of protection statement

For the purposes of paragraph 298H(4)(a) of the Act, the following matters are prescribed:

- (a) the current conservation status and any risks or threats relevant to the listed threatened species or ecological community that is the subject of the protection statement.
- (b) the extent to which the protection statement provides effective guidance for decision makers and persons proposing to take an action;
- (c) the extent to which the protection statement has improved, or is improving, the protection of the listed threatened species or listed threatened ecological community or relevant part of that species or community;
- (d) the extent to which the protection statement is supporting the conservation and recovery of the threatened species or ecological community.
- (e) the extent to which the protection statement is based on accurate and high quality information.

Note: For the purposes of paragraph (b), see the definition of improve the protection in the Dictionary.

Appendix E – Suggested amendments to regulation 19.03 of the Exposure Regulations

19.03 Review of rulings

For the purposes of subsection 514YS(2) of the Act, the following matters are prescribed:

- (a) any previous application of the ruling by persons (**decision makers**) performing a function or exercising a power under the Act or these regulations, including:
 - (i) whether any decision makers acted inconsistently with the ruling; and
 - (ii) for each case (if any) of a decision maker acting inconsistently with the ruling—how the decision maker acted inconsistently with the ruling and the reasons given by the decision maker for that inconsistency;
 - (iii) whether application of the ruling led to environmental outcomes consistent with the objects of the Act
- (b) any of the following that have been made since the ruling was made, varied or last reviewed (whichever is later) and that are relevant to the ruling:
 - (i) amendments to this instrument, a national environmental standard or any other instrument made under the Act;
 - (ii) any national environmental standard or other instrument made under the Act;

and whether the Ruling remains consistent with these.
- (c) any other rulings made under section 514YM or 514YN of the Act, which affect, interact with or are inconsistent with, the ruling that is the subject of the review;
- (d) any other matters the persons undertaking the review consider relevant.

Appendix F – Suggested amendments to regulation 7.09 of the Exposure Regulations

7.09 Register ~~Identification~~ of critical habitat

(1) For the purposes of subsection 207A(1) of the Act, the Minister must, when making or adopting a recovery plan for a species or an ecological community, consider whether to list critical habitat, that is identified in the recovery plan for that species or ecological community, on the register.

(2) Before listing habitat on the register as registered critical habitat, the Minister must:

- (a) consider any advice from the Scientific Committee about whether the habitat is critical habitat for a listed threatened species or listed threatened ecological community; and
- (b) if the critical habitat is not in a Commonwealth area, be satisfied that reasonable steps have been taken to consult with the owner of the property where that critical habitat is located.

Appendix G – Suggested amendments to regulation 4.05 of the Exposure Regulation

4.05 Requirements to obtain Minister's agreement to take minor or preparatory action

Requirements to obtain Minister's agreement

- (1) For the purposes of paragraph 74AA(2A)(b) of the Act, the requirements for obtaining the Minister's agreement are:
 - (a) the proposed action for which the Minister's agreement is sought is a component of a larger action that the Minister has:
 - ~~(i) decided, under subsection 75(1) of the Act, is a controlled action; or~~
 - ~~(ii) not yet made a decision, under subsection 75(1) of the Act, is a controlled action;~~
 - (b) the person makes an application for the Minister's agreement that is:
 - (i) in writing; and
 - (ii) made in the approved form (if any);
 - (c) the application is accompanied by the information or documents specified in subregulation (2).

Information or documents to accompany an application

- (2) The application must be accompanied by the following:
 - (a) a description of the proposed action, including any activities that would be carried out in taking that action;
 - (b) a description of the larger action, of which the proposed action is a component, including:
 - (i) the identification number allocated by the Department to the larger action; and
 - (ii) the title of the larger action that is the same title as the referral for that action; and
 - (iii) the name of the designated proponent of the larger action (if the designated proponent is not the person making the application);
 - (c) a description of the location where the proposed action is to be taken, within the proposed project area of the larger action, including any relevant spatial data;
 - (d) any survey data relevant to the proposed action;
 - (e) the timeframe within which the proposed action is intended to substantially commence;
 - (f) information about why the person considers that the proposed action needs to be taken prior to the assessment and approval of the larger action;
 - (g) information about why the person considers that the proposed action is a minor or preparatory component of the larger action;
 - ~~(h) either:~~

- ~~(i) information, including documentary evidence (if available), on the nature and extent of the impacts the proposed action will have, or is likely to have, on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action; or~~
 - ~~(ii) evidence that the proposed action will not have, or is not likely to have, any impacts on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action;~~
- (i) if any consultation was undertaken in relation to the proposed action, or the larger action, after the decision under section 75 of the Act has been made—details of that consultation.

When application is taken to be withdrawn

- (3) The application for the Minister's agreement is taken to be withdrawn if, after the application is made, the Minister decides, under subsection 75(1) of the Act, that the larger action, of which the proposed action is a component, is not a controlled action.

