

Getting the EPBC Act right

Strengths, weaknesses, and recommended improvements to the Australian Government's proposed environmental law reforms

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The plains wanderer is a Critically Endangered Matter of National Environmental Significance under the EPBC Act 1999. Image: Patrick K59 CC-BY-2.0/Wikimedia Commons



Explaining the Government's Proposed Reforms

This policy brief summarises key strengths, weaknesses, and recommended improvements to the Australian Government's proposed environmental law reforms. While the inclusion of National Environmental Standards (NES), a test for unacceptable impacts, and the commitment to a net gain for nature are welcome, significant gaps remain. Excessive ministerial discretion, unclear definitions, and weak obligations risk undermining the intent of achieving genuinely strong and enforceable protections for nature.



Olive ridley sea turtles are an Endangered Matter of National Environmental Significance under the EPBC Act 1999. Green house gas emissions are one of the major threats to their survival. Image: Bethany McCarter CC-BY-4.0/Wikimedia Commons

1. Unacceptable impacts: a key safeguard that must be strengthened

The legislation rightly prevents the Minister from approving projects that would cause an 'unacceptable impact' on a matter of national environmental significance. This is a critical reform the Biodiversity Council supports.

However, for threatened species and ecosystems, the definition of 'unacceptable impacts' relies on vague concepts such as 'seriously impairing viability' or 'serious damage to critical habitat'. These terms are subjective and undefined. Measures of seriousness (nature, intensity, duration, magnitude, extent) are listed, but no thresholds are set—leaving decisions to ministerial discretion. In practice, this risks the test being applied rarely and inconsistently.

How to fix:

Redefine 'unacceptable impacts' for threatened species and ecological communities to include impacts that:

- a. Damage or destroy irreplaceable habitat; or
- b. Substantially reduce the abundance of threatened or migratory species; or
- c. Substantially reduce the extent and/or condition of a threatened ecological community.

2. National Environmental Standards must be mandatory and enforceable

Enabling the creation of National Environmental Standards (NES) is a welcome reform, but the legislation does not specify which standards must be developed or even require any to be made at all. And if they are made, they are not mandated for use in all decisions, but apply only if the government makes a regulation applying them to particular decisions. Only draft policy documents for offsets and matters of national environmental significance will accompany the bills, with no guarantee of timely or binding standards.

How to fix:

- Specify which standards must be developed (e.g. for Matters of National Environmental Significance (MNES), offsets, regional planning, Indigenous engagement) and set clear statutory timeframes.
- Require the National Environmental Standards (NES) to apply to all relevant decisions under the Act.
- Make compliance with the NES directly legally binding for decision-makers.

3. Ministerial discretion and national interest exemptions create major loopholes

The reforms retain broad ministerial discretion across key provisions, undermining consistency and accountability. Many core decisions—including whether actions are consistent with the NES or constitute unacceptable impacts—are subject only to the Minister's satisfaction.

The bills also create a new 'national interest proposal' provision, allowing the Minister to exempt projects from standards and unacceptable impact tests on broad, undefined grounds. This is a major loophole that risks politically motivated exemptions.

How to fix:

- Replace 'subject to the Minister's satisfaction' with objective statutory tests tied to the NES and scientific criteria.
- Require all decisions affecting MNES to be demonstrably consistent with the NES.
- Remove the 'national interest proposal' exemption provisions and put clearer thresholds for broader national interest exemptions

4. New 'pay-to-destroy' restoration contributions risk worsening biodiversity loss

The proposed replacement of the Environmental Offsets Policy with a legislative 'restoration contributions' framework allows proponents to pay a fee instead of securing direct offsets. These payments are pooled by a 'Restoration Contributions Holder' to fund offset purchases later.

While offsets should be a last resort, this system risks repeating past failures: weakening deterrence for damaging actions, delaying or failing to deliver genuine ecological gains, underestimating costs, and creating long time-lags between damage and restoration.

How to fix:

- Require the Threatened Species Scientific Committee to define matters that cannot be offset.
- Restrict use of the restoration contributions charge to cases where like-for-like offsets are demonstrably available.
- Mandate that the Holder apply the Offset Standard in all decisions.
- Require public reporting of all 'alternative restoration actions' and their ecological outcomes.
- Define in legislation the full cost basis for calculating contributions to ensure adequate funding.
- Remove the 'Top Up' provisions that allow taxpayer subsidies and maintain the current constraint on putting offsets into the Nature Repair Market.

5. Increased devolution to states will remove the national "green safety net"

Under the reforms, the Minister will have power to delegate environmental decision approvals powers to the relevant state or territory government. This would effectively remove a crucial safeguard that is designed to ensure Australia complies with its international obligations and areas of agreed national responsibility.

Efficient concurrent decision making, facilitated through streamlined assessments and well-designed accreditation arrangements, can be made with robust national environmental standards

and clear definitions of unacceptable impacts without the need to abdicate Commonwealth responsibility

How to fix:

- Remove this provision from the reform package. The Commonwealth should retain approval functions as a critical safety net whilst focusing on streamlined assessment pathways.

