STATE PLANNING COMMISSION

Agenda Report for Noting

Meeting Date: 29 June 2023

Item Name	Update on proposed accreditation processes for joined-up assessments under the *Environment Protection and Biodiversity Conservation Act 1999*.
Presenters	Margaret Smith, Robert Kleeman and Simon Neldner
Purpose of Report	Noting
Item Number	6.1
Strategic Plan Reference	N/A
Work Plan Reference	N/A
Confidentiality	Not Confidential (Release Immediately), except for Appendix D which is classified as Confidential (Draft Advice or Documents)
Related Decisions	N/A

Recommendation

It is recommended that the State Planning Commission (the Commission) resolves to:

1. Approve the designation of this item as Not Confidential (Release Immediately), with the exception of **Appendix D** which is classified as Confidential (Draft Advice or Documents).
2. Note the work being undertaken to draft and confirm accredited assessment arrangements with the *Department of Climate Change, Energy, the Environment and Water* for the consideration of Matters of National Environmental Significance (MNES) under the *Environment Protection and Biodiversity Conservation Act 1999* for a joined-up assessment process for Impact Assessed, Crown Development and Essential Infrastructure projects under the *Planning, Development and Infrastructure Act 2016.*

Background

In September 2014, the Government of South Australia and the Commonwealth Government signed a bilateral agreement under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999 (*EPBC Act) to streamline environmental assessments by accrediting the former major development/major project pathways under section 46 of the *Development Act 1993.* A copy of this agreement is at **Appendix A**.

The main benefit of a bilateral agreement under the EPBC Act is the availability of a single touch, 'joined-up' assessment process with the Commonwealth for projects that may impact upon Matters of National Environmental Significance (MNES), thereby reducing time and costs for developers (who would otherwise have to undertake separate assessment processes).

The bilateral agreement covered assessment only – such that the Commonwealth retained a separate approval/decision process under their own legislation. Several state projects were considered under this process, including:

- Kangaroo Island Plantation Timber, Smith Bay
- SA-NSW Interconnector
- Olympic Dam – Resource Recovery Strategy
- Port Spencer – Deep Water Port
- Cape Hardy – Deep Water Port
- Nora Creina Golf Course and Tourism Resort.

With the commencement of the *Planning, Development and Infrastructure Act 2016* (the Act), the 2014 bilateral agreement (which is Act-specific) could not be used for new projects. Work then commenced on drafting a new bilateral agreement with an enhanced scope agreed to between the then State and Commonwealth Liberal Governments to work towards the accreditation of the Impact Assessed and Crown Development process under the Act for the purposes of both assessment and decision making.

In February 2022 the Commission was briefed on the progress of, and endorsed for public consultation, the updated draft Practice Directions for both Impact Assessed and Crown development to reflect the proposed process.

Since the formal ascension of the new State and Federal Labor Governments, the focus has shifted to accrediting assessment only and reserving decision making to each jurisdiction. The new Federal Government has also completed a further review of the earlier recommendations made by Professor Graeme Samuel into the EPBC Act, and the formulation of new Environmental Requirements for the assessment of MNES matters. These draft requirements have only recently been circulated to state agencies for comment.

On 5 April 2023, the Hon Tanya Plibersek MP, Federal Minister for the Environment and Water, gave formal notice to the South Australian Government of the Commonwealth's intention to develop a new assessment bilateral agreement (**Appendix B**).

The Department for Trade and Investment, Planning and Land Use Services (DTI-PLUS) has continued to seek accreditation for Impact Assessed, Crown Development and now Essential Infrastructure pathways under the new Act, reflective of both the state and proponent interest for a joined-up assessment option for those projects involving potential impacts to MNES.

Discussion

DTI-PLUS, along with representatives from the Department for Environment and Water (DEW) and the Department for Energy and Mining (DEM), is in regular contact with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) to progress a formal (assessment) bilateral agreement.

DCCEEW has advised that a formal bilateral agreement will be subject to Commonwealth legislative priorities, such as the planned establishment of an independent Environment Protection Agency, and a wider overhaul of environmental regulation (as part of its response to the Samuel review).

These initiatives have been outlined in the Federal Government's *Nature Positive Plan: better for the environment, better for business* (**Appendix C**).

Given the time required to conclude these processes, and to ensure that new state-level projects (where MNES may be significantly affected) can access a joined-up assessment process in the

meantime, work has progressed on a project specific accreditation framework for an Impact Assessed development application in the first place that can be readily actioned.

The key features of the project accreditation would involve the following steps:

- EPBC Referral submitted and validated (DCCEEW).
- EPBC Referral Decision and Assessment Approach Decision (DCCEEW).
- Declaration of state project as impact assessed (DTI-PLUS)
- Proponent lodges state application (DTI-PLUS)
- Technical Working Group established (DTI-PLUS, DCCEEW, Agencies, Proponent, Council).
- Coordination of Assessment Requirements (DCCEEW, DTI-PLUS, Proponent, relevant Council).
- DCCEEW input into draft EIS, draft Response Document, and if offsets required.
- DCCEEW review draft Assessment Report, including conditions and offset/SEB requirements.
- the Commission reviews and endorses the draft Assessment Report and makes a recommendation to the State Minister.
- State Minister determines proposal (and provides determination to DCCEEW).
- DCCEEW reviews State decision and issues proposed decision notice and then decision.

A draft process framework is at **Appendix D**.

DEM have advanced a similar arrangement with DCCEEW for the Atacama Project (production of mineral concentrate of zircon and ilmenite from a local mineral sand deposit) by Iluka Resources 200 kilometres north-west of Ceduna, with agreed guidelines and administrative arrangements.

In summary and notwithstanding the absence of a formal bilateral agreement in the short term, it is envisaged that similar benefits would apply to individual project accreditation under the EPBC Act for the consideration of MNES, with a strong collaboration and engagement process between DTI-PLUS and DCCEEW to help shorten timeframes and avoid duplication.

Appendices:

A. Previous Bilateral Agreement under the Development Act 1993 (KNet# 20147228)

B. Letter from Tanya Plibersek, Minister for Environment and Water (KNet# 20147231)

C. Nature Positive Plan: Better Environment, Better for Business, Commonwealth Government December 2022 (KNet# 20147328)

D. Draft Project Accreditation Flowchart (KNet# 20147329)

Prepared by:	Simon Neldner & Robert Kleeman
Endorsed by:	Robert Kleeman
Date:	29 May 2023

COMMONWEALTH OF AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

BILATERAL AGREEMENT

Bilateral agreement made under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) relating to environmental assessment

Commonwealth of Australia
(**Commonwealth**)

and

The State of South Australia
(**SA**)

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Details

Parties

1. The Minister for the Environment for and on behalf of the Commonwealth of Australia (the **Commonwealth**).

2. The State of South Australia (**SA**).

Background

A. Under the Intergovernmental Agreement on the Environment 1992 and Council of Australian Governments' Heads of Agreement on Commonwealth and State Roles and Responsibilities for the Environment 1997, the parties committed to working together across shared responsibilities to protect and conserve Australia's environment.

B. Both the Commonwealth and SA are committed to cooperative efforts to strengthen intergovernmental cooperation on the environment and to minimise costs to business while maintaining high environmental standards.

Objects

C. The Commonwealth and SA are jointly committed to maintaining high environmental standards and working together to streamline environmental assessment by this Agreement, as a step to ensuring the efficiency and effectiveness of environmental approvals. This includes ensuring the adoption of best practice regulatory processes for achieving an efficient, timely and effective process for environmental assessment of actions.

D. The parties will work cooperatively so that Australia's high environmental standards are maintained by ensuring that:

   a. Australia complies fully with all its international environmental obligations;

   b. Matters of NES are protected as required under the EPBC Act;

   c. there are high quality assessments of the impacts of proposals on Matters of NES; and

   d. authorised actions do not have unacceptable or unsustainable impacts on Matters of NES.

E. This Agreement provides for the accreditation of the SA processes set out in Schedule 1 of this Agreement to ensure an integrated and coordinated approach to the assessment of actions requiring approval from both the Commonwealth Minister (under the EPBC Act) and SA.

F. This Agreement will therefore enable the Commonwealth to rely on the SA assessment processes set out in Schedule 1 for approvals under the EPBC Act. As a step toward achieving the objectives of this Agreement, the parties will work together so that Commonwealth conditions attached to approvals are strictly limited to matters not addressed in SA assessments and approvals.

G. The parties will develop a comprehensive approvals bilateral agreement to accredit SA to undertake approvals under the *Environment Protection and Biodiversity Conservation Act 1999*, subject to statutory requirements.

H. The parties will use their best endeavours to undertake the commitments in this Agreement acting in a spirit of cooperation and consultation to achieve an efficient, timely and effective process for environmental assessments and decisions on whether to approve actions.

Provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, terms have the same meaning as in the EPBC Act and otherwise the following definitions are used:

Administrative Arrangements	administrative arrangements made under clause 9.1 of this Agreement.
Agreement	this bilateral agreement made under section 45 of the EPBC Act between the Commonwealth and SA, as amended from time to time, and includes its Schedule(s).
Assessment Report	for the class of actions described in: (a) Item 2.1(b)(i) of Schedule 1, the assessment report prepared under section 46B(9) of the *Development Act 1993* (SA); (b) Item 2.1(b)(ii) of Schedule 1, the assessment report prepared under section 46C(9) of the *Development Act 1993* (SA); (c) Item 2.1(b)(iii) of Schedule 1, the assessment report prepared under section 46D(8) of the *Development Act 1993* (SA); (d) Item 2.1(d)(i) of Schedule 1, the assessment report prepared under Item 4.5 of Schedule 1; (e) Item 2.1(d)(ii) of Schedule 1, the assessment report prepared under Item 4.5 of Schedule 1; (f) Item 2.1(d)(iii) of Schedule 1, the assessment report prepared under Item 4.5 of Schedule 1; and (g) Item 2.1(d)(iv) of Schedule 1, the assessment report prepared under Item 4.5 of Schedule 1.
Commencement Date	30 days after the date this Agreement is executed by the parties or, if executed on separate days, the date on which this Agreement is executed by the last party to do so, or such later date agreed in writing between the Commonwealth Minister and the Lead SA Minister.
Commonwealth Minister	the minister administering the EPBC Act and includes a delegate of the Minister.
Department	the Commonwealth Department of the Environment, or any other Commonwealth agency that administers this Agreement from time to time.
EPBC Act	the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Information	includes data.
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government and includes the common law and rules of equity as applicable from time to time.
Matter of NES	a matter protected by a provision of Part 3 of the EPBC Act.
Previous Bilateral Agreement	the bilateral agreement dated 8 July 2008 between the Commonwealth and SA relating to environmental impact assessment.
SA Minister	the SA Minister administering legislation accredited for the purpose of this Agreement and includes a delegate of the Minister.
Lead SA Minister	the Premier of South Australia, or the SA Minister notified in writing by the Premier of South Australia to the Commonwealth Minister.
Schedule	a schedule to this Agreement.

1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

(a) the singular includes the plural and vice versa, and a gender includes other genders;

(b) another grammatical form of a defined word or expression has a corresponding meaning;

(c) the meaning of general words is not limited by specific examples introduced by 'for example' or similar expressions;

(d) a reference to a clause, paragraph, Schedule or annexure is to a clause or paragraph of, or Schedule or annexure to, this Agreement;

(e) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(f) a reference in this Agreement to SA legislation is a reference to that legislation as in force at the Commencement Date; and

(g) notes and headings are for convenient explanation or reference only and do not form part of this Agreement or affect the meaning of the provision to which they relate.

1.3 Priority of Agreement documents

If there is inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

(a) the details and provisions of this Agreement;

(b) the Schedule(s); then

(c) the Administrative Arrangements.

2. Nature of this Agreement

(a) This Agreement is a bilateral agreement made under section 45 of the EPBC Act.

(b) This Agreement does not create contractual or other legal obligations between the parties, and a breach of this Agreement will not give rise to any cause of action, or right to take legal proceedings, other than as provided for in the EPBC Act.

(c) Transitional support from the Commonwealth in the form of embedded officers, and ongoing support in the form of access to Commonwealth Information and expert advice, will be considered and detailed in the Administrative Arrangements.

3. Duration of this Agreement

This Agreement commences on the Commencement Date and continues unless cancelled or suspended in accordance with the EPBC Act.

Note: Section 65(2) of the EPBC Act requires the Commonwealth Minister to cause a review of the operation of this Agreement to be carried out at least once every five years while this Agreement remains in effect.

4. Effect of this Agreement

4.1 Classes of actions not requiring assessment under the EPBC Act

Under subsection 47(1) of the EPBC Act, it is declared that an action does not require assessment under Part 8 of the EPBC Act if the action is in any of the classes of actions specified in Schedule 1 to this Agreement.

4.2 Scope

(a) Subject to clause 4.3, clause 4.1 applies to actions which occur wholly within SA, including its coastal waters.

(b) For actions which do not occur wholly within SA, or which are taken in SA but have relevant impacts in other jurisdictions, the parties will consult and use their best endeavours to reach agreement with other affected jurisdictions on an appropriate assessment process, such as that set out in Schedule 1.

(c) Consistent with section 49 of the EPBC Act, the provisions of this Agreement do not have effect in relation to an action in a Commonwealth area or an action taken by the Commonwealth or a Commonwealth agency.

(d) The parties note that this Agreement does not prevent the Commonwealth Minister deciding on a 'one off' accreditation under section 87(1)(a) of the EPBC Act, for processes not accredited under this Agreement.

4.3 Determination that an action is not within a class of action

(a) The Commonwealth Minister may determine that a particular action is not within a class of actions to which clause 4.1 applies.

(b) The Commonwealth Minister cannot make a decision under clause 4.3(a) after the SA Minister has given notice under clause 5.3.

4.4 Previous Bilateral Agreement

The Previous Bilateral Agreement is revoked from the Commencement Date.

5. Procedures for referral

5.1 SA to inform proponents of need to refer under the EPBC Act

(a) The parties will work cooperatively to ensure that proponents are aware of their obligations under the EPBC Act, and will use their best endeavours to encourage proponents to refer actions that are proposed to take place in SA that may require approval under the EPBC Act. Details will be included in the Administrative Arrangements.

(b) The parties recognise that SA will use its best endeavours to make others aware of the EPBC Act as part of its Information and awareness program.

5.2 Commonwealth Minister to inform SA Minister about whether an action is a controlled action

The Commonwealth Minister must notify the SA Minister of every action that:

(a) is proposed to be taken in SA; and

(b) the Commonwealth Minister determines is a controlled action, within 10 business days of the Minister deciding that the action is a controlled action.

5.3 Notification by SA Minister that an accredited process will apply

(a) Where:

(i) the Commonwealth Minister has notified the SA Minister that an action proposed to take place in SA is a controlled action; and

(ii) the action does not require assessment under Part 8 of the EPBC Act if assessed in a manner specified in Schedule 1 to this Agreement,

the SA Minister wherever possible within 10 business days after receiving the written notice referred to in clause 5.2(b), advise the Commonwealth Minister, in writing, whether the action will be assessed in a manner specified in Schedule 1 to this Agreement.

(b) If SA asks the Commonwealth Minister, under section 79 of the EPBC Act, to reconsider the decision that the action is a controlled action, then the 10 business day period referred to in clause 5.3(a) begins on the day that the State receives the notice described in subsection 79(3) of the EPBC Act. This notice, amongst other things, informs the State of the outcome of the Commonwealth Minister's reconsideration.

6. Assessment

6.1 Clause 6 only applies to 'controlled actions'

To avoid doubt, this clause 6 only applies where a proposed action is a 'controlled action' for the purposes of the EPBC Act.

6.2 Statutory undertaking

(a) Where an action:

(i) is a controlled action taken or proposed to be taken in SA;

(ii) does not require assessment under Part 8 of the EPBC Act if assessed in a manner specified in Schedule 1 of this Agreement; and

(iii) is an action:

(A) taken or proposed to be taken by a constitutional corporation; or

(B) taken by a person for the purposes of trade or commerce between Australia and another country, between two States, between a State and a Territory, or between two Territories; or

(C) whose regulation is appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries,

SA undertakes to ensure that the environmental impacts that the action has, will have, or is likely to have (other than the relevant impacts) are assessed to the greatest extent practicable.

(b) The parties agree that 'greatest extent practicable' in clause 6.2(a) is satisfied where the assessment has been undertaken in a specified manner of assessment as outlined in Schedule 1.

6.3 Proponent service delivery charter

For controlled actions, the parties agree to establish a proponent service delivery charter for appropriate assessment projects in the manner set out in the Administrative Arrangements.

6.4 Single assessment

(a) In determining the assessment approach for a proposed action, SA will decide on a form of assessment that will allow the Commonwealth Minister to have sufficient Information to make an informed decision whether or not to approve the proposed action and, if so, under what conditions.

(b) To inform SA's determination of the assessment approach, the Commonwealth Minister will provide to SA a copy of the notice of the decision and reasons for the decision provided to the proponent under section 77 of the EPBC Act.

(c) To ensure that a single SA assessment can be relied on by the Commonwealth Minister for a decision under Part 9 of the EPBC Act, SA will ensure that the Assessment Report includes:

(i) a description of:

(A) the action;

(B) the places affected by the action; and

(C) any Matters of NES that are likely to be affected by the action;

(ii) all relevant impacts on Matters of NES separately. This means that the nature and extent of likely impacts must be explicitly assessed for each Matter of NES, being, as relevant:

(A) the World Heritage values of a World Heritage property;

(B) the National Heritage values of a National Heritage place;

(C) the ecological character of a Ramsar wetland;

(D) listed threatened species (except a conservation dependent species) or their habitat, or any listed threatened ecological communities;

(E) the members of a listed migratory species or their habitat;

(F) a water resource, in relation to coal seam gas or large coal mining developments;

(G) the environment of the Commonwealth marine area (for actions outside the Commonwealth marine area that may impact the environment in the Commonwealth marine area);

(H) the environment, in the case of a nuclear action; and / or

(I) Commonwealth land (for actions outside Commonwealth land that may impact on the environment on Commonwealth land);

(iii) a clear identification of all relevant impacts on matters of NES.

