

Protecting Country and conserving our Culture

Policy analysis factsheet

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Desert sheoak on Anangu Country. Image: Jaana Dielenberg

Australia is entering an ambitious period of environmental policy reform with major implications for biodiversity and for Aboriginal and Torres Strait Islander peoples. This factsheet explores the implications of these reforms for First Peoples and the Indigenous Estate and provides recommendations for improvement.

Background

Aboriginal and Torres Strait Islander peoples are custodians of a knowledge system which connects the spiritual and physical elements of Country¹ and outlines a blueprint for how and why Country should be managed. This custodianship supported Australia's high level of biodiversity for thousands of generations and at the time of colonisation.

Due to the dispossession and disconnection of First People's practices from their Country over 235 years - a direct result of colonial processes - we are facing continent-wide ecosystem decline with many of these systems facing collapse.

In response to these challenges, governments are increasingly seeking to incorporate Indigenous knowledge to improve land management practices,

¹ Country is the term used by Indigenous Australians to describe the lands, water, and seas to which they are connected. The term contains complex ideas about law, place, custom, language, spiritual belief, cultural practice, material sustenance, family, and identity.

and relying on the Indigenous Estate for the protection and recovery of species and the preservation of nature.

The Indigenous Estate refers to land and sea Country held, or reasonably likely to be held, by or for the benefit of Aboriginal and/or Torres Strait Islander people. It also includes intangible values such as cultural rights, practices, self-determination and expression, as well as Indigenous knowledge and traditional management.

It is important to note while Aboriginal and Torres Strait Island people do not have legally recognised right to all of Australia's land, water and sea Country, it does not remove their cultural responsibility to care for Country, under complex Indigenous Knowledge and kinship systems.

The legally recognised Indigenous Estate comprises 57% of the Australian landmass, and includes some of the highest conservation priority lands, valuable threatened species ranges and 46% of the National Reserve System.

The supported management of the Indigenous Estate is fundamental to Australia curbing biodiversity decline and improving national biodiversity outcomes, as well as meeting our global conservation commitments. So, empowering Indigenous-led actions under collaborative management is key to biodiversity and healthy Country outcomes. Unfortunately, under current legislation and policy settings there is a lack of place-based Aboriginal and Torres Strait Islander people's involvement in decision-making.



Rangers inspecting Country after a cool season burn to protect great desert skink habitat. Image: Jaana Dielenberg

Reform promise

Australia is entering one of its most ambitious environmental reform periods, with a promising agenda of change for biodiversity outcomes and for Aboriginal and Torres Strait Islander peoples. The Indigenous Estate and its expansion will be heavily impacted by these reforms and should be deeply considered in this process.

Here we explore three of the major drivers of this change: international commitments and the Australian Government's Nature Positive Plan and Nature Repair Market.

International Commitments

Australia is a signatory to several major international agreements which include the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**, the **United Nations Convention on Biological Diversity (CBD)** and the **Sustainable Development Goals**.

As a party to the CBD Australia is committed to the **Kunming–Montreal Global Biodiversity Framework (GBF)**, which replaced the **Aichi Targets** in December 2022. Australia has joined 100 other countries in committing to protect and conserve 30% of our land and 30% of our oceans by 2030 (**30 by 30**).

Our international obligations have already seen our nation commit to self-determination for first peoples. The obligations will also create a shift in the way Australia sets and measures targets under the Global Biodiversity Framework, with the promotion of biocultural indicators. Biocultural indicators measure place-based cultural values and recognize the relationship between ecological state and Indigenous well-being.

Australia's Strategy for Nature 2019–2030

coordinates the national delivery of our international agreements and targets across all levels of government. Disappointingly, the Indigenous Estate is only directly referenced in five of the 45 measures in the strategy. This is despite the Indigenous Estate being integral to the progress of the majority of previously committed national and global targets.

Thus, there is an opportunity for national strategies and policies to become a vehicle for change that supports the use of biocultural indicators with a more holistic integration of measures relevant to the Indigenous Estate.

This period of reform also provides a pivotal opportunity for Australia to operationalise UNDRIP in the objectives of the Australian Government's **Environmental Protection and Biodiversity Conservation Act**, enacting Aboriginal and Torres Strait Islanders rights to speak for Country.

Importantly, for the Australian Government to achieve its goal of protecting 30% of our land and 30% of our oceans by 2030, increasing Indigenous Protected Areas and Indigenous land buyback grants will be key.

It is likely the Indigenous Estate will increase with Aboriginal and Torres Strait Islander peoples predicted to ultimately have legally recognised rights across 72% of Australia.

There is a significant need to ensure First People representative bodies are supported financially and have the capacity to respond to the demands and obligations placed on them. Although Indigenous Protected Areas will make up a large proportion of the area counted by the Australian Government



Land and Sea Country at West Island NT that is managed by the li-Anthawirriyarra Sea Rangers. Image: Nicolas Rakotopare

toward the 30 by 30 targets, these areas currently receive less funding per square kilometre than other protected areas such as national parks. Current modelling demonstrates Indigenous Protected Areas are significantly underfunded and this is exacerbated by the additional costs created by remoteness.

