Appendix: Recent Wildlife Queensland Submissions attached

- June 2026 Fresh start for Environmental Offsets Framework
- June 2026 State Development and Public Words Organisation (Critical Minerals) and Other Legislation Amendment Bill 2025
- June 2026 National Environmental Standard for Offsets
- May 2026 National Environmental Standard for MNES
- Dec 2025 Protect and Conserve Nature Repair Market
- Dec 2025 Nature Reform Bill
- Dec 2025 Inquiry into Environmental Protection (Efficiency and Streamlining) and Other Legislation Amendment Bill 2025

Wildlife Preservation Society of Qld

www.wildlife.org.au

29th June, 2026

The Honourable Andrew Powell MP
Minister for the Environment and Tourism and Minister for Science and Innovation
GPO Box 2454
BRISBANE QLD 4001
Email: **environment@ministerial.qld.gov.au**
Phone: **(07) 3719 7300**

CC: Offsets Review Team
Department of Environment, Tourism Science and Innovation
Email: offsetsreview@detsi.qld.gov.au

Dear Minister Powell

Re: A Fresh Start for Queensland's Environmental Offsets Framework Discussion paper

Wildlife Queensland is one of the state's most respected conservation organisations. For over 62 years we have worked to protect Queensland's native wildlife and the habitats that sustain them. We have 13 branches across Queensland, over 20,000 supporters and members and engage over 520,000 Queenslanders annually through research, monitoring, community conservation programs, policy engagement and digital outreach. Queenslanders deeply value our unique wildlife and natural areas and Wildlife Queensland exists to safeguard these environmental assets for current and future generations.

We welcome the opportunity to comment on the discussion paper *A Fresh Start for Queensland's Environmental Offsets Framework*. We support the intent to reform the framework, particularly in its design and application. However, if this review is to deliver a genuine "fresh start," it must consider broader reforms beyond the focus areas identified in the paper.

Our key issues are outlined below.

The first focus area— "unlocking the Offsets Account to deliver outcomes"—addresses a significant issue. The accumulation of uncommitted funds requires urgent resolution. While over 90% of offset conditions are met through financial payments, totalling more than $129.2 million, only $14.2 million has been committed to offset projects. Although financial payments may discharge a proponent's legal obligation, they are not resulting in effective mitigation of impacts on affected matters. This over-reliance on financial offsets is, in fact, an indication of the failure of the current Offsets Framework.

Two core issues must be addressed:
(a) how to use accumulated funds to effectively offset impacts on the matters for which they were collected; and
(b) how to ensure the offsets system functions as intended, including proper application of the mitigation hierarchy (avoid, minimise, restore, offset), with a clear emphasis on avoidance and minimisation (Bull et al. 2020)[i].

The discussion paper focuses primarily on (a), but addressing (b) is critical to meaningful reform. Most of our comments relate to this second, and more important, issue.

Financial payments in lieu of direct offsets should only be permitted where there is clear evidence that offsetting impacts is feasible.

Clear principles are needed to govern how offset funds are applied and what outcomes they must achieve. Without such principles, there is a substantial risk that residual impacts will not be effectively offset. There is also a risk that funds will be used for general environmental activities that should be funded by government, rather than addressing the specific impacts for which they were collected.

The proposal to increase flexibility in the use of the Offsets Account is not clearly defined and represents a critical gap. Flexibility should not enable funds to be redirected to general restoration or management activities that do not address the impacted matter. The priority must be to use existing funds to directly offset those impacts. If, in future, financial contributions cannot realistically deliver outcomes consistent with offset principles, the impacting action should not be approved.

We recognise the value of allowing funds from multiple projects impacting the same matter to be pooled to achieve better outcomes. This could be strengthened by embedding the offsets framework within a more effective system of bioregional planning.

Decisions are also needed on how to use accumulated funds. Given that existing funds are unlikely to meet liabilities on a project-by-project basis, a more strategic approach that maximises outcomes for impacted matters should be the priority for these legacy funds. Funds should be directed to durable conservation outcomes for affected matters, including habitat acquisition, private land conservation agreements, threatened species recovery, regional biodiversity corridors, riparian corridors and long-term management. However, this should not set a precedent for the government accepting via financial offsets, liabilities that cannot be ecologically or practically achieved.

Regarding the calculation of financial offsets, we agree that the current approach requires updating. Contributions must reflect the true cost of achieving outcomes that genuinely offset impacts. Payments should reflect the full ecological cost of offsetting the loss, including scarcity, time lag, uncertainty, restoration failure risk, long-term management, monitoring and compliance. Clear no-go areas should also be established for critical habitat, irreplaceable ecosystems, high-value corridors, old-growth habitat, climate refugia and ecosystems close to collapse. A more realistic calculation so that paying out is not the cheapest or easiest option, is likely to reduce the current reliance on financial offsets.

Access to financial offsets should be contingent on clear evidence that the mitigation hierarchy has been properly applied, with each step demonstrably addressed. Where residual impacts remain,

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acceptance of financial settlement should require evidence that a like-for-like offset is feasible, either at the project scale or through coordinated, landscape-scale actions. We welcome the commitment to further consultation on the financial settlement offset calculator.

Queensland needs a public offsets register that tracks ecological outcomes, not just dollars received and spent. It should show what was lost, what was promised, where the offset is located, who is responsible, whether milestones are being met and what happens if the offset fails.

Conclusion

Wildlife Queensland supports reform of the Environmental Offsets Framework but emphasises that incremental improvements will not deliver the change required. Fundamental reform is needed to ensure the framework achieves its primary purpose—genuine, measurable environmental outcomes.

This requires strict application of the mitigation hierarchy, with a clear priority on avoidance and minimisation, and limiting financial offsets to situations where impacts can be demonstrably and feasibly offset. Clear, enforceable principles must govern the use of offset funds to ensure they are directed to like-for-like outcomes, rather than general environmental activities.

The current reliance on financial payments is failing to offset impacts and must be addressed through more realistic offset calculations, stronger accountability, and more rigorous approval thresholds. While a strategic approach to legacy funds may be necessary, this must not establish a precedent for future practice.

Without these changes, the framework will continue to permit residual impacts without delivering corresponding environmental gains. Reform must therefore focus on restoring integrity, ensuring that impacts are genuinely avoided, minimised, and — only where necessary — effectively offset.

Yours sincerely

[redacted]

Emeritus Professor Marc Hockings, AO

President, Wildlife Queensland

[redacted]

John Tracey

CEO

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[i] Bull, J. W., Gordon, A., Law, E. A., Suttle, K. B., & Milner-Gulland, E. J. (2020). Environmental mitigation hierarchy and biodiversity offsets revisited. *Journal of Environmental Management*, 262, 110330

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28 May 2026

Senator the Hon Murray Watt
Minister for the Environment and Water
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

CC: Senator Sarah Hanson-Young, senator.hanson-young@aph.gov.au, Offset Standard Consultation Team, Department of Climate Change, Energy, the Environment and Water, EPRconsultation@dcceew.gov.au

Dear Minister Watt

Re: National Environmental Standard (Environmental Offsets) 2026

Wildlife Queensland is one of the state's most respected conservation organisations. For over 62 years we have worked to protect Queensland's native wildlife and the habitats that sustain them. We have 13 branches across Queensland, over 20,000 supporters and members and engage over 520,000 Queenslanders annually through research, monitoring, community conservation programs, policy engagement and digital outreach. Queenslanders deeply value our unique wildlife and natural areas and Wildlife Queensland exists to safeguard these environmental assets for current and future generations.

Wildlife Queensland welcomes the opportunity to provide comments on the National Environmental Standard (Environmental Offsets) 2026. Wildlife Queensland supports the intent of establishing strong National Environmental Standards as a core part of reforming Australia's national environmental laws. The standards must provide clear, practical and enforceable protections for threatened species, ecological communities, migratory species, international conservation designations and other matters of national environmental significance. We commend the language in the Principles in the Standard that specify characteristics of offset activities that 'must' apply rather than 'should' or 'may' apply. However, the current drafting requires improvement. It does not adequately address decisions where offsets are delivered through a restoration contribution charge rather than direct offsets. The definition of "offset activity," which underpins most principles in the draft National Environmental Standard (Environmental Offsets), excludes matters addressed via restoration contribution charges. Experience in other jurisdictions suggests this will likely become the primary method proponents use to meet offset obligations.

Our key issues are outlined below.

1. The Standard must prioritise environmental outcomes, not just process

Wildlife Queensland view is that the current draft Offsets Standard risks repeating the weakness of offset regimes in other jurisdictions by not ensuring that offset payments result in actual and additional environmental outcomes.

Sections 7(2) and 7(4) appear to provide that the objectives and outcomes of the Standard will be achieved where an action, decision or framework is consistent with the principles in the Standard. However, most principles do not apply to offsets delivered through restoration contribution charges. Under Section 7(4), an action may be approved as consistent with the Standard simply through payment of such a charge. Without principles governing how these funds are applied or what outcomes they must achieve, there is a significant risk that residual environmental impacts will not be effectively offset. The risk is substantial that accumulated funds held by the Restoration Contribution Holder will be expended on activities unrelated to the offsetting of the impacts for which the contributions were collected, and instead be used to support activities that are properly the responsibility of government.

This is a critical flaw. If funds raised through restoration contribution charges cannot be used to achieve outcomes consistent with all offset principles, the action should not be approved..

Recommendation: Redraft Sections 7(2) and 7(4) to ensure that the principles drive environmental outcomes in all cases, whether offsets are delivered directly, indirectly, or via restoration contribution charges.

2. Net Gain is not defined in an actionable and assessable way

Required net gain is a key concept in the proposed Standard but it lacks a definition or specification through regulation that would allow it to be objectively applied. In the absence of a relevant Regulation and an Offsets Calculator to specify the meaning of net gain, the application of the concept in the proposed Standard will likely fall largely within Ministerial discretion.

Conclusion

Wildlife Queensland supports the establishment of National Environmental Standards, but the 2026 Offset Standard **must be strengthened** if it is to deliver the environmental outcomes promised by the EPBC Act reforms.

The Standard must ensure that offsets, regardless of how they are delivered, result in real net gain for affected protected matters.

Wildlife Queensland recommends that the Standard be amended to:

1. Redraft sections 7(2) and 7(4) and extend the Principles so that they cover not just offset activities as defined in the Standard but also the application and outcomes required through the payment of a restoration contribution charge.

2. Strengthen the principles so they require environmental outcomes, not just procedural consideration.

3. Define net gain in an actionable and assessable way.

Yours sincerely

[redacted]

[redacted]

Emeritus Professor Marc Hockings, AO

President, Wildlife Queensland

John Tracey

CEO

Wildlife Preservation Society of Qld

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25 June 2026

For the attention of the Primary Industries and Resources Committee,

Re: State Development and Public Works Organisation (Critical Minerals) and Other Legislation Amendment Bill 2026

We write to express Wildlife Queensland's strong opposition to the *State Development and Public Works Organisation (Critical Minerals) and Other Legislation Amendment Bill 2026* as currently drafted. If made into law as it stands, this Bill would have significant impacts on landholders, First Nation's people, the community and anyone who seeks to protect their land and local ecosystems from development.

Wildlife Queensland is one of the state's most respected conservation organisations. For over 62 years we have worked to protect Queensland's native wildlife and the habitats that sustain them. We have 13 branches across Queensland, over 20,000 supporters and members, and engage over 520,000 Queenslanders annually through research, monitoring, community conservation programs, policy engagement and digital outreach. Queenslanders deeply value our unique wildlife and natural areas, and Wildlife Queensland exists to safeguard these environmental assets for current and future generations.

We recognise the importance of minerals needed for renewable energy, electrification and modern infrastructure. However, critical minerals projects must not be used as a reason to weaken environmental safeguards, override community rights, reduce transparency or diminish proper assessment of impacts on landholders, wildlife habitat, threatened species, waterways and cultural values. A credible critical minerals framework must accelerate genuinely responsible projects while maintaining strong environmental standards, respecting First Nations rights, protecting landholders and ensuring decisions are consistent with Australia's climate and biodiversity obligations.

