

Wilderness Society Submission: Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024

17 October 2024

For more information about this submission, please contact:

About the Wilderness Society

The Wilderness Society is an independent, community-based, not-for-profit environmental advocacy organisation. Our vision is to transform Australia into a society that protects, respects and connects with the natural world that sustains us. We are committed to protecting, promoting and restoring wilderness across the continent for the survival and ongoing evolution of life on Earth. From community activism to national campaigns, we seek to give nature a voice to support the life that supports us all. We are powered by more than 150,000 supporters from all walks of life.

Summary

The Wilderness Society opposes the *Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024* (“the Bill”) and recommends that the parliament reject it.

The Bill seeks to constrain the ability of members of the public to request reconsideration of controlled action decisions, by prohibiting such requests 36 months and longer after the decision has been made. Such a constraint would unacceptably limit the ability for decisions to be varied to take into account the availability of new information or changes of circumstances. This could lead to outcomes that directly conflict with the objects of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (“EPBC Act”) to provide for the protection of the environment, biodiversity and heritage and conflict with promotion of a co-operative approach

to the protection and management of the environment involving the community, First Nations and others.¹

The independent review of the EPBC Act by Professor Graeme Samuel concluded that the Act was not working for nature, community, or business. However, the solution is not to further undermine already weak accountability mechanisms. Certainty will come from strengthening nature protections and ensuring the public has a fair say in decisions under the Act.

Australia's economy needs healthy nature; and strong nature protection laws are good for nature, business, and communities.

Legislation must increase public scrutiny of environmental decisions – not to constrain it

Environmental community rights are crucial for good environmental governance -- and for 'nature positive governance' -- and for thriving nature. Research and practice around the world shows that when communities have a genuine and meaningful say in decisions about the environment, outcomes for nature and people are better.²

Professor Samuel's independent review of the EPBC Act in 2020 made this explicit, noting that "It is easy to see how Australia's environmental decision-making system leads to public perception that the environment is losing out to other considerations due to proponents having undue influence on decision-makers." (p. 9). Professor Samuel found that inconsistent community rights regimes between states and territories and "unclear responsibilities mean that the community is less able to hold governments to account" (p. 45). Professor Samuel's review makes it clear that nature protection and human rights are necessarily entwined.

The federal government's Nature Positive Plan outlines "restoring integrity and trust" to environment laws as one of three key pillars of its environmental law reforms. To do so, the government must enshrine and activate a national approach to environmental community rights and the unique rights held by First Nations peoples as recognised under the United Nations Declaration of Indigenous Peoples (UNDRIP). Such rights are crucial to integrity in environmental decision-making and include:

- Environmental community rights (including the rights to know, to participate and to challenge decisions)
- The cultural and self-determination rights of Indigenous Peoples under international law.

In 1992 the United Nations Conference on Environment and Development delivered the *Rio Declaration for Environment and Development*. The Rio Declaration's Principle 102 sets out three fundamental rights communities should have to ensure genuine participation in decisions made about the environment. These environmental community rights include:

1. The right to know—to access the information that authorities hold.

¹ EPBC Act ss 3(1)(a), (c), (ca) and (d).

² Wilderness Society (2022), Who holds the power? Community rights in environmental decision-making Retrieved from <https://www.wilderness.org.au/images/resources/WhoHoldsThePowerReport.pdf>

2. The right to participate—to have a genuine say in decision-making.
3. The right to challenge—to seek legal remedy if decisions are made illegally or not in the public interest.

Australia was already bound by these rights, as it is a signatory to the International Covenant on Civil and Political Rights (ICCPR). The ICCPR enshrines these rights in the form of: a right to information (via freedom of expression, Art. 19), a right to take part in the conduct of public affairs (Art. 25), and a right to effective judicial remedy (Art. 2(3)).

Yet despite these binding international commitments, Australia is a laggard when it comes to respecting, protecting and fulfilling environmental community rights. Research by the Wilderness Society, and evidenced by the Environmental Defender's Office's jurisdictional analysis, found that:

1. Australia has a systemic problem with upholding community rights in relation to environmental decision-making.
2. Across the continent, there is inadequate transparency and accountability in environmental decision-making.
3. Inconsistent and patchy application of environmental community rights in different jurisdictions across the continent ensures decision-making is weighted in favour of proponents and vested interests.³

The need for strengthened public participation was also emphasised by the Australian Human Rights Commission in a dedicated section on "Participation as a principle" within its report on a free and equal human rights Act for Australia.⁴ There it noted that the right to participate in public affairs in the ICCPR extends beyond the right to vote in elections, and quoted the following from a report by the UN Office of the High Commissioner for Human Rights:

"The right to participate in public affairs should be recognized as a continuum that requires open and honest interaction between public authorities and all members of society, including those most at risk of being marginalised or discriminated against, and should be facilitated continuously."

