Short Submission to the Senate Inquiry on Environment Protection Reform Bill 2025 and six related bills

Dear Environment and Communications Legislation Committee,

We thank the Committee for the opportunity to provide input into the scrutiny of important reforms to Australia's national environmental laws. This submission draws on interdisciplinary evidence-based research at the University of Melbourne, to offer an analysis of the package of proposed reforms to the EPBC Act. The following concentrates on key aspects of the reforms that require amendment, as well as identifying significant gaps in the coverage of the current Bills before the Senate by reference to international legal developments. We find 9 areas of significant concerns with the proposed Bills summarised in points below, and offer recommendations to address these concerns in the analysis that follows.

This is an interim Executive Summary of a fuller contribution planned for submission by 5 December 2025.

In summary, we submit that, under the proposed reforms:

1. Environmental protections are compromised by **risky Ministerial discretion and major new loopholes** - tightening these provisions would provide certainty for proponents and protect environmental values and ecosystem services.

2. **Regulatory provisions proposed for offsets (restoration contributions) are inadequate** - they need to address well-documented risks that have plagued Australia's offset regimes and have been revealed by repeated formal inquiries.

3. Protected matters are at risk from **failures to include cumulative impacts provisions** in project-level environmental assessment and in bioregional planning; this needs correction to meet global best practice and industry expectations.

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4. More is needed to **improve systems for environmental information** so that they better and more comprehensively reveal environmental conditions and impacts.

5. Provisions are needed to **link systems for better environmental data to *action*** to address environmental decline - rather than simply better document such decline.

6. There is a failure to give **due consideration to Indigenous values and community priorities**, which requires correction throughout the Bills.

7. **Improvements to bioregional planning** provisions are needed so that planning is linked to net gain outcome goals, grounded in data, anchored in adaptive governance, and ensures effective and extensive stakeholder and Traditional Owner engagement.

8. There would be a **weakening of provisions for actively promoting conservation**, including through removal of language in the Act that specifies actively promoting conservation and reducing the role and status of recovery plans. This weakening must be avoided.

9. **Climate change is not integrated**, which is inconsistent with Australia's obligations under international law and recognition of its profound risks and impacts.

Analysis

1. **Environmental protections are compromised by risky Ministerial discretion and major new loopholes - tightening these provisions would provide certainty for proponents and protect environmental values and ecosystem services**

The proposed reforms introduce subjective and discretionary language that will undermine the Act's ability to achieve sustainable environmental outcomes. This language includes e.g. 'the minister is satisfied' (as compared to requiring compliance with criteria) or a weaker test of 'not inconsistent' (as compared to language such as 'in accordance with' or 'complies with').

For example, a project must not be approved 'unless the Minister is satisfied that' the action will not have or be likely to have an 'unacceptable impact' on matters of national environmental significance like the environment in the Great Barrier Reef Marine Park. Unacceptable impact is defined as something that 'seriously impairs, will seriously impair, or is likely to seriously impair', or 'causes, will cause, or is likely to cause, serious or irreversible damage to' the biodiversity values or heritage values that are part of the environment in the Great Barrier Reef Marine Park. The protection this provision offers is undermined by including a subjective test 'to the Minister's satisfaction'.

Another example of discretionary language is the national interest exemption. There is no limit on matters that the Minister may consider in determining the national interest. The Minister may consider Australia's defence or security or a national emergency, but the exemption is not limited to this. The proposed National Interest Exemption would constitute a major regulatory loophole that should be discarded in favour of alternatives to exemptions for critical projects. Around the world, regulatory exemptions, waivers, carve-outs etc from environmental laws facilitate unscrutinised environmental harm (Nelson 2025b, Pt 6.5.2.2 Gaps by Exemption and Derogation). Alternative regulatory approaches are available to facilitate time-critical activities (Nelson 2025b, Table 6.4). For example, shifting a required environmental intervention in time (e.g., where an emergency response action is required in relation to a natural disaster, ensuring post-hoc compensatory activities in relation to adverse environmental effects of the emergency response). Choosing an appropriate alternative to a complete exemption is context-specific. National Environmental Standards should set out alternative mechanisms to ensure extraordinary projects in the national interest proceed in a way that is carefully scrutinised and achieve environmental protections.