We are particularly concerned that the Bill would:

- give broad discretion to declare projects as State strategic projects, without adequate accountability, independent scrutiny or clear environmental safeguards
- allow modification orders that may alter how other laws apply, creating a pathway for existing environmental, planning and landholder protections to be weakened, avoided or displaced
- reduce ordinary planning, assessment, review and appeal rights for communities, landholders and conservation organisations
- increase proponent access to private land, including for investigations and enabling works, while lowering practical barriers to the taking or use of land for major projects.

Wildlife Queensland supports quick decision making, but allowing major projects to circumvent or modify the operation of existing environmental laws risks poor decision-making and long-term environmental harm. Queensland is already facing serious biodiversity decline, habitat loss and escalating threats to native wildlife. Weakening safeguards for large-scale development would make this worse and would accelerate the loss of species and ecosystems that Queenslanders expect government to protect.

The Bill also undermines public trust. Communities are more likely to accept development decisions when they can see that assessments are independent, transparent, evidence-based and subject to meaningful public participation. A system that concentrates decision-making power and limits review rights will reduce confidence that environmental, landholder and community impacts are being properly considered.

Wildlife Queensland supports responsible development that is properly assessed, transparent and consistent with the protection of Queensland's wildlife and natural heritage. This Bill, as drafted, does not strike that balance.

If the Bill is to proceed, Wildlife Queensland submits that it must be substantially amended to include clear, enforceable safeguards. These should include:

1. **No weakening or displacement of environmental laws**
   The Bill should expressly provide that a State strategic project declaration or modification order cannot override, weaken, displace or limit the operation of environmental protection, threatened species, vegetation management, water, cultural heritage, planning, biodiversity offset or landholder protection laws.
2. **Independent environmental assessment**
   Any project declared under the proposed framework should remain subject to independent, transparent and evidence-based environmental assessment, including proper assessment of cumulative impacts, impacts on threatened species and ecological communities, groundwater and surface water impacts, habitat fragmentation, climate impacts and impacts on matters of national environmental significance.
3. **Public participation and review rights**
   The Bill should preserve meaningful public notification, submission, objection, review and appeal rights for affected landholders, First Nations peoples, conservation organisations and local communities. Fast decision-making should not come at the expense of procedural fairness, transparency or public confidence.
4. **First Nations rights and free, prior and informed consent**
   The Bill should include explicit safeguards for the rights of First Nations peoples, including Traditional Owners who care for Country. This must include early engagement, proper resourcing for participation, protection of cultural heritage and a requirement for free, prior and informed consent where projects affect Country, cultural values, water, biodiversity or places of significance.
5. **Climate and international obligations**
   The Bill should require decision-makers to consider whether proposed projects are consistent with Australia's international climate obligations, including obligations to prevent environmental harm and reduce greenhouse gas emissions. Critical minerals development should support the transition to a low-emissions economy, not create a pathway for projects that intensify fossil fuel development, increase emissions or undermine climate and biodiversity commitments.
6. **Biodiversity protection and no net loss**
   The Bill should require decision-makers to refuse or condition projects where they are likely to cause serious or irreversible harm to threatened species, habitat, ecological communities, waterways or areas of high biodiversity value. Any offsetting must be a last resort, scientifically credible, like-for-like, enforceable and additional, and must not be used to justify avoidable destruction of habitat.
7. **Clear limits on ministerial discretion**
   The Bill should include clear statutory criteria for any State strategic project declaration, including environmental exclusions for protected areas, critical habitat, areas supporting threatened species, high-value waterways and areas of cultural significance. Decisions should be accompanied by published reasons and be subject to independent oversight.

8. **Landholder protections**
   The Bill should not expand access to private land, investigation powers, enabling works or acquisition pathways without strong safeguards, fair notice, genuine negotiation, independent dispute resolution and full compensation for affected landholders.

We urge the Committee to listen to the many people and organisations across Queensland who are opposed to this Bill and to act in the state's long-term interest. Please register our strong opposition to the Bill as it stands. We encourage law-makers to substantially rewrite the Bill so that Queensland's unique and iconic wildlife, natural environments, landholders, First Nations peoples and communities are properly protected.

Yours sincerely

[redacted]

Emeritus Professor Marc Hockings, AO

President, Wildlife Queensland

[redacted]

John Tracey

CEO

Wildlife Preservation Society of Qld

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28 May 2026

Senator the Hon Murray Watt
Minister for the Environment and Water
PO Box 6100
Senate
Parliament House
Canberra ACT 2600

CC: Senator Sarah Hanson-Young, senator.hanson-young@aph.gov.au, MNES Standard Consultation Team, Department of Climate Change, Energy, the Environment and Water, EPRconsultation@dcceew.gov.au

Dear Minister Watt

Re: National Environmental Standard for Matters of National Environmental Significance (MNES)

Wildlife Queensland is one of the state's most respected conservation organisations. For over 62 years we have worked to protect Queensland's native wildlife and the habitats that sustain them. We have 13 branches across Queensland, over 20,000 supporters and members and engage over 520,000 Queenslanders annually through research, monitoring, community conservation programs, policy engagement and digital outreach. Queenslanders deeply value our unique wildlife and natural areas and Wildlife Queensland exists to safeguard these environmental assets for current and future generations.

Wildlife Queensland welcomes the opportunity to provide comments on the 2026 Matters of National Environmental Significance Standard. Wildlife Queensland supports the intent of establishing strong National Environmental Standards as a core part of reforming Australia's national environmental laws. The standards must provide clear, practical and enforceable protections for threatened species, ecological communities, migratory species and other matters of national environmental significance. However, **we do not support the current drafting as it further weakens environmental protections at the very point where the reforms require delivering stronger, clearer and more outcome-focused safeguards**.

Our key objections are outlined below.

1. The Standard must remain focused on environmental outcomes, not just process

A central purpose of the EPBC Act reforms is to move away from a process-heavy system and towards one that delivers measurable outcomes for nature. This was a key finding of the Samuel Review, which identified that the existing system was not delivering for the environment and recommended clear National Environmental Standards with strong outcomes and limits for decision-makers.

Wildlife Queensland view is that the current draft Standard risks repeating the weakness of the current system by giving too much weight to procedural principles and not enough weight to actual environmental outcomes.

Sections 7(2) and 7(4) appear to provide that the objectives and outcomes of the Standard will be achieved where an action, decision or framework is consistent with the principles in the Standard. This risks allowing compliance with process-based principles to stand in for the actual achievement of environmental outcomes.

This is a significant flaw. A project should not be treated as meeting the Standard simply because decision-makers have considered the right matters or followed a particular process. The test should be whether the action will genuinely protect, conserve, restore and recover matters of national environmental significance.

Recommendation: Sections 7(2) and 7(4) should be removed or substantially redrafted so that the principles support the achievement of outcomes, rather than being treated as a substitute for them.

2. The principles must be strengthened so they require action, not just consideration

The current principles rely heavily on language such as "having regard to" or "should generally only be considered". This type of wording gives decision-makers broad discretion and does not provide the strong safeguards needed to protect threatened species and critical habitat.

For example, the Standard should not simply require that impacts be considered in context. It should require that the nature, extent and severity of impacts are assessed in context, including cumulative impacts, existing threats and the conservation status of the species or ecological community.

Wildlife Queensland view is that cumulative impacts are still not being given sufficient force. Many threatened species are not lost through a single catastrophic decision, but through repeated incremental habitat loss, fragmentation, disturbance and degradation. A Standard that does not properly address cumulative impacts will fail to protect species and ecological communities across the landscape.

Recommendation: The principles must be redrafted in stronger, outcome-based language. Consideration of cumulative impacts must be elevated into the operative text of the Standard, not left as supporting guidance or notes.

3. The wording on threatened species habitat must be restored to that in 2025 draft

Wildlife Queensland is alarmed that the 2026 draft narrows the protection of threatened species habitat compared with that given in the 2025 draft.

The 2025 draft referred to "Habitat, including critical habitat of the listed threatened species" being protected, conserved and restored to support survival and recovery. The 2026 version restricts this to habitat that is "irreplaceable and necessary for the species to remain viable in the wild".

This is a serious failure to protect and recovery threatened species. Threatened species need more than only the last remaining irreplaceable habitat. They need connected, functional and sufficient habitat across their range to survive and recover. Habitat that may not meet a narrow definition of "irreplaceable" may still be essential for movement, dispersal, breeding, climate resilience, genetic exchange and long-term recovery.

For many species, especially those already affected by fragmentation, local habitat patches can be critical stepping stones across the landscape. Waiting until habitat is classified as irreplaceable before it receives strong protection is inconsistent with a recovery-focused approach.

Recommendation: The Standard must reinstate the 2025 wording: “Habitat, including critical habitat of the listed threatened species”. This would better reflect the need to protect, conserve and restore the full range of habitat needed for species survival and recovery.

4. The Standard should clearly protect local and landscape-scale values

The revised wording of outcome 6(b), which refers to protected matters “across their entire geographic area”, requires clarification.

Wildlife Queensland supports a broad interpretation that requires decision-makers to consider how actions contribute to, or undermine, the diversity, abundance, resilience and integrity of protected matters across their range. However, the wording should not be used to dismiss significant local or regional impacts on the basis that the species or ecological community occurs elsewhere.

Local losses matter. For many threatened species, every viable local population and every remaining area of quality habitat may be important to long-term recovery. Impacts at a local scale can also become significant when viewed cumulatively across the species’ range.

Recommendation: The Standard must be clarified to ensure that both local impacts and cumulative impacts across the geographic range of protected matters are properly assessed.

5. The Standard must support recovery, not just avoid the worst impacts

Wildlife Queensland considers that the National Environmental Standards must do more than prevent the most unacceptable impacts. They should actively support recovery.

For threatened species and ecological communities, this means decisions should contribute to improved habitat condition, increased population viability, stronger ecological connectivity and reduced cumulative pressure over time.

A standard that only prevents the most severe damage will not reverse decline. Australia’s threatened species crisis requires a system that supports measurable recovery outcomes.

Recommendation: The Standard must make clear that actions and decisions are to be consistent with the survival and recovery of threatened species and ecological communities, not merely avoid the most serious or obvious harm.

Conclusion

Wildlife Queensland supports the establishment of National Environmental Standards, but the 2026 MNES Standard **must be strengthened** if it is to deliver the environmental outcomes promised by the EPBC Act reforms.

The Standard must be clear, enforceable and genuinely outcome-focused. It has to protect habitat broadly, properly address cumulative impacts, avoid substituting process for outcomes, and support the recovery of threatened species and ecological communities.

Wildlife Queensland recommends that the Standard be amended to:

1. Remove or substantially redraft sections 7(2) and 7(4).

2. Strengthen the principles so they require environmental outcomes, not just procedural consideration.

3. Restore the broader 2025 wording for threatened species habitat, including critical habitat.

4. Clarify that both local and cumulative impacts must be assessed.

5. Ensure the Standard supports recovery and improvement, not merely the avoidance of unacceptable harm.

Yours sincerely

[redacted]

[redacted]

Emeritus Professor Marc Hockings

President, Wildlife Queensland

John Tracey

CEO

Submission to the Inquiry into the Environmental Protection (Efficiency and Streamlining) and Other Legislation Amendment Bill 2025

From: Wildlife Queensland
Date: 17th December 2025

1. Introduction

Wildlife Queensland welcomes the opportunity to provide feedback to the Health, Environment and Innovation Committee on the **Environmental Protection (Efficiency and Streamlining) and Other Legislation Amendment Bill 2025 (the Bill)**.

Wildlife Queensland is one of the state's most respected conservation organisations. For over 62 years we have worked to protect Queensland's native wildlife and the habitats that sustain them. We have 13 branches across Queensland, over 20,000 supporters and members and engage over 520,000 Queenslanders annually through research, monitoring, community conservation programs, policy engagement and digital outreach. Queenslanders deeply value our unique wildlife and natural areas and Wildlife Queensland exists to safeguard these environmental assets for current and future generations.

