13 November 2025

Committee Secretary
Senate Standing Committee on Environment and Communications
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CANBERRA ACT 2600

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

Dear Committee Secretary

Submission on the Environment Protection Reform Bill 2025 and related bills

The Minerals Council of Australia (MCA) welcomes the opportunity to provide a submission to the Senate Environment and Communications Committee inquiry in relation to the Environment Protection Reform Bill 2025 and related bills ('the bills').

MCA supports reform of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), but significant amendments are essential.

Without the amendments outlined in **Section 2** below, the bills will not deliver benefits to businesses and will not achieve the two core objectives of national environmental law.

And while the package puts in place key elements to deliver benefits for business in the long term, the realisation of these aims will still rely on government efforts to secure streamlining arrangements and the design of supporting standards, policy and other mechanisms.

Australia's environmental laws are founded on two core objectives

The EPBC Act is founded on the first two objects of the Act, which, in short, are:

- protection of matters of national environmental significance,[1] and
- promotion of ecologically sustainable development.[2]

The Act will either do both or neither of these objectives

Protection of the environment and ecologically sustainable development are integrated concepts. As a nation, we must do both, or we will do neither.

Environmental protection is essential to protect our country's beautiful landscape, cultural places and unique biodiversity while sustaining our economy. Roughly half Australia's GDP has a moderate to very high direct dependence on nature, according to recent research.

Similarly, if environmental laws fail to promote ecologically sustainable development, Australia's industry will shift offshore.

[1] s3(1)(a): 'to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance'
[2] s3(1)(b) 'to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources'

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This would push production to jurisdictions with potentially lower standards – leading to serious negative impacts on the environment and communities. This will also affect our ability to become a leading source of the critical minerals required for future development, including reaching global net zero goals and broader sustainable development goals.

It is therefore crucial that our environmental laws strike the right balance in safeguarding our natural assets while supporting sustainable economic activity.

Case study – offshoring Australia's nickel industry

Australia's share of nickel production has plummeted from 16 per cent of world supply in 2003 to under 3 per cent in 2024. During the same period, Indonesian nickel production grew from 9 to over 50 per cent of world supply, resulting in over 15 GW of new off-grid coal-fired power plant capacity to support nickel smelting. This is roughly the equivalent of NSW and Queensland's combined total coal-fired power capacity.

SECTION 1: THE CASE FOR REFORM

MCA supports the Australian Government's ambition to urgently reform the EPBC Act. Australia's current environmental laws are inefficient for business and government and provide inadequate protection of nature.[3]

The government's package of reforms has been designed to address the failings by delivering on both of the Act's two core objectives mentioned above.

The MCA strongly supports both this ambition and the government's commitment to work with states and territories 'towards less duplicative assessments, and ultimately, approvals'.[4]

To provide added confidence to business that the benefits of the proposed reform will be realised, the MCA recommends the Government and relevant state and territory counterparts publicly commit to a timeframe to achieve this commitment.

Accredited arrangements are the key

Robust accredited arrangements are the key to both protecting the environment and promoting sustainable development.

As recommended by the *Independent Review of the EPBC Act* (Samuel Review), the Commonwealth's primary role is to set the nationally consistent outcomes for environmental protection. This allows states and territories to take on greater responsibility for environmental approvals and management, provided they can demonstrate they can meet the national standards. This removes the need for separate Commonwealth approvals.

This arrangement is crucial to achieving the EPBC Act's two core objectives, and should be pursued as an urgent productivity reform within the 12 months of legislation coming into effect.

Accreditation is underpinned by strong standards

MCA supports the reform bills' proposed new power for the Minister to create national environmental standards. Standards are an essential part of the reforms, providing clear requirements for accredited parties and establishing clear bounds for decision-makers. This will give states and territories clarity on the national outcomes supported by their decisions.

Standards should be developed as a priority, with early and thorough consultation with industry as well as states and territories.

[3] Professor Graeme Samuel AC, in the Forward to the *Independent Review of the EPBC Act*
[4] Hon Tony Burke MP, Environment Protection Reform Bill 2025 - Second Reading

The national Environmental Protection Agency will support public trust

The new national Environmental Protection Agency (EPA) will play a crucial supporting role in building confidence in these reforms by demonstrating to the public that the system is working as intended.

The new compliance and enforcement provisions will ensure the EPA is equipped to support compliance with approval conditions by nationally regulated developments.

The EPA's assurance function will build public trust in decision-making by providing strong, independent oversight and transparent audit and public reporting on the performance of accredited states and territories against the national standards.

