

22 December 2025

Senator Varun Ghosh
Chair
Senate Standing Committees on Environment and Communications
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Senator Ghosh,

Inquiry into the Environmental Protection Reform Bill 2025 and six related bills

1. The Law Council welcomes the opportunity to make a submission to the Legislation Committee of the Senate Standing Committees on Environment and Communications regarding its inquiry into the Environmental Protection Reform Bill 2025 and six related bills (the **Bills**).
2. This submission is informed by input from the Law Council's Legal Practice Section Australian Environment Planning and Law Group, the Victorian Bar Association, the New South Wales Bar Association, the Law Society of New South Wales, the Law Society of South Australia, the Queensland Law Society, and the Law Institute of Victoria.
3. The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**) seeks to protect Australia's environment and cultural heritage assets, conserve biodiversity and promote ecologically sustainable development by implementing Australia's international obligations and commitments and ensuring responsible environmental decision making. As identified by Professor Graeme Samuel's 2020 Independent Review (the **Samuel Review**),¹ the Act has required significant reform for many years. Having advocated for such reform to the Act,² including through the

¹ Professor Graeme Samuel AC, Independent Review of the EPBC Act (*Samuel Review*) (Final Report, October 2020) ii <<https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>>.

² See, eg, Law Council of Australia, Submission to the Department of Agriculture, Water and the Environment, Parliament of Australia, *Statutory Review of the Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (20 April 2020) <<https://lawcouncil.au/publicassets/fd93cec8-9383-ea11-9404-005056be13b5/3810%20-%20EPBC%20Act%20Review.pdf>>.

implementation of the recommendations of the Samuel Review,³ the Law Council supports the Bills' objectives to this end.

4. Notwithstanding the urgency and importance of reforming the EPBC Act, adequate time for robust consultation and public scrutiny are essential tenets of good lawmaking.⁴ These underpin the rule of law, helping to ensure transparent legislative processes and to promote public trust and confidence in Government.⁵
5. This is especially important in the context of the present reforms. The EPBC Act affects all Australians and has among its objects "a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples".⁶
6. The Law Council is concerned by the inadequate consultation and public scrutiny processes for the Bills, which do not reflect the breadth nor significance of these reforms.⁷ In summary:
 - The Bills were introduced on 30 October 2025. That package comprised almost 600 pages of draft legislation and over 800 pages of explanatory memoranda.
 - That same day, the Senate referred the Bills to the Legislation Committee of the Senate Standing Committees on Environment and Communications, with submissions due 5 December 2025 and its final report due 24 March 2026.
 - Hearings were held on 14, 20 and 21 November 2025, well before the close of submissions and four months before the Committee's reporting deadline.

³ See, eg, Law Council of Australia, 'EPBC Act in need of fundamental and incremental reform' (Media Release, 19 July 2022) <<https://lawcouncil.au/media/media-releases/epbc-act-in-need-of-fundamental-and-incremental-reform>>; Law Council of Australia, 'Less than positive about nature positive' (Media Release, 26 July 2024) <<https://lawcouncil.au/media/media-releases/less-than-positive-about-nature-positive>>; Law Council of Australia, '2025 Federal Election Call to Parties' (March 2025) <<https://lawcouncil.au/publicassets/2ee42ba0-b70d-f011-94b2-005056be13b5/Law%20Councils%20Call%20To%20Parties%202025.pdf>>.

⁴ See Law Council of Australia, 'Environmental reform welcome, but should not come at the cost of proper legislative processes' (Media Release, 27 November 2025) <<https://lawcouncil.au/media/media-releases/environmental-reform-welcome-but-should-not-come-at-the-cost-of-proper-legislative-processes>>; Law Council of Australia, Submission No 239 to the Productivity Commission, *Interim Report – Investing in cheaper, cleaner energy and the transition to net zero* (23 September 2025) <<https://lawcouncil.au/publicassets/e096b49c-7c9a-f011-94be-005056acd090/4724%20-%20S%20-%20PC%20Interim%20Report%20on%20Investing%20in%20cheaper%20-%20cleaner%20energy%20and%20the%20net%20zero%20transformation.pdf>>; Law Council of Australia, Submission No 105 to the Environment and Communications Legislation Committee, Parliament of Australia, *Inquiry into Nature Positive (Environment Protection Australia) Bill 2024 and related Bills* (18 July 2024) <<https://lawcouncil.au/publicassets/226e9074-e547-ef11-94a6-005056be13b5/4562%20-%20S%20-%20Inquiry%20into%20Nature%20Positive%20Bills.pdf>>.