Discretionary decision-making is contrary to the recommendations of the Samuel Review. The Samuel Review noted that 'opaque rules and unfettered discretion in decision-making can result in poor environmental outcomes' (Samuel Review 2020, p.3). In response to this, Samuels recommended the development and implementation of legally enforceable, outcomes-based National Environmental Standards. Activities and decisions of the minister would be required to be consistent with these Standards (Samuel Review 2020, p.53). Discretion to depart from National Environment Standards 'should be a rare exception' (Samuel Review 2020, p.ii).

Outcomes-based regulation (also known as performance-based regulation) can have clear benefits. In the corporate context, it is said to allow 'firms to meet performance standards more quickly, more effectively, and at a lower cost than can regulators using prescriptive regulation, particularly over time' (Willis 2015, p.1335). It sets a 'measurable standard closer to the regulator's ultimate goal and allows the regulated entity to choose how to meet that standard' (Willis 2015, p.1330), potentially allowing the achievement of regulator goals including environmental protection. Outcomes-based regulation can also be used to address cumulative environmental impacts (Nelson 2025b p. 186).

Despite the potential for these benefits, the proposed outcome-based National Environmental Standards will be fettered by discretionary and weakened language e.g.

'not inconsistent with national environmental standards' (rather than 'consistent with') and 'the Minister is satisfied' that there is application of the Standards.

The Act also introduces a new streamlined assessment pathway that allows the Minister to fast-track a project if they are satisfied, at the time of the decision, that they have all necessary information to decide whether to approve the taking of the action and greenhouse gas emissions information for the action has been provided. Other submissions have pointed out the problems with the current framing of this streamlined assessment pathway. These include that there are no limits on the level of the environmental assessment that would be required and no requirements around public consultation on that impact assessment (EJA 2025; EDO 2025).

Finally, the Bills maintain problematic exemptions for Regional Forestry Agreements and fail to effectively address land clearing. This prioritises sectoral interests over biodiversity protection, even in the light of the well-documented need to arrest the extinction crisis in Australian biodiversity. The removal of 'carve-outs' for forestry was a clear recommendation of the Samuel Review that should be included in these reforms.

The Bills introduce institutional changes such as the adoption of a National Environmental Protection Agency and national standard setting, which are of potential benefit to environmental protection. Yet these institutional initiatives are often not safeguarded by an adequate degree of transparency, monitoring, accountability and fully independent review (Godden et al, ch 3). This is a concern with the proposed changes given that the Bills are characterised by a high degree of ministerial and executive discretion. Under the National Environmental Protection Agency Bill there is a conferral of broad ranging powers to the CEO and agency (ss 13, 14), with limited provision for review. While it is recognised that the CEO should have a degree of independence, the apparent lack of any pathway for third party review of decision-making is not consistent with administrative transparency.

Recommendations to reduce risks from excessive discretion and loopholes:

- Remove discretionary and subjective language such as 'the minister is satisfied' and 'not inconsistent with'.
- Remove 'may consider' in the national interest exemption and replace it with an exclusive list of specific criteria e.g. national emergencies.
- Draft strong outcomes-based National Environmental Standards and require consistency with these.
- Ensure streamlined assessment pathways include adequate environmental assessment and public consultation.
- Remove forestry-related exemptions.