We recognise the value of Queensland's protected area estate, State Forests and Timber Reserves for biodiversity, carbon sequestration, recreation, education, research, cultural values, and ecosystem services. Any legislative changes that alter the allowable activities within these estate categories must be carefully assessed against ecological risk, cumulative impacts, and long-term biodiversity outcomes.

Wildlife Queensland acknowledges that the environment and tourism sectors have long expressed frustration with duplicated permitting and supports administrative streamlining where it improves clarity, reduces duplication, and maintains strong environmental protections.

Wildlife Queensland supports modernising outdated elements of the Forestry Act 1959 and related instruments and we congratulate the government on its efforts to streamline administrative and approval processes, however we **do not support** any changes that weaken environmental safeguards, reduce transparency, or enable unfettered commercial activity inconsistent with sustainability principles.

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2. Summary of Wildlife Queensland's Position

Wildlife Queensland **does not support the proposed open-ended amendments to the Forestry Act** that would allow unregulated or insufficiently regulated commercial activities in State Forests and Timber Reserves. We recommend clearer and explicit drafting to ensure strong statutory protections for biodiversity and ecological integrity.

Specifically:

- **Commercial activity agreements must be explicitly subject to ecological sustainability principles** and compliance with the Nature Conservation Act 1992 (NCA), Vegetation Management Act 1999, Biodiversity Conservation Strategy, and Commonwealth EPBC Act.
- **Commercial activity agreements must include mandatory biodiversity protections, impact monitoring, and public reporting obligations.**
- **Scientific Areas (Schedule 4) and Feature Protection Areas (Schedule 3) must be fully exempt** from commercial activity agreements.
- **Spatial accuracy is essential**: agreements must specify precise mapped boundaries, not only the name of a forest or reserve.
- **Transparency and public accountability must be legislated**, with all commercial activity agreements (subject to narrow commercial-in-confidence exceptions) publicly accessible.

These amendments are necessary to ensure that public land held in trust for Queenslanders is managed primarily for conservation, ecological function, and long-term community benefit.

3. Concerns with the Proposed Amendments to the Forestry Act 1959

3.1 Risk of Unfettered Commercial Activity

The Bill, as drafted, opens the door to broad commercial activities without adequate environmental constraints. State Forests and Timber Reserves are already fragmented and under pressure from:

- increased fire risk
- invasive species
- habitat loss and fragmentation
- recreational impacts
- climate change stressors

Introducing open-ended commercial activities without requiring explicit biodiversity protection measures risks undermining ecological resilience and accelerating species decline.

Wildlife Queensland recommends (1) inclusion of mandatory considerations for deciding first whether a permit should be granted i.e. the Chief Executive must be satisfied that the activity will not have adverse impacts on the environment and then (2) explicit statutory language requiring that any commercial activity agreement:

- **must not adversely impact wildlife, remnant ecosystems, threatened species habitat, ecological processes, or water quality**
- **must demonstrate ecological sustainability** through environmental impact assessments aligned with NCA and EPBC Act triggers
- **must incorporate measurable performance indicators**, including monitoring and audit requirements
- **must allow suspension or cancellation** of the agreement if monitoring indicates negative environmental impacts.

3.2 Inadequate Protection for Scientific Areas (Schedule 4)

Scientific Areas are designated for high-value research, long-term ecological studies, and biodiversity conservation, many contain baseline datasets essential for climate and ecological modelling.

Allowing commercial activity in these areas:

- undermines scientific integrity
- jeopardises long-term research investments
- risks damaging sensitive reference ecosystems

Wildlife Queensland asserts that **all Scientific Areas (Schedule 4) must be explicitly exempt** from commercial activity agreements.

3.3 Inadequate Protection for Feature Protection Areas (Schedule 3)

Feature Protection Areas safeguard key ecological, geological, hydrological, or cultural features. Commercial activity in these areas could:

- degrade critical habitats
- disturb threatened species breeding sites
- damage sensitive hydrological systems
- compromise Indigenous cultural sites

Wildlife Queensland recommends **full exemption** for all Feature Protection Areas (Schedule 3) from commercial activity agreements.

3.4 Requirement for Precise Mapping and Area Definition

The Bill currently allows agreements to refer only to the “name” of a State Forest or Timber Reserve.

This is inadequate and does not:

- ensure clarity of impacts
- support enforcement

- allow for public transparency
- align with ecological planning frameworks

Wildlife Queensland recommends that all commercial activity agreements:

- **must include precise GIS-referenced spatial boundaries**
- cannot be enacted without a publicly accessible map
- must specify the total area affected, type of disturbance, and anticipated footprint

3.5 Lack of Transparency and Public Accountability

State Forests and Timber Reserves are held in trust for the people of Queensland. Commercial arrangements on public land must therefore be publicly accountable.

Wildlife Queensland recommends that the Bill include provisions requiring:

- **public disclosure of commercial activity agreements**, except for narrowly defined commercial-in-confidence information
- public reporting of environmental monitoring results
- annual statements of revenue generated and how funds have been reinvested in State Forest management
- audit and compliance reports made available online

Transparency fosters trust, ensures proper use of public land, and allows communities to understand and assess impacts.

4. Implications for Wildlife and Biodiversity Conservation

Queensland hosts the highest number of threatened species in Australia. Many rely on intact forest habitats, including:

- greater glider
- yellow-bellied glider
- mahogany glider
- brush-tailed rock-wallaby
- spectacled flying-fox
- numerous threatened plants and invertebrate species

Unrestricted commercial access or poorly regulated activities risk:

- clearing or degrading habitat
- disrupting wildlife movement and connectivity

- introducing noise, artificial light, pollution
- increasing human–wildlife conflict
- facilitating weed spread and feral animal incursions

In the context of accelerating climate change, Queensland's forests require improved protection, not reduced safeguards.

The Bill must therefore ensure that **biodiversity protection remains the primary purpose** of legislated management frameworks for State Forests and Timber Reserves.

5. Recommendations

Wildlife Queensland makes the following recommendations:

1. **Insert explicit statutory requirements** that commercial activity agreements must be ecologically sustainable and consistent with the NCA and EPBC Acts.
2. **Mandate environmental monitoring and reporting** for all commercial activities, including pre-activity baseline assessments.
3. **Exempt all Scientific Areas (Schedule 4) from commercial activity agreements.**
4. **Exempt all Feature Protection Areas (Schedule 3) from commercial activity agreements.**
5. **Require precise GIS-defined spatial boundaries** for any agreement area.
6. **Legislate public transparency**, including publication of agreements, monitoring results, compliance reports, and financial contributions to land management.
7. Ensure all new commercial activities undergo **environmental risk assessment**, including cumulative impacts.
8. Include **mechanisms for suspension or cancellation** where impacts to wildlife, threatened species, or ecological processes are detected.
9. Commit to developing **guidelines and minimum environmental standards** for commercial activities undertaken on State Forests and Timber Reserves.

6. Conclusion

Wildlife Queensland strongly recommends that the Committee amend the Bill to ensure that commercial activity within State Forests and Timber Reserves is tightly controlled, transparent, ecologically sustainable, and consistent with Queensland's obligations to protect biodiversity.

Queenslanders expect and deserve confidence that public forests are being managed for long-term ecological health and the protection of native wildlife, not short-term commercial gain. This approach will also help secure long-term economic sustainability for Queenslanders.

Wildlife Queensland welcomes further consultation and would be pleased to appear at Committee hearings to discuss the issues raised in this submission.

[redacted] [redacted]

Emeritus Professor Marc Hockings — **John Tracey**

President, Wildlife Queensland — **CEO**

Submission to the Inquiry into the Environment Protection Reform Bill 2025 and six related bills

To: Senate Standing Committees on Environment and Communications

Wildlife Queensland is Queensland's longest-running not for profit organisation dedicated to conserving Queensland's native wildlife and habitat, influencing choices and engaging communities. Wildlife Queensland has over 20,000 members and supporters and 13 branches across Queensland. Wildlife Queensland also has a number of coordinated networks of citizen scientists including; Queensland Glider Network, Echidna Watch, Quoll Seekers Network, Brush-tailed Rock Wallaby Conservation Network and the Richmond Birdwing Conservation Network.

The *Environment Protection Reform Bill 2025* and six related bills (together, **the Bills**) are a once in a generation opportunity to meaningfully address critical issues with the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). We welcome the Government's commitment to improving and updating the EPBC Act.

Key aspects of the Bills have the potential to make positive, enduring systems change and must be retained. These include a new National Environmental Protection Agency (**NEPA**), stronger penalties for those who break the law, definitions within the EPBC Act of "unacceptable impact" and "critical habitat" and the initial steps towards a system grounded in National Environmental Standards (**NES**), we congratulate the government on taking these important steps for the long-term protection of our wildlife and key habitat.

However, recent announcements should not be used to justify a retreat from strong national environment laws. **Australia cannot afford another decade of incrementalism.** Parliament must ensure that the reforms progressed now are robust, enforceable, grounded in science, and fully aligned with Australia's no-new-extinctions commitment.

The Bills must be amended in nine essential areas, if they are to ensure that our national environment laws are fit-for-purpose and can protect nature, climate and people.

1. **Concerns about staged reforms and the risk of partial implementation**

   The recent announcements to defer core elements of the Nature Positive reforms until at least 2026 significantly increase the risk that Australia will be left with a piecemeal system that compounds, rather than resolves, the known failures of the current EPBC Act.

   Wildlife Queensland urges the Committee to expressly recognise the danger of progressing only administrative or market-based reforms (such as the Nature Repair

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Market amendments) while deferring the legally binding National Environmental Standards, strengthened assessment and approval provisions, and climate-related requirements.

Reform must not occur in fragments. The components retained in this legislative package must be strong enough on their own to prevent ongoing decline, not merely prepare the ground for future reforms that may never eventuate.

2. The Bills are unacceptably weakened by discretionary and non-mandatory drafting – they must be amended to **increase certainty and reduce discretion in decisions** including:
    a. the Government has announced a national commitment to a "no new extinctions" goal, yet this is not embedded in the current Bills. To maintain integrity and public confidence, **the Bills should include a legally enforceable duty on decision-makers to ensure that approval decisions cannot result in extinction risk increasing for any listed species or ecological community**.
    b. to ensure **objective decision-making** and make the test for compliance more prescriptive.
    c. to **remove the rulings power**, or subjecting it to substantive and procedural safeguards.
    d. to ensure that **protection statements complement** and cannot override or diminish recovery plans, conservation advice and threat abatement plans, including requirements to not act inconsistently with these documents.
    e. for **strategic assessments** – to remove or constrain 'minor variations', retain public consultation and objectively apply environmental protections.
    f. to **retain existing reconsideration request provisions**.
    g. to **remove the new 'national interest proposal' exemption power**, or constrain this power and the existing **national interest exemption**.

3. The Bills fail to address Australia's deforestation crisis – amendments must be made to **close deforestation and land clearing loopholes** including:
    a. Removing the Regional Forest Agreement (**RFA**) exemption or comprehensively apply NES to logging in RFA areas, while improving monitoring, reporting and accountability.
    b. Removing or sufficiently constraining the outdated exemption for continuations of use (s43B EPBC Act).
    c. Delaying deforestation and land-clearing reforms until future legislative stages will leave thousands of hectares of threatened species habitat unprotected in Queensland alone. This is contrary to public expectations and international commitments under the Kunming–Montreal Global Biodiversity Framework, which requires halting and reversing biodiversity loss by 2030.