Timeframe for Minister's decision

- (4) The Minister must decide whether or not to agree that the person can take the proposed action within 20 business days of the following:
- (a) if the application is made after the Minister has decided, under subsection 75(1) of the Act, that the larger action, of which the proposed action is a component, is a controlled action—the day the application for the Minister's agreement is made;
 - (b) if the application is made before the Minister has so decided—the day the Minister makes that decision.

Minister may agree to action if satisfied of certain matters

- (5) The Minister may agree that the person can take the proposed action if and only if the Minister is satisfied of the following matters:
- (a) that the proposed action is a component of a larger action that the Minister has decided is a controlled action under subsection 75(1) of the Act;
 - (b) that ~~the proposed action will not have, or is not likely to have,~~ any impacts ~~the proposed action will have, or is likely to have,~~ on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action ~~are minor and repairable;~~
 - (c) that it is appropriate for the person to take the proposed action before the larger action has been assessed and approved;
 - (d) if the Minister has previously agreed that the person can take one or more actions that are a minor or preparatory component of the same larger action—that the proposed action, when taken together with those actions previously agreed to, is still a minor or preparatory component of the larger action.

Notice of Minister's decision

- (6) The Minister must, as soon as practicable after making the decision, give written notice of the decision to the applicant and publish a copy of the notice on the Department's website.
- (7) If the Minister agrees to the person taking the proposed action, the notice given under subregulation (6) must include the following:
 - (a) a description of the action (the **agreed action**) that the Minister has agreed that the person can take;
 - (b) a description of the larger action of which the agreed action is a minor or preparatory component;
 - (c) a description of the location where the agreed action is to take place within the project area of the larger action;
 - (d) reasons for the decision, that address the matters in subsection (5);
 - (e) the day the Minister's decision comes into effect, which must not be a day earlier than the day after the decision is made.
- ~~(7)~~ (8) If the Minister does not agree to the person taking the proposed action, the notice given under subregulation (6) must include the reasons for the decision.

Appendix H – Suggested amendments to regulation 4A.02 of the Exposure Regulation

4A.02 Information for application to reconsider decision that action is not controlled action because taken in particular manner

For the purposes of paragraph 79A(2)(c) of the Act, the following information is prescribed:

- (a) information about why the person considers the identified manner is no longer appropriate for the action, **including why an action cannot be undertaken in accordance with the identified manner;**
- (b) information, including documentary evidence (if available), on the nature and extent of the impacts the action will have, or is likely to have, on a matter protected by a provision of Part 3 of the Act if the action is taken in the different manner proposed under paragraph 79A(2)(b) of the Act;
- (c) information on any consultation the person has undertaken on that different manner.

Appendix I – Suggested amendments to regulations 2A.01A and 2B.02 of the Exposure Regulation

2A.01A Criteria for accreditation of management or authorisation framework

For the purposes of paragraph 33(3)(d) of the Act, the prescribed criterion is that the framework requires each decision maker, in deciding whether to approve an action or class of actions in accordance with the framework, to have regard to:

- (a) any bioregional plan or bioregional guidance plan the decision maker considers relevant.
- (b) whether adequate compliance and enforcement is undertaken by the applicable regulator to ensure that laws are complied with in the jurisdiction
- (c) whether the framework provides access to justice, accountability and transparency in assessment and decision making to ensure quality decisions that are in the public interest
- (d) whether the framework ensures consideration of the public interest and human rights in assessment and decision making
- (e) whether the framework is sufficiently resourced to ensure that it operates effectively in achieving environmental protection and community rights
- (f) whether 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

2B.02 Criteria for accreditation of management or authorisation framework for a bilateral agreement

For the purposes of paragraph 46(3)(d) of the Act, the prescribed criterion is that the framework requires each decision maker, in deciding whether to approve an action or class of actions in accordance with the framework, to have regard to:

- (a) any bioregional plan or bioregional guidance plan the decision maker considers relevant.
- (b) whether adequate compliance and enforcement is undertaken by the applicable regulator to ensure that laws are complied with in the jurisdiction
- (c) whether the framework provides access to justice, accountability and transparency in assessment and decision making to ensure quality decisions that are in the public interest
- (d) whether the framework ensures consideration of the public interest and human rights in assessment and decision making
- (e) whether the framework is sufficiently resourced to ensure that it operates effectively in achieving environmental protection and community rights

- (f) whether 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
- (g) whether a bilateral agreement has been entered into under section 47 of the Act, and whether such agreement has been implemented effectively to protect matters protected by a provision of Part 3 of the Act.

Appendix J – Suggested amendments regulation 5.01 of the Exposure Regulation

5.01 Greenhouse gas emissions information

~~————(1)———— For the purposes of subparagraph 84A(2)(a)(ii) of the Act, the prescribed amount is 100,000 carbon dioxide equivalent tonnes for a financial year.~~

~~————(2)———— For the purposes of subparagraph 84A(2)(b)(ii) of the Act, the prescribed amount is 100,000 carbon dioxide equivalent tonnes for a financial year.~~