6. Unchecked 'rulings' power can be used to substitute for due legal interpretation and processes

The proposed power for the Minister (and EPA CEO) to issue rulings on how the Act is applied grants sweeping discretion with minimal safeguards. These rulings could for example determine whether management or authorisation frameworks align with the Standards—effectively enabling the Minister to play the role usually filled by a legal process – effectively blurring the role between the executive and judicial arms of government.

How to fix:

- Limit rulings to procedural clarifications only, not substantive accreditation decisions or individual projects.
- Explicitly prohibit rulings from overriding or substituting for Standards or formal accreditation processes and state that rulings in no way determine what is legally correct.



The Tumut grevillea is a Critically Endangered Matter of National Environmental Significance under the EPBC Act 1999. It only occurs in a small area in New South Wales and seven of its nine natural populations occur on private land. Image: Eyeweek CC BY-NC-ND 2.0/Flickr

7. Net gain test: undefined and easily weakened

The proposed 'net gain' requirement is an essential safeguard intended to ensure development results in overall improvements for nature. However, as drafted, the test is undefined, highly discretionary, and open to manipulation. Compliance with the test is again subject to the Minister's satisfaction, rather than measurable ecological criteria.

'Net gain' can also be achieved through offsets or financial restoration contributions, even when direct ecological improvements are uncertain or delayed. Without clear definitions and limits, the test risks becoming a tick-box exercise rather than a genuine guardrail against biodiversity loss.

How to fix:

- Define 'net gain' in legislation, based on demonstrable and measurable ecological outcomes.
- Require independent scientific advice to verify that actions taken to address actions taken to address residual impacts achieve a true net gain.
- Prohibit the net gain test being met through financial contributions.
- Mandate transparent, time-bound reporting of restoration progress to ensure real-world ecological benefits.

8. Industry carve-outs perpetuate unequal protection

Despite being presented as a comprehensive national reform, the proposed laws retain major exemptions for certain industries, particularly under Regional Forest Agreements (RFAs). These carve-outs mean that activities with significant environmental impacts can continue outside the main regulatory framework and without meeting the new standards for unacceptable impacts or net gain.

The continued exclusion of RFA-covered forestry operations undermines national consistency and leaves some of the most biodiverse and threatened habitats without effective federal oversight. This contradicts the government's commitment to 'no weakening of environmental protections'.

How to fix:

- Remove the RFA exemption to ensure all industries are bound by the same National Environmental Standards.
- Require that all forestry and resource projects affecting Matters of National Environmental Significance comply with unacceptable impact and net gain tests.
- Clarify that land clearing of native vegetation cannot constitute a continuous use for the purposes of the Act.



Greater gliders are Matters of National Environmental Significance under the EPBC Act 1999, however they are not protected by the Act in important parts of their range due to regional industry carve-outs. Image: Sam Horton CC-BY-4.0/ Wikimedia Commons

9. Indigenous representation, engagement and knowledge are missing from the reforms

The draft legislation retains the role of the Indigenous Advisory Committee in providing advice to decision-makers. It fails to meaningfully embed Indigenous participation, leadership, and knowledge in environmental decision-making. Despite repeated commitments to co-design and to upholding the principles of the Nature Positive Plan, the bills contain no clear obligations for partnership with First Nations or formal recognition of cultural values as integral to environmental protection.

There are no requirements for First Nations representation in key governance bodies such as



The draft legislation fails to meaningfully embed Indigenous participation, leadership, and knowledge in environmental decision-making. Image: Nicolas Rakotopare.

the EPA or advisory committees, nor any mandate that Indigenous knowledge be considered alongside scientific evidence in environmental assessments or standards development. This omission risks perpetuating a colonial approach to land and water management and undermines culturally informed, place-based conservation outcomes.

How to fix:

- Embed requirements for Indigenous engagement and consent throughout decision-making, including in the development of NES, bioregional plans, and accreditation processes.
- Mandate First Nations representation on governance bodies.
- Ensure that Indigenous knowledge is given equal standing with scientific evidence in environmental assessments and standard setting.
- Require that all environmental decision-making processes demonstrate active partnership with Traditional Owners, consistent with the principles of free, prior, and informed consent.
- Formally recognise Culturally Significant Entities as a Matter of National Environmental Significance

10. Lack of data transparency and limited reporting undermine Australia's biodiversity commitments

The publication of State of the Environment reports every 2 years and the establishment of environmental economic accounts are positive



The government should report on Australia's commitments under the Global Biodiversity Framework and progress in implementing Australia's Biodiversity Strategy and Action Plan. Image: DCCEEW.

commitments. However, the government should not just report on national environmental goals set by the Minister, but also Australia's commitments under the *Global Biodiversity Framework* and progress in implementing Australia's Biodiversity Strategy and Action Plan.

Environment Information Australia (EIA) appears to have prioritised information confidentiality over fulfilling the Samuel Review's goal of establishing a clear and authoritative source of environmental data and information. It is essential that the EIA is able to disclose information to research institutions, in addition to other governments and law enforcement. Without access to comprehensive environmental data, opportunities for the development of effective, evidence-based environmental solutions are significantly limited.

