Conservation Council ACT Region: Submission on the Albanese Labor Government's Environment Protection Reform Bills

> "Whether we and our politicians know it or not, Nature is party to all our deals and decisions, and she has more votes, a longer memory, and a sterner sense of justice than we do." (Wendell Berry)

The Conservation Council ACT Region (the Council) is pleased to provide input to the public consultation on the Albanese Labor Government's Environment Protection Reform Bills.

The Council is the leading environmental advocacy organisation in Canberra and hub for over 40 community groups. Our mission is to protect nature and safeguard ecosystems in the ACT and region. We also support broader initiatives to counter regional and global climate change.

We are a non-profit, non-government organisation that runs campaigns, promotes and upskills local groups, undertakes research, advocates passionately, and engages and informs our community.

Overall

The Council considers that the reform package includes some good features, like the inclusion of a framework for National Environmental Standards (**NES**), defining 'unacceptable impacts' and requiring overall 'net gains'; but, 'signs of

compromise are everywhere'.[1] As drafted, the changes will weaken the protections for nature, climate, cultural heritage and communities in Australia.

The legal framework is too loose

In Professor Samuel's review of the *Environment Protection and Biodiversity Conservation Act 1999* (**Act**), he wrote 'the activities of government should be consistent with' a recommended nine National Environmental Standard (NES) embedded in the Act.[2] He emphasised the need for NES to be strong, clear, and legally enforceable—to ensure that they weren't just guidelines but actual legal benchmarks.

It is good the package includes the power to make the NES; however, the Bills do not specify what NES must be made, nor what matters those NES should address.

We see two draft NES have been published and we will comment on them in the days ahead; however, from what we have read so far, those draft NES are vague, discretionary, and unenforceable.

Relevantly, the **legal framework proposed to support those draft NES is too loose.** This renders the NES vulnerable to dilution and inconsistent application. Key issues include:

- the risk NES will be delayed or not made
- excessive discretion
- an absence of binding obligations
- weak accountability mechanisms
- a failure to embed outcome-focused duties
- the risk decisions can be politicised.

For decisions whether (or not) to approve a development or accredit another regulatory framework, nature needs appropriate limits on future ministers' discretion. Rather than requiring that the Minister must **be satisfied** (a subjective test) that activities and decisions **not be inconsistent with** NES, the Council recommend requiring consistency with those NES based on clear and objective science-based tests.

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[1] In this respect we agree with: Bell-James, J. (30 October 2025) Labor's environmental law overhaul: a little progress and a lot of compromise, In *The Guardian*, https://theconversation.com/labors-environmental-law-overhaul-a-little-progress-and-a-lot-of-compromise-268198

[2] Samuel, G. (30 Oct 2020) *Independent Review of the EPBC Act – Final Report,* www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf, p. ii

We recommend *not* giving decision-makers power to make rulings on how the law is interpreted. Statutory interpretation should be a matter for the courts.

The Australian Government should 'keep its hands on the steering wheel'[3]

The Council is concerned the Bills abdicate responsibility. Australia needs strong leadership to protect nature. As drafted, the reform bills will facilitate the:

- devolution of the Minister's powers to state and territory governments[4] – to us this is an unacceptable risk as these governments are short of cash and therefore prone to approving inappropriate projects[5]
- accreditation of more regulatory arrangements, like the one loosely regulating offshore oil and gas exploration, development and production.[6]

The result will be governments and entities with weak environmental records and vested interests looking for *and finding* loopholes that leave matters of national environmental significance (**MNES**) unprotected.

Streamlined assessment pathway

The Council is concerned about the fast-tracking of approvals via the streamlined assessment pathway. By this pathway, the Council anticipates risky and high-impact developments will be approved without robust and genuine assessment, and without the same degree of public scrutiny. The public will have no opportunity to review information not supplied at the time of any referral.