(iv) a description of feasible mitigation measures, changes to the action or procedures to prevent or minimise environmental impacts on each relevant Matter of NES proposed by the proponent or suggested in public submissions; and

(v) to the extent practicable, a description of any feasible alternatives to the action that have been identified through the assessment process, and their likely impact on each Matter of NES;

(vi) a statement of recommended conditions for approval of the action that may be imposed to address identified impacts on Matters of NES, including consideration of any offsets;

(vii) a statement of SA approval requirements and conditions that apply, or are proposed to apply, to the action when the Assessment Report is prepared, including a description of the monitoring, enforcement and review procedures that apply, or are proposed to apply, to the action; and

(viii) the Information and opinion on which the assessment is based, or its source.

(d) In relation to coal seam gas and large coal mining developments, SA will:

(i) refer coal seam gas or large coal mining developments that are likely to have a significant impact on water resources to the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development for advice; and

(ii) take account of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development advice in the Assessment Report.

(e) SA may seek advice on relevant matters from Commonwealth agencies with relevant expertise with details to be outlined in the Administrative Arrangements.

6.5 Consistency and predictability

The parties agree to take steps wherever possible, to improve the efficiency and effectiveness of their own administrative processes to the greatest extent possible. This will include, but is not limited to the use of:

(a) greater up-front guidance to industry;

(b) common streamlined generic terms of reference for assessments;

(c) standard outcome-focused conditions; and

(d) increased data sharing across governments and provision of industry data from assessment documentation to the public.

6.6 Draft Assessment Report

(a) SA will provide to the Commonwealth Minister for comment a draft Assessment Report (or relevant part which addresses impacts on Matters of NES) before finalising it for the purposes of the relevant assessment process, and both parties will endeavour, to the greatest extent possible, to agree on a proposed set of common conditions.

(b) After receiving a copy of the draft Assessment Report, the Commonwealth Minister will provide advice within an agreed timeframe as to whether it provides the required Information for the Commonwealth Minister to make a decision on whether or not to approve the action under Part 9 of the EPBC Act. The process for the timeframe to be agreed will be set out in the Administrative Arrangements.

(c) If the Commonwealth Minister does not respond within the agreed timeframes it is taken that the Commonwealth has no additional requirements.

(d) If the Commonwealth Minister decides that further Information is required, SA will either:

  (i) provide the Information; or

  (ii) proceed to finalise the Assessment Report notwithstanding the advice.

6.7 Final Assessment Report

(a) When an action is assessed in the manner specified in Schedule 1 of this Agreement SA will:

  (i) provide a copy of the final Assessment Report or part thereof which addresses the relevant impacts of the action, together with the relevant assessment documentation and any other relevant Information on which the Assessment Report is based, to the Commonwealth Minister on the date on which the Report is provided to the proponent or decision-maker or published under the relevant State legislation; and

  (ii) if the State decision maker seeks further Information relevant to impacts on Matters of NES after the Assessment Report is provided under clause 6.7(a)(i) - provide copies of that further Information to the Commonwealth Minister not more than 10 business days after the date on which the Information is provided to the State decision-maker.

(b) SA may, when it provides the final Assessment Report referred to in this clause 6.7(a), provide additional Information on social, cultural and economic matters (only where the provision of this Information does not breach privacy or commercial in confidence Information requirements, or any relevant Law).

6.8 Additional Information

(a) If, in deciding whether to approve the taking of a proposed action assessed under this Agreement, the Commonwealth Minister uses any Information described in section 136(2)(e) of the EPBC Act, the Commonwealth Minister undertakes to provide a copy of this Information to the SA Minister.

(b) The Commonwealth Minister agrees to give SA an opportunity to comment on the accuracy of this Information, subject to the requirements of section 130 of the EPBC Act relating to the time period within which the Commonwealth Minister must decide whether to approve the action.

6.9 Relevant plans and policies

When preparing Assessment Reports on relevant impacts under this Agreement, SA agrees to take into account relevant guidelines, policies and plans, including where relevant:

(a) the Commonwealth EPBC Act Environmental Offsets Policy. (Where offsets under SA legislation are considered by either party not to fully address Commonwealth EPBC Act environmental offset policy requirements, the parties will consult on the offsets which may be recommended in the assessment report. Where additional offsets are identified as necessary to meet Commonwealth requirements they will be separately identified in the report).

(b) a recovery plan for a relevant listed threatened species or ecological community, any approved conservation advice and any threat abatement plan;

(c) Information in a report on the impacts of actions taken under a policy, plan or program under which the action is to be taken that was given to the Commonwealth Minister under an agreement under Part 10 of the EPBC Act (about strategic assessments);

(d) any management plan for a World Heritage property, a National Heritage place, or a Ramsar wetland property; and

(e) any wildlife conservation plan for a listed migratory species.

7. Transparency and access to Information

7.1 Clause 7 only applies to 'controlled actions'

To avoid doubt, this clause 7 only applies where a proposed action is a 'controlled action' for the purposes of the EPBC Act.

7.2 Indigenous peoples

(a) Assessments will recognise the role and interests of Indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources and promote the cooperative use of Indigenous peoples' knowledge of biodiversity and Indigenous heritage.

(b) The parties note that Indigenous people affected by a proposed action may have particular communication needs, and will make arrangements to ensure that affected Indigenous people have reasonable opportunity to comment on actions assessed under this Agreement.

(c) In particular, SA will:

(i) take all reasonable steps to obtain the views of Indigenous peoples in relation to any action under assessment that is likely to have a significant impact on any Matter of NES that relates to Indigenous cultural heritage or, that will occur on or directly affect land held under native title;

(ii) treat the views of Indigenous peoples as the primary source of Information on the value of Indigenous cultural heritage; and

(iii) consider and apply, as appropriate, guidelines jointly developed by the Commonwealth and South Australia in relation to consulting with Indigenous peoples for proposed actions that are under assessment in accordance with clause 9.5(a) of this Agreement.

(d) In relation to actions assessed under the *Mining Act 1971* (SA), the requirements in clauses 7.2(c)(i) and 7.2(c)(ii) are satisfied by the processes presently prescribed to meet the requirements of part 9B of the *Mining Act 1971* (SA) in relation to native title land.

7.3 Public access – generally

SA agrees that documentation about each assessment made under a manner specified in Schedule 1 will be available to the public, subject to any appropriate statutory exemptions (including commercial-in-confidence information and information relating to Indigenous cultural heritage). Documentation about each assessment includes guidelines for assessment and Assessment Reports, as identified in Schedule 1.

7.4 Public access – particular needs groups

SA will, in providing public access to assessment documentation, make special arrangements, as appropriate, to ensure affected groups with particular communication needs have an adequate opportunity to comment on actions assessed in the manner specified in Schedule 1.

Note: Groups with particular communication needs may include those with a vision or hearing impairment; who are illiterate or for whom English is a second language; and who, because of a disability, have difficulty accessing paper documentation or using a computer.

8. Conditions

8.1 Conditions attached to an approval

(a) The parties recognise the desirability of avoiding, to the extent practicable, attaching inconsistent conditions to approvals for actions assessed under this Agreement and SA Law.

(b) To this end, the parties:

(i) note the provisions of section 134 of the EPBC Act, which include a requirement for the Commonwealth Minister to consider any relevant State conditions when deciding whether to attach a condition to an approval;

(ii) agree to consult on the conditions proposed to be attached to an approval granted by either party; and

(iii) agree to inform one another before varying conditions attached to an approval for an action, where the condition relates to, or affects, a matter protected by Part 3 of the EPBC Act. The parties also agree to advise one another of any such variation after it has been made.

(c) To minimise duplication to the extent possible for actions assessed under this Agreement:

(i) SA will identify conditions imposed, recommended or likely to be imposed by the SA in relation to Matters of NES; and

(ii) the Commonwealth will use its best endeavours to ensure that conditions under the EPBC Act are strictly limited to matters not addressed, or likely to be addressed, by the State conditions.

8.2 Monitoring compliance with conditions

(a) Where an action:

(i) is taken in SA;

(ii) requires the approval of the Commonwealth Minister under Part 9 of the EPBC Act; and

(iii) requires approval (however described) under SA Law,

the parties agree to cooperate in monitoring compliance with conditions attached to approvals, with the aim of reducing duplication.

(b) Without limiting clause 8.2(a), the parties agree:

(i) that each party will inform the other of any conditions attached to an approval(s) to take an action assessed under this Agreement; and

(ii) subject to the legal requirements of each party, to put complementary arrangements in place for monitoring compliance with conditions on any action. The aim of these arrangements is to ensure that reporting and compliance activities, including site inspections are, to the extent practicable, consistent and effective.

8.3 Enforcing conditions on approvals

The parties agree to inform one another, as soon as practicable, of any action to prosecute a person for contravening a condition of an approval for an action assessed under this Agreement, where the condition relates to, or affects, a matter protected by Part 3 of the EPBC Act.

9. Cooperation and governance

9.1 Administrative Arrangements

To ensure that the requirements of this Agreement are administered cooperatively and efficiently, the parties will jointly develop Administrative Arrangements:

(a) that further detail the roles and responsibilities of each of the parties;

(b) that streamline the referral process for proponents;

(c) which may include guidelines on the exchange of Information for the purposes of clause 9.3 (Exchange of Information);

(d) which will allow proponents to simultaneously satisfy both requirements under the EPBC Act and relevant SA Law; and

(e) that otherwise provide for the implementation of this Agreement.

9.2 Senior officers' committee

The Administrative Arrangements will detail and provide for the establishment, operation and terms of reference of a senior officers' committee to oversee the implementation of this Agreement.

Note: The parties intend that the senior officers' committee would have alternating Chairs and would deal with both specific matters arising, including matters in dispute, but also be responsible for the ongoing health of this Agreement and the partnership, including making recommendations to governments on a continuous improvement basis, and to consider the implications of any legislative or other system changes proposed by either party.

9.3 Exchange of Information

(a) Subject to the permission of the owner of the relevant Information, each party agrees to share Information for the purposes of assessments conducted under this Agreement and to comply promptly with any reasonable request from the other party to supply Information relating to this Agreement.

(b) Subject to the permission of the owner of the relevant Information and the confidentiality requirements of the party providing the Information, the parties agree to make available to each other any appropriate and relevant Information for the parties to meet their respective responsibilities relating to this Agreement.

(c) The parties agree that Information will remain the property of the owner and its use will be subject to such licence conditions as may be agreed. The parties agree that Information will not be used or communicated to any other person without the permission of the owner.

9.4 Aligning assessment processes

The parties recognise that there is opportunity to streamline assessment processes even where those assessment processes cannot be accredited. To this end, the parties agree that they will cooperate to align assessment processes as set out in the Administrative Arrangements.

9.5 Guidance documents

(a) The parties commit to cooperate to jointly develop, implement, maintain and review guidance documents relating to Matters of NES and the operation of this Agreement.

(b) For the purposes of this clause 9.5, guidance documents may include:

(i) referral / application guidelines in relation to significant impacts on Matters of NES;

(ii) guidance documents for listed threatened species and ecological communities; and

(iii) other guidelines, policies or plans relating to Matters of NES prepared by the Commonwealth under the EPBC Act that may relate to the operation of this Agreement.

10. Review

10.1 Five year reviews

(a) A review of the operation and effectiveness of this Agreement must be carried out at least once every five years while this Agreement remains in effect in accordance with section 65 of the EPBC Act.

(b) Each review of this Agreement under this clause will be carried out jointly by the relevant administrative units of the Commonwealth and SA, at their own cost.

(c) Each review will include an evaluation of the operation and effectiveness of this Agreement against the objects of this Agreement.

(d) The Administrative Arrangements will set out the process that the parties agree to follow in conducting each review.

(e) The Commonwealth Minister must publish the report of each review in accordance with the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), and give a copy of the report of each review to SA.

11. Audit

11.1 Commonwealth Auditor-General

The parties recognise that, under the *Auditor-General Act 1997* (Cth), the Commonwealth Auditor-General may audit the operations of the Commonwealth public sector (as defined in section 18 of that Act) in relation to this Agreement.

12. Dispute resolution

12.1 Escalation process

(a) Acting in a spirit of cooperation, the parties agree that any dispute arising during the course of this Agreement will be dealt with as follows:

(i) the party claiming that there is a dispute will provide notice to the other party setting out the nature of the dispute;

(ii) the parties will seek to resolve the dispute by direct negotiation using their best endeavours;

(iii) discussions aimed at resolution will normally take place in the following order, before the exercise of any other rights in, or referred to in, clause 13:

(A) between officers of the senior officers committee established under clause 9.2;

(B) between the Secretary of the Department and the equivalent SA official; and

(C) correspondence between the Commonwealth Minister and the SA Minister.

(b) This clause 12 is subject to the rights and obligations of each party under relevant sections of the EPBC Act (including those sections dealing with cancellation and suspension of bilateral agreements).

12.2 Obligations continue

Despite the existence of a dispute, both parties must continue to perform their respective obligations under this Agreement, unless this Agreement is suspended or cancelled in accordance with the EPBC Act.

13. Suspension or cancellation

13.1 By Commonwealth Minister

Sections 57 to 64 of the EPBC Act provide that the Commonwealth Minister may cancel or suspend all or part of this Agreement (either generally or in relation to actions in a specified class) under certain circumstances. Sections 57 to 64 of the EPBC Act also set out a process for consulting on the cancellation or suspension of all or part of this Agreement.

13.2 At the request of SA Minister

(a) Section 63 of the EPBC Act requires the Commonwealth Minister to cancel or suspend all or part of this Agreement if the SA Minister requests a notice of cancellation or suspension in accordance with this Agreement.

(b) A request by the SA Minister under section 63 of the EPBC Act to cancel or suspend all or part of this Agreement is made in accordance with this Agreement if:

(i) the request is made on the grounds that the SA Minister is not satisfied that the Commonwealth has complied or will comply with this Agreement; or

(ii) the request is made on the grounds that the SA Minister is not satisfied that:

(A) the objects of this Agreement specified in clause C or D of this Agreement are being achieved; or

(B) the Commonwealth has not given effect, or will not give effect, to the Agreement in a way that accords with the objects of the EPBC Act and the objects of Part 5 of Chapter 3 of that Act; or

(iii) the request is made on the grounds that relevant SA legislation or administrative processes have been amended or are proposed to be amended and the SA Minister is satisfied that objects specified in clause C or D of this Agreement will no longer be achieved; or

(iv) the request is made on other grounds that the SA Minister considers appropriate; and

(v) before making the request, the SA Minister has informed the Commonwealth Minister in writing of the reasons for requesting the suspension or cancellation and allowed a period of at least 20 business days for the Commonwealth Minister to respond.

14. Amendment

14.1 Continuous improvement

The parties will notify and consult each other on matters that come to their attention that may improve the operation of this Agreement.

14.2 Minor amendments to this Agreement

(a) The parties note that under section 56A of the EPBC Act the Commonwealth Minister may make a written determination that an intended draft amendment to a bilateral agreement will not have a significant effect on the operation of the bilateral agreement.

(b) Before making a determination under section 56A of the EPBC Act, the Commonwealth Minister must reach agreement with the appropriate SA Minister on the wording of the amendment.

14.3 Amendment of legislation

If the EPBC Act, the *Development Act 1993* (SA), the *Mining Act 1971* (SA), or any other relevant Law is subsequently amended, or proposed to be amended, in a manner that would affect the operation of this Agreement, the parties agree to promptly notify each other and the parties will seek to agree as soon as practicable on whether it is necessary to make another bilateral agreement varying or replacing this Agreement.

15. Freedom of information

(a) If a party receives any request, including under freedom of information Laws, for any documents originating from another party which are not otherwise publicly available, the parties will, subject to the requirements of the relevant freedom of information Laws, consult on the release of those documents.

(b) The parties recognise the need for expeditious consultation on such requests so that statutory obligations can be met.

16. General provisions

16.1 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

16.2 Notice

A party giving notice or notifying under this Agreement must do so in writing or by electronic communication.

16.3 Disclosure of Information

Notwithstanding any other provision of this Agreement, the Department may disclose Information about this Agreement required to be reported by the Department.

Schedule 1 – Declared class of actions

1. Preamble

(a) Section 47(1) of the EPBC Act provides that a bilateral agreement may declare that actions in a class of actions identified wholly or partly by reference to the fact that they have been assessed in a specified manner need not be assessed under Part 8 of that Act.

(b) Clause 4.1 of this Agreement declares that an action in any of the classes of actions specified in this Schedule does not require assessment under Part 8 of the EPBC Act.

2. Classes of actions to which clause 4.1 applies

2.1 Classes of actions

(a) Subject to Item 2.2 of this Schedule 1, for the purposes of the declaration in clause 4.1 of this Agreement, the classes of actions are those specified in this Item 2.1 of this Schedule 1.

Classes of action under the Development Act 1993 (SA)

(b) Where the assessment has been undertaken in accordance with the requirements of Item 3 of this Schedule 1:

(i) actions that are assessed under Part 4, Division 2 of the *Development Act 1993* (SA), where an EIS must be prepared under section 46B of the *Development Act 1993* (SA);

(ii) actions that are assessed under Part 4, Division 2 of the *Development Act 1993* (SA), where a PER must be prepared under section 46C of the *Development Act 1993* (SA); and

(iii) actions that are assessed under Part 4, Division 2 of the *Development Act 1993* (SA), where a DR must be prepared under section 46D of the *Development Act 1993* (SA),

including where the SA Minister has indicated in a written notice to the Commonwealth Minister under clause 13.2 of the Previous Bilateral Agreement that the action would be assessed in the manner specified in Schedule 1 to the Previous Bilateral Agreement.