⁵ Note in July 2025, the Law Council published a [Best Practice Legislative Development Checklist](#) that can be used to guide best practice legislative design, consultation and impact assessment processes for those legislative reforms.

⁶ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 3(d).

⁷ (n 4) Law Council of Australia (Media release, 27 November 2025; See also Centre for Public Integrity, 'Government's rush to pass EPBC reforms undermines trust' (Media Release, 24 November 2025) <<https://publicintegrity.org.au/wp-content/uploads/2025/11/Gov-Rush-to-Pass-EPBC-Reforms-Undermines-Trust.pdf>>; Centre for Public Integrity, *Integrity Assessment - Environment Protection and Biodiversity Conservation Act Reforms 2025* (Report, 4 November 2025) <https://publicintegrity.org.au/research_papers/integrity-assessment-environment-protection-and-biodiversity-conservation-act-reforms-2025/>.

- A mere 20 business days after their introduction, the Bills passed both Houses.
7. These rushed timeframes are reminiscent of the equally concerning process for the Nature Positive Stage 2 Bills.⁸ Compressed timeframes without adequate justification delegitimise the parliamentary process, undermine stakeholders' ability to respond in a robust and considered way and ultimately risk legislation that does not fully achieve its objectives or has unintended consequences. The Law Council is concerned that this process has also missed an opportunity to streamline the EPBC Act framework to enhance its clarity, certainty and accessibility.⁹
 8. Lack of consultation was also identified by the Centre for Public Integrity as among six integrity concerns in relation to the Bills,¹⁰ noting that:

According to the Explanatory Memorandum, the Minister conducted more than 90 stakeholder meetings, roundtables, and forums during the reform process. Despite these claims, significant stakeholders, such as the Northern Territory's land councils, have stated that they have not been consulted on the reforms that were introduced.

The detail of the final Bills appear to have been developed largely behind closed doors.¹¹
 9. The Law Council agrees that targeted, closed consultations are no substitute for proper process, including through the present inquiry.
 10. In our view, transparent, accountable law making, underpinned by democratic engagement with civil society throughout the process, underpins the legitimacy of Parliament as a public institution. It facilitates understanding and observance of the law itself. Parliaments are increasingly passing more laws of greater complexity and length. Australians need to have a say in what they will be bound by. Processes of the above nature erode democratic law-making.
 11. Limited by the above constraints, this submission outlines the Law Council's position on key aspects of the Bills as passed for the Committee's consideration.

Comments on the Bills

National Environmental Standards

12. The National Environmental Standards (**NES**) were a central tenet of the Samuel Review and the Law Council is pleased that the amendments to the EPBC Act include the architecture for their development and application. Of particular importance is the requirement that the Minister must not vary or revoke a standard in a manner that reduces environmental protections (known as the 'non-regression')

⁸ See (n 4) Law Council of Australia, Submission No 105 to the Environment and Communications Legislation Committee, [8]-[10].

⁹ (n 1) *Samuel Review*, 8-9.

¹⁰ (n 4) Centre for Public Integrity (Report, 4 November 2025).

¹¹ *Ibid* 2.

principle).¹² This is a positive step towards promoting the EPBC Act's environmental objectives.

13. While the NES are left to be prescribed by regulation, which will influence their ultimate impact and effectiveness, as legislative instruments they will also be subject to ordinary Parliamentary scrutiny processes, including disallowance, which is welcomed by the Law Council.¹³ However, the NES must also be developed through proper public consultation and be carefully drafted in precise terms to provide clarity to decision makers and promote public confidence in this process.¹⁴

National Environmental Protection Agency

14. The Law Council supports the establishment of a National Environmental Protection Agency (**NEPA**) as an independent regulator.¹⁵ At this stage however, its level of independence in practice remains to be seen, particularly as the Minister will retain ultimate responsibility for decision making on approvals.
15. The Law Council is further concerned that the CEO of the NEPA would not have to abide by the natural justice hearing rule or be subject to merits review when administering Environment Protection Orders.¹⁶ The natural justice hearing rule guides decision makers to act fairly with respect to the process by which they make decisions. This is an important aspect of affording justice to individuals and leads to better decisions being made.¹⁷ Holding decision makers to account, including through merits review processes, is fundamental to Australia's democracy and improves the performance of legislation. The concentration of decision-making powers with the CEO (through delegation) or the Minister may lead to unintended outcomes and risk political or industry bias in decision making. The Law Council submits, as we did in relation to the *Nature Positive Bills* in 2024,¹⁸ that having an independent skills-based board would also lead to greater transparency and integrity in the NEPA.