4. The Bills would entrench outdated regulatory decision-making about new fossil fuel projects and the climate crisis – amendments must be made to **embed and respond to climate change** including:

    a. Adding climate mitigation and adaptation to the purpose of the law, and embedding clear, enforceable climate tests in every decision.
    b. Requiring projects to report scope 1, 2 and 3 emissions, be assessed against future climate scenarios, and align with Australia's international obligations.

c. The Government has publicly stated that it does not intend to introduce a climate trigger in this phase of reforms. In the absence of a dedicated climate trigger, **the Bills must provide clear and enforceable pathways for decision-makers to consider emissions and climate-related impacts**, or the EPBC Act will continue to facilitate approvals for projects that worsen the very climate impacts driving species decline.
d. Recent statements by Government indicating a shift toward "single-touch approvals" heighten Wildlife Queensland's concerns about devolving responsibilities to States and Territories. Streamlining must not become a euphemism for weakened standards, reduced transparency, and diminished Commonwealth accountability for matters protected under international law.

5. The Bills propose inappropriate devolution of Commonwealth government responsibility to the States and Territories – amendments must be made to **ensure the Commonwealth Government is responsible for national laws** including:
   a. The Federal Government retaining responsibility for project approval decisions, and **assessment accreditation** only being allowed where strict, objective tests are met.
   b. Removing changes proposed to the **water trigger**, so that it remains exempt from devolution.
   c. Requiring appropriate environmental assessment and consultation for projects in the **streamlined assessment pathway**, which must be limited to low risk and impact projects.
   d. Proper assessment of, and protection being guaranteed by, **bioregional plans**.
   e. Removing the proposed new section Part 4 Division 2A (Actions covered by Ministerial declarations and **NOPSEMA** management or authorisation frameworks).

6. The Bills would create a risky offsets scheme without sufficient safeguards to ensure environmental outcomes for threatened species and their habitat – amendments must be made to **ensure an offsets scheme with integrity** including:

   a. Removing the pay-to-destroy offsets fund.
   b. Removing the option to pay restoration contribution charges in lieu of offsets.
   c. Embedding transparency and accountability in the offsets scheme.
7. Wildlife Queensland is concerned by recent suggestions that the National Environmental Protection Agency may initially operate with limited compliance and enforcement powers. **A regulator without independence and enforcement authority is not a regulator.** The Bills must guarantee that the NEPA commences with full investigative, enforcement, and litigation powers on day one.
8. Recent announcements regarding the development of a national "Nature Index" highlight the need for transparent, standardised biodiversity data. **Wildlife Queensland recommends that the Bills include explicit obligations for the NEPA and the Commonwealth to maintain publicly accessible, real-time data on:**
   - **approvals,**
   - **compliance actions,**
   - **offsets performance,**
   - **habitat loss, and**
   - **threatened species trends.**

Without mandatory transparency, public trust in the system cannot be restored.

9. Wildlife Queensland is concerned that market-based mechanisms, including the Nature Repair Market, are being advanced ahead of the core EPBC reforms that would constrain harmful activities. **Markets cannot compensate for regulatory gaps.** If the offsets scheme proceeds without binding standards, safeguards, and enforcement, it risks becoming a vehicle for entrenching habitat destruction rather than restoring nature.

1. Concerns about staged reforms and the risk of partial implementation

The recent announcements to defer core elements of the Nature Positive reforms until at least 2026 significantly increase the risk that Australia will be left with a piecemeal system that compounds, rather than resolves, the known failures of the current EPBC Act.

Wildlife Queensland urges the Committee to expressly recognise the danger of progressing only administrative or market-based reforms (such as the Nature Repair Market amendments) while deferring the legally binding National Environmental Standards, strengthened assessment and approval provisions, and climate-related requirements.

Reform must not occur in fragments. The components retained in this legislative package must be strong enough on their own to prevent ongoing decline, not merely prepare the ground for future reforms that may never eventuate.

2. Increase certainty and reduce discretion in decisions

2.1 Stronger statutory language

Many key aspects of the reforms: (a) are framed as subjective and discretionary (e.g. ‘to the satisfaction of the Minister’); and/or (b) involve a weaker test of being ‘not inconsistent’ with set criteria, rather than a positive test such as ‘in accordance with’ or ‘complies with’.

The Second Independent Review of the EPBC Act (**Samuel Review**) found that a fundamental shortcoming of the current EPBC Act is that it does not provide sufficient constraints on discretion and this considerable and unfettered discretion in decision making has resulted in uncertainty and poor environmental outcomes.1 The Bills would exacerbate, rather than resolve, these existing flaws, increasing discretion and subjectivity in decision-making.

The First Independent Review of the EPBC Act (**Hawke Review**) found that the use of double negatives, such as ‘not inconsistent’, weakens provisions significantly and recommended this language be replaced with stronger tests.2 In practice, 'not inconsistent' has been interpreted as lowering the threshold of decision-making obligations.3

1 Samuel Review, p 48, 43, 3
2 Hawke Review, p 233
3 For example, the Court has said that 'a statutory imperative to act "not inconsistently with" is intended by
Parliament to be to some extent a softer requirement than an imperative to act "in accordance with"' (*Friends*
of Leadbeater's Possum Inc v VicForests (2018) 260 FCR 1 (construing s 139) at [215])

For example, the National Environmental Standards (**NES**) are intended to be the centrepiece of the reforms but there is significant discretion throughout the assessment and decision-making process - for example the Minister must 'be satisfied' the NES will promote the objects of the EPBC Act and 'not be inconsistent' with relevant international agreements. How and which NES are to be applied in Ministerial decisions is subject to the Minister's satisfaction rather than an objective test. Regulations will prescribe how and when NES will apply to other decisions.

This statutory drafting risks undermining the intended reforms and must be amended to ensure better decision-making to deliver environmental outcomes.

> **Recommendation 1:** The Bills must be amended to change to an objective decision-making frame that sets out the decision-maker's obligations in fact, rather than opinion, and to strengthen tests for compliance, making them more prescriptive than the proposed 'not inconsistent' threshold.
> **Annexure 1** lists key provisions that should be amended and substituted with stronger drafting.

2.2 Introduce appropriate safeguards on new powers

The Bills also introduce several new powers which, as drafted, do not have appropriate safeguards to ensure misuse or misapplication by future governments.

A **new rulings power** provides significant discretion to the Minister and National Environmental Protection Agency (**NEPA**) CEO to declare how laws should be interpreted. This power risks infringing upon the role of the judiciary and as drafted, it is inappropriate for the Minister responsible for the EPBC Act to be exercising this role.

> **Recommendation 2:** The Bills should be amended to remove the rulings power (remove new Part 19C). If this is not done, the rulings power must be subject to substantive and procedural safeguards including appropriate consultation, transparency, and published statements of reasons for rulings. The legislation should prescribe matters for consideration in the making of rulings and ensure that rulings do not undermine other core aspects of the Bills, for example, by clearly stating that rulings cannot authorise or facilitate unacceptable impacts or outcomes that are inconsistent with the new NES.

New **protection statements** grant the Minister broad discretion to interpret conservation planning documents (recovery plans, threat abatement plans and conservation advices). As drafted, protection statements can be of less scientific rigour and content than recovery plans (for example, there are minimal mandatory content requirements and no requirement to consult with the Scientific Committee). Protection statements risk undermining long-standing requirements in the EPBC Act that align conservation planning with decision making and require that Ministerial decisions are not inconsistent with recovery plans. This is particularly concerning when combined with amendments allowing recovery plans to be made for only part of a species or ecological community. This would mean that recovery plans may not provide the same holistic protection for a threatened species as currently required**.** See **Annexure 2** for further detail.

> **Recommendation 3:** Protection statements must complement, not override or diminish the role of existing conservation planning documents. Existing provisions in the EPBC Act that require the Minister to not act inconsistently with a recovery plan and have regard to a conservation advice must retain their force. The Bills must be amended to require that protection statements have objective consistency with relevant NES and provide equal or greater protection than recovery plans, threat abatement plans and conservation advices.

The Bills amend the **strategic assessment** framework by creating broad new powers to make and vary strategic assessments without proper oversight and accountability, and with significant Ministerial discretion. A new process will allow for new 'minor' variations to a policy, plan or program.

> **Recommendation 4:** Remove or constrain provisions allowing 'minor variations' to strategic assessment to ensure transparency and accountability. Retain public consultation on terms of reference for strategic assessments. New environmental protections in the Bills (no inconsistency with NES, no unacceptable impact, no residual impact without net gain) should apply to strategic assessments and drafting should be amended to be objective (see **Annexure 1**).

The **reconsideration of controlled action decisions** framework in the current EPBC Act (Ch 4, Part 7, Div 3) provides an important safeguard allowing the Minister to respond to substantial new information or substantial changes in circumstances in the s 75 process of determining whether an action is a controlled action. The Bills wind back these provisions by introducing new time limit and criteria that will effectively render reconsideration requests so limited they cannot meet the intended purpose as a safeguard. A new provision (new s79E) allows for controlled actions to continue during the assessment process following reconsideration, in clear opposition to the scheme of the legislation. See **Annexure 3** for detailed recommendations.

> **Recommendation 5:** Amendments to reconsideration request provisions should be removed from the Bills.

The Bills introduce new powers for the Minister to declare a proposal a "**national interest proposal**", meaning that a project is not required to comply with the key safeguards in the Bills (no inconsistency with NES; no inconsistency with unacceptable impacts; net gain test). The Bills do not constrain the current s158 **national interest exemption** provision, contrary to the recommendation of the Samuel Review.

> **Recommendation 6:** Remove the proposed new 'national interest proposal' exemption power. If this is not done, introduce safeguards consistent with

Recommendation 3(c) of the Samuel Review that confine all national interest exemptions to national emergencies, with time-limitation and requirement for written reasons.

The Samuel Review recommended prioritising, as a matter of urgency, the National Environmental Standard for Indigenous engagement and participation in decision-making.4 We understand the **NES for First Nations Engagement and for Community Engagement and Consultation** won't be released for consultation until 2026. These NES should provide essential constraints on ministerial power and contain elements that will require substantial integration with the regulatory systems of the EPBC Act.

Recommendation 7: Prioritise proper consultation on strong First Nations Engagement and Community Engagement and Consultation national environmental standards so that these standards are ready to go when the new laws commence.

3. Close deforestation and land clearing loopholes

Deforestation and land clearing are the biggest drivers of extinction in Australia. Yet these drivers are effectively exempt from Federal oversight under the current EPBC Act. Regional Forest Agreements (**RFAs**) and the "continuation of use" exemption means that critical habitat can be destroyed without EPBC Act assessment and approval. Weak monitoring and poor compliance mean illegal land clearing, particularly clearing for agriculture, often goes unchecked.

Australia's environment laws must curb deforestation by removing special exemptions that let logging and land clearing avoid national protections. Laws must be backed by stronger compliance, monitoring and enforcement to stop illegal clearing and habitat destruction.

3.1 Repeal the Regional Forest Agreement (RFA) exemption

The RFA exemption should be removed.

If this is not done, the NES must apply to logging under RFAs. Logging in RFA areas must be subject to regular and publicly available monitoring and reporting, and accountability measures (NEPA and third parties can remedy or restrain breaches of the EPBC Act). State and territory conflicts of interest, including due to profits from forestry operations, must be protected against.

In addition, if required, the RFA exemption could be amended to sunset within a set timeframe from the Bills coming into force. This would ratchet down the applicability of the exemption, enabling industry and the NEPA to transition into referral, assessment and approval of forestry operations. It could be coupled with a legislated transition plan or package.

Recommendation 8: Remove the RFA exemption so forests covered by RFAs are fully subject to the EPBC Act and NES. Drafting options are at **Annexure 4.**

3.2 Repeal or constrain the continuation of use exemption

The exemption for continuations of use in s 43B of the EPBC Act undermines the ability of the Act to protect matters of national environmental significance (**MNES**) and should be repealed or constrained. The state of the environment and of many MNES has declined markedly since the commencement of the Act in 2000. Therefore, actions that fall within the exemption are likely to have a far greater impact on MNES than they would have at the commencement of the Act. Assessment of the likely impacts of these actions is necessary to properly understand and manage the threats to MNES today. In addition, the very existence of the exemption provided for by s 43B (and also that at s 43A) creates significant uncertainty for the community, proponents, and the regulator as to the operation of the Act.