(c) The assessment approach in Item 2.1(b)(i) of this Schedule 1 is taken to correspond to assessment by Environmental Impact Statement under Division 6 of Part 8 of the EPBC Act. The assessment approaches in Items 2.1(b)(ii) and 2.1(b)(iii) of this Schedule 1 are taken to correspond to assessment by Public Environment Report under Division 5 of Part 8 of the EPBC Act.

Classes of action under the Mining Act 1971 (SA)

(d) Where the assessment has been undertaken in accordance with the requirements of Item 4 of this Schedule 1:

(i) actions that are assessed as a mining lease under Part 6 of the *Mining Act 1971* (SA), which include an application under section 35 of the *Mining Act 1971* (SA);

(ii) actions that are assessed as a retention lease under Part 6A of the *Mining Act 1971* (SA), which includes an application under section 41B of the *Mining Act 1971* (SA);

(iii) actions that are assessed as a miscellaneous purposes licence under Part 8 of the *Mining Act 1971* (SA), which includes an application under section 53 of the *Mining Act 1971* (SA); and

(iv) actions that are assessed as an exploration program for environment protection and rehabilitation under Part 10A of the *Mining Act 1971* (SA), which includes a program under section 70B of the *Mining Act 1971* (SA).

(e) Each of the assessment approaches described in Items 2.1(d) of this Schedule 1 are taken to correspond to assessment on preliminary documentation under Division 4 of Part 8 of the EPBC Act.

2.2 Excluded actions

(a) A class of actions described in Item 2.1 of this Schedule 1 does not include actions which have been prescribed under subsection 25(1) of the EPBC Act.

(b) A class of actions described in Item 2.1(d) of this Schedule 1 does not include actions which have been determined to be a controlled action pursuant to section 75 of the EPBC Act prior to the Commencement Date.

3. Specified manner of assessment – Item 2.1(b) (*Development Act 1993* (SA))

3.1 Overview

(a) Any controlled action subject to this Agreement and assessed using one of the assessment approaches described above at Item 2.1(b) must also be subject to the additional requirements in this Item 3 of this Schedule 1.

(b) Where the assessment of a controlled action under an assessment approach described above at Item 2.1(b) is on the basis of an application made to the Minister responsible for the administration of the *Roxby Downs (Indenture Ratification) Act 1982* (**South Australian Indenture Minister**), then the activities that are required to be taken by either or both of the Development Assessment Commission and the SA Minister under this item 3 of this Schedule 1, may instead be taken by the South Australian Indenture Minister.

3.2 Selecting the assessment approach

In making a determination under section 46 of the *Development Act 1993* (SA) with respect to the level of assessment that should apply to the major development or project, the Development Assessment Commission must:

(a) have Information that it considers to be sufficient to make the determination; and

(b) consider criteria equivalent to the criteria that are mentioned in any guidelines published under section 87(6) of the EPBC Act, to the extent relevant to the determination.

3.3 Guidelines for assessment

(a) The guidelines contained in the report given to the proponent under section 46(13)(a) of the *Development Act 1993* (SA) are designed to ensure that material prepared by the proponent as part of the assessment:

(i) contains an assessment of all relevant impacts that the action has, will have or is likely to have on each matter protected by a provision of Part 3 of the EPBC Act;

(ii) provides enough Information about the controlled action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the controlled action under the EPBC Act; and

(iii) addresses the matters outlined in Schedule 4 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

(b) The Development Assessment Commission may, if appropriate, having regard to the objects and purposes of the EPBC Act and any comments from the Commonwealth Minister, seek public comment on the guidelines before they are made. If public comments are sought, the publication requirements described in Items 3.4(a) and 3.4(b) must be complied with.

3.4 Public comment

(a) The SA Minister must have released for public comment:

(i) the EIS, under sections 46B(5)(b) of the *Development Act 1993* (SA);

(ii) the PER, under section 46C(5)(b) of the *Development Act 1993* (SA); and

(iii) the DR, under section 46D(5)(b) of the *Development Act 1993* (SA),

for at least 28 days.

(b) When the public is invited to comment, the invitation must:

(i) be published in a newspaper circulating generally in each State and self governing Territory; and

(ii) include the matters specified in Schedule 1, Item 7.04 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

(c) For the class of actions described in Item 2.1(b)(ii) of this Schedule, the proponent must have prepared a written response to all submissions referred to the proponent under section 46D(6) of the *Development Act 1993* (SA), and provided a copy of that response to the SA Minister, in accordance with section 46D(7) of the *Development Act 1993* (SA).

3.5 Assessment Reports

The Assessment Report must take into account:

(a) the Information in the assessment documentation; and

(b) any other relevant Information available to the SA Minister.

4. Specified manner of assessment – Item 2.1(d)(iv) (*Mining Act 1971* (SA))

4.1 Overview

(a) Any controlled action subject to this Agreement and assessed using one of the assessment approaches described above at Item 2.1(d) of this Schedule 1, must also be subject to the additional requirements in this Item 4 of this Schedule 1.

(b) Where for the class of actions described above at Item 2.1(d)(i) and 2.1(d)(iii) of this Schedule 1, the assessment approach requires the preparation of an Environmental Impact Statement or Public Environmental Report because of section 75 of the *Development Act 1993* (SA), the assessment approach must also be subject to the requirements set out in Item 3 of this Schedule 1.

Note: It is intended that this Item 4.1 only applies to applications made under the Mining Act 1971 (SA).

4.2 Selection of assessment approach

Where the SA Minister makes a determination under section 75(4)(a) of the *Development Act 1993* (SA), the decision maker must:

(a) have Information that it considers to be sufficient to make the determination; and

(b) consider criteria equivalent to the criteria that are mentioned in any guidelines published under subsection 87(6) of the EPBC Act, to the extent relevant to the determination.

4.3 Assessment approach must assess relevant impacts

The assessment approach must include an assessment of the relevant impacts of the action as defined in section 82 of the EPBC Act.

4.4 Public comment

(a) For the class of actions described in Item 2.1(d)(iv) of this Schedule 1:

(i) draft assessment documentation about each assessment must have been made available to the public and released for public comment; and

(ii) the public must have been given at least 14 days to provide comments to the consent authority.

(b) For each prescribed class of action, when the public is invited to comment, the invitation must:

(i) be published in accordance with the requirements of either Items 7.02 or 7.03 of Schedule 1 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth); and

(ii) include the matters specified in Item 7.04 of Schedule 1 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

(c) For each prescribed class of action, the proponent must have:

(i) been provided with submissions made by the public during the period that the assessment is released for public comments; and

(ii) prepared a written response for inclusion in the assessment documentation, which summarises or takes into account the issues raised by the public in those submissions.

4.5 Assessment Report

An assessment report must be prepared by the SA Minister for each action that is assessed which takes into account:

(a) the Information in the assessment documentation; and

(b) any other relevant Information available to the SA Minister or inquiry.

Execution page

EXECUTED as an agreement

SIGNED for and on behalf of the Commonwealth of Australia by:

The Hon Greg Hunt MP

Minister for the Environment

8 Sept 2014

Date

SIGNED for and on behalf of the State of South Australia by:

The Hon John Rau MP LLB

Minister for Planning

24.9.14

Date

The Hon Tom Koutsantonis MP

Minister for Mineral Resources and Energy

23rd September 2014.

Date

The Hon Susan Close MP

Acting Minister for Sustainability, Environment and Conservation

25/9/14

Date

Australian Government
Department of Climate Change, Energy, the Environment and Water

Sally Smith
Executive Director – Planning and Land Use Services
Department for Trade and Investment
Level 8, 250 Victoria Square/Tarntanyangga
ADELAIDE SA 5000

Via: [redacted]

Dear Ms Smith

I write to you regarding the assessment bilateral agreement between the Commonwealth and South Australian governments dated 25 September 2014 which was made under section 45 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

Following the cessation of the *Development Act 1993* (SA) and the commencement of the *Planning, Development and Infrastructure Act 2016* (SA), it is our view that the bilateral agreement is no longer valid or operational.

The effect of this legislative change significantly alters the operation of the agreement to the extent where it would not be appropriate to accommodate these changes through a minor amendment under section 56A of the EPBC Act.

Please note, I have also written to the Department for Energy and Mining regarding the amendments to the *Mining Act 1971* (SA) and the commencement of the *Mining Regulations 2020* (SA).

We will now be investigating the reestablishment of our assessment bilateral arrangements with South Australia to ensure we can continue to work cooperatively to maintain high environmental standards and to provide efficiency and effectiveness in the environmental assessment process.

If you have any questions about the bilateral agreement process please contact Candace Cooke, Assistant Director, by email to [redacted] (and cc [redacted]), or telephone phone [redacted] .

Thank you for your consideration of this matter.

Yours sincerely,

Tanya Stacpoole
Acting Branch Head
Environment Assessments West (WA, SA, NT) Branch

31 January 2023

COMMONWEALTH OF AUSTRALIA

Intention to develop a draft bilateral agreement with the State of South Australia under section 45 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)

In accordance with subsection 45(3) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the **EPBC Act**), I, Tanya Plibersek, Minister for the Environment and Water, give notice of my intention to develop, on behalf of the Commonwealth, a draft bilateral agreement with the State of South Australia.

The draft bilateral agreement is intended to revoke and replace the current bilateral agreement of 25 September 2014 between the Commonwealth of Australia and the State of South Australia.

The draft bilateral agreement may update the classes of actions that are currently declared in Schedule 1 of the current bilateral agreement and make other miscellaneous updates to the current bilateral agreement.

Note: Subsection 47(1) of the EPBC Act provides that a bilateral agreement may declare that actions in a class of actions need not be assessed under Part 8 of the EPBC Act.

Dated this 5th of April 2023

Tanya Plibersek

Minister for the Environment and Water

Australian Government

Department of Climate Change, Energy, the Environment and Water

Nature Positive Plan: *better for the environment, better for business*

December 2022

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We acknowledge the Traditional Owners of Country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present. We are committed to working respectfully with Aboriginal and Torres Strait Islander peoples and give particular acknowledgement to their use, knowledge and custodianship of Australia's native plants and animals over countless generations.
We support Aboriginal and Torres Strait Islander peoples and their aspirations to maintain, protect and manage their culture, language, land and sea Country and heritage.

Red flowering gum

Contents

Minister's foreword

In October 2020, Professor Graeme Samuel AC submitted his independent review into the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). His review concluded that the EPBC Act, Australia's central piece of national environmental law, is outdated, ineffective, and requires fundamental reform.

When read alongside the *2021 State of the Environment Report*, Professor Samuel's report presents us with an alarming story of environmental decline. Australia's natural environment is deteriorating and it's not resilient enough to withstand current or emerging threats. Native species extinction, habitat loss and cultural heritage destruction are all accelerating, and reform is urgently needed.

The equation facing Australia is simple. If our laws don't change, our trajectory of environmental decline will not change either.

The prospect of accelerating decline should alarm us all. Our economy, our livelihood and our well-being all depend on the health of the natural world. And our current demands on nature exceed its capacity to survive and thrive.

Professor Samuel produced a comprehensive, thoughtful and practical report, which offers us an opportunity to make the fundamental changes we need to make.

In formally responding to the Professor Samuel's review, we are identifying the priorities that will guide our government's reform agenda. These reforms will be guided by three essential principles:

- Delivering better environmental protection and laws that are nature positive
- Speeding up decisions and making it easier for companies to do the right thing
- Restoring integrity and trust to systems and environmental laws.

We will make long overdue changes to our environmental laws, to build trust, integrity and efficiency into our national system of environmental approvals. We will develop National Environmental Standards, to improve protections and guide decision-making. And we will establish an Environment Protection Agency, to enforce the law and restore confidence.

Uniting all these changes will be a conceptual shift. When we reform our environmental laws, we will take them from being nature negative, where we oversee an overall decline in our environment, to nature positive, where we protect our land and leave it in a better state than we found it.

This is not a choice between protecting the environment or economic development. The current system is frustrating for business and ineffective for the environment. Our reforms will ensure we have faster, more efficient decision-making, while at the same time ensuring we better protect our natural environment and heritage.

This response is the next step in a longer process of consultation and discussion. As Minister, I will continue to engage with everyone who has a stake in environmental protection and our system of environmental approvals, as we develop our laws and design the new Environment Protection Agency. I want to hear from First Nations groups, businesses, conservationists, and community groups, as well as state, territory and local governments.

All Australians benefit from better protection for our environment and fairer, clearer decision-making for business.

We are so lucky to live in the most beautiful country on earth. Visitors come from all over the world to experience the natural wonders we live with every day. We can't take this good fortune for granted.

As Professor Samuel's review makes clear: if we want to ensure our exceptional natural heritage is there for future generations, we must act seriously, and we must act now.

Tanya Plibersek

The Hon Tanya Plibersek MP
Minister for the Environment and Water

Views over Kununurra © Department of Climate Change, Energy, the Environment and Water—Photographer Michelle McAulay

Executive summary

The Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (the review) and the State of the Environment Report tell an alarming but consistent story. A story of environmental degradation, loss and inaction; of businesses frustrated by slow bureaucratic structures and an Act focused on processes rather than outcomes. A story of opaque data and decisions, poor enforcement and the exclusion of First Nations people from involvement in decision-making.

In this response to the review, the Australian Government is laying down a marker for environmental law reform. The agenda outlined in this response presents the most comprehensive remaking of national environmental law since the EPBC Act was first introduced. The fundamental problems with the EPBC Act and the basis of the necessary reforms are set out by Professor Samuel AC in the review. This government response builds on the review's recommendations, taking account of new opportunities and challenges that have arisen since the review was provided to government 2 years ago.

The Australian Government has committed to protect 30% of Australia's land and seas by 2030, create a nature repair market, establish an independent Environment Protection Agency (EPA) and work in partnership with First Nations people, including to develop standalone cultural heritage legislation. We are working towards zero new extinctions. These policies are necessary, but have to be implemented in challenging times. The Australian economy faces headwinds from a deteriorating global economy, natural disasters, and rising cost of living pressures. Faster, clearer environmental approval decisions assist economic growth, increase employment and support a greater capacity to invest in environment and social priorities. A resilient and healthy environment is necessary for a vibrant economy and society and essential to quality of life. The condition and rate at which we are eroding the environment poses significant risks to Australia's economic, financial and social stability.

The government's response will be guided by three fundamental principles. Firstly, the need to better protect Australia's environment and prevent further extinction of native plants and animals. This means adopting regulation that is outcomes focused, decisions that are nature positive, better partnerships with First Nations, and conservation planning that targets resources to areas where they will have the greatest impact. Secondly, faster decision-making and clear priorities to provide certainty to project proponents, de-risk investments and promote sustainable economic development. Thirdly, a commitment to restoring public accountability and trust in environmental decision-making though an independent EPA, regular reporting on progress towards environmental goals and making environmental data publicly accessible.

Nature positive is a term used to describe circumstances where nature – species and ecosystems – is being repaired and is regenerating rather than being in decline.

Better environment and heritage outcomes

National Environmental Standards

National Environmental Standards will set out the environmental outcomes that our laws are seeking to achieve. The establishment of standards will underpin our environmental law reforms. The initial standards for development will be:

- Matters of National Environmental Significance
- First Nations engagement and participation in decision-making
- community engagement and consultation
- regional planning
- environmental offsets

The standard for Matters of National Environmental Significance will be the subject of early consultation with stakeholders, including state and territory governments, and will be released in draft form alongside new legislation. The standard set out in the review will be the starting point for consultation. After the standard for Matters of National Environmental Significance is made, any new projects will need to comply with it. This will be easier where there is a regional plan. All standards will be made under law and subject to regular review, with future amendments able to strengthen but not weaken environmental protection.

Conservation planning

We are living through an extinction crisis and our conservation planning processes are not up to the challenge. Processes are bureaucratic, create unnecessary paperwork and do not enable effective protection or prioritisation of effort.

The government will remove overly prescriptive processes and duplication in conservation and management planning for species, communities and, where relevant, heritage. Conservation planning documents will identify and prioritise the threats, actions and important habitat for threatened species and ecological communities. Protection of threatened species will be strengthened by ensuring that environmental decision-making is consistent with any conservation planning documents. Planning will be fit-for-purpose, with the advice of the Threatened Species Scientific Committee critical to deciding the type of conservation planning required.

First Nations partnerships

The government is committed to working in partnership with First Nations in line with commitments agreed by all jurisdictions through the National Agreement on Closing the Gap. The role of the EPBC Act's Indigenous Advisory Committee will be enhanced to give First Nations a stronger voice in our system of environmental protection.

A National Environmental Standard for First Nations engagement and participation in decision-making will be developed as a priority. This will ensure that First Nations interests and cultural heritage are identified early and can be protected as projects are designed.

The government is also working with First Nations representatives to co-design new standalone First Nations cultural heritage protection laws. These will ensure that cultural heritage is identified and protected early, provide certainty for Traditional Owners and proponents, and prevent a repeat of the Juukan Gorge tragedy.

Climate considerations

The government supports the recommendation of the review that proponents be required to publish their expected Scope 1 and 2 emissions. Further, proponents will be required to disclose how their project aligns with Australia's national and international obligations to reduce emissions. The changing climate will also be a mandatory consideration in environmental planning approaches. Improvements in information and guidance will support these reforms.

Water trigger

The existing water trigger will be expanded to include all forms of unconventional gas (e.g. shale and tight gas). Decisions will be supported by independent expert advice, ensuring the environmental and water impacts of these proposed developments are managed. The government will consult with industry and other stakeholders to deliver these improved protections for water resources and to avoid unintended consequences.

Nuclear

The Government will pursue a uniform national approach and make regulatory requirements and codes consistent by harmonising requirements under national environmental law with the radiation management standards of the Australian Radiation Protection and Nuclear Safety Agency. This approach will maintain the Australian Government's focus on protecting the community and environment from the harmful effects of radiation and radioactive material.