2. Regulatory provisions proposed for offsets are inadequate – reforms must address well-documented risks that have plagued Australia's offset regimes and have been revealed by repeated formal inquiries

Under the proposed reforms, offsets may be managed directly by the proponent under the offsets standard, or offset obligations can be acquitted by paying into a 'Restoration Contribution Fund'. Substituting offsets for tighter environmental controls can have poor biodiversity outcomes (Godden et al ch 5). The use of such restoration funds without robust guardrails (e.g. setting an appropriate price or ensuring 'like for like' offsets can be secured and a pipeline of offsets is available) has been demonstrated to be highly problematic. In New South Wales, this approach has led to: a) weakened price signals intended to deter impacts on valuable biodiversity assets, particularly where offsets markets are in use; b) increased risk that ecologically equivalent offsets will not be delivered; c) 'shortfalls' where there are underestimates in the amount of money needed to deliver offsets; d) risks that the amount of money in offset funds do not cover the costs of acquisition or restoration; e) exacerbated time-lags between ecological impact and compensation; and now f) risks the use of the offset fund utilising funds to deliver action that should be funded by core government programs – effectively using destruction to bankroll core business (e.g. weed management in National Parks, which would usually be regarded as standard practice rather than an 'additional' action in the context of offsetting). The EPBC regime for restoration contributions must comprehensively address key design issues like these that are known to plague offset regimes. Doing so will reduce problems with these regimes and the scrutiny they draw as a result.

Since 2020 alone, Australian jurisdictions have seen no fewer than 15 formal inquiries into offset systems, run by parliamentary committees, auditors-general and government-commissioned independent experts across the Commonwealth, New South Wales, Queensland and Victoria (Nelson 2025a). The well-documented problems with offset systems around Australia warrant greater emphasis on clear guardrails in the Bill.

Drawing on lessons from across regimes (e.g. offsets for biodiversity, water quality, water quantity, and greenhouse gas emissions), research has identified 10 key design issues that offset regimes should address to avoid some of the critical problems and issues that often plague them: clarity about "no-go" offset situations, preconditions for using offsets (e.g. strict application of the mitigation hierarchy) and rules about priority of access to available offsets; equivalence (e.g. 'like for like' offsets); additionality; data and uncertainty; ownership and transfer rules; monitoring and reporting; adaptation; co-benefits and adverse impacts on third parties; synergies between multiple offset regimes; and ensuring that diverse regulatory approaches are used (see "Offsets: problems and possibilities in environmental policy", Nelson 2025a).

Recommendations to improve offset provisions:

- Include references to mandatory safeguards in the restoration contribution provisions of the Bill, to be elaborated in regulations.

3. To meet global best practice and industry expectations, include cumulative impacts provisions in both bioregional planning and project-level assessment

To avoid "death by a thousand cuts" to protected matters, the EPBC Act should require cumulative impact assessment for controlled actions in general, increasing consistency between protections offered under the water trigger (currently the only context that requires cumulative impact assessment: Nelson 2019) and other MNES. This change is needed to align with global best practice, environmental treaties, states' and territories' laws, and leading industry expectations.

Cumulative impact assessment is envisioned to be a part of bioregional planning, but this is neither sufficiently express in the Bill, nor is it enough. Bioregional plans are unlikely to cover Australia, and they are unlikely to be regularly updated. The scientific and legal literatures strongly support the integrated use of regional-level and project-level cumulative impact assessment, known as "tiering" (Therivel & González 2021). Tiering improves decisions at both levels; one cannot replace the other.

By ignoring project-level cumulative impact assessment, the EPBC Act lags behind most of the rest of the world, Australian states and territories, and industry bodies. Globally, around 60% of national EIA laws provide for assessing cumulative impacts (see this map: Nelson & Shirley 2023). Leading jurisdictions also require cumulative impact assessment in 'streamlined' impact assessment processes (e.g. California's opt-in fast-track process for solar farms: Cal.Pub.Res.Code § 25545.7; 20 CCR § 1879(b)). Nearly all Australian states and territories have major EIA laws or policies that include provision for cumulative impact assessment (e.g. Planning Act 2023 (ACT) s 104(a)(b); Cumulative Impact Assessment Guidelines for State Significant Projects (NSW, October 2022)). Internationally, many of the major environmental treaties that underlie the EPBC Act recognise the critical importance of cumulative impact assessment (e.g. UNESCO's Guidance and Toolkit for Impact Assessments in a World Heritage Context; Ramsar Convention Handbook 16 on Impact Assessment; Decisions adopted at the 14th Meeting of the Conference of the Parties to the Bonn Convention on the Conservation of Migratory Species of Wild Animals in 2024).