The Bill would constrain the right of the public to challenge poor environmental decisions

The Bill would unacceptably undermine the public's right to challenge poor decisions made under the EPBC Act. The Bill seeks to constrain the ability of members of the public to request reconsideration of controlled action decisions under Part 7, Division 3, by prohibiting such requests 36 months and longer after the decision has been made. A controlled action decision is the decision (made pursuant to s 75) as to whether or not the EPBC Act applies to the proposed development. That is determined with reference to the EPBC Act's requirements for assessment and approval, which are concerned with actions which will have a significant impact on Matters of National Environmental Significance, and therefore which require Commonwealth oversight.

³ Wilderness Society (2022), Who holds the power? Community rights in environmental decision-making Retrieved from <https://www.wilderness.org.au/images/resources/WhoHoldsThePowerReport.pdf>

⁴ Australian Human Rights Commission (2022) FREE AND EQUAL A Human Rights Act for Australia December 2022. (pg 165-173) <https://humanrights.gov.au/human-rights-act-for-australia>

The proposed limitation on the right to request reconsideration would unacceptably limit the ability for controlled action decisions to be varied to take into account the availability of new information or changes of circumstances. This could lead to outcomes that directly conflict with the EPBC Act's objects of providing for the protection of the environment, especially matters of national environmental significance, promoting the conservation of biodiversity and heritage, and promoting a co-operative approach to the protection and management of the environment involving the community, First Nations and others.⁵

This Bill would therefore deepen the integrity failings of the EPBC Act rather than offering a solution. This conflicts with Professor Samuel's recommendations. In his independent review, Professor Samuel recognised the need to better enshrine the public's right to challenge – that is, to seek legal remedy if decisions are made illegally or not in the public interest. Specifically, he called for the addition of a new avenue for the public to challenge decisions: "limited merits review for development approval decisions." (p. 95).

Professor Samuel found that the way to reduce the risk of litigation is not to constrain the community's right to challenge decisions but to improve the provision of information and public participation before a decision is made (p. 11):

The recommended reforms to deliver improved transparency and robust oversight of decision-making address the underlying causes of distrust in decisions. This should reduce the need for third parties to resort to court processes to discover information. Improving participation and transparency will mean that stakeholders will be less likely, and have less justification, to resort to legal challenge.

EPBC Act decisions are not currently subject to unacceptably large amounts of litigation. For instance, in his independent review, Professor Samuel noted the very small number of legal challenges of EPBC Act development approval decisions (p. 86):

The number of third-party legal actions (judicial reviews and injunctions) in relation to development approval decisions has remained consistent each year over the life of the EPBC Act (2000 to 2020). Annually, judicial review proceedings vary from zero to 8 cases and injunctions number zero to 4 applications[...]. In some cases, injunctions and judicial review proceedings relate to the same matter but this has not been quantified.

(We note that the proposed bill relates to controlled action decisions, not approval decisions, but offer the above excerpt as important broader context.)

Business also has a role in ensuring certainty – by managing environmental and social risk

Rather than further eroding the integrity and coherence of the EPBC Act, certainty for business will come from two things:

1. Reforms to the Act aimed at strengthening and clarifying nature protections and environmental community rights
2. Action by business to better manage environmental and social risk.

⁵ EPBC Act, ss3 (1)(a), (c), (ca) and (d).

On point 1, see Annexure: Wilderness Society submission on Nature Positive (Environment Protection Australia) Bill 2024 and related bills 15 July 2024. Certainty can be achieved by making changes to the EPBC Act to strengthen nature protections, close deforestation loopholes, and afford the public a more meaningful say in decisions, and by establishing a new federal EPA that is independent, transparent and accountable to communities.

On point 2, businesses can also contribute to certainty by managing nature, climate and social risks through responsible and science-informed operation, rather than blaming legitimate regulatory action and oversight.