National environmental restoration fund

The establishment of a national environmental restoration fund will support the realisation of coordinated, strategic, landscape-scale environmental outcomes while providing an efficient avenue for businesses to meet its regulatory obligations, where appropriate.

SECTION 2: AMENDMENTS ARE NEEDED

While the reform principles are strongly supported, MCA has identified some fundamental concerns in the current drafting that will undermine the reforms and the achievement of the two core objectives. This is understandable, given the relatively short timeframe for drafting and the limited time for stakeholders to consider the bills in their entirety.

These issues need to be addressed to ensure the integrity and effectiveness of the legislation.

The proposed 'unacceptable impact' definition would undermine sustainable development

The bills introduce a new statutory 'unacceptable impact' test. The government's intent is 'to set a responsible standard, used in very limited circumstances',[5] which means 'if someone wants to build an apartment block in a Ramsar-listed wetland, or mine Uluru, they'll get a quick no'.[6]

However, the proposed unacceptable impact definitions are complex, ambiguous and hard to distinguish from existing significant impact criteria.

The definitions set an unclear threshold that would capture routine, responsibly managed developments rather than only the government's more extreme examples of apartments in Ramsar-listed wetlands or mining Uluru. Thus, it would be used in a wide range of circumstances rather than the intended 'very limited circumstances'.

Under the proposed definitions, even a minor, temporary impact to a limited geographic area could be deemed 'unacceptable' due to ambiguous terms like 'seriously impairs'. For example, a single tree in a paddock could be deemed critical habitat necessary for dispersal, which could then preclude any permanent damage such as the development of a mine or solar farm. Similarly, even small or intangible changes to National and World Heritage places, such as minor alterations to the visual setting of heritage values, could be captured, despite not materially diminishing the integrity or authenticity of those values. This could capture an alteration to a pre-existing infrastructure, highlighting the need to differentiate between truly unacceptable developments and those can require assessment and management.

The ambiguous language fails to 'set clear, up-front and transparent criteria'.[7] This would create uncertainty for regulators, proponents and the community, and lead to assessment delays.

This could inadvertently preclude well-managed projects from entering the environmental assessment process altogether. In effect, the test could act as a barrier to sustainable development, preventing

[5] Hon Tony Burke MP, Environment Protection Reform Bill 2025 - Second Reading
[6] Hon Murray Watt, Speech to the National Press Club, 30 October 2025
[7] Hon Murray Watt, Speech to the National Press Club, 30 October 2025

projects that could otherwise deliver positive environmental, social, and economic outcomes from being properly assessed.

The well-supported Samuel Review never intended for unacceptable impacts to be defined in legislation, nor for the definition to be applied in the manner set out in the bills. Rather, the review stated that 'whether impacts are unacceptable should be determined with reference to the nature and context of the proposed action, past decisions, and best available information.'[8]

Example – World Heritage Values

Under the proposed criteria, an action that causes, will cause or is likely to cause loss, damage or alteration to part of the world heritage values would be deemed unacceptable.

The EPBC Act significant impact criteria defines 'likely' as not a remote chance. To illustrate the importance and potential impacts of the definitions, the transit of a large cargo vessel could be captured under these criteria, because of the risk of a major spill that could damage part of the Great Barrier Reef's world heritage values. While the probability of this is very low, under the definition, it could be deemed unacceptable.

Recommendation

Adopt a single definition of unacceptable impacts that applies universally to all protected matters which is simple and clear to all stakeholders, sets the appropriate threshold as intended and is unambiguous. The new criteria should be thoroughly tested against a range of real actions to ensure its application by assessment officers matches government intent.

Climate disclosure provisions need to match government's intent

The government's requirement for proponents to disclose scope 1 and scope 2 emissions is intended to 'provide a clearer linkage to climate-related policies, such as the Safeguard Mechanism, but will not be taken into account in project approval decisions'.[9]

However, the drafting of the bills requires disclosure of emissions and management measures as part of the assessment process, which is likely to lead to them being considered by the decision-maker as part of the overall development proposal and assessment process. This runs counter to the government's stated intent and may increase the risk of judicial review.

Recommendation

Scope 1 and scope 2 emissions should be disclosed to Environment Information Australia (EIA), rather than to the decision-maker. The legislation should explicitly clarify that, for the avoidance of doubt, the greenhouse gas information provided to the Head of EIA is not a relevant consideration for the Minister for the purposes of Chapter 4 of the EPBC Act.