Industry bodies also support cumulative impact assessment. Indeed, they produce their own advice on cumulative impact assessment because the EPBC Act has not kept up with best practice (e.g. Minerals Council of Australia Cumulative Environmental Impact Assessment Industry Guide). Major proponents have undertaken large-scale cumulative impact assessment on a voluntary basis (e.g. Abbot point project in

Queensland, described in Groom et al., 2018) or as part of strategic assessments under the EPBC Act (e.g. BHP and Rio Tinto).

Any changes to assessment processes in the Bill must be accompanied by the inclusion of a requirement to undertake cumulative impact assessment.

Recommendations to include project-level cumulative impact assessment requirements:

- Refer to cumulative impacts in the definition of 'unacceptable impacts' (proposed s 527F), 'seriously impair' (proposed s 527H), and for clarity, the definition of 'impacts' (existing s 527E). The definition should clarify that unacceptable impacts and serious impairment may be brought about by the cumulative impacts of an action.

4. More is needed to improve systems for environmental information so that they better and more comprehensively reveal environmental conditions and impacts.

The Environment Information Australia Bill valuably recognises the critically important nature of environmental information, but it needs to do more to increase the comprehensiveness of the environmental information systems for which it provides. Empirical research on the water trigger under the EPBC Act has shown that government staff, proponents and others consider that a lack of accessible environmental information poses a critical challenge to the assessment of impacts (Nelson 2019). Failings in relation to information were also a strong theme of the Samuel Review.

Effective decision-making about biodiversity requires comprehensive information about drivers of biodiversity decline: information about impactful actions that are regulated and lawfully undertaken in a way that permits some harm, actions that are regulated but undertaken in a way that exceeds their authorisation (eg clearing more than is allowed), unregulated actions that nonetheless cause impact (eg harmful actions that are exempt from environmental controls), and background effects like wildfire and climate change (Nelson 2025b Pt 5.1.1). However, information collection mechanisms rarely deal with all of these drivers, and may fail to aggregate information that is collected by different agencies or levels of government, and non-government parties. Valuable environmental information goes to waste, and governments may not even know it exists. To maximise the comprehensiveness of publicly available data, the Bill should expressly include a mechanism for holders of environmental information to contribute it for public sharing, alongside information requested under s 19.

The EIA Bill's provisions on information sharing must clearly cover models as well as data, and must provide for powers to mandate sharing both models and data. Disputes about modelled environmental impacts lie at the heart of some of the most controversial projects approved under the EPBC Act – notably, in relation to the impacts of the Carmichael Coal Mine on spring ecosystems. Proponents face incentives to claim that their environmental data and models are commercial-in-confidence to reduce scrutiny and the ability of independent researchers and the public to test their claims. Projects that are already approved may not be subject to conditions to provide critical information to test claims about a project's environmental impact (e.g., models that have been the subject of ongoing concern and independent scrutiny in the case of the Carmichael Coal Mine). Accordingly, the Minister needs powers to *require* the provision of both raw environmental data and related models, and to make these publicly available to improve transparency and accountability. Relying on voluntary provision of data (cl 19) is not enough. This should be supported by a provision that clearly states that such requirements prevail over barriers to information sharing based on commercial reasons (mirroring this approach in European Union law: see Nelson 2025b Table 5.4). An alternative would be to provide time-limited protection for disclosure of environmental information that has genuinely commercial value (e.g. require disclosure after 2-5 years: see Nelson 2025b Table 5.4).

Recommendations to improve the comprehensiveness of environmental data systems:

- Expressly provide for non-government holders of environmental information to provide their information to Environment Information Australia to complement Ministerial powers to request information under the EIA Bill (s 19)
- Grant the Minister coercive powers in relation to requests for environmental data (with appropriate safeguards for culturally sensitive data), including models related to environmental impacts, rather than relying solely on voluntary provision of information (s 19, EIA Bill).