For instance, recent research by EY⁶ found that:

1. Nature and biodiversity are critical foundations of the global economy and human existence, and are rapidly degrading (Page 10).
2. Deforestation and forest degradation are significant contributors to biodiversity and nature loss in Australia and are primarily driven by the agriculture, forestry, and land development sectors (Page 21).
3. Due to impacts and dependencies within value chains, these losses can become material financial risks for companies and their financiers without effective management (Page 11).
4. Deforestation risk sectors in Australia are linked to European and other overseas financing, particularly from North America (Page 36).
5. The extent of deforestation and degradation in Australia is not well understood globally, and is not considered by financiers in their current ESG screening processes (Page 19) .
6. Financiers in Europe and elsewhere will be required to consider these risks in the future, so taking action now is essential (Page 40).

- ENDS -

⁶ Ernst & Young. (2023). *Following the money: Financial services' links to deforestation and forest degradation in Australia*. Available from https://www.wilderness.org.au/images/resources/Following-the-Money_August-2023.pdf

Annexure: Wilderness Society Submission: Nature Positive (Environment Protection Australia) Bill 2024 and related bills

15 July 2024

For more information about this submission, please contact:

Sam Szoke-Burke
Biodiversity Policy and Campaign Manager

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About the Wilderness Society

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This submission is co-signed by 3863 Wilderness Society members, representing individuals in every state and territory in Australia. A detailed list of individual co-signatories to this submission is attached in Annexure B, provided alongside this submission.



Summary of recommendations

The nature positive bills should be amended to:

1. Give the EPA objects, functions and duties to ensure the community has a reasonable opportunity to participate in environmental decision-making, including in consultation with project proponents.
2. Include requirements regarding the types of information that proponents must provide, such as information about the proponent, the proposed action and any Environmental Impact Assessment relevant to the decision.
3. Require the decision-maker to demonstrate how submissions from the community have been taken into account when making a decision.
4. Allow any person to request the Minister to request referral of a proposal.
5. Increase the minimum period for public comment to 40 days, excluding public holidays and holiday periods.
6. Add a provision that removes the exemption for RFA forestry operations contained in s 38 EPBC Act. This should repeal sections 38-42 of the EPBC Act, and part or all of the Regional Forest Agreements Act 2002.
7. Remove section 43B of the EPBC Act, which exempts actions that are “lawful continuations of use of land etc”.
8. Insert a provision in the EPBC Act that compels referral of planned native vegetation clearing within threatened or migratory species habitat or areas where such species are likely to occur, within a threatened ecological community, or within the Great Barrier Reef catchment, for assessment under the EPBC Act.
9. Include a strong legislative framework for the development and review of legally binding national environmental standards in the form of legislative instruments, in accordance with the government’s commitment, and the recommendations of the Samuel Review relating to centrality of standards to effective EPBC reform.
10. Make further amendments to the Sea Dumping Act to include community consultation and transparency at a minimum in line with international standards for public participation in environmental decision-making.
11. Include revised definition of “nature positive” that includes a measurable baseline.
12. Require and empower EIA to capture and manage data that will enable and support nature protection and recovery, including tracking threatened species recovery.
13. Establish a national deforestation and ecological restoration monitoring program based on the latest remote sensing technology that includes regular, detailed data made publicly available and task the EIA with the program’s implementation.

Introduction

As one of the world’s most megadiverse countries, Australia’s biodiversity is magnificent, unique and rightly treasured by Australians and the world. Many of Australia’s species are only found here, and Australia is home to many iconic World Heritage Areas. Australia’s unique animals and plants have cultural value to Australians of all backgrounds, especially for First Nations peoples, and are vital to supporting economic prosperity,¹ wellbeing and community health.² Australia’s national

¹ Ernst & Young. (2023). *Following the money: Financial services’ links to deforestation and forest degradation in Australia*.

² Commonwealth of Australia. (2023). *Measuring What Matters: Australia’s First Wellbeing Framework* (p. 44). Retrieved from https://treasury.gov.au/sites/default/files/2023-07/measuring-what-matters-statement020230721_0.pdf



environment law must protect and safeguard this heritage now and for future generations.

Australia's environment is under increasing pressure. Independent reporting shows all major indicators of environmental health have declined over the more than two decades the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has been in force. Australia is worst in the world for mammal extinctions,³ second worst in the world for loss of diversity of life, and fourth in the world for overall plant and animal extinctions. It is also a global deforestation hotspot.⁴ Cumulative interactions between the major pressures impacting the environment—especially climate change—are amplifying the threat faced by Australia's species and ecosystems. Strong reforms to the EPBC Act—that strengthen protections and processes, and enhance monitoring and enforcement—are desperately needed.