> **Recommendation 9:** Repeal or significantly narrow the section 43B "continuation of use" exemption, which allows outdated approvals to persist even when they would not pass today's standards. Drafting options are at **Annexure 5**.

3.3 Enhance compliance, monitoring and enforcement of land clearing

Despite the EPBC Act currently prohibiting actions likely to have a significant impact on threatened species, clearing for agricultural purposes regularly occurs without referral under the Act. This is notwithstanding the mandatory obligation to refer actions that a person thinks may, or are likely to, have a significant impact on threatened species.

Between 2014-2021 in likely relevant EPBC Act areas in Queensland and the Northern Territory less than one quarter (22%) of clearing was referred under the EPBC Act.6 Between 2000 – 2017, just 7% of habitat for threatened species, migratory species and threatened ecological communities that was subject to deforestation was referred to the Federal Government for assessment. 7 This chasm between the obligation to refer and the near total failure to do so in practice in the agricultural sector, over the life of the EPBC Act, demonstrates that the existing controls are inadequate and require targeted reform that deals explicitly and directly with deforestation.

EJA welcomes the creation of the NEPA. The NEPA must, as a matter of priority, focus on enhancing compliance with the EPBC Act by enforcing referral of land clearing for agriculture where it is likely to significantly impact MNES.

4. Embed and respond to climate change

Climate change is an existential threat to every species, ecosystem and place protected by the EPBC Act, yet neither the current Act nor the proposed reforms provide a clear pathway for the Federal Government to assess and manage the substantial contribution made by Australian industry to global climate change.

Actions assessed and approved under the EPBC Act make a globally significant contribution to climate change, both directly and by supplying fossil fuels to other nations. Every tonne of long- stored CO_2 emissions released by Australia's extraction and use of fossil fuels contributes to climate change and the impacts of climate change on MNES; as the global carbon budget shrinks, each additional tonne of CO_2-e has a greater proportionate effect.

Australian industry's contribution to climate change is, in any commonsense interpretation of the phrase, an impact of that industry on the environment. Yet, there is no clear indication of how this component of proposed actions' impacts on MNES should be factored into decision-making under the Act, resulting in legal uncertainty.

The Bills do not fix this gap. In particular:

- There is, still, no clear pathway for how emissions information is to be factored into decision-making under the EPBC Act.
- While the Bills make emissions disclosure an explicit requirement for referred actions, it is limited to 'scope 1' and 'scope 2' emissions, omitting any downstream or 'scope 3' emissions (whether produced in Australia or overseas), providing an incomplete picture of actions' actual contribution to climate change and consequential impacts on MNES. This is inconsistent with Professor Samuel's recommendation, 8 with State and Territory requirements, and with the Federal Government's own corporate disclosure laws.9
- There is no provision to ensure that projects' emissions estimates and 'plans and strategies' for managing emissions are robust and accurate.

The Federal Government has defended its exclusion of climate change impacts from the Act by reference to the Safeguard Mechanism and the Paris Agreement. Neither of these instruments negates the need to consider GHG emissions in the EPBC Act. The Safeguard Mechanism is a partial emissions trading scheme applicable to a subset of Australian industries; it is not an impact assessment framework and there is no avenue for any responsible Minister or regulator to reject or impose conditions on covered facilities by reference to their environmental impact.10 The International Court of Justice, meanwhile, has recently advised that state obligations under the Paris Agreement (and the United Nations Framework Convention on Climate Change) cover the licensing and exporting of fossil fuels, as well as the assessment of *all* emissions associated with the production of fossil fuels – including downstream.11

The EPBC Act is the framework through which the Federal Government assesses whether the potential harm to nationally and internationally significant species and ecosystems resulting from proposed actions is or is not acceptable. Every additional tonne of CO_2, no matter where it is produced, contributes to the existential threat posed by climate change to Australia's protected species and ecosystems. These reforms provide a crucial opportunity to provide clarity about how and where the climate harms of proposed projects will be assessed by the decision-makers responsible for protecting Australia's environment.

Recommendation 10: Add climate mitigation and adaptation to the purpose of the law, and embed clear, enforceable climate tests in every decision.
Recommendation 11: Require full emissions disclosure, extending to scope 1, 2 and 3 emissions, and including an assessment against future climate scenarios and Australia's domestic and international emissions reduction obligations.

8 Samuel Review, 5, 26, 48
9 AASB S2 – Climate-related Disclosures, applicable to corporate entities covered by the reporting obligations
in Part 2M of the *Corporations Act 2001* (Cth)
10 See https://envirojustice.org.au/safeguard-or-smokescreen/
11 See https://envirojustice.org.au/what-the-icj-ruling-means-for-australias-environment-laws/

5. Commonwealth government responsible for national laws

The core constitutional basis of the EPBC Act is the external affairs power, and the Act has a corresponding mandate to implement Australia's obligations and commitments under international environmental agreements, including the Convention on Biological Diversity.12 The Commonwealth should not step away from its responsibilities which form the very basis of the legislation.

Several aspects of the Bills weaken Commonwealth responsibilities and create risks of overlap, conflict or dangerous gaps with State and Territory systems.

EJA notes with concern that the Bills **weaken requirements for accreditation and bilateral agreements**, thereby facilitating less rigorous impact assessment and remove the extra layer of protection afforded by Commonwealth oversight via the EPBC Act. Allowing accreditation of non- law documents reduces oversight and accountability.

> **Recommendation 12:** The Federal Government must retain responsibility for assessment of controlled actions and approval of decisions. If assessment accreditation is allowed, States and Territories should only be accredited where strict, objective tests are met. This includes removing the 'Minister is satisfied' drafting in new ss 33, 34B, 34BA, 34C and 34E. Accredited frameworks must be objectively consistent with NES and international obligations. Regular quality assurance review requirements should be required with mandatory criteria, recommendations, and response.

The Bills also remove **the exemption from devolving the "water trigger"**. Devolving responsibility for approving actions subject to the water trigger to the States/Territories may result in inadequate assessment of impacts of coal and gas projects on inter-state and important water resources.

> **Recommendation 13:** Ensure the water trigger (s24D & E EPBC Act) remains exempt from devolution.

The Bills introduce a new **streamlined assessment** pathway, which could be used to fast-track high-risk projects without adequate assessment or public participation. The Minister can assess a proposed project via streamlined assessment without considering the scale, nature or impact of the action, the environmental record of the proponent or public concerns. There is nothing specifying the level of environmental impact assessment that must be in an application for the Minister to be satisfied they have enough information, and no requirements around public consultation of that impact assessment. There is a requirement to consider matters specified in a Regulation, but such matters are yet to be drafted. Streamlined assessment is weaker and subject to less accountability and transparency than any other assessment in the existing EPBC Act and should be subject to appropriate safeguards.

12 Explanatory Memorandum to the *Environment Protection and Biodiversity Conservation Bill 1998* at [49],
available at:
182%22
https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation
%2Fbillhome%2Fs

Recommendation 14: Ensure streamlined assessment pathway includes appropriate environmental assessment and consultation. The Bills should be amended to limit streamlined assessment to actions with a level of risk and impact commensurate with the scrutiny offered by that assessment pathway.

The Bills introduce new provisions for **bioregional planning** at a landscape or seascape scale, so that zones for development and conservation can be mapped. Amendments to the Bills are required if bioregional plans are to achieve the genuine environmental outcomes intended by this aspect of the reforms. As drafted, broad discretion and lack of robust legislative criteria for making of bioregional plans mean that conservation zones lack integrity, and high-risk/harmful projects could be specified as priority actions and exempt from EPBC Act assessment and approval. As a starting point, there should be robust requirements for environmental assessment in the making of bioregional plans. The Bills should ensure that conservation zones meet their intended purpose by providing comprehensive protection for species and habitat. Priority actions in development zones must be subject to guardrails and limited to low-risk activities.

Recommendation 15: Require clearer upfront assessment in preparation of bioregional plans. Conservation zones should comprehensively protect MNES, including requiring certain MNES to be protected via conservation zones. Priority actions that can be fast- tracked should be subject to appropriate limitations and guardrails. The water trigger should be exempt from bioregional planning to ensure Federal oversight remains.

The proposed reforms allow the Environment Minister and the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) to disregard key safeguards for offshore gas and petroleum projects, paving the way to weaken consultation with First Nations communities and undermining proper environmental assessment.

Recommendation 16: The Bills must be amended to remove the proposed new section Part 4 Division 2A (Actions covered by Ministerial declarations and NOPSEMA management or authorisation frameworks).

6. An offsets scheme with integrity

The new offsets framework in the Bills is deeply flawed in design, is extremely risky, and will undermine the objects of the Act. In particular, the option to pay a 'restoration contribution change' instead of securing actual direct offsets is highly speculative and uncertain. This is effectively a "pay to destroy" scheme. The Bills would allow projects to be approved without any guarantee that genuine offsets will ever be delivered or real environmental outcomes will be achieved. Companies could simply pay "restoration contributions" into an offset fund instead of actually restoring or protecting habitat.

In New South Wales, a similar scheme has been criticised for collecting money that could not be spent because no suitable offset exists. Without strong safeguards, this model risks becoming a pay-to-destroy system that normalises nature loss instead of preventing it. Having previously had a similar scheme, NSW is now overhauling their offsets laws following findings that this scheme was found to be easily gamed and largely ineffective. The ability for developers to pay into the offsets fund compromised the scheme because money was continuously paid into the fund without the offsets being sourced.13 The overall scheme has resulted in devastating biodiversity losses.14

Offsets should only ever be a last resort – never a substitute for strong laws that stop destruction before it starts.

Recommendation 17: Amend the proposed offsets scheme to:

- Remove the pay-to-destroy offsets fund: Any offsets must deliver real, like-for-like outcomes for nature.
- Remove the option to pay restoration contribution charges in lieu of offsets: If these charges remain, there must be strong upfront restrictions on when and how "pay-to-destroy"offsets can be used.
- Embed transparency and accountability: Key reporting, monitoring and enforcement measures must be built directly into the legislation

7 Annexures

1. Discretion
2. Protection statements
3. Reconsideration requests
4. RFAs
5. Continuous use

13 Independent Review of the Biodiversity Conservation Act 2016 p 7. Report No 16 – PC 7 – Planning and
Environment – Integrity of the NSW Biodiversity Offsets Scheme; Submission
14 Gibbons, P., Macintosh, A., Constable, A. L., Hayashi, K. Outcomes from 10 years of biodiversity offsetting,
Global Change Biology, (2017). https://doi.org/10.1111/gcb.13977

Annexure 1: Priority reforms for strengthening decision-making and removing discretion

The following priority amendments are necessary to strengthen decision-making by shifting subjective provisions towards an objective decision-making framework.

	Current drafting	Suggested amendment (References are to first print version of the Bill)
Implementation of National Environmental Standards (NES)	The key provision that an approval must not be inconsistent with the NES is subject to the Minister's satisfaction and broad consideration of any conditions that may be applied. Further, a Regulation will prescribe which NES apply to which decisions rather than all NES needing to be applied as relevant.	Schedule 1, item 237, p 99, lines 5-9: The Minister must not approve the taking of an action unless ~~the Minister is satisfied that, taking into account any conditions to be attached to the approval~~, the approval of the taking of the action is not inconsistent with any relevant national environmental standards ~~prescribed for the purposes of this subsection~~.
Making NES	The making, of NES is subject to the satisfaction of the Minister, who can have regard to any matter they consider relevant.	Schedule 1, item 571, p315, line 16 - 21: ~~Before making~~ a national environmental standard must~~, the Minister must be satisfied that:~~ (a) ~~the standard would~~ promote the objects of this Act; and (b) ~~the standard would~~ not be inconsistent with Australia's obligations under the international agreements specified in subsection 520(3).
Varying and revoking NES	The varying or revocation of NES is subject to the satisfaction of the Minister, who can have regard to any matter they consider relevant.	Schedule 1, item 571, p315, line 16 - 21: ~~Before varying or revoking~~ When varied or revoked, a national environmental standard or revocation must~~, the Minister must be satisfied that:~~ (a) ~~the standard as varied, or the revocation,~~ promote~~s~~ the objects of this Act; and (b) ~~the standard as varied, or the revocation, is~~ be not inconsistent with Australia's obligations under the international agreements specified in subsection 520(3).
No regression principle	The no regression principle is subject to the satisfaction of the Minister.	Schedule 1, clause514YG(1) Before varying or revoking a national environmental standard, ~~the Minister must be satisfied that~~ the variation or revocation must: (a) ~~does~~ not reduce protections of the
		environment; and … (etc.) Delete subsection (2) and (3).