Nature Positive Plan

An independent review of the Environment Protection and Biodiversity Conservation (EPBC) Act led by Graeme Samuel made 38 recommendations. The **Nature Positive Plan** is the Australian Government's response to the review and sets out the government's commitment to reform Australia's environmental laws.

The plan sets an ambitious benchmark of co-design with Aboriginal and Torres Strait Islander peoples but lacks the mandates to ensure safeguards and improve Indigenous decision-making in the implementation of the Act.

While there are improvements to the current arrangements under the Act, the recommendations impinge on Cultural responsibilities and fall short of Indigenous aspirations for reform. Importantly, it is recognised that the recommendations alone cannot ensure best practice in Indigenous-led decision-making. To achieve this, the Act would require broader reform and detailed legislative amendment.

This political nuancing will have a major impact on the consultation fatigue of Aboriginal and Torres Strait Islander peoples in the process and perhaps more importantly the design of the National Environmental Standards (NES), Environment Protection Australia (EPA), Other Effective Area-based Conservation Measures (OECMs) and regional planning mechanisms.

There seems to be little consideration of the Indigenous-led submissions which championed the legal recognition of Culturally Significant Species, to include Indigenous Protected Areas as Matters of National Environmental Significance (MNES) and to appoint an Indigenous Commissioner to oversee Aboriginal and Torres Strait Islander people's interaction with the Act.

Nature Repair Market

The current draft of the **Nature Repair Market** offers an innovative opportunity of wealth generation for Aboriginal and Torres Strait Islander groups caring for Country. Aboriginal and Torres Strait Islander organisations called for best practice consent processes - Free, Prior and Informed Consent - and control over cultural knowledge and practices. Encouragingly this call has been heard and is reflected in the current draft.

The draft also recognises Aboriginal and Torres Strait Islander people in its objectives. However, the draft Bill does not identify First Peoples as rights holders on their Country, nor has it ensured representation at all decision points such as the development of assessment methods.

The market also offers an opportunity for offsets under the EPBC Act to be Indigenous-led and designed. The ongoing recognition of offsets as a tangible approach to impact mitigation, albeit the last resort option, presents a significant opportunity to enhance and leverage existing funding instruments that support Indigenous ranger programs such as Caring-for-Country / Working-on-Country initiatives.

Moving beyond engagement to empowerment

There is a clear opportunity to protect Country using traditional management through legislation and innovative policy, by recognizing the role of Aboriginal and Torres Strait Islander peoples and their Estate as a fundamental principle of biodiversity conservation in Australia. Further, the resetting of both national and international biodiversity strategies provides a key opportunity for Australia to re-think how we measure and invest in biodiversity outcomes.

To do this we need to see the values of the Indigenous Estate reflected in policy design and funding allocations. This could be achieved with the use of meaningful targets and mandates. Without targets that reflect the scale and value of the Estate, supported by mandates to include the Indigenous Estate (tangible and intangible) into biodiversity planning, we will continue to see Aboriginal and Torres Strait Islander peoples' participation largely limited to goodwill partnerships.

It's time for governments and conservation groups to recognise the enduring value of the Indigenous Estate and the knowledge and custodianship of Indigenous peoples in curbing Australia's environmental decline. As the size and scale of the Indigenous Estate continues to grow so too does its importance to biodiversity outcomes.

Key recommendations

- Adopt biocultural indicators into national strategy and policy targets.
- Operationalise UNDRIP in the objectives of the EPBC Act, enacting Aboriginal and Torres Islanders rights to speak for Country.
- Ensure that First People representative bodies are adequately resourced (funding, capacity and infrastructure) to manage land and sea areas that are counted toward national 30 by 30 targets.
- Appoint an Indigenous Commissioner to oversee Aboriginal and Torres Strait Islander people's interaction with the EPBC Act.
- Reform the EPBC Act to recognise and support:
 - Best practice Indigenous-led decision-making
 - Cultural responsibilities
 - Culturally identified species, and
 - Indigenous Protected Areas as Matters of National Environmental Significance (MNES)
- Ensure First Peoples are rights holders on their Country and represented at all decision points.
- Include the Indigenous Estate (tangible and intangible) in biodiversity planning.

Bunjalung knowledge holder Oliver Costello at an environmental and cultural burn on Bundjalung Country. Image: Teagan Goolmeer



READ MORE

Goolmeer, T. et al. (2022) *Recognizing culturally significant species and Indigenous-led management is key to meeting international biodiversity obligations*. *Conservation Letters*, <https://doi.org/10.1111/conl.12899>

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**Biodiversity
Council**

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 including its host the University of Melbourne, with support from The Ian Potter Foundation, The Ross Trust, Trawalla Foundation, The Rendere Trust, Isaacson Davis Foundation, Coniston Charitable Trust and Angela Whitbread.