Australians want nature reform – and now

Australians are impatient for legislative action to protect nature. At the federal level, the EPBC Act is widely regarded as needing urgent reform. For example, **over 3,800 Australians have signed onto this submission**. Further, in May 2024 alone, the Wilderness Society led a month of action around Australia, with community events in Western Australia, Queensland, New South Wales and Victoria turning out hundreds of Australians who expect and are demanding nature laws that work. These demands for strong and effective nature laws are the latest expression in a long history of high levels of community engagement and interest, including in the most recent independent ten-year review of the EPBC Act, which commenced almost half a decade ago. **For more on this recent month of community action see Annexure A to this submission (confidential).**

Research has repeatedly shown that Australians care about nature and want the federal government to protect it from destruction. The Biodiversity Council's second annual Biodiversity Concerns Survey,⁵ for instance, found that the majority of Australians:

- Indicate that it is important to them to know nature is being looked after (85%) and that nature conservation issues would influence how they vote in future elections (89%).
- Support strengthening environmental laws to support nature (73%), protecting native species habitats from development (69%) and reducing the use of biodiversity offsets (67%).
- Believe it is very important to uphold Australia's international obligations under the Convention on Biological Diversity to stop or reduce the extinction of animals (64%) and ensure at least 30% of land and seas are protected (58%), in line with the Global Biodiversity Framework adopted in 2022.

³ Wilderness Society. (n.d.). 10 facts about deforestation in Australia. Retrieved July 12, 2024, from

<https://www.wilderness.org.au/protecting-nature/deforestation/10-facts-about-deforestation-in-australia>

⁴ Thorpe, D. (2023). *Deforestation: How does Australia fare in global comparisons?* The Fifth Estate. Retrieved July 12, 2024, from

<https://thefifthestate.com.au/business/deforestation-how-does-australia-fare-in-global-comparisons/>

⁵ Biodiversity Council (2024). 2024 Biodiversity Concerns Report: A survey of community attitudes to nature conservation. March 2024.



Purpose of EPBC Act, and delays in its reform

The EPBC Act is widely regarded as not fit for purpose, including by Professor Graeme Samuel in his independent review of the Act in 2021⁶, the Albanese government⁷, and environmental groups.⁸ As it currently stands, the EPBC Act is unable to protect Australia's iconic nature, avert species from being threatened, endangered, critically endangered, or extinct; it is unable to protect internationally significant and recognised ecosystems, and is failing to enable nature to heal, recover and thrive.

Reforms to the EPBC Act are urgently needed to materially turn things around for nature. This requires:

- Protecting the best that is left (i.e. delivery of up front protections and clarity on unacceptable impacts);
- Facilitating genuine ecosystem restoration and species recovery (that is well-funded and not shrouded or perverted by weak and problematic offsets);
- Preventing species extinction and ecosystem collapse caused by proponent-driven destruction of nature;
- Good and clear decision-making that delivers positive outcomes for nature; and
- Sound operation of the Act, which means well-informed and empowered regulator/s, and consistent application of the three universal community rights in environmental decision-making such that stakeholders do begin to have trust and confidence in environmental decisions being made by the Federal government.

The Albanese government's decision, announced in April 2024,⁹ that its "nature positive" reforms would be broken into stages creates the real risk that the majority of reforms that are desperately needed will not be passed this term of government. This follows the government's failure to comply with its own deadline in the Nature Positive Plan, namely that "A package of new environmental legislation ... will be released as an exposure draft prior to being introduced into the Parliament before the end of 2023."¹⁰ No exposure draft of the full package of the reforms has been released.