Using NES	The NES are only required to be used in decisions (other than assessment decisions) in a way which are to be prescribed by regulations (yet to be seen) and are otherwise optional.	Schedule 1, item 514YK Subsection (1) should be amended to clarify that NES apply to all relevant decisions (e.g. MNES Standard to apply to decisions relating to MNES). In addition, amended discretion as follows: (2) For the purposes of paragraph (1)(b), the regulations must may prescribe the following ways that a national environmental standard is to be applied by a person making a decision: ~~(a)~~ by the person being satisfied so that the decision is not inconsistent with the standard. Delete 2(b) and (c).
Unacceptable impact	The provision that an action must not have an unacceptable impact is subject to the Minister's satisfaction.	Schedule 1, item 136B The Minister must not approve the taking of an action unless, the Minister is satisfied that, taking into account any conditions to be attached to the approval, the taking of the action will not have or be likely to have an unacceptable impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action.
Net gain	The provision requiring approvals to pass the net gain test is subject to the satisfaction of the Minister or the drafting of unseen Regulations which may also be discretionary.	Schedule 1, item 136C The Minister must not approve the taking of an action that will have or is likely to have a residual significant impact on a matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action unless, the Minister is satisfied that, taking into account any conditions to be attached to the approval, the approval passes the net gain test in relation to the residual significant impact on the matter.
Application of NES to declarations	Provisions allowing accreditation of frameworks should be amended so that the consistency of declarations with NES is an objective standard.	Schedule 1, item 33(3) (3) The Minister must not accredit a management or authorisation framework for the purposes of a declaration under subsection (1) unless the Minister is satisfied that:... (aa) the framework is not inconsistent with any national environmental standard prescribed for the purposes of this paragraph; and (ab) approving an action in accordance with the framework will not be inconsistent with any national environmental standard prescribed for the purposes of this paragraph; and…

Application of NES to suspension, variation and revocation of declarations	Consistent with accrediting frameworks, proposed amendments, suspension, variation and revocation of accredited agreement declarations should be an objective standard.	Schedule 1, item 35(1) 1) If, in relation to a declaration in force under section 33, the Minister reasonably believes that a situation mentioned in subsection (2) exists or will arise, or is satisfied that any requirements prescribed by the regulations for the purposes of this subsection are met, the Minister may must, by written instrument…
Applications of NES to requirements for accrediting management or authorisation frameworks	Accrediting management or authorisation frameworks should be required to be objectively consisted with NES.	Schedule 1, item 46(3) (3) The Minister must not accredit a management or authorisation framework for the purposes of a bilateral agreement with a State or self-governing Territory unless the Minister is satisfied that: (aa) the framework is not inconsistent with any national environmental standard prescribed for the purposes of this paragraph; and (ab) approving an action in accordance with the framework will not be inconsistent with any national environmental standard prescribed for the purposes of this paragraph; and…
Making of bioregional plans	Making a bioregional plan should be framed as an objective test to ensure outcomes and consistency with instruments.	Schedule 1, item 177AP The Minister must not make a bioregional plan for a region unless the Minister is satisfied of the following:.... Schedule 1, item 177AQ H18: The Minister must not make a bioregional plan unless the Minister is satisfied that making the bioregional plan would not be inconsistent with any of the following:...
Bilateral agreements	Criteria for approval of an accredited arrangement should be framed as objective requirements to ensure outcomes and consistency (rather than the current subjective test which is based on the Minister's state of mind).	Remove "the Minister is satisfied that" to apply an objective test of whether an accredited framework is not inconsistent with each of these important criteria: ● in new s33(3) - the NES and other criteria; ● in new s34B(2) - the relevant World Heritage requirements; ● in new s34BA(2) - National Heritage requirements; ● in new s34C(2) - the declared Ramsar wetland requirements; and ● in new s34E(2) – relevant international conventions or agreements. For suspension, variation and revocation of declaration of an accredited framework, remove in

		new s35(1): “the Minister reasonably believes that” and “is satisfied that’.
		Remove reference to Ministerial satisfaction when approving accreditation of NOPSEMA, for example in s36H.
Streamlined assessment	Criteria for deciding whether a streamlined assessment approach is appropriate should be objective.	Schedule 1, part 1 s 194 at new s 87(5) should be amended as follows: (5) The Minister may decide on an assessment by streamlined assessment if only if the Minister is satisfied (after considering the matters in subsection (3)) that: (a) the approach will allow the Minister to make an informed decision whether or not to approve under Part 9, for the purposes of each controlling provision, the taking of the action; and (b) the greenhouse gas emissions information for the action has been provided. Additional considerations in new s 87A should similarly be amended to objective frames.
Strategic assessments	The proposed changes to current strategic assessment include powers to vary current and new approvals for classes of actions following strategic assessment.	Section 146DI and s 146DJ regarding minor variations and variations of approvals should be an objective test. The following proposed sections should also be objective: ● Section 146FA (no inconsistency with NES) ● Section 146FB (no unacceptable impact) ● Section 146FC (no residual significant impact without net gain
Grounds for grant of national interest exemption and new power to declare national interest proposal	Consideration of what is in the national interest for an exemption from the EPBC Act requirements to apply should be constrained to limit the considerations that the Minister can take into account when determining the national interest. The new power for	Remove schedule 1,part 1, div 2A Schedule 1 items 157C(2) (if remaining), 157L(3), 302D remove: ~~This does not limit the matters the Minister may consider.~~ If national interest proposals are remaining, amend considerations in item 157C(2) to be in line with other national interest exemptions.

	the Minister to declare a national interest proposal should be removed.	
Rulings	The power to make rulings provides significant discretion to the Minister and EPA CEO to act in the place of the judiciary and parliament in declaring how laws should be interpreted and is a corruption risk.	Schedule 1, part 19C The Bill should be amended to **remove the power** to make rulings. If this is not possible, robust substantive and procedural safeguards must be placed on the power. For example: · Safeguards about the outcome of rulings, for example: Rulings must not authorise or facilitate unacceptable impacts, or actions that do not comply with NES. · Safeguards about the making of rulings, for example: The Minister/CEO must consult on proposed rulings, must provide an explanation of the purpose and intended effect of the ruling, must disclose if the ruling has been requested by any third party, and must provide reasons for the ruling. Matters for consideration and matters that are prohibited considerations for the making of rulings should be prescribed.

Offsets framework	As drafted, nearly all obligations on the Restoration Contributions Holder are framed as discretionary. Instead, offsets must be scientifically outcome-based in order to ensure that offsets can achieve real environmental outcomes that compensate for the impacts of projects. All obligations on the Restorations Contributions Holder should therefore be objective and non-discretionary.	Attaching offset conditions should be objective (s 134(3AB) such that the Minister may only attach an offset condition if it would objectively assist in mitigating or repairing damage. All obligations on the Restorations Contributions Holder should be objective, including: ● Constraints on spending on restoration actions (s 177CS(2) ● The availability of “alternative” restoration actions (s 177CS(4) and (5)) ● The option of using a combination of general restoration and alternative restoration actions (s 177CT) ● Finding that the primary impact has already been compensated for and that a restoration contribution charge therefore does not need to be spent under (s 177CU) ● Pooling amounts to cover multiple residual significant impacts (s 177CV(1)(b)) ● Consultation with the restoration contributions advisory Committee (s 177CW) ● Spending exemption amounts on restoration actions (s 177CY(1)(a)) ● Spending on bioregional restoration actions (s 177CZ) ● Spending top-up amounts (s 177DA) ● General spending requirements (s 177DC)

Annexure 2: Strengthening Protection Statements

Issue 1: Interaction between protection statements and conservation planning documents

Existing provisions in the EPBC Act require that the Minister not act inconsistently with a recovery plan or threat abatement plan, and must have regard to any approved conservation advice, must be retained (emphasis added).

The draft amendments will diminish this requirement and instead require (generally) only that the Minister must not act inconsistently with protection statements (while still being able to consider recovery plans and conservation advices). **This is a backwards step.** Recovery plans in their entirety are an important part of the regulatory framework. They are developed through rigorous scientific and community consultation processes set out in the Act. While we recognise that there may be efficiency in lifting important information into 'protection statements' to provide quicker guidance to decision makers and for protection statements to provide clarity in relation to new provisions (such as new provisions relating to unacceptable impacts), **the existing requirement that the Minister not act inconsistently with a recovery plan must be retained.** Protection Statements must complement, and must not be inconsistent with or override existing conservation planning documents.

The Bill proposes to make amendments to the existing requirements in relation to:

- Approvals under Part 9 – see proposed amendments to section 139
- Declarations under s 33 that actions do not need approval – see proposed amendments to section 34D
- Bilateral agreements and management or authorisation frameworks – see proposed amendments to section 53
- Strategic assessments – see proposed amendments to section 146K

The Bill replicates these changes in proposed new section 177AO (which deals with how bioregional plans need to consider protection statements, recovery plans and conservation advices).

The requirement that the Minister not act inconsistently with a recovery plan and have regard to conservation advices is one of the very few guardrails on Ministerial discretion in making approval decisions and must be retained. It has been particularly important in holding decision makers to account under section 139.

Recommendation: Existing requirements for the Minister to not act inconsistently with a recovery plan or threat abatement plan and have regard to any approved conservation advice must be retained.

These reforms also provide the opportunity to strengthen the Act by requiring the Minister to not act inconsistently with conservation advices (compared to simply have regard to considering conservation advices as currently required).

Issue 2: Making protection statements

Current drafting provides that:

- the Minister must not make a protection statement unless the Minister is satisfied that the protection statement is not inconsistent with any national environmental standard prescribed by the regulations for the purposes of this paragraph (s 298A(2)); and

- the Minister must have regard to any recovery plan for the species or community or a relevant part of the species or community; and any approved conservation advice for the species or community (s 298A(3) (our emphasis)

Recommendations:

Section 298A(2): The requirement to be consistent with relevant national environmental standards or other criteria prescribed by regulation should be an objective requirement (i.e. the language of "unless the Minister is satisfied") should be removed.

Section 298A(3): **Drafting should be amended to ensure protection statements**

provide equal or greater protection than recovery plans or conservation advices.

To align new protection statements with existing requirements, the Bill should require:

- the Minister to consider recovery plans and conservation advices when making or varying protection statements
- that protection statements must provide equal or greater protection than set out in a recovery plan or conservation advice
- where there is any inconsistencies, protection statements prevail to the extent of the inconsistency

This would ensure protection statements do not replace or override recovery plans or conservation advices, including important existing requirements that the Minister to not act inconsistently with a recovery plan and have regard to a conservation advice, but that they can be used to enhance recovery plans and provide greater protection, particularly when a recovery plan may be out of date. These changes would need to be made across various provisions of the Act.

We consider that **consultation with the Scientific Committee** in s 298D should be mandatory rather than optional to ensure the scientific basis and integrity of protection statements.

There should also be a requirement to not be inconsistent with Threat Abatement Plans, which are also important conservation planning documents.

Finally, section 298B(3) provides the Minister **broad powers to input into decision-making** in a broad range of decisions (being applying an environmental law provision), which risks Ministerial direction of decision-making. This is an expansive power that should be removed, particularly given 298B(2)(d) and (e) would allow a broad range of information to be included in a protection statement. Section 298B(3) should be removed.