¹² *Environment Protection Reform Act 2025* (Cth) s 514YG.

¹³ *Ibid* pt 19B. See also Revised Explanatory Memorandum, Environment Protection Reform Bill 2025 (Cth), 506.

¹⁴ Note the public consultation period for National Environmental Standards on Matters of National Environmental Significance and Environmental Offsets Standard is open until 30 January 2026. We understand that other draft Standards will be released early in 2026.

¹⁵ *National Environmental Protection Agency Act 2025*, s 3.

¹⁶ (n 12) see ss 474A; 474G. See also (n 13) Revised Explanatory Memorandum, 492, 495-6.

¹⁷ See eg *International Finance Trust Co Ltd v New South Wales Crime Commission* (2009) 240 CLR 319, [143] (Heydon J); *Condon v Pompano* (2013) 252 CLR 38, [177] (Gageler J); *Nathanson v Minister for Home Affairs* (2022) 96 ALJR 737, [51] (Gageler J). See also *R v Alexandridis* [2008] VSCA 126, [17] (Redlich JA, Buchanan and Nettle JJA agreeing). See also Law Council of Australia, Submission No 28 to the House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into the Administrative Review Tribunal Bills 2023*, (2 February 2024) <<https://lawcouncil.au/publicassets/9997bb82-88c4-ee11-948f-005056be13b5/4481%20-%20S%20-%20Administrative%20Review%20Tribunal%20Bills.pdf>> 54.

¹⁸ (n 8) 9 [18(a)]-10.

First Nations engagement and knowledge

16. The Samuel Review highlighted the need to better harness the value, and recognise the importance, of First Nations knowledge in the EPBC Act.¹⁹
17. Australia has accepted the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) as a framework for recognising and protecting the rights of First Nations Australians. For consistency with UNDRIP and domestic arrangements including the *National Agreement on Closing the Gap*,²⁰ First Nations Australians must play a genuine part in decision making in respect of these reforms, including in making, varying or revoking NES and through the Indigenous Advisory Committee. Genuine involvement requires more than one-off consultation, particularly for the development of NES, to ensure a holistic approach. The NES for Indigenous engagement and participation in decision making should be released for public consultation as a matter of priority in 2026.

Rulings

18. The Samuel Review highlighted that there is a significant deficit in public trust in environmental decision making.²¹ New Part 19C introduced by the *Environment Protection Reform Act 2025* provides the Minister with the ability to make rulings, which can be used to set out the Minister's opinion on how provisions of the EPBC Act, regulation or subordinate instruments apply in particular situations.²² This will also be available to the CEO of the NEPA to make in relation to vested powers on compliance and enforcement matters.²³ However, rulings did not feature among the recommendations of the Samuel Review, and some of their features risk undermining the transparency, consistency and certainty that the reforms had intended to achieve. For example:
 - section 514YM(8) notes that a ruling made under that section is not a legislative instrument, so it would not be subject to Parliamentary oversight or scrutiny;
 - section 514YO allows public comment on draft rulings but stipulates no minimum timeframe for consultation (a reasonable minimum timeframe is especially important where a draft ruling involves analysis of complex scientific or legal issues); and
 - section 514YT enables decision makers to act inconsistently with the ruling "having regard to the particular circumstances of the matter" in which their function or power is being exercised without any guidance on when this might apply, merely requiring that they must provide reasons for doing so after the fact.

¹⁹ (n 1) *Samuel Review*, 225.

²⁰ Coalition of Peaks, *National Agreement on Closing the Gap*, (July 2020), 'Priority reform one' <<https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/64467ee62c9e8f38067d2352/1682341610670/National-Agreement-on-Closing-the-Gap-July-2020.pdf>> 5-7.

²¹ (n 1) *Samuel Review*, 9-11.

²² (n 13) Revised Explanatory Memorandum, 8.