Faster, better decision-making and clear priorities

Accreditation

Under the current arrangements, states and territories can be accredited to undertake assessments on behalf of the Commonwealth. As envisaged by the review, states and territories will be able to apply to become accredited under national environmental law to allow for single-touch decision-making. A decision to accredit a state or territory must be made by the minister. Accreditation will occur in accordance with the recommendations of the review, require compliance with National Environmental Standards, and require full transparency of environmental performance data and decision-making. The EPA will provide assurance over accredited parties.

As accreditation will take time, and not all jurisdictions will seek or continue to satisfy the requirements for accreditation, the Australian Government will continue to play a role in environmental decision-making. Streamlining and additional reforms, such as those to regional planning and offsets, will deliver better, faster environmental decision-making.

Regional planning

Regional plans can speed up decision-making while delivering nature positive outcomes at a landscape scale. Regional plans will be built around a three-level (traffic light) map, designed to pre-identify areas for protection, restoration and sustainable development. Regional plans will also identify priority areas for action and investment and help ensure Australia meets its biodiversity outcomes including the 30x30 target.

Regional plans will be required to deliver outcomes set in the standard for Matters of National Environmental Significance. Approaches to regional planning and project assessments will be developed together to create a framework for practical implementation of new environmental laws. This will support consistent project assessment and decision making by the Commonwealth, states and territories. Implementation of standards at regional scale will provide flexibility and ensure critical habitat and other significant environmental matters are protected, including from cumulative impacts.

Regional plans will be informed by relevant conservation plans and underpinned by strong data and made in accordance with a Regional Planning Standard. They will be subject to approval by the minister and negotiated with relevant states or territories, as well as regional natural resource management bodies and local government.

Regional plans and National Environmental Standards will provide project proponents with certainty, giving clear indicators of conservation priorities and where development impacts will largely be prohibited. Working in conjunction with environmental offsets and the nature repair market, regional plans will enable more accurate pricing, de-risk projects and reduce project approval time.

Environmental offsets

Current offset arrangements are failing to prevent environmental decline. They don't properly compensate for the loss of habitat or heritage values and are often not enforced or maintained. Offset arrangements also cause delays and impose significant, unproductive costs on project proponents. The government will reform offset arrangements to ensure they deliver gains for the environment and reduce delays for project proponents. A National Environmental Standard for environmental offsets will be made under law to provide certainty and confidence in its application.

Project proponents will need to first demonstrate attempts to avoid and mitigate harm to protected matters before resorting to environmental offsets. Where a proponent is unable to find or secure 'like for like' offsets, the proponent will be able to make a conservation payment.

Conservation payments will be sufficient to achieve a net positive environmental outcome. This will establish a clear price signal and give proponents an effective incentive to avoid and mitigate environmental impacts from their projects.

An evidence-based investment strategy, developed at arms-length from government, will ensure that conservation payments are used to deliver optimal biodiversity outcomes for relevant bioregions.

Nature repair market

The government will establish a nature repair market to make it easier for businesses and individuals to invest in nature. Currently businesses wanting to invest in nature or establish offsets must buy land or enter bespoke contracts with landholders. Businesses cannot easily invest in nature without some form of land ownership or tenure.

The government will introduce legislation to underpin the nature repair market. This will establish a nationally consistent framework for measuring, monitoring, reporting, verifying and publicly tracking biodiversity projects. Long-term obligations to maintain and manage nature repair projects will apply to participating landholders. This voluntary scheme will operate alongside the carbon market, with both schemes regulated by the Clean Energy Regulator.

Regional Forest Agreements

The Government will work with stakeholders and relevant jurisdictions towards applying National Environmental Standards to Regional Forest Agreements to support their ongoing operation together with stronger environmental protection. The timing and form of this requirement will be subject to further consultation with stakeholders. Consultation will consider future management and funding opportunities under voluntary environmental markets.

Further streamlining

In developing the new national environmental law, the government will identify opportunities to further improve and streamline existing processes under the EPBC Act, including by removing prescriptive processes and underutilised assessment pathways, improving flexibility, adaptability and assurance of strategic assessments and improving wildlife trade permitting practices.

Accountability and trust

Independent Environment Protection Agency

The government has committed to establishing an independent EPA to be a tough 'cop on the beat'. The EPA will be responsible for compliance and enforcement under the new Act, holding proponents to account for their information, decisions and undertakings. This will include the publication of mandatory guidelines to inform the development and submission of environmental, social and economic information in support of applications. The EPA's regulatory functions will extend to wildlife trade regulation (EPBC Act) and the Sea Dumping, Ozone and Synthetic Greenhouse Gas Management, Hazardous Waste, Product Emissions Standards, Recycling and Waste Reduction, and Underwater Cultural Heritage Acts.

The EPA will be responsible for project assessments, decisions and post-approvals (where these are not undertaken by another accredited decision-maker). The minister will have a power to call in decisions that would otherwise be made by the EPA, with a requirement for full transparency about any decisions and reasons.

The EPA will also be responsible for assuring the operations of states, territories and other Commonwealth decision-makers under any accreditation arrangements.

The EPA will be an independent statutory entity, with a statutorily appointed CEO subject to removal only in specifically defined circumstances. The government will pursue cost recovery for EPA-administered regulatory functions.

Data Division

The government will establish a Data Division within the Department of Climate Change, Energy, the Environment and Water to provide clear authoritative sources of high-quality environmental information. The Data Division will have a legislative mandate to provide environmental data to the EPA, the minister and the general public.

Access to quality data will underpin effective compliance by the EPA. The success of regional planning and environmental markets will also depend on the collection of, and access to, environmental data. Data will be available through a public portal and be accessible, searchable, interoperable and high quality. The portal will bring together and make accessible data from a range of sources including proponents and state and territory regulators.

The Data Division will be responsible for expanded *State of the Environment* reporting, including regular interim reports and analysis of progress towards environmental goals (e.g. 30x30). It will also be responsible for delivering environmental economic accounts in partnership with the Australian Bureau of Statistics, and analysis needed for environmental indicators in the Wellbeing Budget.

Public accountability

Degradation of nature affects every Australian. In addition to approval decisions and strengthened compliance and enforcement by an independent EPA, it is proper that members of the public should be able to hold proponents to account for their promises made under environmental law. This will occur through the provision of publicly available, transparent and accessible data. The government will also support the public to report their concerns to the EPA's compliance and enforcement area, and will provide opportunities to contribute to the monitoring of our environment and compliance with National Environmental Standards. This includes examining the possibility put forward by some stakeholders of strengthening third-party enforcement.

The government will not introduce a right to limited merits review of decisions. Legislating National Environmental Standards, greater transparency and establishing an independent EPA are more effective ways to improve and assure the quality of decision-making. Limited merits review may also prevent projects from proceeding in a timely manner, as matters are held up by courts, which can lead to unreasonable and unfair costs for proponents. Members of the public will continue to be able to bring legal claims against decisions of the EPA or the minister for errors of law.

National parks

The government and the Director of National Parks have committed to restoring trust and confidence in the management of jointly managed Commonwealth National Parks, including providing Traditional Owners with more control over the management of their Country.

The government will work with Traditional Owners of Kakadu, Uluṟu-Kata Tjuṯa and Booderee to examine the legal and institutional settings in the current EPBC Act that establish the Director of National Parks and frame the joint management relationship between the Director of National Parks and Traditional Owners, and to co-design policy, governance and transition arrangements that meet the management aspirations of Traditional Owners.

Next steps

A package of new national environmental legislation will be prepared in the first six months of 2023 to implement these reforms. During this period, there will be extensive consultation with stakeholders around the detail of the legislation. Draft legislation will be released to enable further consultation and detailed feedback. The legislation will be released as an exposure draft prior to being introduced into the Parliament before the end of 2023.

The five initial National Environmental Standards will also be the subject of consultation with stakeholders, including states and territories. Work will begin on regional planning with initial projects to be rolled out with states and territories.

The EPBC Act is not working for the environment, business or the community

The Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (the review) was undertaken by Professor Graeme Samuel AC, and published in 2021. This was the second 10-yearly independent examination of our national environment law. The review, along with the *2021 State of the Environment Report* (SoE 2021), underscores the failure of our current environmental law to halt, let alone reverse, the continued decline of our environment, built and natural heritage.

The review found that Australia's environmental law was not working for the environment, business or the community. The review found:

- **The EPBC Act is ineffective** – it cannot deliver outcomes for national environmental matters and is not fit for current or future environmental challenges.
- **The EPBC Act is inefficient** – it is complex, costly and hard to navigate, is not integrated with state and territory arrangements, and leads to decisions that are piecemeal, opaque and short-sighted.
- **Traditional Knowledge is not valued** – there is a culture of tokenism. Indigenous Australians are seeking stronger national protection of their cultural heritage.
- **Data is inaccessible and not current** – confidence in decision-making is low and effectiveness is not monitored. There is no assurance over decisions or decision-makers.
- **Compliance and enforcement is weak –** powers are rarely used, and are inadequate and outdated. There is distrust in the Act and its administration.

The review recommended immediate and fundamental reforms to improve community and industry trust in the EPBC Act, centred around six key pillars:

- National Environmental Standards
- reducing duplication and complexity
- independent oversight and strong compliance
- planning and restoration
- First Nations knowledge and heritage
- integrated data, monitoring and evaluation

Aerial view of apple orchards

SoE 2021 confirmed the failure of our environmental laws. It found that the state and trend of the environment of Australia is poor and deteriorating. The environment is facing increasing pressures from climate change, habitat loss, invasive species, pollution, and resource extraction. Native species extinction, habitat loss and cultural heritage destruction are accelerating.

SoE 2021 also highlighted that environmental decline affects the wellbeing of all Australians. Our health, living standards, cultural and spiritual fulfilment, and connection to Country are all interconnected and are negatively affected by our deteriorating environment. Every sector of the Australian economy is directly dependent on nature to varying degrees. Almost half of Australia's gross domestic product (GDP) has a moderate to very high direct dependence on nature.[1] The rate at which we are eroding the environment poses tangible risks to Australia's economic, financial and social stability.

Despite these findings, there is cause for optimism. Both the international and Australian communities are coming together to set ambitious targets to protect, restore and sustainably manage the environment and ensure future generations have access to the wild places, natural resources and outstanding heritage that Australia is renowned for.

Rooftop solar panels, Sydney

1 The Australian Conservation Foundation (2022) has produced estimates for Australia's economic reliance on the environment based on the methodology used by the World Economic Forum. In a 2020 report the World Economic Forum found that around half of the world's economic output, or GDP, was moderately to highly dependent on nature.

Bluegrass, Carnarvon Station © Department of Climate Change, Energy, the Environment and Water—Photographer Dragi Markovic

Better environment and heritage outcomes

Better environment and heritage outcomes

On behalf of the Australian Government, the Prime Minister has endorsed the Leaders' Pledge for Nature, which aims to step up global ambition to tackle the climate crisis, halt biodiversity loss and deliver a nature positive world by 2030. This includes a commitment to protect and conserve 30% of Australia's land and oceans by 2030, increase Indigenous Protected Areas and improve their management by doubling the number of Indigenous rangers. To achieve this, we must shift our thinking and amend our laws to promote climate and environment-friendly development and nature-based solutions to protect, restore and manage our most precious habitats, places and species.

Clear National Environmental Standards and coordinated conservation planning will support this shift, but they must be supported by investment in management and restoration. This includes a national nature repair market, which will drive innovation and give nature a real financial value.

Restoring our natural environment will involve collaboration and engagement from all sectors, public and private, in partnership. We must work with all land managers, but particularly First Nations people, to turn around the trajectory of decline. The Australian Government recognises that First Nations peoples' participation in management of land and sea is crucial to environmental outcomes. Improving protection of First Nations cultural heritage and increasing opportunities to integrate and value First Nations' knowledge and participation in managing Australia's heritage and environment are important first steps.

Scientist assessing carbon in sediment core

Karlu Karlu / Devil's Marbles Conservation Reserve

National Environmental Standards will drive nature positive outcomes

The government will establish National Environmental Standards (standards). The package of standards will address the lack of clearly stated outcomes the current EPBC Act aims to achieve – a shortcoming highlighted by the review.

The standards will also enshrine transparency, streamline processes and support faster decision-making. They will set clear priorities to provide certainty to project proponents. They will move the regulatory system away from the existing approach, which is process driven and discretionary.

The government will introduce legislation to establish standards in 2023. The legislation will provide that standards will be made in law and subject to periodic review. Standards will need to be capable of amendment to provide for changing, unforeseen or emergency scenarios. The legislation will specify that no standard can be amended to reduce environmental protection, only to improve it.

The standards will apply to all decision-making under national environmental law and be administered and enforced by an independent Environment Protection Agency (EPA). They will also have a normative effect, informing and guiding non-regulatory activities.

Developing the first National Environmental Standards

The standards recommended by the review provide a starting point for the development of a package of standards. Standards will be developed in consultation with stakeholders, including with First Nations peoples, and with states and territories. There will be opportunities for public comment.

National Environmental Standard for Matters of National Environmental Significance

A standard for Matters of National Environmental Significance will be developed first as it is central to improving outcomes for nationally important environment and heritage matters. It will be developed in 2023 and made available by the time the new Act is introduced to Parliament, to provide confidence in the outcomes to be delivered through reform.

The standard for Matters of National Environmental Significance will require a nature positive approach to development. Projects and plans approved under national environmental law will have to:

- avoid unacceptable and unsustainable impacts on matters of national environmental significance
- deliver net positive outcomes for Matters of National Environmental Significance.

Other priority National Environmental Standards

The government will also prioritise development of National Environmental Standards for:

- First Nations engagement and participation in decision-making
- community engagement and consultation
- regional planning, and
- environmental offsets.

The Standard on Community Engagement and Consultation will ensure the public has access to meaningful information about project impacts and an opportunity to provide feedback early in the project development process.

The next priorities will be a standard for Data and Information and a standard for Compliance and Enforcement. These will be developed following the establishment of the EPA and the Data Division.

Conservation planning will strengthen protection and guide recovery efforts

Since the EPBC Act came into effect in 2000, the nature and intensity of pressures on Australia's biodiversity have changed and grown. Too many of Australia's species, ecological communities and ecosystems are at risk of extinction, collapse or ongoing loss and degradation. Australia's conservation planning approaches need to be more efficient, agile and effective to address these changing pressures and halt biodiversity decline. Disasters such as the 2019–20 bushfires highlight the constraints of the existing system and the need to improve how we respond to conservation and recovery imperatives.

An improved national conservation planning framework for wildlife and places will be underpinned by standards and improve environmental decision-making. The current focus on administrative processes will be re-balanced with more priority given to on-ground action based on the latest science. Protection and recovery planning documents will be designed to guide environmental decision-making and clearly identify necessary threat management, restoration and recovery action.

Changes to conservation planning approaches will include:

- a planning document for each nationally listed threatened species and ecological community
- strong regulatory standing for all conservation planning documents in environment impact assessment and approval processes
- clear requirements for conservation planning documents to identify and prioritise threats, recovery actions and important habitat for threatened species and ecological communities
- incorporation of contemporary data and information in protection and recovery responses as new threats emerge and science evolves
- transfer of conservation planning documents to a digitised system that enables greater accessibility and application for all stakeholders.

Conservation planning will continue to be informed by the best-available expert information; consultation with First Nations peoples, other stakeholders and the public; and independent advice from the Threatened Species Scientific Committee.

The transition to new conservation planning approaches will be managed to ensure that existing statutory conservation planning documents continue to provide direction on protection and recovery action for threatened species and ecological communities until they are transferred under new arrangements. This will ensure that no protections are diminished while new arrangements take effect.

In addition to legislative reform, the government recognises that better conservation planning for species protection requires more strategic financial investment in protection measures and better management of data. The government will pursue a modern data management platform that enables efficient production of conservation planning documents that are more accessible, searchable and informative. This system will be designed to better identify and target action on threats to biodiversity, and to direct investment in protection and recovery action where it is needed most and will have the biggest impact. This platform will in turn be informed by, and guide, the delivery of Australian Government conservation programs and

the efforts of conservation managers and stakeholders, notably state and territory governments, recovery teams, conservation groups, the scientific community and First Nations organisations.

To further enhance protection and conservation of our environment the government will pursue reforms to ensure the continued integration of biosecurity measures, to manage the threats of invasive pests, weeds and diseases to Australia's fauna and flora and their unique habitats.

The new *Threatened Species Action Plan 2022–2032*, released in October 2022, will also make an important contribution to threatened species recovery and complement species protection measures under the EPBC Act.

Partnerships with First Nations will improve environmental management and protect cultural heritage

The government is committed to working in partnership with First Nations to achieve better outcomes for people and communities and for Australia's heritage and environment. These partnerships will ensure First Nations participation in improved management of Australia's land, fresh waters and sea.

First Nations cultural heritage protections will be strengthened

The government has committed to developing new standalone cultural heritage protection laws to strengthen First Nations cultural heritage protections nationally, including to replace the existing Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. The current cultural heritage protection arrangements create uncertainty for First Nations people and proponents, because they occur too late in assessment and approval processes, and often after those processes have been completed. As the new cultural heritage protection laws are developed, the government will seek to ensure streamlined interactions with national environmental law, reducing the potential for complexity, confusion or gaps in protection.

The government is working in partnership with the First Nations Heritage Protection Alliance (FNHPA) to co-design reforms to First Nations cultural heritage protections. The FNHPA is a coalition of over 29 member organisations representing First Nations people from across Australia, including native title bodies, such as Prescribed Bodies Corporate, land councils and community-controlled organisations.

Reforms to First Nations cultural heritage legislation will be developed in parallel with reforms to the national environmental law. The interrelationship between these two areas of reform work, and the need for these pieces of legislation to work together, will be considered as part of both reform processes.