<u>Issue 3: Varying protection statements</u>

The draft provisions allow the Minister to vary protection statements, but requirements for making protection statements (in proposed section 298A) do not apply in the same way. Instead, proposed section 298F(2) provides that the Minister must have regard to relevant recovery plans, conservation advices, any advice received from in accordance with section 298D; and any relevant comments received in accordance with section 298E.

Recommendation: Given a varied protection statement will have the same effect as the original protection statement, it would be appropriate for the variation provisions to align with the provisions for making protection statements.

<u>Issue 4: Revoking protection statements</u>

Revocation of protection statements should be subject to public consultation and mandatory consultation with the Scientific Committee as the decision to revoke a protection statement could impact how decisions relating to the approval of actions impact threatened species or ecological communities.

Annexure 3: Reconsideration requests

The current EPBC Act provides power for the Minister (at s 78) to reconsider (and then vary or revoke) controlled action decisions (being decisions made under s 75 of the Act) both as to whether an activity needs to be assessed and approved under the EPBC Act, as well as if so, what matters of national environmental significance are relevant to the assessment. The Act also provides for third parties to make requests for this power to be exercised (s78A). A reconsideration request can be made for example where:

- substantial new information has become available about the impacts the action may have on a protected matter which warrants reconsideration of the decision; or
- there has been a substantial change in circumstances since approval which changes the impacts of the action; or
- the controlled action decision was made pursuant to a bilateral agreement, s 33 declaration or bioregional plan which no longer applies.

This is an essential power to ensure that regulation of impacts can be responsive to the changing environment and improvements in scientific understanding. This framework is important for environment groups and the community to raise the need for reconsideration of a decision if the circumstances or information has changed around the approved activity such that there is a need to reconsider how it is being regulated.

This power also represents an **important safeguard** by providing the Minister with an opportunity to correct mistakes that may have occurred in the s 75 process of determining whether an action is a controlled action. The Bills limit the power to seek reconsideration in ways that hinder the utility of the reconsideration power.

Changes to reconsideration requests

We are particularly concerned about the following**:**

- **Limiting the timeframe to make a reconsideration request to 28 days for controlled action decisions (new s78A(2)):**
  Currently under the Act there is no time limit for seeking reconsideration of a decision (except that it must be before a decision on an EPBC referral or before the decision is acted upon). EPBC Act assessment can take a number of months to years depending on the complexity of an application and its potential impacts, and in that time circumstances can change, warranting reconsideration. The Bill proposes to limit the timeframe for reconsideration requests to 28 days after a controlled action decision has been made (Schedule 1, clause181 of the Bill, amending s78A(2)), undermining the ability for the reconsideration provisions to play the role intended.

This time limit for making a request was amended earlier this year to limit reconsideration for actions being taken where it was decided it is not a controlled action if taken in a particular way in accordance with a management arrangement, and the action is being

taken and the way in which the action is being taken has been ongoing or recurring for at least 5 years. This limitation remains under the Bill.

- **Higher threshold for reconsideration requests for controlled action decisions (new s78A(2)-(2B)):** The Bills propose that a valid reconsideration request must now include substantial information/substantial change in circumstances that demonstrates, with a "high degree of certainty associated with the quality and accuracy of the information", that the impacts the action has, will have or is likely to have on an MNES are or are likely to be different from the impacts as assessed for the first decision. If it's a substantial change in circumstances, the request also needs to set out satisfactory reasons for the circumstances not being foreseen.

In our view, these two amendments are so onerous and limiting that they are likely to effectively foreclose reconsideration requests for controlled action decisions and undermine the intent and purpose of the reconsideration power. The purpose of the provisions is to allow for the Minister to fix potential errors and ensure all relevant information is considered at this stage of the assessment process which has been acknowledged as a triage process rather than a final one - no substantial information is likely to arise a mere 28 days after the controlled action decision, particularly any information that could meet this threshold. Further, this proposed amendment is directly contrary to the precautionary principle.

We recommend that these proposed amendments are rejected and current requirements in the Act are maintained.

Amendment suggested: Remove Schedule 1, clause 181 of the Bill in its entirety to ensure that the reconsideration request power is able to still effectively operate.

Carrying out controlled actions during assessment process

- The Bill provides, at new s79E (Schedule 1, clause 187 of the Bill), a power for the Minister to determine that an action that was previously not a controlled action, but was subsequently decided to be a controlled action following a reconsideration, can **continue to be taken while being assessed under the EPBC Act.** This power undermines the assessment and approval regime of the Act and should be deleted.

We recommend that either:

- Section proposed new s79E is rejected, or alternatively; or
- Additional safeguards are added that require the Minister to be satisfied, before making a determination allowing an action to continue while an assessment is undertaken, that doing so would not be inconsistent with the objects of the Act, or any offence provisions.

Amendment suggested: Remove proposed new s79E in its entirety.
Alternatively amend s79E to limit the potential impacts that may be allowed to continue under this provision, by:

- Amendment ss79E(d) to add after 'agreement': ', or with any provisions in this Act, including but not limited to the objects'

Removal of reconsideration powers for bilateral agreements, s 33 declarations or bioregional plan

- The Bill proposes to remove provisions (via Schedule 1, clauses 176 and 177 of the Bill amending s78(1)) that currently allow for reconsideration where the controlled action decision was made pursuant to a bilateral agreement, s 33 declaration or bioregional plan. This would remove an important safeguard in circumstances where there is warrant to reconsider a decision made under an accredited framework or bioregional plan. Regardless of the fact that applications under accredited frameworks will no longer need to be referred under the reformed EPBC Act, allowing a reconsideration power for the accredited decision and bioregional plans is an important safety net for matters of national environmental significance. It will ensure that these decisions which are intended to uphold the EPBC Act are subject to the same power of review should circumstances or information with regard to matters of national environmental significance change.

We recommend that amendments be considered that would allow for reconsideration of decisions with respect to accredited frameworks and bioregional plans under the Bill, as a safeguard where there is more information, or circumstances have changed, with respect to the impacts to matters of national environmental significance of an action under these pathways.

Annexure 4: Removing or constraining the Regional Forest Agreement (RFA) exemption

A number of options exist for amending the EPBC Act to remove or constrain the RFA exemption.

1. Repeal the Regional Forest Agreements Act 2002 and remove the RFA exemption from the EPBC Act

See drafting in Schedule 1 of the Ending Native Forest Logging Bill 2023, previously introduced by Senator Rice.

2. Condition the RFA exemption and apply NES

Amendments shown below – deletions in ~~red strikethrough~~, additions in <u>black underline</u>.

Any means of subjecting RFAs to standards must also be subject to robust transparency, reporting (by states) and accountability measures to enable the NEPA to conduct ongoing compliance assurance and to provide visibility of trends and impacts for regulators and the public. Conflicts of interest must be avoided. Transparency measures should include regular and publicly available monitoring and reporting. Accountability measures should include the right of the NEPA and third parties to seek to remedy or restrain breaches of the Act or any relevant standards by operators.

<u>Amend the EPBC Act as follows</u>:

38 Part 3 not to apply to certain RFA forestry operations

~~(1) Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.~~

(1) Part 3 does not apply to an RFA forestry operation that is not likely to have an unacceptable impact and is undertaken in accordance with the terms of, and any requirements imposed by or through:

a. the applicable RFA;

b. the applicable state Forest Management System or Forest Management Framework referred to in the relevant RFA;

c. any Recovery Plan, Threat Abatement Plan, Conservation Advice or protection statement relevant to the forestry operation, or component thereof, including strategies, actions and advice; and

d. any National Environmental Standard relevant to the forestry operation.

Note: Recovery Plans, Conservation Advices, and protection statements relevant to a forestry operation include, but are not limited to, those for listed threatened species or listed threatened species habitat likely to occur in the area subject of the forestry operation, or

listed threatened species or listed threatened species habitat that may be impacted by the forestry operation.

Note: A National Environmental Standard relevant to a forestry operation includes, but is not limited to, a National Environmental Standard that relates to a matter of national environmental significance listed under Part 3, which is likely to be impacted by the forestry operation.

Note: See the definition of ***unacceptable impacts*** *in section 527F.*

42 This Division does not apply to some forestry operations

Subdivisions A and B of this Division, and subsection 6(4) of the Regional Forest Agreements Act 2002, do not apply to RFA forestry operations, or to forestry operations, that are:

(a) in a property included in the World Heritage List; or

(b) in a wetland included in the List of Wetlands of International Importance kept under the Ramsar Convention; or

(c) incidental to another action whose primary purpose does not relate to forestry. (d) in a listed threatened ecological community; or

(e) in critical habitat; or

(d) likely to have an unacceptable impact; or

(e) inconsistent with National Environmental Standards.

3. Condition the RFA exemption and provide for sunsetting

Legislate narrowing of the RFA exemption to take immediate effect as above, with sunsetting of the RFA exemption to occur within 18 months. This ratchets down the applicability of the exemption without an immediate cut-off, enabling both industry and the NEPA to transition into referral, assessment and approval of forestry operations. It could be coupled with a legislated transition plan or package, drawing on experience from other sectors and legislative schemes that set up an industry transition – this could also form a commitment rather than a legislated package.

Annexure 5: s43B continuations of use exemption

The exemption for continuations of use undermines the ability of the Act to protect matters of national environmental significance (MNES) and should be repealed or constrained. EPBC Act reform is an opportunity to ensure that all activities that have or are likely to have a significant impact on MNES, including land clearing, can be assessed under Commonwealth law.

S43B should be repealed in its entirety. Alternatively, s43B should be amended as detailed below to address misapplication and over-exploitation.

43B Actions which are lawful continuations of use of land etc.

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring on that particular land, sea or seabed immediately before the commencement of this Act.

(2) However, subsection (1) does not apply to an action if:

(a) before the commencement of this Act, the action was authorised by a specific environmental authorisation; and

(b) at the time the action is taken, the specific environmental authorisation continues to be in force.

Note: In that case, section 43A applies instead.

(3) For the purposes of this section, none ~~neither~~ of the following is a continuation of a use of land, sea or seabed:

(a) an enlargement, expansion or intensification of use;

(b) any use where, since the commencement of the Act:

(i) the impact of the use on a matter protected by a provision of Part 3 has increased in severity or significance;

(ii) the use impacts on new or different MNES, listed threatened species, listed migratory species, or listed threatened ecological communities.

(c) either:

(i)any change in the location of where the use of the land, sea or seabed is occurring; or

(ii) any change in the nature of the activities comprising the use;

that results in a substantial increase in the impact of the use on the land, sea or seabed.

(d) an intermittent, periodic, irregular or variable use of land, sea or

seabed; (e) a passive use of land, sea or seabed;

(f) the clearing of woody vegetation which is at least 15 years of age;

drafting note: Regrowth habitat for threatened species should be protected, and not exempt. A 15 year median age threshold for woody vegetation regrowth to become viable as habitat for threatened species is identified in Thomas et al, 2025. This is a sensible threshold for regrowth woody vegetation to be excluded from the exemption and require referral and assessment before any clearing occurs.

(g) any use in or outside the Great Barrier Reef Marine Park in the Australian jurisdiction that has, will have or is likely to have, a significant impact on the environment in the Great Barrier Reef Marine Park;

(h) any use prescribed in the regulations to not be a continuation of use of land, sea or seabed for the purposes of this section; or

(i) is likely to havehave an unacceptable impact.

Note: See the definition of ***unacceptable impacts*** in section 527F.

Insert new s43C, as proposed here in underline:

43C Certification of actions which are lawful continuations of use of land

(1) A person may apply to [Environment Protection Australia/the Minister] for a certificate confirming that an action is a lawful continuation of use for the purposes of section 43B.