Consolidating the assessment pathways may increase assessment timeframes

The bills introduce a new 'streamlined assessment pathway, but remove three existing lower-level pathways. This is intended to 'simplify, streamline and improve the existing EPBC Act assessment and approvals pathways'.[10]

MCA supports the addition of the new streamlined assessment pathway.

However, in practice, the new streamlined pathway may only help the simplest projects that do not require detailed assessment. Consequently, most developments that would previously use the

[8] Professor Graeme Samuel AC, *Independent Review of the EPBC Act*, p.205

[9] Hon Murray Watt, Speech to the National Press Club, 30 October 2025

[10] Explanatory Memoranda, Environment Protection Reform Bill 2025

existing lower-level pathways (e.g. assessment of preliminary documentation) will be forced to use the full environmental impact statement pathway, leading to longer and costlier assessments.

Recommendation

Retain the existing assessment pathways alongside the new streamlined pathway.

The EPA's accountability can be improved to build public trust

The stated purpose of establishing the EPA is 'the restoration of public accountability and trust'.[11]

However, the bills may inadvertently undermine strong public accountability by failing to give the government appropriate means to hold the EPA accountable to act in line with public expectations.

For example, the CEO of the EPA is not required to follow the Minister's statement of expectations, nor is there any ability for the Minister to direct the EPA in the way other independent Commonwealth regulators (e.g. the National Offshore Petroleum Safety and Environmental Management Authority, or NOPSEMA) can be directed.

Decisions under the EPBC Act will have a significant influence on the economy, so it is imperative the EPA remains accountable to government and therefore the Australian public via elected officials. To ensure the EPA's actions reflect community needs, the Minister must have the ability to direct the EPA where needed, similar to other independent entities such as NOPSEMA.

Recommendations

The Minister should have the ability to hold the EPA to account. Government should have the power to remove the CEO for failure to meet statutory requirements, demonstrable failure to consider the Minister's directions and expectations or maladministration.

The EPA should be subject to regular review by the Australian National Audit Office. These reviews should inform any decision to reappoint the CEO, with review findings made publicly available. To encourage responsiveness to public concerns, the CEO's term should be shortened to three years with a maximum of two reappointments.

The EPA's assurance function should be expanded

The Samuel Review stated that strong, independent oversight and assurance are essential to the success of environmental reform by building trust and auditing decision-making at all levels – Commonwealth, State, and Territory – against the national standards.

While the bills provide for this assurance of state and territory processes, the EPA will not undertake audits of Commonwealth processes. This will undermine public trust, and also discourage states and territories from seeking accreditation, as they may hesitate to participate in audits not required of the Commonwealth.

For the EPA to audit Commonwealth decisions, it must be independent of the assessment process. The currently proposed functions of the EPA include assessments and delegated decisions, which would create a conflict of interest in Commonwealth oversight, among other issues. For example, delegated decision-making by an independent entity creates ambiguity and uncertainty.

MCA also notes the recent Senate Economics Committee inquiry into the Australian Securities and Investments Commission (ASIC), which found that ASIC's 'remit is too broad for it to be an effective and efficient agency'. Allowing the new EPA to focus on compliance, enforcement and assurance would help to reduce the risk of excessive remit.

[11] Explanatory Memoranda, National Environmental Protection Agency Bill 2025, p. 2

Recommendations

The EPA's assurance function should be expanded to include oversight of decisions at all levels, including the Commonwealth, in line with the Samuel Review recommendations. To avoid a conflict of interest, the EPA's functions should not include assessments and delegated decisions, but instead should focus on compliance, enforcement and assurance in line with the Government's commitment prior to the 2022 election.[12]

Compliance and enforcement powers must incentivise both good behaviour and investment

The proposed 'tough new powers' are intended to build public trust in the reformed environmental laws. This increased level of trust is essential to enable accredited arrangements which will reduce approval timeframes and encourage investment.

Compliance and enforcement powers carry serious implications for proponents, so should be used appropriately, proportionately and in accordance with the requirements of natural justice.

As drafted, the compliance and enforcement powers could be applied to matters which are administrative or technical in nature and not material to the outcome for the protected matter.

While strict compliance measures are appropriate for egregious breaches, there is a need for a more proportionate approach for unintentional administrative or technical breaches or matters influenced by external factors.

Given the lack of constraints on the circumstances to which these new powers would apply, environmental compliance risk will likely become a key risk consideration for investments in Australia as the legislation leaves open the possibility of significant penalties for minor or administrative breaches (with maximum fines exceeding $800 million). Safeguards are needed in the legislation to avoid this occurring.