While the Environment Minister has cited complexity as the reason for the delays and missed deadlines, a key factor that was in the Albanese government's control is its decisions to prioritise other environment-related bills over the nature positive reforms, including the *Nature Repair Act 2023* (which appears to be struggling to translate into an operative market without significant government funding¹¹) and changes to the *Sea Dumping Act 1981* to facilitate fossil fuel companies to undertake risky and unproven projects to pump carbon pollution into marine areas. As a result, it

⁶ Samuel, G. (2020). Independent review of the EPBC Act - final report (p. 39). Department of Agriculture, Water and the Environment, Commonwealth of Australia. Retrieved from <https://epbcactreview.environment.gov.au/resources/final-report>

⁷ DCCEEW. (2022). *Nature Positive Plan: Better for the environment, better for business* (p. 6). Department of Climate Change, Energy, the Environment and Water, Commonwealth of Australia. Retrieved from <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>

⁸ Places You Love. (2022) *Policy Agenda: It's time for a new generation of national environmental laws*. Retrieved July 12, 2024, from <https://hsi.org.au/wp-content/uploads/2022/02/PYL-Policy-Agenda-2022-v2.pdf>

⁹ Plibersek, T. (2024, April 16). *Environment and business to benefit from Nature Positive Plan*. Retrieved July 12, 2024, from <https://minister.dcceew.gov.au/plibersek/media-releases/environment-and-business-benefit-nature-positive-plan>

¹⁰ DCCEEW. (2022). *Nature Positive Plan: Better for the environment, better for business* (p. 5). Department of Climate Change, Energy, the Environment and Water, Commonwealth of Australia. Retrieved from <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>

¹¹ Greber, J. (2024, April 10). *Henry demands billions for nature repair market*. *Australian Financial Review*. Retrieved July 12, 2024, from <https://www.afr.com/policy/energy-and-climate/henry-demands-billions-for-nature-repair-market-20240409-p5fihq>



is highly likely that the proposed stage 2 bills, and not the remainder of the envisaged reform package (which contains elements critical for the reforms to be successful), will be put before parliament in this term of government.

Overarching comments on “Stage 2” bills

The Stage 2 Nature Positive reforms consist of three bills:

1. *Nature Positive (Environment Protection Australia) Bill 2024 (EPA Bill)*
2. *Nature Positive (Environment Information Australia) Bill 2024 (EIA Bill)*
3. *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024 (EPBC Amendments Bill)*

These bills, as passed by the House of Representatives, are an inadequate response to the crises Australia’s nature is currently experiencing. They are also insufficient for achieving the government’s commitment to “Restoring integrity and trust to systems and environmental laws”, which is one of the “three essential principles” of the nature positive reforms.¹² We discuss some of the key changes needed to Stage 2 in the subsequent sections.

The government refused to agree to any amendments to the stage 2 bills in the lower house. Much of the Environment Minister’s responses to each amendment focused on the need to establish Environment Protection Australia (EPA) and Environment Information Australia (EIA) and get them up and running.

Such a position is both inaccurate based on the scope of the amending laws, and unnecessary and untenable from nature’s perspective.

The government is also squarely on the record as proposing to do more than merely establish these two institutions:

- **On regulation of deforestation**, Minister Plibersek announced that she would “ask the new EPA to examine illegal land clearing and offset conditions as a priority”.¹³ But the EPBC Act is widely regarded as failing to stop illegal land clearing, or even to cause proposed deforestation to be referred to regulators for assessment. In “*Deforestation and the ‘continuations of use’ exemption*”, below, we propose neat, targeted changes to the existing EPBC regime that would enable the new EPA to actually crack down on illegal land clearing; such changes are not currently included in the stage 2 reforms, but should be.
- **On additional changes to the EPBC Act**, the EPBC Amendments Bill contains changes that are not needed to enable the establishment and functioning of EPA and EIA, notably “Schedule 12—Amendments relating to 1 stopping the clock”. These amendments enable proponents to refuse to allow the decision-maker to “stop the clock” on timeframes for decisions when it has requested further information from the proponent. Proponents can insist that the decision be made within the required timeframe despite the absence of the

¹² DCCEEW. (2022). *Nature Positive Plan: Better for the environment, better for business* (p. 3). Department of Climate Change, Energy, the Environment and Water, Commonwealth of Australia. Retrieved from <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>

¹³ Plibersek, T. (2024, May 29). *Environment Protection Australia legislation introduced to Parliament*. Retrieved July 12, 2024, from <https://minister.dcceew.gov.au/plibersek/media-releases/environment-protection-australia-legislation-introduced-parliament>



requested information. If the government is willing to entertain such changes, it has no grounds for rejecting the consideration of other proposed reforms that could have a greater and more immediate and positive impact on Australia's iconic environment. The Wilderness Society is also opposed to Schedule 12 on the grounds that it will enable proponents to force a decision-maker to make decisions without all the information that it believes it needs to make the decision