Indigenous Ranger, controlled burning © Parks Australia

First Nations perspectives will inform environment and heritage protection

A new National Environmental Standard for First Nations Engagement and Participation in Decision-Making will be developed as a priority to enable First Nations views and knowledge to be considered in all project approvals and planning decisions under national environmental law.[2]

Co-design of the standard will be led by the Indigenous Advisory Committee (a statutory committee established and operating under the current EPBC Act) and will involve engagement with First Nations peoples. It will build on the draft standard that was recommended by the Review and related work progressed following the release of the review.[3]

The government will also work to develop a strategic, effective, meaningful and culturally informed approach to inclusion of First Nations knowledge in listing assessments, conservation planning and threat abatement for species and ecological communities. This work will also look at how species that are of cultural significance to First Nations people are considered in environmental and heritage protection processes. Recognition of culturally significant species can improve the way communities help maintain biodiversity and ecosystems in Australia.

As First Nations people increasingly share their knowledge, the government will ensure appropriate access and handling and the protection of Indigenous Cultural and Intellectual Property (ICIP).

Commonwealth responsibilities will be clarified in line with international commitments

The government will make improvements to the national environmental law's coverage of climate, water and nuclear actions. Changes will deliver effective protections for these nationally important matters and uphold our international commitments.

Climate change

The government recognises the risks global warming poses to Australia's unique ecosystems and the link between climate and biodiversity. We will address this by embedding climate considerations in all roles and functions of government.

In addition to our commitments to reduce national emissions to 43% below 2005 levels by 2030, and to achieve net zero emissions by 2050 (see Box 1), the government will integrate climate change considerations, where relevant, throughout national environmental law without duplicating existing mechanisms for reducing greenhouse gas emissions. This will include:

1. Improved transparency in project assessments
Projects assessed under national environmental law will be required to provide estimates of emissions expected across the life of the project, including their approach to managing emissions in line with the government's commitments. Estimates will include emissions released and removed from the atmosphere, including those generated as a direct result of an activity (Scope 1 emissions), and those from the indirect consumption of an energy commodity (Scope 2 emissions).

2. Improved planning and landscape-scale approaches to facilitate adaptation to climate change
Regional plans, strategic assessments and other strategic planning will be required to consider climate change and include environmental adaptation and resilience measures.

East Gungahlin School energy efficiency © Department of Climate Change, Energy, the Environment and Water—Photographer Dragi Markovic

2 This will apply unless there is clearly no First Nations relevance (e.g. Antarctic projects)

3 These recent activities include: Free, Prior and Informed Consent in the work of the Australian Heritage Council's' policy developed by the Australian Heritage Council in 2021, and the Commonwealth's Engagement and Partnership Framework.

The government's commitment to protect 30% of lands and waters by 2030 will further contribute to delivering ecologically representative and well-connected systems and will create critical climate refugia for Australian plants and animals.

'Loss of Climatic Habitat Caused by Anthropogenic Emissions of Greenhouse Gases' is listed as a Key Threatening Process under the current EPBC Act. The Threatened Species Scientific Committee will provide advice in 2023 on whether a Threat Abatement Plan would be a feasible, effective and efficient way of addressing threats from climate change.

3. Improved information and climate-impact modelling
These commitments will be underpinned by improvements in information and understanding of future climate scenarios, including information on climate-exposed habitats, species and places. This information will be made publicly accessible and contribute to better regional planning.

Box 1: The Australian Government is taking strong action on climate change

Climate change is one of the greatest threats to our environment, accelerating biodiversity loss and species extinctions globally. Climate change is exacerbating threats from habitat fragmentation, land-clearing, expansion of invasive species, and some agricultural management practices. Combined, these create cumulative impacts and amplify threats, reducing ecosystems' ability to recover after extreme events, making them even more vulnerable.

The Australian Government is committed to taking ambitious action on climate change. In September 2022 the landmark Climate Change Bills were passed, ensuring Australia's emissions reduction target of 43% and net zero emissions by 2050 are enshrined in legislation. The legislation empowers the Climate Change Authority to provide the government with independent and expert advice while agencies including the Australian Renewable Energy Agency, the Clean Energy Finance Corporation, Infrastructure Australia and the Northern Australia Infrastructure Facility will embed amended targets in their objectives and functions.

In October 2022 the government joined over 120 countries in committing to collectively reduce global methane emissions across energy and resources, agriculture and waste sectors. Legislation has been introduced into parliament to heal the ozone layer and reduce harmful emissions. The Government will continue to partner with industry to decarbonise the economy and improve ozone protection, including capturing waste methane to generate electricity.

The new targets reflect the government's resolve to urgently step up the pace of action, to work alongside global partners, and particularly with our Pacific family, to tackle the climate crisis and keep 1.5ºC degrees of warming within reach.

Water resources

The government will amend the water trigger to ensure the appropriate management and protection of water resources from all forms of unconventional gas (e.g. shale and tight gas), in addition to coal seam gas and large coal mining developments, to include new forms of gas extraction that had not been contemplated when the water trigger was initially developed.

The government also agrees with the review that national environmental law should recognise Commonwealth, state and territory water management systems, where these adequately protect and manage water resources.

Changes to expand the scope of and access to independent expert advice provided by the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development will ensure all states and territories have access to independent expert advice on managing impacts on water resources.

Nuclear actions

The government will improve the consistency and efficiency of regulation of nuclear actions by bringing EPBC Act requirements into line with the radiation management standards of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). ARPANSA's codes and guides promote best practice radiation protection. A uniform national approach to regulation of radiation will be delivered through the new National Environmental Standards. This approach will maintain the Australian Government's focus on protecting the community and environment from the harmful effects of radiation and radioactive material.

Workers at a construction site

Better, faster decision-making and clear priorities

Better, faster decision-making and clear priorities

Well-designed and well-implemented laws promote certainty and minimise costs for business and the community. This is not a choice between environment and jobs. It is not a choice between protecting our unique wildlife, heritage and places and approving developments. The Australian Government will simplify and streamline processes to deliver faster, clearer and more efficient decisions, while safeguarding our unique environment and heritage.

The National Environmental Standards will be outcomes focused and provide certainty to the community, reducing time frames and costs for business. Regional planning will speed up development and decision-making by identifying priority areas for protection, development and restoration. Strong accreditation arrangements will continue to deliver harmonisation, where other regulators can meet the standards. Better guidance and support to proponents on the use of environmental offsets will facilitate improved environmental outcomes and faster project approvals.

The government will also progress reforms to streamline regulatory processes for environmental assessments and wildlife trade and establish common national approaches to listing of threatened species and ecological communities.

Accreditation will be based on National Environmental Standards

The government is committed to improving accreditation arrangements and ensuring that robust oversight and clear requirements for decision-making apply to accredited parties. All accredited arrangements will be subject to National Environmental Standards. The EPA will provide assurance and independent oversight of accredited processes, ensuring that environmental outcomes are being met.

Existing accredited agreements, arrangements and strategic approaches include assessment bilateral agreements with states and territories, and Commonwealth environmental regulatory and management frameworks including Commonwealth fisheries and the National Offshore Petroleum Safety Environmental Management Authority (NOPSEMA) strategic assessment.

The government will work with parties to existing accredited agreements and arrangements to integrate the new standards and requirements.

Once the new foundations for accreditation are in place, states, territories, and Commonwealth agencies will be able to apply to become accredited under national environmental law to further streamline decision-making and provide a single decision-maker for projects. Any decision to accredit will be made by the minister under national environmental law. Decision-making by accredited parties and territories will be subject to their compliance with all relevant standards, and full disclosure of environmental performance data.

As accreditation will take time, and not all jurisdictions will seek or satisfy the requirements for accreditation, the Commonwealth, through the EPA, will continue to play a role in environmental decision-making.

Regional Forest Agreements

Regional Forest Agreements (RFAs) are in place between the Australian Government and some state governments and will continue to operate. RFAs are already subject to a requirement to have regard to environmental values such as old growth, wilderness, endangered species, national estate values and World Heritage values. However, they are exempt from assessment under the current EPBC Act and are unique in that respect.

Renewable energy options

The government will work with stakeholders and relevant jurisdictions towards applying National Environmental Standards to Regional Forest Agreements to support their ongoing operation together with stronger environmental protection. The timing and form of this requirement will be subject to further consultation with stakeholders. Consultation will consider future management and funding opportunities under voluntary environmental markets.

Regional plans will guide sustainable development and environmental restoration

The government has committed $29.3 million to make an immediate start on regional planning and guide sustainable development. The government will work with state and territory governments to identify locations for initial regional plans. Priority areas for consideration will be those experiencing development pressure and with high biodiversity values. These might include urban growth areas, renewable energy zones, and future development areas. The first regional locations should also have a variety of ecosystem types.

Regional plans will speed up decision-making and deliver nature positive outcomes at a landscape scale, including by addressing cumulative impacts. Regional plans will enable active management of our landscapes, oceans, waterways and places through a three-level spatial system:

- Areas of High Environmental Value, where development will largely be prohibited. These are areas of high environmental sensitivity, including with World Heritage or National Heritage values, Ramsar wetlands, critical habitat for threatened species and, by agreement, other areas of high conservation significance. This will provide planners and prospective proponents with certainty including an early 'no' so developments can be directed towards areas where there will be less environmental impact.
- Areas of Moderate Environmental Value, where development will be allowed, subject to an approval process and any agreed rules. These are areas of moderate environmental sensitivity that may contain matters of national environmental significance. Development in these areas will be required to adhere to the mitigation hierarchy, under which impacts should be avoided then mitigated or, if this is not possible, offset (either by securing environmental offsets or making conservation payments) in accordance with any priorities identified in the regional plan.

Rainforest, Fraser Island National Park

- Development Priority Areas, where the planning process has determined development can proceed without a separate Commonwealth environmental approval. Consistent with current practice, state and territory planning and environmental approvals will still be required for certain types of land use and development in the Development Priority Areas.

Once regional plans are in place, individual projects will need to demonstrate compliance with the plan.

Regional plans will also identify areas necessary for restoration and management, and help Australia meet its biodiversity objectives, including the 30x30 target. Areas adjoining or connecting Areas of High Environmental Value will be particularly important.

The definition of 'Areas of High Environmental Value' will be essential to the practical implementation of regional plans and will form the basis of consultation with stakeholders during the development of standards. Central to this definition is recognition that impacts in Areas of High Environmental Sensitivity cannot be offset effectively. Conservation planning documents will provide foundational evidence for the development of regional plans.

A principles-based Regional Planning Framework has been developed collaboratively with stakeholders. The Regional Planning Framework provides high-level guidance to planners and partners looking to undertake regional planning. A National Environmental Standard for Regional Planning will be developed together with approaches to assessment to create a practical framework for implementation of new environmental laws. Regional plans will support a consistent approach to project assessments and decision-making by the Commonwealth, states and territories.

The government will seek to trial the application of regional plans with states and territories to determine whether they are practical before finalising the Regional Planning Standard. Other standards will underpin implementation of regional plans.

The government aims to complete the first round of regional planning by 2028. In areas where regional plans are not yet in place, proposed developments likely to have a significant impact on MNES will follow an assessment process similar to that which will apply in Areas of Moderate Value in a regional plan. Proposed developments will be required to avoid impacts on critical habitat and otherwise apply the 4-step offset hierarchy described below to deliver a net positive environmental outcome at the project level.

A digital platform for regional plans will present up-to-date monitoring data and information to demonstrate how the regional plan is benefiting sustainable development and nature positive objectives across the landscape, over the term of the plan.

The incorporation of First Nations people's values, aspirations, knowledge and science will be an objective of all regional plans. Incorporating local First Nations cultural knowledge by embedding it within the objectives and priorities of the plans, will foster appropriate methods of caring for Country. The standard for First Nations engagement and participation in decision-making will be applied to the development of regional plans.

Environmental offset arrangements will deliver better overall environmental outcomes

Current offset arrangements are contributing to environmental decline. Offset arrangements do not require outcomes that are better for the environment overall, many offsets deliver no benefit at all as they involve 'protection' of areas that would not have been cleared and they are not maintained long-term. At the same time, offset requirements are difficult to comply with, cause delays and impose significant, unproductive costs on proponents.

The government will reform offset arrangements to ensure they deliver gains for the environment and reduce delays for proponents. The government has committed $12 million for this purpose.

A National Environmental Standard for Environmental Offsets (Environmental Offsets Standard) will be made under law to provide certainty and confidence in the application of environmental offsets. Changes to environmental offsets will assist proponents to demonstrate net positive outcomes as required by the standard for Matters of National Environmental Significance.

New offset arrangements will establish the following hierarchy of action:

1. avoid harm to the environment
2. reduce or mitigate environmental damage
3. identify offsets within the region that deliver a net gain for the imperilled plants or animals
4. make a conservation payment to enable a better overall environmental outcome.

Proponents will need to first demonstrate attempts to avoid and mitigate harm to protected matters before resorting to environmental offsets. This mitigation hierarchy will be strictly enforced. Where residual impacts cannot be avoided and offsets are necessary, the offsets should be 'like for like' and deliver a net benefits for MNES.

The use of 'averted loss' offsets (protecting one patch of existing habitat in exchange for clearing or loss of another) will be discontinued, unless it can be demonstrated that the habitat is under clear and imminent threat. A focus on improving habitat and reducing threats will deliver better environmental outcomes from proposed developments.

A National Environmental Offsets System will be released by the end of 2022, to track and report on the use and delivery of environmental offsets.

The government will issue new guidance for proponents on how to identify and manage their own environmental offsets. This will outline criteria for the appropriate use of environmental offsets, including:

- contribution of offsets to net positive outcomes for Matters of National Environmental Significance
- delivering ecologically feasible and effective offsets
- adaptive management and reporting requirements
- priority offset areas and activities.

To support streamlining and enable the achievement of better, more strategic environmental outcomes, the government will enable proponents to make conservation payments where they are unable to finalise proposed developments due to their inability to find suitable environmental offsets. Establishment of a conservation payment will send a clear price signal so proponents have an effective incentive to avoid and mitigate impacts on the environment. A price signal will promote compliance with offset requirements.

Conservation payments would be based on the cost of like-for-like habitat restoration (including land value) and management and a premium designed to address risks and ensure an overall environmental benefit from the proposed development. Cost-setting arrangements will be in Regulation, and include indexation, to provide certainty and ensure proponents continue to face the right financial incentives to avoid and reduce their environmental impact.

Conservation payments will be made to, and invested by, a body such as an independent government trust to ensure funds are used for their intended purpose and subject to full public accountability. The New South Wales Biodiversity Conservation Trust is an example of such a trust.

An evidence-based investment strategy, underpinned by conservation planning documents, will be developed to ensure conservation payments are used to deliver optimal environmental benefits. Like proposed development offsets, conservation payments could be invested in feral pest management and fire/flood protection as well as habitat restoration. Investments would not be required to be 'like for like' if this would not result in the best overall environmental outcome. Investments may be targeted towards the management of Areas of High Environmental Sensitivity, including

where these are on private land. Outcomes from the investment of conservation payments will be subject to regular review.

In the future, once the nature repair market is operating effectively, the EPA may allow certain types of market projects to be used to meet approval obligations. For example, proponents may be able to identify 'like for like' projects certified through the nature repair scheme. Governments may also invest in conservation funds through the nature repair market.

Improvements in data, planning and markets will increase opportunities for landholders to deliver offsets efficiently and reduce the time lag between impact and offset delivery.

A nature repair market will make it easier to invest

The government has announced its intention to establish a nature repair market. The nature repair market will deliver benefits for landholders, investors and the environment by encouraging investment in restoration activities to deliver clear, measurable biodiversity outcomes.

Restoration activities are diverse and can have multiple goals. Restoration can include removing or managing threats, planting specific foraging trees missing from the landscape or improving ecological function (e.g. by re-establishing water flows). Restoration activities can also focus on improving the condition of remnant native vegetation or degraded land through removal of pests and weeds.

Revegetation area, Tasmania © Department of Climate Change, Energy, the Environment and Water—Photographer Ivan Haskovec (Staff)

Foundational components of a nature repair market include:

- describing the biodiversity projects that could be certified and how the biodiversity benefits from those projects should be measured and described
- establishing biodiversity certificates as a simple means of investing in nature, reducing the need to buy or lease land and contract environmental services directly
- a public register of biodiversity projects to provide information to buyers and sellers, and to track ownership of certificates
- a transparent system for compliance and assurance to maintain integrity in the market
- delivery of information, advice and tools to support those looking to participate in the market.

The government will engage with stakeholders throughout the market design and implementation to ensure the market is fit for purpose. The government will work with First Nations to identify barriers and opportunities to participate in and earn income from biodiversity protection, including through the nature repair market.

Site checking

Processes will be improved and streamlined

The government will improve the regulatory requirements for proponents under national environmental law and foster faster and better decision-making. New information systems are being built to better coordinate Commonwealth and state and territory decision-making and allow proponents to submit and track their applications online. Transparency and accountability improvements are being delivered through a new performance framework for environment approvals, and partnerships with states and territories to harmonise threatened species listing approaches (known as the Common Assessment Method).

The government will further streamline environmental laws by removing prescriptive processes and underutilised assessment pathways, making changes to improve flexibility and assurance of strategic assessments, and strengthening wildlife trade permitting practices to protect vulnerable species.

Environmental laws will be simplified and streamlined

Prescriptive, outdated and contradictory processes increase the time and costs of assessments, for both the government and proponents. The government will reduce complexity and overly prescriptive processes that slow down the operation of national environmental law and do not add value to decision-making. This will include:

- simplifying and standardising public comment processes, including allowing modern methods for publishing information
- clarifying the information that must be considered in decision-making
- moving to outcomes-based requirements through National Environmental Standards
- moving process information into regulations or guidelines wherever possible, to enable faster and more efficient maintenance of the regulatory system.

Assessment pathways will be rationalised to avoid unnecessary referrals

Having six pathways for assessment of proposed developments creates unnecessary complexity and confusion, increasing the burden on proponents and

decision-makers. The government will rationalise the assessment pathways to create a risk-based approach to determining whether and how proposed developments that may have a significant impact on matters protected under national environmental law should be assessed. This will reduce costs and regulatory complexity.