5. Systems for better environmental data need to link to *action* to address environmental decline, rather than simply better documenting decline

The statutory State of the Environment report is an excellent information mechanism, but as it stands, it only documents decline, without any link to action to reverse decline. The driving purpose of understanding impacts on our environment is to *do something* about those impacts: the purpose of environmental information is to build 'the ability to consider existing and potential interventions that seek to modify impacts or take other action to address unacceptable harm' (Nelson 2025b, p. 107). Clause 12(2) of the Environment Information Australia Bill should be amended to require a State of the Environment report to include, in addition to the matters already listed, "recommendations for government action, including in relation to law reform", to which the government must respond. This would be analogous to requirements under the *Commissioner for Environmental Sustainability Act 2003* (Vic) section 17(5) (see also Nelson 2025b Table 5.4).

More generally, no Australian entity has oversight over the larger system of laws that lets environmental harm accumulate, to highlight the potential for rules to be mutually undermining or suffer from gaps and loopholes: we need information about how laws work together, as well as information about the environment itself. Australia currently lacks a body tasked with understanding the effectiveness of our environmental law regimes as a whole, yet this role is crucial to effectively preventing environmental harm to protected matters (Nelson 2025b). The National Environmental Protection Agency and Environment Information Australia can play an important role in this regard, if their statutory functions support it.

Recommendations to better link environmental data to action:

- Improve information about the effectiveness of interventions by empowering the NEPA (s 13, NEPA Bill) to scrutinise Australia's environment-related laws as a whole, in coordination with appropriate entities in other Australian jurisdictions.
- Amend clause 12(2) of the Environment Information Australia Bill to require a State of the Environment report to include "recommendations for government action, including in relation to law reform", to which the government must respond.
- Empower Environment Information Australia to coordinate with NEPA and expertise-based independent advisory bodies for the purpose of investigating recommendations made in State of the Environment reports.

6. There is a failure to give due consideration to Indigenous values and community priorities, which requires correction throughout the Bills

Indigenous leaders and researchers have advocated strongly for their voices and priorities to be integrated into Australia's environmental protection laws. This includes calls for designating and managing Culturally Significant Entities and recognising Indigenous governance, knowledge and biocultural management (Goolmeer et al 2024, Goolmeer et al 2022a). More fundamentally, these calls have argued for the need for genuine co-design of legislation and associated instruments (Goolmeer et al 2022b). Unfortunately, this has not happened in the development of the Bills currently being presented.

The proposed reforms (section 194ff) only allow for inclusion of Indigenous knowledge (including cultural significance) in listing processes. In doing so, it also fails to provide adequate protections for Indigenous Cultural and Intellectual Property. The new provision does not allow for listing of entities by virtue of being culturally significant, nor has there been an Indigenous-led or co-design approach to determine how cultural significance provisions could operate under a revised Act.

The Bill also includes the requirement that any National Standard developed for Indigenous engagement be run by the Indigenous Advisory Committee (proposed section 514YI). However, it does not appear to mandate the development of such a Standard, nor does it include provisions for ensuring Indigenous perspectives, values, priorities and knowledge are meaningfully integrated in the Act as a whole. There is an absence of requirements for Indigenous voice, governance, or even engagement in decision-making in key provisions of the Bill, including bioregional planning.

Recommendations to better consider Indigenous values and community priorities (ss 194, 514 and throughout):

- Pause the passing of the Bill in favour of a full Indigenous engagement / co-design process to designate key provisions that will ensure protection of and support for culturally significant entities and biocultural values.
- Add additional provisions that allow for:
    - Nominating, listing and protecting culturally significant entities.
    - Including Indigenous perspectives and governance, particularly those of Traditional Owners, in provisions for bioregional planning.
    - Mandating the development of an Indigenous engagement standard under the National Standards

7. Improvements to bioregional planning provisions are needed so that planning is linked to net gain outcome goals, grounded in data, anchored in adaptive governance, and ensures effective and extensive stakeholder and Traditional Owner engagement

Extensive evidence demonstrates that effective strategic environmental impact assessments (such as those intended under the proposed bioregional planning provisions) be grounded in robust data, allow for uncertainty, and include appropriate application of the precautionary principle. They should also include extensive participatory processes that meaningfully include all stakeholders to the process, including proponents, experts, local communities and Traditional Custodians (e.g. Hardy et al 2019). These are the underpinning pre-conditions of effective strategic regulatory plans, which can meaningfully allow for the streamlining of development within designated ‘development zones’ without risking ongoing environmental losses and community backlash. Yet, as it stands, there are no provisions in the Bill’s bioregional planning amendments for ensuring this strong foundation is laid.