The unconstrained ability to issue environmental protection orders (EPOs) without an appropriate evidentiary basis will also weigh on investment decisions. EPOs, especially stop work orders, can have significant and costly repercussions for large operations. They should be used only where necessary, proportionately, targeting the specific risk factor based on evidence of actual or potential environmental harm.

Recommendations

The new higher provisions should be applied to a new category of egregious breach. EPOs should be limited to 14 days (beyond which an extension should require a court order), and must have an evidentiary basis with reasons disclosed to the proponent. The exclusion of natural justice requirements should be omitted.

The amended nuclear trigger may not operate as intended

The proposal to change the nuclear trigger to 'radiological exposure actions' is intended to reduce duplication and 'avoid the unintended capture of Naturally Occurring Radioactive Materials' (NORMs).

However, as drafted, this will have the opposite effect, resulting in an increased level of duplication and capture of actions.

While the definition of 'nuclear' is very clear within the International Atomic Energy Agency's (IAEA) Nuclear Safety and Security Glossary, there is no recognised international standard for a 'radiological exposure action'. This will lead to the EPBC Act capturing a range of actions well beyond those linked to nuclear fission or fusion.

[12] This is also aligned with the Samuel Review, which recommended independent compliance and enforcement functions, but did not recommend independent assessments.

Referring to ARPANSA's threshold of 1 Bq/g as a trigger for review also creates potentially perverse outcomes. This threshold for radioactivity is so low that many unrelated facilities could be captured – including activities and research at universities, ports, hospitals, labs and sampling services – as well as the use of other radioactive products for health, agriculture or research.

The introduction of NORMs and constraining the exclusions to mineral sands and rare earths adds complexity at a time when all parties are looking to streamline and simplify the Act. The radiological impacts of these NORMS should remain regulated at the state level through the relevant environmental agency in accordance with ARPANSA guidelines, and not through the EPBC Act. In the original 1998 Explanatory Memorandum for the EPBC Act, paragraph 69 contains the following:

> To avoid any doubt, this does not include operations for the recovery of mineral sands or rare earths.

As such, references to minerals sands and rare earths are not required within the Act.

Recommendations

The trigger should not be renamed to 'radiological exposures'.

The definition of a nuclear action should be amended as follows:

Paragraph 1A(e) and 1A(h) should be deleted.

Paragraph 1A(d) should be amended to: 'uranium mining or milling likely to have a significant radiological impact on the environment'.

Paragraph 1B should be amended to: 'To avoid doubt, paragraphs (1A)(a) to (1A)(f) apply only to actions that are part of the Nuclear Fuel Cycle as defined by the International Atomic Energy Agency.

The net gain test should drive better environmental outcomes, not simply larger offsets

The minerals industry supports strong environmental standards and effective offset mechanisms that deliver real, measurable improvements for nature. However, the proposed net gain test risks prioritising offset size over offset quality, adding administrative complexity without guaranteeing better environmental outcomes.

Because project locations are dictated by the location of the resource, environmental offsets are often the primary means by which the industry delivers lasting environmental gains. Yet, under current policy, offset implementation is already slowed by administrative burden, jurisdictional inconsistency, and inflexible rules that frequently delay or prevent practical on-ground action.

Introducing a new net gain requirement, without clear metrics or alignment across jurisdictions, will compound existing uncertainty and divert effort from activities that genuinely improve ecological condition and resilience. The emphasis should instead be on enhancing offset effectiveness through stronger ecological equivalence, improved management standards, and greater transparency in monitoring and reporting outcomes.

While the new offsets standard will make some improvements to the effectiveness of offsets, the new 'net gain' test would be more effective if it included:

- Focus on quality and performance of offsets rather than increasing their area arbitrarily
- Promote strategic, landscape-scale offsets that contribute to regional conservation priorities
- Reduce red tape and duplication, enabling faster, more tangible environmental outcomes.

Refining the net gain test in this way would better align with the bill's objective of improving environmental outcomes while maintaining a workable, transparent framework for responsible development.

Recommendations

The net gain test should be redefined to require a net gain for the environment as a whole for an action, rather than a net gain on every individual protected matter. This will reduce regulatory burden while upholding the need for actions to restore the environment to be better than what would have occurred without the action.

The MCA looks forward to the opportunity to provide further input on environmental reforms. Should you have any questions, please do not hesitate to contact Chris McCombe – General Manager, Sustainability on 02 6233 0600 or chris.mccombe@minerals.org.au.

Yours sincerely

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