Concluding statements

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[3] Senate Environment and Communications Legislation Committee, Environment Protection Reform Bill 2025 and six related bills, Canberra, 14 Nov 2025, https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/29094/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2025_11_14.pdf;fileType=application%2Fpdf#search=%22committees/commsen/29094/0000%22, p. 19, evidence of Sydes, B.

[4] We note, as drafted, the Australian Government would be accepting state and territory laws, regulations and even policies, including where those laws, regulations and policies could change; Explanatory Memorandum, Item 120, p. 102.

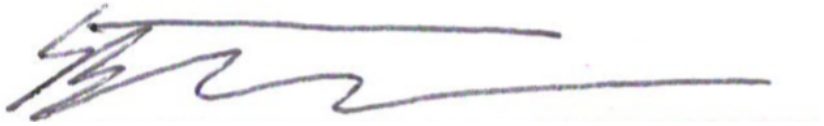
[5] States and territories propose unacceptable proposals themselves, e.g., Minister Plibersek found 'clearly unacceptable' the Victorian Government's proposal to develop and operate a port facility supporting offshore wind farm infrastructure along the Victorian coast—on the basis it threatened internationally significant Ramsar wetlands (EPBC 2023/9609).

[6] As an example: On 5 Feb 2021, NOPSEMA authorised the removal from a petroleum title area of a mooring known to contain plastic. At the time, NOPSEMA knew Woodside intended to place the mooring as few as 1.7 km from The Ningaloo Coast World Heritage Area. NOPSEMA's authorisation was given without confirming who would accept ownership of and liability for the integrated artificial reef: NOPSEMA (5 Feb 2021) *Activity - Nganhurra Operations Cessation*, https://webarchive.nla.gov.au/awa/20210304205652/https://info.nopsema.gov.au/activities/80/show_public read with NOPSEMA (16 Jul 2021) *Answers to Questions on Notice: BI-157* [2021-22 Budget estimates], https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=a19855bb-6642-4fb3-b439-2597e58bf6fc, responses to question 13.

Additional specific points and concerns are set out in the Enclosure.

A huge part of Australia's economy is dependent on nature. Future generations will not look back on the decisions made in 2025 and applaud fast timeframes based on less rigorous assessments, they will applaud strong action taken now to protect Australia's environment. This is a legacy moment. We urge the Parliament to seize the opportunity.

Yours sincerely



Dr Simon Copland
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19 November 2025

Enclosure

Specific concerns

Controls on clearing, including from deforestation

The Act has not stopped land clearing including deforestation. Like Professor Samuel, the Council hates the Regional Forest Agreement provisions in the Act, and we agree with him that in some jurisdictions forestry activities have been and continue to be criminal.[7] Loopholes for logging must be closed and land clearing laws strengthened and enforced.[8]

Consider the effect of all decisions on the climate

Contrary to the Advisory Opinion of the International Court of Justice, the Bills do not require federal assessment and mitigation of the greenhouse gas (**GHG**) emissions of proposals.[9] Claims the Safeguard Mechanism is adequately regulating GHG emissions in Australia are false and unfounded, including because this mechanism does not regulate scope III emissions. It is these scope III emissions that "are the knockout punch for nature".[10]

Climate should be a factor in all decisions made under the Act; hence, we recommend a new object be added to the Act, e.g., 'to promote the mitigation of, and adaptation to, the impacts of a changing climate'.

To protect Australia's environment, including its nature, communities and cultural heritage, we recommend:

- that the impacts on the environment of projects with GHG emissions above a minimum threshold be a MNES
- that decisions on proposals are based on objective assessments of forecasts of scope I, II and III emissions
- that, to promote greater accountability and transparency, after approved projects proceed, the regulator check the accuracy of forecasts and adjust project approval conditions accordingly.