A fundamental problem facing bioregional planning is data availability. Australia currently lacks an agreed national ecosystem map or national ecosystem assessment (Nicholson et al 2024). Around 110 ecological communities have been assessed and listed under the EPBC Act, which likely constitutes less than 5% of the total ecological communities in Australia. Some states address this (e.g. Queensland) but most do in an ad hoc way (e.g. New South Wales and Western Australia have individual rather than comprehensive) assessments, while other states ignore ecological communities (e.g. Victoria). As a result, there is a dearth of knowledge about which ecosystems are threatened and why, even though this knowledge is central to sustaining and managing biodiversity and the cultural and economic benefits Australians get from ecosystems (Nicholson et al 2021, IPBES 2019). Similarly, most species are not assessed. Any strategic planning must be iterative and adaptable, and designed to include new knowledge. It also needs to identify the important knowledge and data that are missing but needed to make informed decisions, and invest in it.

Ensuring that bioregional plans enable streamlined developments without compounding the decline of protected matters requires adaptive governance with ongoing monitoring anchored to the achievement of net gain outcomes for protected matters designated under the plan. This includes the potential to allow for uncertainty; designate zones of possible development to which further detailed environmental assessments must apply; and require a scientifically grounded process for varying plans (and their designated zones) in the case of 'unanticipated' events, such as the discovery of a protected matter in previously designated development zones or the listing/uplisting of protected matters within the bioregional planning area. Provisions for bioregional planning must also allow for the implementation of plans to be paused in cases where net gain outcomes for protected matters under the plan fail to be achieved (for example, where acquisition of adequate offsets lags behind impacts from development; this intersects with the need for strong guardrails in the offset regime, including as to adaptation - see no 2 above).

There is an extensive literature showing full, meaningful participatory processes that involve local communities and Traditional Custodians in both knowledge gathering *and* decision-making in bioregional planning is essential for streamlining and ensuring the effectiveness of planning processes (e.g. Riddle and Pahl-Wostl 2005, Hassan et al 2011, see Hardy et al 2019 for a review in the Australian context). Such processes help ensure that:

- vital local knowledge is included in designation of these plans;
- local and biocultural values are protected and accounted for;

- local communities and Traditional Custodians continue to benefit from the protection and restoration of biodiversity where they live and on the Country where culturally significant values are impacted; and
- buy-in to the agreements is achieved, thereby *limiting* uncertainty for proponents and mitigating against the risk of community backlash and stalled developments. This is an important rationale for the use of strengthened community participation and negotiation requirements for streamlined assessment processes in California (Opt-In Certification Program for renewable energy projects, requiring agreements with local community organisations and tribal consultations). Community buy-in speeds up projects.

No provisions are made in the Bill's proposed bioregional planning framework for participatory processes to underpin the development of bioregional plans. Instead, these components of the Bill appear to be grounded in the mistaken perception that streamlining and certainty requires 'faster' top-down processes for designating regional plans. This risks *worsening* the slowing down of projects and presenting more hurdles for developments. It also limits the extent to which communities that frequently bear the burden of developments (such as regional and farming communities) feel disempowered.