How to fix:

- Require the government to report (at the same intervals as proposed for SoE reporting), on Australia's commitments under the Global Biodiversity Framework and progress in implementing Australia's Biodiversity Strategy and Action Plan.
- Mandate the need for identifying clear and adequate responses when environmental reporting reveals increasing extinction risks to MNES, and the timely implementation of such responses.
- Expand use and disclosure of environmental information so that all information is public, unless there is a compelling policy reason to not disclose, such as certain Indigenous cultural knowledge.

11. Reduced time to request reconsideration of Minister's 'no controlled action' determination

Many of the activities that are not a controlled action are approved on the basis that they are done in a 'particular manner' to avoid harm to Matters of National Environmental Significance. In 2025, the Australian Government amended the EPBC Act to remove the Environment Minister's power to reconsider any previous particular manner determination older than five years. This means that even if new evidence shows that an activity is causing significant harm, it cannot be reassessed under the Act. The current proposed reforms further limit the period in which public interest groups can request reconsideration of the Minister's decision that an activity is not a controlled action (and thus does not require federal oversight or approval) to only 28 days. This leaves no scope for adaptive decision-making where serious environmental impacts manifest some time later.

How to fix:

Either:

- Remove the 28 day limit; or
- Ensure that "particular manner" notices stipulate that the Minister may alter or add to the particular manner requirements where evidence of environmental harm shows that the current manner is failing to prevent a significant impact on a matter of national environmental significance.



The Engangered Maugean skate is one of the Matters of National Environmental Significance which has been impacted by restricting the power of the Environment Minister to review past determinations that an activity could proceed without Commonwealth approval if undertaken in a particular manner. Image: Fisheries Research and Development Corporation Project 2013_008 CC-BY

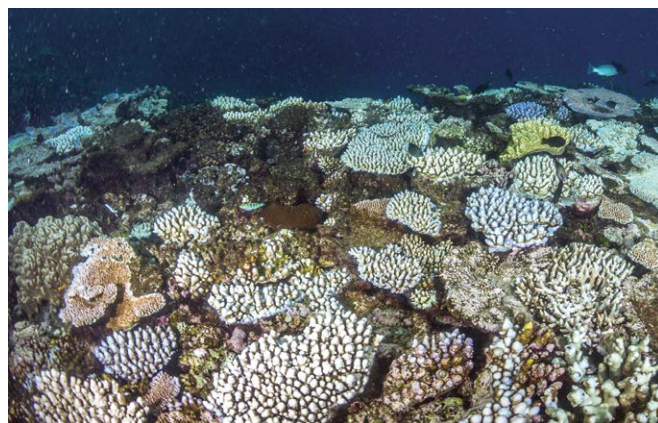
12. Impacts of greenhouse gas (GHG) emissions on climate change are not accounted for

Climate change is among the greatest threats to nature and culturally significant sites in Australia. However, the current Act does not require that the climate impacts of new or expanded projects (including coal and gas) are considered.

Climate change considerations must be explicitly integrated into environmental decision making at every level in the new laws, including measures to account for and mitigate the likely GHG emissions from proposed actions.

How to fix:

- Require decision-makers to explicitly consider the impacts of a proposed activity on global GHG emissions, that is to say new laws must account for the scope 1, 2 and 3 emissions that arise from a project.
- Require that all plans, policies and decisions under the EPBC Act take full account of the likely impacts of climate change and include appropriate adaptation and resilience measures.



John Brewer Reef showing significant destruction caused by a cyclone and marine heatwave. The most important action Australia can take to reduce the risk of future marine catastrophes is to dramatically accelerate the decarbonisation of our economy. Image: Matt Curnock

Why it matters

Biodiversity underpins all aspects of our life, supplying clean air and water and breaking down wastes. About half of Australia's GDP relies on biodiversity, animals pollinate 90% of crops, and natural ecosystems remain the only viable large-scale carbon sink. Access to biodiverse nature improves our physical and mental health and reduces government health spending.

Biodiversity is in precipitous decline in Australia leading to many ecosystems showing signs of collapse. Our current laws and policy approaches are not succeeding in stemming biodiversity destruction and ecosystem declines. An independent review in 2020 found that Australia's national environmental law, the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999*, is ineffective in protecting biodiversity.

More than 2,000 threatened species are afforded protection under the Environmental Protection and Biodiversity Conservation Act 1999 as Matters of National Environmental Significance, and yet populations of threatened plants, mammals and birds are less than half their 1985 sizes on average.

From 2000–2017, more than 7.7 million hectares of threatened species habitat have been destroyed, affecting 1,390 (85% of all) terrestrial threatened species. The majority of this clearing (93%) was unregulated under national environmental law. Since the EPBC Act was established, threatened species populations have been declining by approximately 4% a year.

The Biodiversity Council brings together leading experts including Indigenous Knowledge holders to promote evidence-based solutions to Australia's biodiversity crisis. It was founded by 11 universities with support from The Ian Potter Foundation, The Ross Trust, Trawalla Foundation, The Rendere Trust, Isaacson Davis Foundation, Coniston Charitable Trust and Angela Whitbread.