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[7] Senate Environment and Communications Legislation Committee n 3, pp. 3, 7, evidence of Samuel, G.
[8] Australian Conservation Foundation, University of Queensland, WWF Australia, & Wilderness Society (2018) *Fast-tracking extinction: Australia's national environmental law,* http://nla.gov.au/nla.obj-3164848042
[9] Environmental Defenders Office (14 July 2025) *Prominent international courts agree states must address climate change*, https://www.edo.org.au/2025/07/24/good-things-come-in-threes-prominent-international-courts-agree-states-must-address-climate-change/
[10] Senate Environment and Communications Legislation Committee n 3, p. 14, evidence of O'Shanassy, K.

Conservation planning

We recommend *not* adding new layers of conservation planning documents that could conflict with and undermine recovery plans or conservation advice.

Protection statements must not override recovery plans, conservation advice and threat abatement plans.

The national interest approval provisions

The new national interest approval provisions are too broad and discretionary. Absent limits on what a Minister can decide is in the national interest, and we consider it would be too difficult to try to identify all the actions that can or cannot be so exempted, projects could skip environmental safeguards for vague reasons.

The Council recommends the national interest be instead embedded within the NES as a balancing factor, not a free-standing override.

If that is not accepted, the exemptions must be clearly defined and strictly limited to genuine emergencies; otherwise, there will be a 'conga line' of developers queuing up at the Minister's door seeking approvals in the so-called national interest.[11] National interest exemptions could be limited to Defence (tightly defined); Defence should not be used as an example of what might be exempted.

Unacceptable impacts

It is good that unacceptable impacts are to be defined; however, the current definitions are **too vague and discretionary**, risking inconsistent application. For example, for threatened species and ecological communities, the Minister must first **be satisfied** an action 'seriously impairs', or that any habitat impacted is both critical and irreplaceable, and necessary for the species to remain viable in the wild.

Uncertainty might be reduced by rigour and granularity in the NES; however, these qualities are not evident in the draft NES for MNES. Nature needs **measurable ecological thresholds hardwired into the law**—abundance, extent, and condition—so unacceptable impacts are objectively defined, enforceable, and transparent.

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[11] Senate Environment and Communications Legislation Committee n 3, p. 4, evidence of Samuel, G.; Jervis-Bardy, D. (31 Oct 2025) Ken Henry warns 'conga line of developers' would try to exploit exemptions in Labor's proposed nature laws, In *The Guardian*, https://www.theguardian.com/australia-news/2025/oct/30/ken-henry-warns-labors-nature-laws-are-worthless-unless-minister-tightens-national-interest-exemptions

Net gain provisions

It is good that 'net gain' is mandated; however, as drafted, the relevant provisions do not ensure development will result in overall improvements for nature; the tests need to be tightened. At present the test is undefined, highly discretionary, and open to manipulation, e.g., the Minister must be satisfied **significant impacts have been minimised** as far as possible. Compliance with the test is also subject to the Minister's satisfaction, rather than measurable ecological criteria.

Continuous use provisions

To protect Australia's environment, the Council recommends the 'continuation of use exemption' found in s 43B be repealed or significantly narrowed.

The water trigger

The Council **opposes removing the prohibition** on accrediting the states and territories to administer the water trigger. The trigger (including the controls on its application) was introduced by the Gillard Government to protect water from the impacts of coal and gas projects, and was expanded by the Albanese Government to cover unconventional gas. Removing the prohibition dismisses community concerns, benefitting only the resource extraction sector.

'Restoration contributions' framework

The Council supports the inclusion of the mitigation hierarchy in the Act. However, as drafted, the framework for compensatory offsets makes money the metric not like for like conservation outcomes. We consider it unacceptable to retreat from a strict requirement that, if any residual significant impact is ever authorised and occurs, **like for like** compensation must be delivered. We recommend restricting the use of the restoration contributions charge to cases where like for like offsets are demonstrably available.

Strategic assessments

The Council does not agree with the proposal to allow 'minor variations' to endorsed plans, policies and programs. If that is not accepted, all minor variations should be subject to public consultation as well as the objective application of the proposed test that variations not increase risks to matters protected.

Reconsiderations

The Council recommends the existing reconsideration request provisions be retained.