For proposed development that clearly require detailed assessment, the initial referral is an unnecessary step in the process. The government will explore options to move straight to assessment, including for proposed developments assessed under accredited arrangements with state, territory or other Commonwealth regulators.

Better up-front guidance for proponents will be developed to reduce the number of unnecessary referrals and clarify the types of impacts that do not require approval, including for proposed developments that can demonstrate up-front consistency with National Environmental Standards.

Strategic assessments will be reformed so they are more functional

The government will continue to support the use of strategic assessments alongside regional planning. Strategic assessments provide up-front approval for actions covered by an endorsed policy, plan or program.

Strategic assessments can lead to more streamlined regulatory arrangements. There are, however, limitations on strategic assessments that restrict their functionality, effectiveness and ability to respond to changes in information and circumstances over time. The government will improve the operation and effectiveness of strategic assessments.

Cost recovery will be strengthened

The government will implement activity-based costing and update cost recovery arrangements for environmental assessment and approvals, and will support regulators to:

- consistently and transparently cost and track their regulatory activities
- cost new policy initiatives
- measure the benefits of reforms
- ensure charges to business more accurately reflect the cost of regulation.

These measures support streamlining by enabling the government to model costs and savings from reforms, minimising the cost of regulation to both business and government.

A national approach to listing threatened species will help conservation

Environment Ministers have agreed to accelerate national efforts to prevent new extinctions of native plants and animals, including through working towards full implementation of the Common Assessment Method to enable consistent national listing decisions.

New environmental laws will enable the Australian Government to recognise jurisdictional assessments and the listing of threatened species and ecological communities.

Further efficiencies will be considered, including:

- aligning listing processes with international best practice
- considering the Common Assessment Method in the development of National Environmental Standards
- enabling the Threatened Species Scientific Committee to advise the minister on whether assessments prepared by other jurisdictions comply with the Common Assessment Method.

These reforms will be undertaken in consultation with state, territories and with other stakeholders.

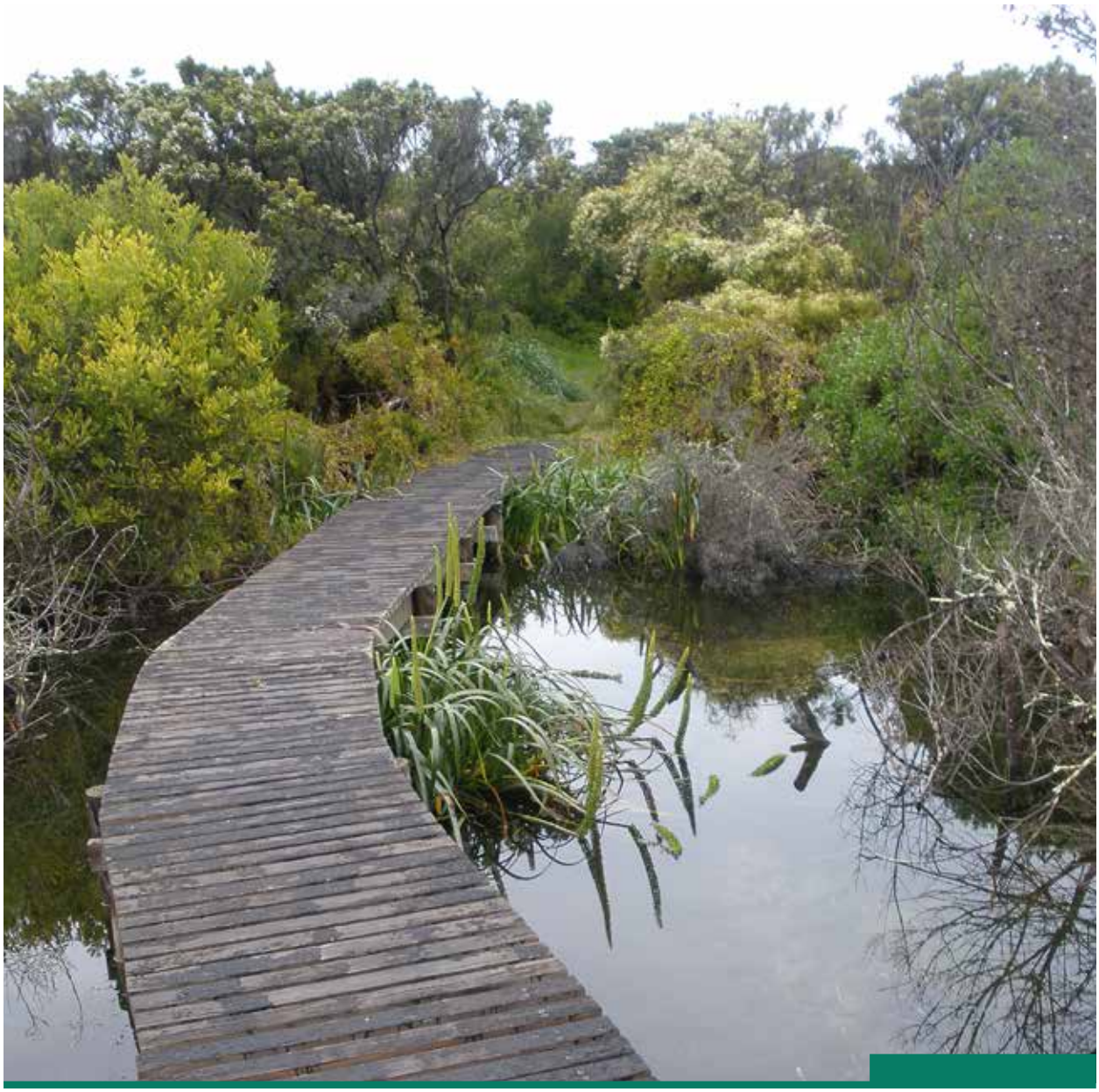
Wildlife trade will be better regulated

Australia has a strong and robust system that protects our wildlife from the insidious illegal trade in our native fauna and flora. However, important changes are needed to enable more efficient and effective regulation of wildlife trade, and improve enforcement options. Some species are over regulated while protections for other species are inadequate, and there is misalignment with international standards. There is unnecessary duplication of effective certification of goods (e.g. leather products) by other international jurisdictions. While we have best practice approaches to ensure the humane treatment of terrestrial species, there are gaps in provisions for some marine species that put these animals at risk of harm. Inadequate definitions of ‘zoos’ and ‘research institutions’ create regulatory loopholes.

The government will strengthen provisions relating to trade in wildlife to ensure we are protecting our native wildlife and delivering on our international commitments to the sustainable import, export and trade of wildlife and supporting global conservation goals. To enhance the effectiveness of wildlife trade regulation, the Government will improve compliance and enforcement and reduce the potential for wildlife permits to be misused by applicants.

Measures to ensure humane transport and the suitability of applicants applying to import live specimens will be explored, including alignment with international standards. Ensuring the highest welfare standards for live specimens imported and exported from Australia is an important component in demonstrating the sustainability of international wildlife trade. A fit and proper person test will apply to live import applications where this will improve transparency and accountability.

The Government will reduce unnecessary prescription and administrative processes for wildlife trade permits, ensuring ongoing protection of species and consistency with international obligations. Excessive administration of the wildlife trade permitting process creates additional costs for individuals, businesses and government.



Bool and Hacks Lagoon. © Department of Climate Change, Energy, the Environment and Water—Photographer Ryan Breen (Staff)

Black-flanked rock wallaby © Department of Climate Change, Energy, the Environment and Water—Photographer Tyrie Starrs

Accountability and trust

Accountability and trust

Australians have lost trust in the ability of the current EPBC Act to deliver good outcomes for our environment and heritage and for businesses.

The Australian Government recognises that to restore trust our national laws must establish clear standards and deliver nature positive outcomes. Decisions will be underpinned with quality data, transparently made by an independent agency, and subject to strong compliance and enforcement.

Squatter pigeon © Department of Climate Change, Energy, the Environment and Water—Photographer Tyrie Starrs

An independent Environment Protection Agency will restore trust and integrity

An independent national Environment Protection Agency (EPA) will undertake regulatory and implementation functions under the EPBC Act (including wildlife trade), and other relevant Commonwealth laws. These will include laws regulating sea dumping, ozone protection and synthetic greenhouse gas management, hazardous waste, product emissions standards, recycling and waste reduction, and underwater cultural heritage.

The EPA will undertake assessments and make decisions about development proposals, including approval conditions. It will issue permits and licenses and undertake compliance and enforcement activities. The EPA will establish and publish its compliance and enforcement policy. The EPA will make decisions in accordance with National Environmental Standards and be supported by an advisory group to ensure it has access to relevant skills. It will provide assurance, and advise the minister, on whether accredited parties and instruments under the EPBC Act apply the standards. The EPA will have a mandate to identify streamlining opportunities across its regulatory systems and recommend future improvements to the minister.

The independence of the EPA will be ensured through several measures including its establishment through legislation as a separate, statutory Commonwealth entity with its own budget (including funding from cost recovery). The minister will be able to issue the EPA with a public Statement of Expectations but will not otherwise be able to direct the agency. The EPA will be led by a Chief Executive Officer, who will be appointed for a fixed term and removable only in specified circumstances, such as ill health or misconduct. The skills and qualifications required of the CEO will be

set out in legislation. The EPA will report publicly on its performance and the Data Division will report on whether the system as a whole, including the EPA, is delivering on national environmental goals and objectives. The EPA will publish annual reports which the minister will be required to table in Parliament.

The minister will have a power to call in decisions that would otherwise be made by the EPA, with a requirement for full transparency about decisions and reasons. The EPA will provide advice to the minister on 'called in' proposed developments and this advice will be published. The minister will have the power to approve proposed developments that have an unavoidable negative impact on matters of national environmental significance but only where this is clearly in the national interest. The national interest exemption will be tightly and clearly defined in legislation. Given the Minister's role in sensitive environmental decision making, the EPA will not have a statutorily appointed board.

The minister will retain responsibility for policy, regional planning and standard-setting activities under national environmental law. The EPA will develop its own operational policies but not have broader environmental policy functions.

Better data will help us track, understand and adjust

The government is committed to ensuring decisions made under national environmental law are transparent and based on quality data and information. Better data supports better conservation planning and better species and ecological communities listing decisions, and improves our ability to prioritise, coordinate and assess the effectiveness of regulation and investment to protect and restore the environment (See Box 2).

Improving environmental data is also critical to supporting growing private sector environmental data needs, such as informing nature-related risk assessments and underpinning robust nature-related reporting and investment.

The Data Division will track and publish progress

The Government will establish an independent environmental information office – the Data Division – within the Department of Climate Change, Energy, the Environment and Water to provide access to authoritative sources of high-quality environmental information.

The Data Division will oversee and coordinate improvements to Australia's environmental data and information, act as the custodian of the national environmental information supply chain, and ensure data meets the National Environmental Standard for Data and Information and technical data guidelines.

A Chief Environmental Data Officer will be appointed to lead the Data Division, with clear responsibilities and powers provided for in legislation. The Chief Environmental Data Officer will develop and implement a National Environmental Data Strategy. This will set out how they will work with Australian, state and territory government agencies, proponents, scientists, First Nations and the broader community to improve the availability, interoperability, management and quality of national environmental data, and address key data and capability gaps.

Box 2: Better Use of Environmental Data

The government will improve our environmental data, using innovative tools and technology to make it easier to understand the state of our natural environment and improve regulatory decision making.

Remote imaging through satellite and drone technology combined with advances in machine learning algorithms can help us monitor our environment. It can help identify changes in environmental condition in response to climate change and natural disasters and detect illegal land clearing or changes to conservation areas and environmental offset sites. Environmental DNA tools can be used to detect threatened or invasive species, improving accuracy of conservation planning.

Integrated data repositories and digitised assessment logic can lead to faster decision making by pre-populating referral information and advice to reduce cost to industry and governments. Better sharing of information between governments through initiatives such as the Digital Environmental Assessment Program is crucial to realising these benefits.

Moulting Lagoon, Ramsar Site © Department of Climate Change, Energy, the Environment and Water—Photographer Michelle McAulay

The Data Division will provide advice to the government on the establishment of the National Environmental Standard for Data and Information and be responsible for its implementation.

The standard will provide clarity on how data and information are used in decision-making. It will designate National Environment Information Assets and be transparent about who will have a role in and accountability for maintaining and improving them. These assets will underpin priority reforms including National Environmental Standards, regional planning and the nature repair market. Transparent and well-maintained environmental information assets will also provide greater certainty in conservation planning, environmental reporting, and understanding the effectiveness of government actions undertaken to protect and restore the environment.

The Data Division will develop and implement a monitoring, evaluation and reporting framework to provide assurance that the system as a whole, including the EPA, is working to deliver environment and heritage outcomes and achieving the objectives of national environmental law.

The Data Division will play a key role in providing a platform for bringing together disparate environmental information held by different organisations and governments, including information gathered as part of environmental approval processes and biodiversity data collected through government natural resource management programs. To support this, the Data Division will be given responsibility for the Biodiversity Data Repository (BDR). The BDR will be a platform to easily integrate and share environmental data. An initial BDR pilot successfully included foundational data from the Western Australian Government. Modern data management technology means the Data Division does not need to hold information itself but can link data sets together. This measure will promote consistent data capture, interoperability, storage and sharing, thus improving and streamlining environmental decision-making in all jurisdictions.

The Data Division will also work with government, science, data and other organisations to ensure existing national data resources meet agreed quality standards and are made publicly available.

We will make better use of the State of the Environment report

The government will legislate to clarify of the purpose of *State of the Environment* (SoE) reporting, including requiring trend analysis against national goals and environmental indicators. This will include a requirement for governments to respond to future SoE reports.

Environmental-economic accounting will provide a primary source of trend data for SoE reporting, including a public dashboard of trends on the state of our key natural capital assets, such as land, water and ecosystems.

The Data Division will deliver future SoE reports, including commissioning the report and recommending improvements. The Data Division will also track, analyse and report against trends and environmental indictors, including real-time data reporting where possible. This could include innovative public tools, tailored data analytics services, and the release of data products.

Environmental economic accounts will help us value nature

Environmental-economic accounts present data to help us better understand the condition of the environment and interactions between the economy and the environment. They track changes in natural wealth: the condition of the environment, value of natural capital, benefits of the environment to the economy and society, dependencies of the economy and society on the environment, and impacts of the economy and society on the environment.

The review found that the importance of the environment and its contribution to our economic and social wellbeing is being overlooked as it is not reflected in our traditional financial accounts. The government will seek to table annually in Parliament a core set of national environmental-economic accounts to support government policy, planning and decision-making alongside the system of national (economic) accounts.

The government is investigating incorporating social, human health and environmental measures along with traditional budget measures in its 'Measuring what matters' agenda. As part of this work, a set of environmental indicators will be developed that will contribute to our understanding of the connection between the environment and the wellbeing and productivity of Australians. Environmental-economic accounts can be used to underpin these indicators and ensure they are robust.

The Data Division will be responsible for progressing environmental-economic accounts in partnership with the Australian Bureau of Statistics.

Statutory committees will be reformed

The review highlighted that trust and confidence in the current EPBC Act could be enhanced by the provision of transparent, independent advice on the adequacy of

Bicycle path and a corridor for runners in the park

information provided to decision-makers. The current EPBC Act has a range of statutory advisory committees that provide advice to the minister to promote a cooperative approach to protecting and managing Australia's environment.

The government will consult with the four existing statutory committees – the Indigenous Advisory Committee, Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, Threatened Species Scientific Committee and Australian Heritage Council – on amendments to enable them to best contribute to the objectives of the new environmental laws.

As a priority, the terms of reference for the Indigenous Advisory Committee will be updated to provide a clear role in the development of standards.

Environmental decisions will better consider social and economic matters

The review highlighted the need to better incorporate social and economic considerations in decision-making. The Australian Government is committed to ensuring that social (including cultural) and economic matters are accurately identified and transparently factored into decision-making. Reforms will include:

- establishment of mandatory guidelines for identifying and quantifying the social and economic impacts of each proposed development. These will be developed in consultation with relevant Australian Government portfolios, including reporting and review requirements
- provisions for relevant government authorities to provide authoritative review of proposed developments and advice on social and economic matters
- provisions to enable cost recovery of requisite independent analysis of social and economic matters.

Public accountability will be strengthened

The degradation of nature affects every Australian. In addition to strengthened compliance and enforcement by an independent EPA, it is proper that members of the public be able to hold proponents to account for their promises made under environmental law. This will occur through the provision of publicly available, transparent and accessible data. The government will support members of the public to report their concerns to the EPA's compliance and enforcement area, and provide opportunities to contribute to the monitoring of and compliance with National Environmental Standards.

The government will not introduce a right to limited merits review of decisions. Legislating National Environmental Standards, greater transparency and the establishment of an independent EPA are more effective ways to improve and assure the quality of decision-making. This will improve public trust and confidence in environmental decisions, which in turn will provide greater certainty for proponents. A National Environmental Standard for Community Engagement and Consultation will allow for greater community involvement in environmental decision-making and regional planning processes. Limited merits review could prevent proposed development from proceeding in a timely manner, as matters are held up by courts, which can lead to unreasonable and unfair costs for proponents. Members of the public will retain the right to bring claims for judicial review of decisions by the EPA or the minister.

The government will examine the possibility of introducing third-party enforcement as suggested by a number of stakeholders, noting that it operates in jurisdictions such as Victoria.

Traditional Owners will have more control over Commonwealth National Parks

Transforming management arrangements for Commonwealth National Parks

The government and the Director of National Parks have committed to restoring trust and confidence in the management of Commonwealth National Parks, including providing Traditional Owners with more control over the management of their Country.