²³ *Ibid.*

Unacceptable impacts

19. The Law Council is pleased that a more comprehensive definition of “unacceptable impacts” is provided in new section 527F introduced by the *Environment Protection Reform Act 2025* (Cth).
20. However, the word “serious” should be deleted before the words “damage to critical habitat” in that provision to prevent the loss of Australia’s critical habitat, consistent with the recommendations of the Samuel Review. In respect of a listed threatened species in the endangered category, for example, any damage to critical habitat where the habitat is irreplaceable and necessary for that species to remain viable in the wild should be an unacceptable impact. The use of the word “serious” in the threshold test undermines the protection of listed threatened species and ecological communities by permitting a subjective determination regarding the loss of critical habitat which is essential to their survival.
21. Further, if a proposal is deemed to be in the national interest, and its impacts are reasonably necessary to result in the intended outcome of that proposal, it can still be approved.²⁴ In effect, the national interest test can override and permit impacts that would otherwise be unacceptable. Where powers are exercised in the “national interest”, the grounds on which a judicial review can be sought are very limited.²⁵ The interaction between these provisions creates significant ambiguity, which risks poor decision making and negative environmental outcomes.

National interest exemptions

22. The Samuel Review recommended a single, narrow exemption to the requirement that decisions under the EPBC Act be consistent with NES,²⁶ in circumstances that are demonstrably justified in the national interest and accompanied by a published statement of reasons that addresses the environmental implications of the relevant proposal. By contrast, the Bills expand on the existing national interest power, create new and broader exemptions for “national interest proposals”, and risk reduced transparency in relation to their use.
23. The new concept of a “national interest proposal” is even broader, covering “strategic interests” and international agreement in a non-exhaustive list.²⁷ A grant of power on such terms puts the “national interest” in opposition to environmental protections and risks inconsistency with the EPBC Act’s statutory objectives of promoting ecologically sustainable development, conservation of biodiversity and co-operative implementation of Australia’s international environmental obligations. While the Minister must publish reasons for such determinations,²⁸ this obligation is negated by

²⁴ (n 12) s 136B(2).

²⁵ See eg *Carrascalao v Minister for Immigration and Border Protection* (2017) 347 ALR 173; *Minister for Immigration & Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507; See also Law Council of Australia, Submission No 29 to the Senate Legal and Constitutional Affairs Committee, Parliament of Australia, *Inquiry into the Migration Amendment (Strengthening the Character Test) Bill 2019* (14 August 2019) <[https://lawcouncil.au/publicassets/25696350-1ecd-e911-9400-005056be13b5/3660%20-%20Migration%20Amendment%20\(Strengthening%20the%20Character%20Test\)%20Bill.pdf](https://lawcouncil.au/publicassets/25696350-1ecd-e911-9400-005056be13b5/3660%20-%20Migration%20Amendment%20(Strengthening%20the%20Character%20Test)%20Bill.pdf)> 18.

²⁶ (n 1) *Samuel Review*, Recommendation 3, 52-53.

²⁷ (n 12) s 157C(2).

²⁸ (n 12) s 157N.

a provision enabling non-publication of any matters the Minister considers contrary to the national interest, and does not specifically require that the Minister address environmental implications. Consistent with the Samuel Review's emphasis on tight, transparent constraints on national-interest exemptions,²⁹ the Law Council recommends that the EPBC Act be further amended so that the Minister be required to explain the environmental impacts of the national interest proposal.³⁰

Streamlined pathways

24. The Samuel Review recommended that separate assessment pathways be provided for high- and lower-impact developments, so that the assessment is proportionate to the level of environmental impact.³¹ The new streamlined assessment pathways may not provide the rigorous and full assessment required for high-impact developments and should be limited to low-impact developments only. Clearer guidance relating to how section 87(3) of the Environment Protection Reform Act is expected to operate should be provided. The 30 business day deadline for the Minister to decide whether to approve the taking of an action subject to streamlined assessment from the time of the assessment approach decision will place significant pressure on assessment officers and risks undermining the integrity of environmental assessments for potentially high-risk developments. These considerations could instead be addressed through appropriate safeguards, including again by limiting streamlined pathways to low-impact developments only.

Bioregional plans

25. To be effective, bioregional plans through the new framework must be robustly developed and subject to proper consultation processes (including longer periods for public consultation on more complex plans) so that they do not operate as just another fast-track mechanism for development with potentially significant impacts on matters of national environmental significance or provide only tokenistic environmental protection.

Contact

If the Law Council can be of any further assistance to the Senate Committee, in the first instance, please contact [REDACTED]

Yours sincerely



Tania Wolff
President-elect

²⁹ (n 1) *Samuel Review*, Recommendation 3, 52-53.

³⁰ *Ibid.*

³¹ *Ibid.*, Recommendations 18 and 19, 112-113.