- **On assessment processes**, in addition to the issues with Schedule 12 of the EPBC Amendments Bill (above), ahead of stage 2 bills being introduced, Minister Plibersek announced “faster decision making” as being a priority element of stage 2.¹⁴ The Albanese government is also committed to a goal of “no new extinctions”.¹⁵ Clear definitions and rules, around unacceptable impacts in particular, are necessary for good decision-making, and for achieving positive outcomes for the environment, as well as for business. As such, outcome-based National Environmental Standards are a necessary component for the functioning and operation of any reformed Act where outcomes for nature are clarified and enforced, likewise therefore also for the proper functioning of any EPA as a regulator.
- **On additional proposed amendments to make the EPA more accountable to communities**, the Albanese government has committed to “restoring integrity and trust to systems and environmental laws”. Proposed amendments to the EPA Bill that would give the EPA objects and functions to ensure communities are adequately consulted belong in stage 2 because it is at the stage of establishing a decision-making body that its objects, functions and duties must be established in legislation, now. Additional amendments proposed by crossbenchers in the House of Representatives to the EPBC Amendments bill to enable the EPA to ensure the community has an adequate opportunity to participate in environmental decision-making cannot wait for this uncertain third stage of reforms.

EPA independence and integrity

The federal government's Nature Positive Plan identifies improving trust and integrity as a key pillar of its reforms. However, the EPA Bill fails to make the EPA responsible for ensuring the community has access to relevant information and is properly consulted about proposed developments.

Drafts viewed at the ‘lock-up consultations’ give proponents too much control over the information that is provided to the community about proposed developments and how the community is consulted—and this is reinforced by the lack of objects, functions and duties to ensure proper consultation for the EPA in the EPA bill. The Wilderness Society's experience over many decades is that proponents will not consult properly with First Nations and the broader community unless the regulator has a responsibility to make sure they do, and that that responsibility leads to concerted enforcement efforts.

¹⁴ Plibersek, T. (2024, April 16) *Press Conference in Sydney, with the Minister for the Environment and Water* [Press conference transcript]. Retrieved from <https://www.tanyaplibersek.com/media/transcripts/press-conference-in-sydney-with-the-minister-for-the-environment-and-water-tanya-plibersek/>

¹⁵ Foley, M. (2022, October 4). ‘No more extinctions’: Labor's wildlife pledge raises funding questions. *Sydney Morning Herald*. Retrieved from <https://www.smb.com.au/politics/federal/no-more-extinctions-labor-makes-bold-wildlife-protection-pledge-20221004-p5bmz7.html>



These shortcomings are alarming. In the years since the Albanese Government, and more recently the current Environment Minister, committed to deliver nature law reforms that centre trust and integrity, successful court cases have confirmed the right of “relevant persons”, in particular Traditional Owners, to be consulted about oil and gas projects. Subsequently, fossil fuel companies like Santos have lobbied Minister King to weaken community consultation requirements, as revealed in documents accessed by the Wilderness Society through a freedom of information request.¹⁶ **The fact that the draft National Environment Standard for community engagement and consultation viewed at the ‘lock-up consultations’ proposes to give more power to proponents to determine if, how and with whom consultation happens, suggests they are exerting their influence over the federal nature laws as well.**

It is no secret that under federal nature laws, the public has inadequate access to information, is not properly consulted and has a lack of avenues to challenge bad decisions.¹⁷ Each of these represents a failure to provide for community rights in environmental decision-making as established under the United Nations Rio Declaration, to which Australia is a signatory. Community rights under the Rio Declaration include the right of community members to: access information about proposals that will affect the environment; participate in decision-making; and seek remedy in cases where decisions have been made improperly or unlawfully.

The failure of the EPBC Act to adequately enshrine community rights in environmental decision-making, and thus to ensure accountability and integrity, was highlighted in Professor Samuel’s independent review, which recommended that information provision be improved (pp. 88-89), there should be more opportunities for the community to engage in decision-making (p. 88), and there should be limited merits review of decisions (pp. 94-95). In other words: sweeping reforms around data and monitoring, a standard to support community engagement and access to key justice provisions such as merits review to ensure governments make decisions fairly and in line with laws and regulations.