Joint management arrangements are in place for three Commonwealth National Parks: Kakadu, Uluṟu-Kata Tjuṯa and Booderee. In these areas, Traditional Owners lease their land to the Director of National Parks (a statutory position established under the current EPBC Act) and each park is jointly managed through lease agreements, statutory management plans, and boards of management for each park.

The government and the Director of National Parks will work with the Traditional Owners of Kakadu, Uluṟu-Kata Tjuṯa and Booderee National Parks to examine the legal and institutional settings in the current EPBC Act that

establish the Director of National Parks and frame the joint management relationship between the Director of National Parks and Traditional Owners.

Possible future management models will be co-designed based on the aspirations of Traditional Owners and will provide the foundation for reform, including amendments to national environmental law and changes to associated policy and internal governance arrangements. This will include consideration of models that allow for more direct management by Traditional Owners and where appropriate, creating pathways towards sole management.

Throughout this process the Director of National Parks will continue to improve joint management arrangements and ensure the highest level of protection for the environment and cultural heritage in Commonwealth National Parks. This includes enabling traditional land use and maintaining public access to Commonwealth National Parks in a way that supports cultural, social and economic benefits for Traditional Owners.

Reform associated with the Director of National Parks will include changes to the legislative approach to support the creation and management of other Commonwealth Reserves including marine parks, the Australian National Botanic Gardens, Norfolk Island National Park, Christmas Island National Park and Pulu Keeling National Park. It will also explore opportunities to more closely link and align the role and functions of the Director of National Parks with environmental goals and objectives for the management of protected areas.

Potential updates to the legislative and regulatory framework creating zoning definitions for Australian Marine Parks will also be considered. The focus will be on strengthening the effectiveness of the marine parks, including scope for the Director of National Parks to report on the contribution of marine protected areas to ocean health. Improvements to the current legislative and regulatory framework will be informed by science, consultation with stakeholders and international better practice models.

The Commonwealth will work with states and territories

The 1992 Intergovernmental Agreement on the Environment and the 1997 Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment provide the foundation for collaboration on national environmental protection laws.

The government is committed to strengthening cooperation across the federation and will consider the best way to support this as part of future environmental policy and national law reform. The government is committed to reinvigorating important forums such as the Environment Ministers Meeting, to provide a platform to discuss strategic issues and agree cross-government actions to improve Australia's environment.

Indigenous Ranger © Parks Australia

Great Barrier Reef

Next steps

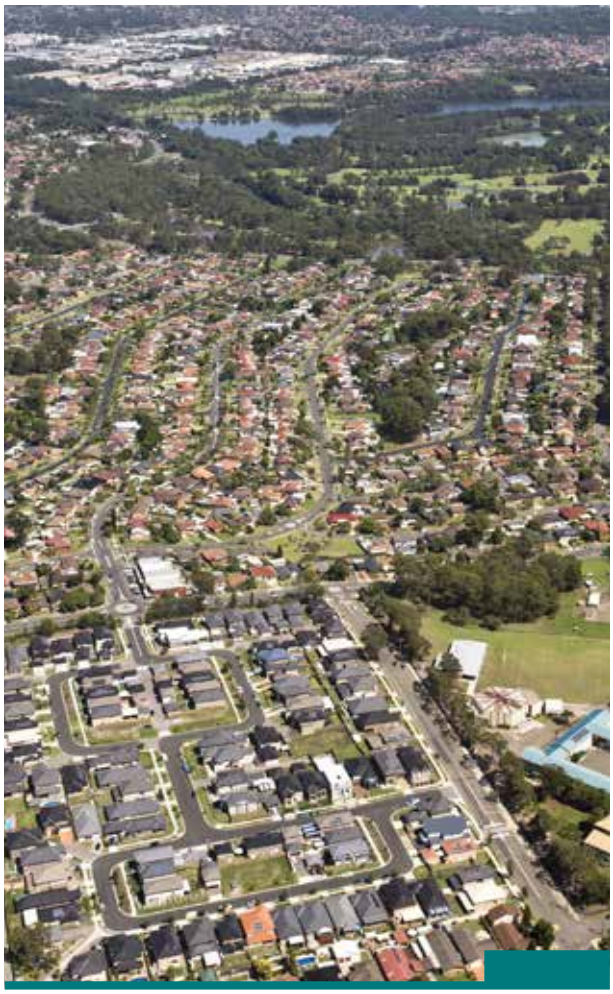
The Australian Government will introduce legislation to give effect to this response in 2023. During this period there will be ongoing engagement with stakeholders on the legislation.

The government will continue to work with stakeholders, including industry; environment groups and scientists; First Nations groups; and state, territory and local government to inform the design and implementation of reforms.

Engagement in 2023 will focus on:

- developing the first National Environmental Standards. The standard for Matters of National Environmental Significance will be the first developed, building on the standard set out in the review. A draft of this standard will be released alongside new legislation when it is introduced into Parliament. Further priority standards will also be developed throughout 2023
- designing the independent EPA and developing of an appropriate cost recovery model
- working with states and territories to identify initial locations for regional plans
- improving the quality, accessibility and interoperability of environmental data to aid decision-making, measuring what matters, reporting and assisting with the establishment of the national nature repair market
- improving the quality and effectiveness of conservation planning.

These important reforms will lay the foundations for a strong, efficient and enduring regulatory system that can deliver better outcomes for Australia's unique environment and heritage.



Aerial view of an Australian urban area, with residential and commercial properties

Appendix A

Government action to address recommendations of the Independent Review of the EPBC Act (Samuel, 2020)

The actions the Australian Government will take are set out against each recommendation in the table below.

1. **Matters of national environmental significance should be focused on Commonwealth responsibilities for the environment.**

    a. **The water MNES (section 24D/24E) should be amended to apply only to cross-border water resources. Any action that is likely to have a significant impact on cross-border water resources should be subject to the trigger. Restrictions should be removed where they prevent other parties from being accredited to undertake approvals of proposals assessed under the water trigger. This amendment should occur in the second tranche of reforms.**

    b. **The nuclear MNES (section 21/22A) should be retained. In the first tranche of reforms, the government should immediately adopt the recommended National Environmental Standard for the protection of the environment from nuclear actions. In the second tranche of reform, the EPBC Act and the regulatory arrangements of the Australian Radiation Protection and Nuclear Safety Agency should be aligned, to support the implementation of best-practice international approaches based on risk of harm to the environment, including the community.**

> The government will improve the coverage of water resources and nuclear actions to deliver effective protections for these nationally important matters and uphold our commitments internationally.
>
> The government will amend the water trigger to include all forms of unconventional gas (e.g. shale and tight gas), with care to avoid duplicating state and territory water management systems.
> See **Water resources**.
>
> The government already ensures nuclear activities are managed in accordance with international best practice and will harmonise regulatory requirements and codes with the Australian Radiation Protection and Nuclear Safety Agency's standards. See **Nuclear actions**.

2. **National Environmental Standards recommended by this review should require development proposals to:**

    a. **Explicitly consider the likely effectiveness of avoidance or mitigation measures on nationally protected matters under specified climate change scenarios.**

    b. **Transparently disclose the full emissions of the development.**

> The government will require reporting of Scope 1 and 2 emissions and related management actions over the life of the project. Regional and conservation planning will be required to take account of climate change. See **Climate change**.

3. **The EPBC Act should be immediately amended to enable the development and implementation of legally enforceable National Environment Standards.**

    a. **The Act should set out the process for making, implementing and reviewing National Environmental Standards. The Act should include specific provisions about their governance, consultation, monitoring and review.**

    b. **The Act should require the activities and decisions made by the minister under the Act, or those under an accredited arrangement, be consistent with the National Environmental Standards.**

    c. **The Act should include a specific power for the minister to exercise discretion to make a decision that is inconsistent with the National Environmental Standards. The use of this power should be a rare exception, demonstrably justified in the public interest an accompanied by a published statement of reasons which includes the environmental implications of the decision.**

    d. **National Environmental Standards should be first made in a way that takes account of the current legal settings of the Act. The National Environmental Standards set out in detail in Appendix B should be adopted in full. The remainder of the suite of standards should be developed without delay to enable the full suite of 9 standards to be implemented immediately. Standards should be refined within 12 months.**

> The government will introduce legislation to establish standards in 2023, which will include a process for making, implementing and reviewing standards. The legislation will specify that no standard can be amended to reduce environmental protection. See **National Environmental Standards will drive nature positive outcomes**.
>
> The independent Environment Protection Agency will apply standards and ensure compliance with conditions of approval. The Data Division will develop and implement a Monitoring, Evaluation and Reporting framework to provide assurance that the objects of national environmental law and outcomes of National Environmental Standards are being achieved. See The **Data Division will track and publish progress**.
>
> The standards recommended by the review will provide a starting point for the development of a package of National Environmental Standards. See **Developing the first National Environmental Standards**.

4. **In the second tranche of reforms, the EPBC Act should be amended to deliver more effective environmental protection and management, accelerate achievement of the environmental outcomes and improve the efficiency of National Environmental Standards. Parts 3 to 10 should be completely overhauled to enable:**

    a. **National Environmental Standards to evolve and be set in a way that delivers ecologically sustainable development, through the collective contributions of the actions, decisions, plans and policies of the Commonwealth and accredited parties.**

    b. **A proactive focus on managing matters of national environmental significance. The Act should require that matters of national environmental significance be protected, conserved, recovered and enhanced.**

    c. **All decisions to be targeted towards achieving the environmental outcomes set out in National Environmental Standards**

    d. **National Environmental Standards to be more efficiently applied to decision-making, including accredited arrangements.**

> The government will ensure statutory decision-making is in line with the National Environmental Standards. See **National Environmental Standards will drive nature positive outcomes**.

5. **To harness the value and recognise the importance of Indigenous knowledge, the EPBC Act should require decision-makers to respectfully consider Indigenous views and knowledge. Immediate reform is required to:**

   a. **Amend the Act to replace the Indigenous Advisory Committee with the Indigenous Engagement and Participation Committee. The mandate of the Committee will be to refine, implement and monitor the national environmental Standard for Indigenous engagement and participation in decision-making.**
   b. **Adopt the recommended National Environmental Standard for Indigenous engagement and participation in decision-making.**
   c. **Amend the Act to require the Environment Minister to transparently demonstrate how Indigenous knowledge and science is considered in decision-making.**

The Standard for First Nations Engagement and Participation in Decision-making will be co-designed with the IAC as a priority.

The government will engage with First Nation peoples as part of overall reforms to co-design standalone cultural heritage legislation and incorporate and protect First Nations data and knowledge.
See **First Nations perspectives will inform environment and heritage protection**.

6. **The department should take immediate steps to invest in developing its cultural capability to build strong relationships with Indigenous Australians and enable respectful inclusion of their valuable knowledge.**

The department is taking immediate steps to develop the cultural capability of its staff.

7. **The Commonwealth Government should immediately initiate a comprehensive review of national-level cultural heritage protections, drawing on best practice frameworks for cultural heritage laws.**

The government will work with the First Nations Heritage Protection Alliance to co-design standalone First Nations cultural heritage legislation. See **First Nations cultural heritage protections will be strengthened.**

8. **The Commonwealth Government, through the Director of National Parks, should immediately commit to working with Traditional Owners to co-design reforms for joint management, including policy, governance and transition arrangements. The Commonwealth Government should ensure that this process is supported by amending the EPBC Act when needed, and providing adequate resources.**

The government and the Director of National Parks will work with Traditional Owners to review the role, function and purpose of the Director of National Parks, including consideration of new legislative models that allow for more direct management of Commonwealth National Parks by Traditional Owners.
See **Transforming management arrangements for Commonwealth National Parks.**

9. **Legislative reforms should be redrafted in line with modern, best practice drafting guidance. Immediate amendments should be made to:**

   a. **Fix inconsistencies, gaps and conflicts in the EPBC Act to make it easier to understand and work with.**
   b. **Implement enforceable National Environmental Standards; improve the durability of bilateral agreements; independent oversight and audit; and compliance and enforcement.**

The government will improve the legislative framework to make the new Act easier to understand and to work with, and enable the establishment of National Environmental Standards, the EPA and regional planning. See **Environmental laws will be simplified and streamlined.**

10. **Over a 2-year transition period, a comprehensive reworking of the EPBC Act should be undertaken to fully implement the reforms recommended by this review and to deliver an effective legislative framework.**

    a. **The Act should be restructured to clarify and simplify the functions of the Act and how they interact.**

    b. **Redrafting and restructuring of the Act should explicitly consider its interaction with other Commonwealth legislation to remove inconsistency and to improve operational efficiency. To deliver the full results, this may require consequential changes in other legislation.**

    c. **Redrafting should include consideration of dividing the Act, such as creating separate pieces of legislation for its key functional areas.**

> The government will simplify, modernise and streamline processes and clarify information requirements. It will also involve removal of prescriptive processes and unused assessment pathways to reduce complexity and improve flexibility for proponents and regulators. See **Environmental laws will be simplified and streamlined**.

11. **The Commonwealth Government should increase the transparency of the operation of the EPBC Act by:**

    a. **immediately improving the availability of information as required by the National Environmental Standards**

    b. **immediately improving the accessibility of the Act through plain English guidelines and targeted communication**

    c. **immediately implementing arrangements to publish reasons for Commonwealth decisions under Parts 9 and 10 of the Act**

    d. **in the second tranche of reform, amend the Act to require publication of all information relevant to, and the reasons for, decisions made under the Act. Processes and systems should be implemented to support greater transparency.**

> The government will provide greater transparency to community and businesses about environmental decision-making, including the data and information considered when making decisions. See **The Data Division will track and publish progress.**

12. **The EPBC Act should be immediately amended to recast the statutory committees to create the Ecologically Sustainable Development Committee, the Indigenous Engagement and Participation Committee, the Biodiversity Conservation Science Committee, the Australian Heritage Council, and the Water Resources Committee. The Ecologically Sustainable Development Committee should be an overarching committee with responsibility for providing advice on National Environmental Standards, planning and implementation, and coordination across all the committees.**

> The government will review the terms of reference of the four existing statutory committees to ensure alignment with the objectives of the new Act. See **Statutory committees will be reformed**.

13. **The EPBC Act should retain the current extended standing provisions. In the second tranche of reform, the Act should be amended to provide for limited merits review for development approval decisions but be restricted:**

    a. **by set time frames for applications**
    b. **to the papers at the time of the original decision**
    c. **to matters that will have a material impact on environmental and heritage outcomes**
    d. **to where senior counsel advice is that there is a reasonable likelihood of the matter proceeding.**

The government will not introduce a right to limited merits review of decisions. Legislating National Environmental Standards and establishing an EPA and the Data Division are better ways to improve, and provide public assurance, about the quality and consistency of decision-making.
See **Environmental laws will be simplified and streamlined** and **Public accountability will be strengthened**.

14. **Immediately amend the EPBC Act to provide confidence to accredit state and territory arrangements to deliver single-touch environmental approvals in the short-term. Accreditation should be:**

    a. **underpinned by legally enforceable National Environmental Standards**
    b. **subject to rigorous, transparent oversight by the Commonwealth, including comprehensive audit by the independent Environment Assurance Commissioner.**

The government will improve accreditation arrangements, including through setting more robust requirements for decision-making. Accredited assessment will be subject to National Environmental Standards and the same, strong assurance and oversight as other assessment processes under the EPA.
See **Accreditation will be based on National Environmental Standards**.

15. **Increase the level of environmental protection afforded in Regional Forest Agreements (RFAs).**

    a. **The Commonwealth should immediately require, as a condition of any accredited arrangement, states to ensure that RFAs are consistent with the National Environmental Standards.**
    b. **In the second tranche of reform, the EPBC Act should be amended to replace the RFA 'exemption' with a requirement for accreditation against the National Environmental Standards, with the mandatory oversight of the Environment Assurance Commissioner.**

The government will work with stakeholders and relevant jurisdictions towards applying National Environmental Standards to Regional Forest Agreements to support their ongoing operation together with stronger environmental protection. See **Regional Forest Agreements.**

16. **In the second tranche, the accreditation model should be applied to arrangements with other Commonwealth agencies, where they demonstrate consistency with the National Environmental Standards and subject themselves to transparent independent oversight. Specifically:**

    a. **The complex requirements for ministerial advice on certain Commonwealth authorisations (sections 160–164) should be removed. These arrangements should be subject to the accreditation model, or the standard assessment and approval provisions of the EPBC Act.**
    b. **The accreditation model should be applied to the National Offshore Petroleum Safety and Environmental Management Authority and the Australian Fisheries Management Authority using appropriate legislative amendments.**
    c. **Where relevant, a broader application of the National Environmental Standards to other Commonwealth decisions and management plans, beyond those already provided for under the current settings of the Act, should be considered.**

All accredited parties will be subject to the same requirements under National Environmental Standards. This will include state, territory and Commonwealth processes and management frameworks, such as, the NOPSEMA strategic assessment and advice provided to other Commonwealth agencies under s160–164.

The EPA will assure and provide independent oversight over decision-making under national environmental law and the standards. See **Accreditation will be based on National Environmental Standards**.

17. **In the second tranche, a National Environmental Standard for actions impacting on Commonwealth land and Commonwealth actions should be developed to provide a national benchmark for effective environmental protections. The Commonwealth should promote the broader application of this standard by encouraging other jurisdictions to adopt it.**

The government will set National Environmental Standards. An overarching Standard for all MNES will be established ahead of a Standard for actions on Commonwealth land. See **National Environmental Standards will drive nature positive outcomes**.

18. **In the second tranche, Commonwealth assessment pathways should be rationalised to enable a risk-based approach to assessments that is proportionate to the level of impact on matters protected by the EPBC Act.**

The government will rationalise assessment pathways and ensure that assessment is proportionate to the level of impact on MNES. Risks to MNES will also be addressed through regional plans. See A**ssessment pathways will be rationalised to avoid unnecessary referrals**.