Recommendations to improve bioregional planning:

- Replace the bioregional planning provisions (proposed section 176 and following sections) that require the designation of restoration actions 'that the Minister is satisfied are necessary or convenient to mitigate, repair or compensate for likely damage to one or more impacted protected 11 matters' with provisions that require restoration plans to be designed that achieve a net gain outcome goal or better for all protected matters impacted under the bioregional plan.
- Strengthen bioregional planning provisions to require a foundation in strong data, a requirement to resource the filling of data gaps, and scientifically sound processes for addressing irresolvable uncertainty
- Mandate participatory processes as a part of bioregional planning.
- Strengthen adaptive governance provisions in bioregional plans, anchored to the delivery of net gain outcome goals for all protected matters impacted under the plan by:
    - designating monitoring and improvement strategies to ensure effective implementation within the plan boundaries; and
    - replacing provisions that allow thea Minister to vary a plan with provisions that trigger a process to review, and where necessary, alter the terms of

the plan in cases of defined ‘exceptional circumstances’ (including the designation or detection of a new or uplisted protected matter within the plan’s impact area).

8. The Bill unacceptably waters down provisions for actively promoting conservation, including through removing language in the Act that specifies actively promoting conservation and reducing the role and status of recovery plans

The proposed provisions regarding the Minister’s capacity to make a declaration regarding actions that do not require approval and accredited management and authorisation frameworks for listed matters (proposed section 33ff) reduces the requirement that such declarations be for the positive promotion of conservation. This would amend language throughout the Bill requiring provisions to promote the management of listed matters (e.g. to promote the management of Heritage areas and Ramsar Wetlands; to promote the survival and/or enhance the conservation status of threatened and migratory species and ecological communities). These proposed provisions replace these existing requirements for positive conservation measures with language that requires declared actions and frameworks only to be ‘not inconsistent with’ these values. These amendments thus completely alter the original purpose of these provisions in the Act, allowing for the development of a wide range of accredited actions and frameworks, not only those intended to improve outcomes for listed matters, provided these meet the significantly less robust requirement to be ‘not inconsistent with’ our international obligations as codified in signed international treaties. This not only introduces wide-ranging mechanisms for ‘fast tracking’ approved actions (see above), it also reduces the expectation that the Act is designed to support the designation of actions and frameworks for restoring the environmental values of protected matters.

Research has shown that the development and designation of recovery plans (as distinct from less robust instruments) has played a crucial role in the successful protection and recovery of threatened species since the introduction of the EPBC Act in Australia (Garnett et al 2018). The Bill significantly undermines these benefits by making adherence to recovery plans optional (proposed section 34D(5), (6)) and in the way it introduces new instruments called ‘protection statements’ (section 298). The protection statements have the potential to provide more clarity on unacceptable impacts (such as irreplaceable areas that cannot be destroyed), which is welcome. However, unlike recovery plans, protection statements are not required to be grounded in independent scientific advice, but are instead designated by the Minister, who ‘may obtain advice from’ the Scientific Committee, alongside a wide range of other sources (including the Restoration Committee). Protection statements can over-ride recovery plans in bilateral agreement-making or reduce the Minister’s obligation to be consistent with them (proposed section 53(2), (5)). As written, proposed section 53(6) appears to require the Minister to have regard to an approved conservation advice, but there is no comparable need to consider recovery plans.

Recommendations:

- Reject the amendments under proposed section 33 and subsequent sections that remove the requirement for designated actions and frameworks to promote the management of listed matters and the survival and conservation status of threatened and migratory species and ecological communities.
- Restore the requirement that approved actions and bilateral agreements must be consistent with recovery plans (proposed sections 34D and 53).
- Amend provisions for the creation of protection statements (proposed section 298A) so that these require oversight of the Scientific Committee and advice from the Indigenous Advisory Committee.

9. Climate change is not integrated into the Bill

Climate change poses significant risks to Australia's natural environment. As Australia's recent 'National Climate Risk Assessment' found, these impacts are already 'significant, widespread and cascading across all systems' (Australian Climate Service 2025, p.176). In the future, '[t]he sustainability and prosperity of all natural systems will be challenged, with severe impacts expected on ecosystems, high risks of resource depletion, loss of species, and the almost certain collapse of some ecosystems' (Australian Climate Service 2025, p.176).