(2) [Environment Protection Australia/the Minister] must publish an application received under subsection (1) on the internet, invite public comments on the application for 60 days after the date of publication, and give proper consideration to any public comments received including an explanation of how [Environment Protection Australia/the Minister] took public comment into account;

(3) [Environment Protection Australia/the Minister] must, within 90 days of the closure of public comments on an application under subsection (1), decide the application and either issue or refuse the certificate.

(4) An application under subsection (1) must be made in a way, and include the information, prescribed by the regulations.

(5) [*a provision providing the [Environment Protection Australia/the Minister] with the ability to request further information equivalent to s76, including suspension of time in subsection (2)- (3) during such a request*]

(6) [Environment Protection Australia/the Minister] may only issue a certificate under subsection (1) if the action for which the certificate is sought is a lawful continuation of a use of land, sea or seabed within the meaning of this section, and must refuse to issue a certificate if not.

(7) A certificate issued under subsection (3) is binding upon Environment Protection Australia and the Minister.

Amend s 520 Regulations, as proposed here in underline:

(1) The Governor-General may make regulations prescribing all matters: (a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

…

(9) The Regulations may prescribe the documents required to be provided to [Environment Protection Australia/the Minister] by a person applying for a certificate under s43C of this Act.

(10) The Regulations may prescribe any action which is not a lawful continuation of a use of land, sea or seabed for the purposes of section 43B of this Act.

To: Nature Repair Market Team
Department of Climate Change, Energy, the Environment and Water
E: NatureRepairMarket@dcceew.gov.au
Re: Consultation – Protect & Conserve Method for the Nature Repair Market

Dear Sir/Madam,

On behalf of Wildlife Queensland, we welcome the opportunity to respond to the consultation on the "Protect & Conserve" method of the Nature Repair Market (NRM). As a state-wide environment NGO deeply engaged in species conservation, habitat protection, hollow-dependent fauna, private protected areas, and community-led conservation initiatives in Queensland, we commend the Australian Government's initiative to create a voluntary national biodiversity market. We believe that if carefully designed, this mechanism can make a meaningful contribution to Australia's biodiversity targets (including the 30 % by 2030 goal) and support the long-term protection outcomes we so urgently need.

Below we set out key comments, recommendations and suggested improvements specific to the Protect & Conserve method, grouped under thematic headings. We also provide specific recommendations relevant to Queensland's context.

1. Purpose, Scope and Alignment with National & Global Frameworks

Comment:
The Protect & Conserve method is appropriately framed as supporting long-term protection and conservation of biodiversity via expansion of protected areas or enhanced management of existing protected / conserved land. This aligns well with national and international commitments (e.g., the Kunming-Montreal Global Biodiversity Framework, UN Global Forest Goals, the 30 × 30 ambition) and the policy context you have described. We note that the NRM is intended to complement, not replace, regulatory protections.

Recommendation:

- Explicitly reference permanence in protection (i.e., in-perpetuity or at least very long-term) as a priority in the method design, rather than short-term protection blocks. Many threatened species and ecological processes require decades to centuries of continuity.

- Ensure the method is clearly aligned with and supportive of existing frameworks such as the Queensland Biodiversity Conservation Strategy, the Nature Positive Plan, and the national protected area expansion target.

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- Provide clarity on how this method complements the other methods (e.g., “Replanting Native Forest & Woodland Vegetation”, “Enhancing Native Vegetation”) to avoid overlap, double-counting, and confusion of scope.

2. Integrity, Additionality and Baselines

Comment:
High integrity of credits/certificates is critical to avoiding perverse outcomes. Existing commentary for the NRM stresses the need for transparency, strong governance and robust baselines. In the Queensland context, many areas of remnant vegetation or private protected areas are already under management for threatened species (e.g., hollow-dependent fauna such as greater gliders, yellow-bellied gliders, spotted-tailed quolls). Recognising pre-existing conservation effort is important to fairness, but also challenging for additionality.

Recommendation:

- Confirm that the method design includes clear baseline criteria for existing protected/conserved land: what qualifies as “new area” vs “existing area improved”?

- Clarify how improvements in management (e.g., invasive species control, fire management, hollow retention, long-term covenanting) will be credited under this method, and how “additionality” is framed in this context, ideally recognising incremental improvement rather than penalising prior high-quality stewardship.

- Explicitly provide for stacking or integration of outcomes (e.g., biodiversity + carbon + ecosystem services) where appropriate, while guarding against double-counting. The method should clarify how biodiversity certificates sit relative to other markets.

- Ensure mechanisms for verification and auditing are scalable for community and conservation NGOs, not so onerous that small or regional protected areas are excluded by cost.

3. Permanence, Risk, and Monitoring Requirements

Comment:
Protection and conservation outcomes require long timeframes. There is a risk of short-term crediting undermining long-term ecological values. For hollow-dependent fauna in Queensland, habitat continuity over decades is essential.

Recommendation:

- Provide minimum permanence periods (e.g., 50–100 years or in-perpetuity) for projects under this method, with clear mechanisms to deal with changes in land ownership, threats (e.g., climate change, fire, invasive species) and termination of conservation agreements.

- Require robust long-term monitoring frameworks tied to biodiversity outcomes (not just management actions). For example, monitoring of key indicator species (hollow-dependent mammals, woodland birds, etc.) to demonstrate outcome delivery.

- Include risk mitigation provisions (e.g., buffer zones, insurance against catastrophic loss, adaptive management triggers) to protect certificate value if assets degrade.
- Incorporate a strong reporting and audit regime, but balanced for NGO/community sector use, not excessively costly or technical such that participation is discouraged.

4. Eligibility, Access & Equity in Queensland Context

Comment:
Queensland has significant private protected area (PPA) estate, many volunteer-run Friends of Parks and Land for Wildlife properties, and thousands of hours of volunteer effort supporting hollow-dependent fauna and understorey restoration. It is critical the method provides equitable access for smaller holders, community organisations and Indigenous land managers.

Recommendation:

- Ensure that community-based organisations, Indigenous land managers and smaller protected areas (including those managed by volunteers) can participate under the method without prohibitive transaction costs.
- Provide fee waivers or streamlined pathways for smaller projects (< e.g., 500 ha) or those in high-conservation-value patches (e.g., hollow-bearing landscapes, critical connectivity corridors).
- Allow recognition of non-contiguous parcels or aggregated projects (e.g., multiple parcels under one management group) so that smaller landholders/networks can pool resources.
- Ensure first-mover disadvantage is avoided. Areas already under covenant or management should not be disadvantaged vis-à-vis new acquisitions simply because the project commenced earlier.

5. Ecological Priorities – Focus on Hollow-Dependent Fauna, Connectivity and Intact Remnants

Comment:
Wildlife Queensland draws attention to the critical importance of hollow-bearing trees, long-term cavity availability, and connectivity for hollow-dependent species (e.g., gliders, possums, owls, bats) in Queensland's forest and woodland ecosystems. Many of these ecological values are under-represented in policy and markets.

Recommendation:

- Prioritise recognition of habitat quality, not just quantity or area, for instance, the presence of senescent/xeric trees with hollows, canopy continuity, structural complexity, recruitment of new hollow trees, and connectivity between remnant patches.
- Incorporate metrics for hollow availability, hollow retention and recruitment into the method's "outcome-based" framework or monitoring requirements.

- Encourage projects that secure connectivity corridors between remnant patches (which may be small but ecologically critical) to support metapopulation resilience of hollow-dependent fauna.

- Promote enhancing existing reserves (e.g., Friends of Parks sites, private protected areas) via targeted management (e.g., feral animal control, fire-safe management, hollow tree recruitment) as eligible under this method, not solely land acquisition.

6. Economic Viability and Market Signals

Comment:
For the NRM to attract meaningful private investment (and hence deliver large-scale outcomes), the economic signal (price, certificate value) and transaction design must be credible. The commentary suggests certificates must be tradeable and transparent.

Recommendation:

- Provide early indication of likely certificate value ranges (or price brackets) and how the permanence/risk grading affects pricing, so that participants (including NGOs, landholders) can evaluate business cases.

- Ensure administrative costs (registration, monitoring, audits) are proportionate and known upfront. Smaller not-for-profits or volunteer reliant groups must have a clear pathway.

- Consider mechanisms to prioritise investment in biodiversity "hot-spots" (e.g., Queensland's threatened hollow-dependent fauna landscapes, priority corridors) by signalling higher certificate multipliers or preferential recognition of high-value ecological outcomes.

- Enable aggregation of smaller projects into portfolios, facilitating participation of community groups and smaller landholders and reducing per-unit transaction costs.

7. Governance, Transparency and Adaptive Learning

Comment:
Strong governance and transparency are foundational to market credibility. Existing scrutiny of the NRM legislation and discussion papers emphasise this need.

Recommendation:

- Ensure the method includes public disclosure of project registers, certificate issuance, monitoring results and audit outcomes (while respecting confidentiality of sensitive species/localities).

- Provide mechanisms for periodic review of the method (say every 3–5 years) to incorporate scientific advances, ecological changes (e.g., climate impacts), lessons learned from early projects and evolving best practice.

- Include adaptive management pathways: if unforeseen ecological change (e.g., severe wildfire) impacts a project's ability to deliver outcomes, there must be mechanisms to adjust performance expectations and manage risk (rather than automatic failure).

- Ensure engagement with Indigenous nations and Indigenous knowledge systems as part of project design, monitoring and governance.

8. Specific Recommendations for Queensland & Wildlife Queensland's Focus

Given our organisation's focus, we suggest the following state-specific priorities within the national method design:

- Recognise and reward efforts to secure cavity-bearing trees and hollow recruitment over time. For example, projects that maintain and enhance hollow trees should be eligible under "enhanced management" rather than only acquisition of land.

- Recognise the value of community/citizen science monitoring for threatened hollow-dependent fauna as valid monitoring evidence within project reporting.

- Enable the method to be used to support Private Protected Areas (PPAs) in Queensland, many of which are small-to-medium size, and rely on volunteer engagement and long-term management, but which deliver high conservation value, especially in fragmented landscapes.

- Encourage the method's application in coastal, marine-adjacent and island systems (for example Moreton Bay Marine Park edge habitats, Turtle nesting sites on K'gari Coast) where Wildlife Queensland is active, recognising that "conservation" is not only terrestrial.

- Provide Queensland-specific guidance or allowance for recognising long-term volunteer hours, community monitoring and land-manager contribution as part of project valuation (which supports the "social licence" and volunteer base that Wildlife Queensland represents).

- Ensure the method's approach to additionality and baseline does not penalise Queensland land-managers who have already undertaken conservation covenants or management (e.g., allowed for "grandfathering" or incremental credit for additional enhancement).

9. Summary of Key Asks

In summary, Wildlife Queensland urges that the Protect & Conserve method:

1. Prioritises in-perpetuity or very long-term protection and management of biodiversity assets, including hollow-bearing habitat and connectivity.

2. Provides clear baseline/eligibility criteria recognising both new acquisitions and enhancement of existing protected assets.

3. Enables smaller land-holders, community/volunteer organisations and Indigenous land-managers to participate without prohibitive cost or administrative burden.

4. Recognises habitat quality, not just quantity, and specifically hollow-dependent fauna, connectivity and structural/functional ecological values.

5. Signals economic viability (fee transparency, certificate value, transaction cost mitigation) to attract broad participation.

6. Embeds robust monitoring, auditing, and governance systems while remaining accessible to non-profit and volunteer-based conservation groups.

7. Ensures transparency, periodic review and adaptive learning to respond to evolving ecological science, market experience and climate risk.

8. Gives special attention to Queensland's conservation landscape: private protected areas, volunteer citizen science, threatened hollow-dependent species, and community conservation networks.

We appreciate the opportunity to provide this submission. Wildlife Queensland stands ready to contribute further, including through case studies, mapping of hollow-dependent species habitat, volunteer-monitoring frameworks, and engagement with our members across the state, to help ensure that the Protect & Conserve method delivers meaningful biodiversity outcomes in Queensland and nationally.

Yours sincerely,

[redacted]

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[redacted]

John Tracey
CEO

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