19. **In the second tranche, the implementation of Commonwealth assessment should be supported by providing clear guidance, modern systems and appropriate cost recovery.**

The government will improve the regulatory requirements for proponents and foster faster and better decision-making. See **Processes will be improved and streamlined**.

20. **Amend the EPBC Act to ensure wildlife permitting requirements align with Australia's international obligations related to:**

    a. **species listed under Appendix I and II of the *Convention on the Conservation of Migratory Species* (Bonn Convention)**
    b. **import permitting requirements for Appendix II listed species under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES)**
    c. **requirements to ensure the humane transport of live fish and live invertebrates.**

> The government will streamline and improve wildlife trade permit requirements to retain consistency with international obligations, including welfare standards for live specimens. See **Wildlife trade will be better regulated**.

21. **Amend Part 13A Division 2 and 5 of the EPBC Act, EPBC regulations and association definitions to streamline and reduce regulatory burden on wildlife trade permitting processes and to enable proportionate compliance and enforcement responses.**

> The government will reduce unnecessary prescription and administrative process for wildlife trade permitting, ensuring ongoing protection of species is maintained and permit requirements remain consistent with international obligations. See **Wildlife trade will be better regulated**.

22. **Reduce instances under the EPBC Act and EPBC regulations where wildlife trade permitting may be subject to abuse by applicants.**

    a. **Tighten the definitions for the non-commercial categories of exhibition and travelling exhibition, including what can be classified as a zoo.**
    b. **Apply a fit-and-proper-person test as broadly as possible to wildlife permitting approvals under the Act.**

> The government will improve the effectiveness of wildlife trade regulation by improving compliance and enforcement and reducing the potential for wildlife permits to be misused. A fit and proper person test will also be applied. See **Wildlife trade will be better regulated**.

23. **Immediately establish, by statutory appointment, the position of Environment Assurance Commissioner with responsibility to:**

    a. **oversee audit of decision-making by the Commonwealth under the EPBC Act, including the Office of Compliance and Enforcement**
    b. **oversee audit of an accredited party under an accredited arrangement**
    c. **conduct performance audits, like those of the Auditor General and set out in the *Auditor-General Act 1997***
    d. **provide annual reporting on performance of Commonwealth and accredited parties against National Environmental Standards. This report should be provided to the Environment Minister, to be tabled in the Australian Parliament in a prescribed timeframe.**

> These functions will be performed by the EPA which will make decisions in accordance with National Environmental Standards and assure accredited parties and instruments apply the standards. See **An independent Environment Protection Agency will restore trust and integrity**.
>
> The Data Division will develop and implement a Monitoring, Evaluation and Reporting (MER) framework to provide assurance that the system as a whole, including the EPA, is achieving the objectives of the new Act and outcomes of National Environmental Standards. See **The Data Division will track and publish progress**.

24. **In the second tranche, the EPBC Act should be amended to remove outdated bilateral agreement processes and replaced with robust and efficient accreditation processes, based on National Environmental Standards, that include:**

    a. **self-assessment of arrangements by the party proposing to be accredited**
    b. **independent advice of the Environment Assurance Commissioner**
    c. **the opportunity for the Australian Parliament to disallow a proposed accreditation**
    d. **accreditation agreement by the Commonwealth Environment Minister**
    e. **escalation processes to resolve disputes between the Commonwealth Environment Minister and the accredited party**
    f. **the Commonwealth Environment Minister's unfettered right to make a decision**
    g. **scheduled formal review.**

The government will improve accreditation arrangements and ensure robust oversight of decision-making by accredited parties. Accredited arrangements will be subject to National Environment Standards, strong assurance, and independent oversight. The accreditation framework will reflect the proposals set out in the recommendation. See **Accreditation arrangements will be based on National Environmental Standards**.

25. **In the second tranche of reform, the EPBC Act should be amended to support more effective planning that accounts for cumulative impacts and past and future key threats and build environmental resilience in a changing climate. Amendments should enable:**

    a. **strategic national plans to be developed, consistent with the National Environmental Standards, to guide a national response and effectively target action and investment to address nationally pervasive issues such as high-level and cross-border threats**
    b. **regional recovery plans to be developed, consistent with the National Environmental Standards, to support coordinated threat management and investment to reduce cumulative impacts on threatened species and ecological communities**
    c. **ecologically sustainable development plans to be developed and accredited, consistent with the National Environmental Standards. These plans should address environmental, economic, cultural and social values and include priority areas for investment in the environment**
    d. **strategic assessments to be approved, consistent with the National Environmental Standards and regional recovery plans and provide for a single approval for a broad range of actions**
    e. **the Commonwealth to accredit plans made by other parties, where these plans are consistent with National Environmental Standards and other relevant plans**
    f. **plans to be made consistent with key principles for quality regional planning.**

The government's approach emphasises this recommendation and focuses on regional planning. Conservation plans will also be delivered via a regional framework with Areas of High Environmental Value reducing the cumulative impacts on threatened species and ecological communities. The government has committed $29.3 million to make an immediate start on regional planning and guide sustainable development. See Regional Plans will guide sustainable development and environmental restoration.

The first standards will include a Regional Planning Standard to support the development of regional plans. See **National Environmental Standards will drive nature positive outcomes.**

26. In the second tranche, the Commonwealth should establish a dedicated program to develop and implement strategic national plans and regional plans with a focus on key Commonwealth priorities, including:

- **a. strategic national plans for key, new and emerging threats of national significance**
- **b. regional plans in biodiversity hotspots, areas foreshadowed as national priorities for economic development and areas where matters of national environmental significance are under greatest threat.**

The government will remove overly prescriptive processes and duplication to streamline and strengthen conservation planning. See Conservation planning will strengthen protection and guide recovery efforts.

Regional plans will identify areas necessary for the protection, conservation and repair of environment and heritage values. In other areas, plan will guide ecologically sustainable development, will harmonise requirements between Commonwealth and state or territory regulators and significantly reduce development approval times. See **Regional Plans will guide sustainable development and environmental restoration**.

27. The Commonwealth should reform the application of environmental offsets under the EPBC Act to address decline and achieve restoration.

- **a. The EPBC Act environmental offsets policy should be immediately amended (or a National Environmental Standard for restoration that includes offsets should be made) in accordance with the recommendations in Box 2.**
- **b. As part of the second tranche of reform, the Act should be amended or standalone legislation passed to legislate the revised offsetting arrangements, providing the certainty required to encourage investment in restoration.**

A National Environmental Standard for Environmental Offsets will work alongside the MNES Standard to significantly improve environmental outcomes from offset arrangements. See **Environmental offset arrangements will deliver better overall environmental outcomes**.

28. To foster private sector participation in restoration, the Commonwealth should formally investigate and consider:

- **a. co-investment with private capital to improve the sustainability of private land management**
- **b. establishing a central trust or point of coordination for private and public investment in restoration to be delivered (including offsets)**
- **c. opportunities to leverage existing markets (including the carbon market) to help deliver restoration**
- **d. changes to the tax code that can deliver environmental restoration.**

The government will establish a nature repair market. The nature repair market will encourage private investment in environmental restoration and management. The government will investigate barriers and incentives for the protection and restoration of biodiversity on private land. See **A nature repair market will make it easier to invest**.

29. **Immediate reforms are required to ensure that compliance and enforcement functions by the Commonwealth, or an accredited party are strong and consistent.**

    a. **The recommended National Environmental Standard for compliance and enforcement should be immediately adopted.**
    b. **Commonwealth compliance and enforcement functions and those of any accredited party should be required to demonstrate consistency with this standard.**
    c. **The Commonwealth should retain the ability to intervene in project-level compliance and enforcement, where egregious breaches are not being effectively dealt with by the accredited party.**

The EPA will be responsible for undertaking regulatory functions and implementing new environmental laws. See **An independent Environment Protection Agency will restore trust and integrity**.

To facilitate the accreditation of other parties, a Standard for Compliance and Enforcement will be developed once the EPA is established. See **Developing the first National Environmental Standards**.

Accredited parties will be subject to their compliance with all standards, and full disclosure of environmental performance data. All accredited arrangements will be subject to strong assurance, and independent oversight. See **Accreditation will be based on National Environmental Standards**.

30. **The Commonwealth should immediately increase the independence of and enhance Commonwealth compliance and enforcement. This requires:**

    a. **Simplified law and a full suite of modern regulatory surveillance, compliance and enforcement powers and tools, including targeted stakeholder resources to build understanding and voluntary compliance.**
    b. **Assigning independent powers for Commonwealth compliance and enforcement to the Secretary of the Department of Agriculture, Water and the Environment, with compliance functions consolidated into an Office of Compliance and Enforcement within the Department. This office should be provided with a full suite of modern regulatory powers and tools, and adequate resourcing to enable the Commonwealth to meet the National Environmental Standard for compliance and enforcement.**
    c. **An increase in the transparency and accountability of activities, including clear public registers of activities, offsets and staff conflicts of interest.**

The government will establish the EPA as a strong independent environmental regulator with a mission to improve trust and transparency in the operation of national environmental laws. See **An independent Environment Protection Agency will restore trust and integrity.**

A National Environmental Offsets System will be released by the end of 2022, to track and report on the use and delivery of environmental offsets. See **Environmental offset arrangements will deliver better overall environmental outcomes**.

The government will provide full transparency to community and businesses on environmental decision-making, including the data and information considered when making decisions. See **Better data to track, understand and adjust**.

31. **The Commonwealth should initiate immediate improvements to the environmental information system by:**

    a. **adopting a National Environmental Standard for data and information to set clear requirements for providing best available evidence, including requiring anyone with environmental information of material benefit to provide it to the environmental information supply chain**
    b. **appointing an interim supply chain Custodian to oversee the improvements to information and data**
    c. **designating a set of national environment information assets to ensure essential information streams are available and maintained to underpin the implementation and continual improvement of the National Environmental Standards for MNES**
    d. **expanding the application of existing work with jurisdictions on the digital transformation of environmental assessments and ensuring it is aligned with implementation of the national environmental information supply chain**
    e. **commencing the overhaul of the Department's information management systems to provide a modern interface for interactions on the EPBC Act and support better use and efficient transfer of information and knowledge.**

The government agrees with the report's recommendations and is committed to quality, accessible and transparent data. The government will ensure decisions are based on the best available data, information and advice, and increasing the transparency of decisions. See Better data to track, understand and adjust.

A Standard for Data and Information will be developed once the Data Division is established. See **Developing the first National Environmental Standards**.

The government will establish a Data Division so an interim data supply chain custodian is not required. S ee **The Data Division will track and publish progress.**

New information systems are being built to better coordinate Commonwealth and state and territory decision-making and allow proponents to submit and track their applications online. See **Better data to track, understand and adjus**t.

32. **The Commonwealth should build, maintain and improve an efficient environmental information supply chain to deliver the best available evidence to improve the effectiveness of the EPBC Act. Aligned with the second tranche of reform, the supply chain should:**

    a. **have a clearly assigned Custodian responsible for providing long-term stewardship and coordination**
    b. **have a legal foundation with provisions in the Act that details responsibilities, governance, National Environmental Information Assets and reporting to ensure accountability**
    c. **be underpinned by a long-term strategy and roadmap prepared and maintained by the Custodian, with the first strategy due within 12 months**
    d. **be supported by a coordinated effort to improve national ecosystem and predictive modelling capabilities**
    e. **have adequate up-front and ongoing funding.**

The government will establish a Data Division within the Department of Climate Change, Energy the Environment and Water to oversee and coordinate improvements to Australia's environmental data and information, and act as the custodian of the national environmental information supply chain.
See **Better data to track, understand and adjust**.

33. **To monitor and evaluate the effectiveness of the EPBC Act the Commonwealth should immediately:**

    a. **Establish a National Environmental Standard for environmental monitoring and evaluation of outcomes to ensure that all parties understand their obligations to monitor, evaluate, report on and review their activities.**

    b. **Assign the Ecologically Sustainable Development Committee responsibility for the oversight and management of monitoring, evaluating and reporting on the outcomes of the Act. Immediate priorities of the Ecologically Sustainable Development Committee should be developing a monitoring and evaluation framework and preparing monitoring and evaluation plans for the National Environmental Standards for MNES**

The Data Division will develop and implement a Monitoring, Evaluation and Reporting (MER) framework to provide assurance that the objects of the new Act and outcomes of National Environmental Standards are being achieved. See **Better data and information to track, understand and adjust.**

34. **In the second tranche, the EPBC Act should be amended to require formal monitoring, evaluation and reporting on the effectiveness of the Act in achieving its outcomes. Specifically, amendments should include requirements to:**

    a. **deliver a comprehensive and coherent monitoring and evaluation framework that includes appropriate mechanisms for embedding the framework including governance**

    b. **require a long-term strategy to identify and achieve systematic monitoring required to understand the trend and condition of MNES**

    c. **deliver an annual statement by the Ecologically Sustainable Development Committee to the Environment Minister and the Environment Assurance Commissioner. The statement should evaluate environmental performance under the Act, how the outcomes for MNES are tracking, and make recommendations for adjustments are required.**

The government will establish standards and ensure that decision-making processes under national environmental law is effective and transparent.

The Data Division will provide publicly available monitoring and reporting on environmental outcomes.

See **Accreditation will be based on National Environmental Standards** and **The Data Division will help us track, understand and adjust**.

35. **The Commonwealth should immediately agree to deliver a published response to the *2021 State of the Environment Report*. The response should provide a strategic national plan for the environment, including annual reporting on the implementation of the plan.**

The government published the *2021 State of the Environment Report* on 19 July 2022. This response addresses findings from the SoE report and the review. Implementation of the government's actions will be reported regularly for transparency and accountability.

36. **In the second tranche, the EPBC Act should be amended to provide a sound legislative basis for the Commonwealth's national leadership and reporting role including amendments to:**

    a. **Set out the purpose of the national State of the Environment report to provide the national story on environmental trends and condition, and require that it be independent, based on a consistent, long-term set of environmental indicators, and align the timing of the report to enable it be used as a contemporary input into the decadal review of the Act.**
    b. **Require a government response to future *State of the Environment* reports that should be tabled in the Australian Parliament in the form of a strategic national plan for the environment and annual reports on the implementation of the plan.**
    c. **Require a set of national environmental-economic accounts to be tabled annually in the Australian Parliament alongside traditional budget reporting.**

The government will introduce legislation to provide a sound basis for reform in 2023.

The government will legislate to clarify the purpose of SoE reporting, including requiring trend analysis against national goals and a long term set of environmental indicators. This will include a requirement for a government response to future SoE reports to be tabled in Parliament within a specified timeframe. See **We will make better use of the *State of the Environment* report.**

The Government will develop a core set of national Environmental Economic Accounts to be tabled annually in Parliament alongside the system of national (economic) accounts. See **Environmental economic accounts will help us value nature.**

37. **As part of the third tranche of reform, the Commonwealth, in its national leadership role, should build on its own reforms by pursuing harmonisation with states and territories to streamline national and international reporting by delivering:**

    a. **a national environmental monitoring and evaluation framework, developed in collaboration with jurisdictions, to better understand the performance of the different parts of the national environmental management system**
    b. **a nationally agreed system of environmental-economic accounts to support streamlined environmental reporting. These accounts should be continuously improved over time.**

The government will improve reporting and consider the best way to support further harmonisation with states and territories through relevant intergovernmental forums. See **The Commonwealth will work with states and territories.**

38. **In the third tranche of reform, the Commonwealth should instigate a refresh of intergovernmental cooperation and coordination to facilitate collaboration with the states and territories, including:**

    a. **greater consistency and harmonisation of environmental laws**
    b. **finalising a single national list of protected matters to facilitate streamlining under the common assessment method**
    c. **a shared future program of regional planning and strategic national plans**
    d. **leveraging Commonwealth reforms in data and information**
    e. **consolidating monitoring and reporting on environmental outcomes across Australia through the *State of the Environment Report* and other reporting.**

The government will seek to formalise support for implementation of national environmental law reform through relevant intergovernmental forums. The government has reinstated the Environment Ministers' Meeting to promote collaboration with states and territories. Ministers have committed to work together on National Environmental Standards, regional planning locations and environmental data. Regional planning will be undertaken with states, territories and local government. See **The Commonwealth will work with states and territories.**

Appendix B

This response is informed by engagement with stakeholders

2021 State of the Environment Chief co-authors

Association of Mining and Exploration Companies

Australian Academy of Science

Australian Climate and Biodiversity Foundation

Australian Conservation Foundation

Australian Forest Products Association

Australian Foundation for Wilderness & Great Eastern Ranges Initiative

Australian Land Conservation Alliance

Australian Marine Conservation Society

Australian Petroleum Production and Exploration Association

Birdlife Australia

Bush Heritage Australia

Business Council of Australia

Dr Chris Pigram, Chair, Independent Expert Scientific Committee on Coal Seam Gas and Large Goal Mining Development

Environment Institute of Australia and New Zealand

Environment Ministers from all states and territories

Environmental Defenders Office

Environmental Justice Australia

First Nations Heritage Protection Alliance (FNHPA)

Greening Australia

Humane Society International

Indigenous Land and Sea Corporation

Invasive Species Council

Lock the Gate Alliance

Minerals Council of Australia

Mr Duane Fraser, Chair, Indigenous Advisory Committee

Mr Ted Baillieu, Chair, Australian Heritage Council

National Farmers' Federation

National Offshore Petroleum Safety and Environmental Management Authority

North Australian Indigenous Land and Sea Management Alliance Ltd

Places You Love

Professor Andrew Macintosh, ANU Law School

Professor Helene Marsh, Chair, Threatened Species Scientific Committee

Professor Graeme Samuel, AC

Property Council of Australia

Reef Advisory Committee

Resilient Landscapes Hub

State and territory government departments

The Chamber of Minerals and Energy WA

The Nature Conservancy

The Wilderness Society

Trust for Nature

Urban Development Institute of Australia

Wentworth Group of Concerned Scientists

WWF Australia