Despite this, the proposed reforms have almost zero integration of climate change concerns (mitigation and adaptation) into a regime that is intended to protect Australia's natural system. There is no reference to Australia's obligations under the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol or the Paris Agreement. There is no requirement for projects with certain emissions thresholds to be assessed or climate change to be considered throughout decision-making processes (Peel 2023; Peel 2024).

Moreover, failure to require entities to disclose their scope 3 emissions is inconsistent with existing Australian law. Australia's recent mandatory climate-related disclosures require entities to disclose their scope 1, 2 and 3 greenhouse gas emissions, as well as to undertake scenario analysis to assess their resilience under different climate scenarios (AASB 2024). It is also inconsistent with current case law in courts in Australia where scope 3 emissions are being considered relevant to assessments of fossil fuel-related projects e.g. *Gloucester Resources*, *Youth Verdict*, and inconsistent with courts' interpretation of environmental impact assessments in other jurisdictions, which require consideration of scope 3 emissions. e.g. *R(Finch) v Surrey County Council* (UK

Supreme Court), *Greenpeace Nordic and Others v. Norway* (European Court of Human Rights).

The failure to include climate change impacts in the reforms is also inconsistent with Australia's obligations under international law. The International Court of Justice (ICJ) recently outlined Australia's international climate obligations in its advisory opinion on climate change, stating that countries have a duty to prevent 'transboundary environmental harm' (paras 272-273) which includes a requirement to regulate all fossil fuel emitting activities in their jurisdictions, including by private actors. Following this judgment, the Australian government could be held internationally liable for a failure at both the national and subnational level to appropriately assess climate harms when approving projects (McClelland et al 2025; Young 2025). The ICJ considered that the scope of relevant activities that adversely affect the 'climate system' is not limited to conduct that directly results in GHG emissions, but instead 'comprises all actions or omissions of States which result in the climate system...being adversely affected by anthropogenic GHG emissions' (para 94).

The Court also stated: 'While the Court is aware that the cumulative and diffuse nature of GHG emissions may involve some difficulty in risk assessment, it considers it important that all States provide for and conduct EIAs with respect to particularly significant proposed individual activities contributing to GHG emissions to be undertaken within their jurisdiction or control, on the basis of the best available science. Such specific climate-related assessments could identify previously unknown information about possibilities for reducing the quantity of GHG emissions by relevant proposed individual activities' (para 298).

The lack of integration of climate concerns is not compensated for via the Safeguard Mechanism or other existing frameworks, which provide limited assessment of climate change impacts (Peel 2023) insufficient to meet Australia's domestic or international obligations.

In addition, adaptation is an international obligation, which requires Australia to take preventive, proactive measures to implement adaptive action (Nishimura 2025, Ch 2; ICJ Advisory Opinion). Its absence in the proposed bill runs afoul of both the stated priorities of National Climate Risk Assessment and the purposes of the Bill.

Very few law and policy approaches have been developed to require, incentivise or otherwise mobilise relevant actors to assist species and ecosystems to adapt to climate change (a 'coping measure': Nelson 2025, p. 152). Recent research (Nelson 2025, Ch 6) provides a matrix of strategies and approaches to interventions that provide governments with a way to consider whether presently unexplored options for interventions are available to facilitate such adaptation.

Key recommendations:

- Expand the objects of the Act to include climate change mitigation and adaptation.
- Require disclosure of scope 1, 2 and 3 greenhouse gas emissions and use of scenario analysis to assess the entities' impact on the environment and climate change (including harm and adaptation).
- Integrate climate change considerations into bioregional planning.
- Refer to Australia's obligations under the UNFCCC, Kyoto Protocol and Paris Agreement where there is reference to the Biodiversity Convention, the Apia Convention and CITES.
- Require developments exceeding certain emissions thresholds (scope 1, 2 and 3 included) to be assessed.
- Embed requirements for consideration of climate impacts (mitigation and adaptation) in decision-making processes throughout the Act or add a non-exclusive definition of 'impact' that includes climate impacts (mitigation and adaptation).
- Include mechanisms to facilitate adaptation of species and ecosystems to climate change, and to require consideration of how climate change (e.g. changes in habitat distributions) will affect their use in tools for conservation.