Case study: Inadequate consideration of community concerns regarding the Narrabri Gas Project

In working with communities across the continent, the Wilderness Society is aware of many examples that highlight these failings in practice. One particularly pertinent example is that of community members—including Gomeroi Traditional Owners, farmers and conservations—who engaged in the consultation process regarding the Narrabri Gas Project in the Pilliga Forest. There was a record-breaking number of submissions (23,000, 98% opposed to the project) but then Environment Minister Sussan Ley’s statement of reasons only addressed public submissions in five of the statement’s 670 paragraphs. The community got no explanation of how their submissions were considered in making the decision. This is problematic because a significant component of meaningful public participation occurs when a decision-maker engages with public feedback, weighs it in their decision, and transparently explains the decision to the public.¹⁸

¹⁶ Barossa Joint Venture (2023, October 6) Request for Urgent Policy Clarity - Offshore Petroleum Approvals (Email) Obtained through Freedom of Information request. Available at <https://www.industry.gov.au/sites/default/files/2024-02/disclosure-log-24-011-74088.pdf>

¹⁷ Wilderness Society. (2022). *Who holds the power? Community rights in environmental decision-making*. Retrieved, from <https://www.wilderness.org.au/images/resources/WhoHoldsThePowerReport.pdf>

¹⁸ United Nations Environment Programme. (2015). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>



The EPA Bill and EPBC Amendments Bill present opportunities to address the above-mentioned shortcomings. However, as drafted, they will rightly be seen by the community as business-as-usual. The EPA is intended to, among other things, address the public's complete lack of faith in relation to federal environmental regulation (as found by Professor Samuel and noted by the Government in its Nature Positive Plan). **A key reason, Professor Samuel found, for community distrust in the EPBC Act is: “[l]imited access to information about decisions and the lack of opportunity to substantively engage in decision-making under the Act” (p. 81)¹⁹. As such, it is critical that the EPA Bill is strengthened by the addition of objects, functions, and duties promoting and ensuring public trust and accountability in it.**

These amendments belong in stage 2 because it is at the stage of establishing a decision-making body that its objects, functions and duties must be established in legislation. To actually improve decision-making and consultation, these objects, functions and duties must be established in law, rather than be left to matters of policy and guidelines in (any eventual, or perhaps even subsequent) stage 3 reforms. Functions and duties relating to provision of information to the community and facilitating public participation are contained in numerous comparable state laws, such as the *Protection of the Environment Administration Act 1991* (NSW), s 6.²⁰

To enable the EPA to ensure the community has an adequate opportunity to participate in environmental decision-making, there should be complementary amendments to the EPBC Amendments bill. **These amendments cannot wait for an uncertain third stage of reforms that has no timeframe and may indeed never happen.** This should include increasing the minimum period for public comment to 40 days, excluding public holidays and holiday periods. International guidelines stipulate that consultation should involve reasonable timeframes that allow the public to participate effectively.²¹ Existing timeframes are prohibitive to the participation of many interested parties in the community, including, oftentimes, Traditional Owners.

The EPBC Amendments Bill should also be amended to allow third parties to refer proposals they believe may be a controlled action that should be assessed under the EPBC Act. **The EPBC Act relies predominantly on proponents to self-refer proposals for assessment. Sometimes community members are aware of projects that should be referred but haven't been—yet the EPBC Act does not allow third parties to refer proposals they believe may be controlled actions that should be assessed.** In practice, third parties who are concerned that a proposal has not been referred may write to the Minister raising their concerns and requesting the Minister to request referral under section 70, but there is nothing to compel the Minister to act on such requests. The Wilderness Society is aware of many examples of projects that should have been referred under the EPBC Act and where community members tried unsuccessfully to have projects referred despite the potential for significant impacts on matters of national environmental significance (see below case study).

¹⁹ Samuel, G. (2020). *Independent review of the EPBC Act – final report* (p. 81)). Department of Agriculture, Water and the Environment, Commonwealth of Australia. Retrieved from <https://epbcactreview.environment.gov.au/resources/final-report>

²⁰ *Protection of the Environment Administration Act 1991* No 60 (NSW) s 6. (Current version for 1 July 2024)

²¹ United Nations Environment Programme. (2015, p.75). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/handle/20.500.11822/11201>



Case study: Third party notifications of potentially illegal deforestation

Between December 2023 and March 2024, the Wilderness Society, Greenpeace Australia Pacific and Queensland Conservation Council referred six instances of potentially illegal deforestation to the federal government for assessment. In each case, habitat for listed threatened and endangered species, including the koala, northern quoll and greater glider, was bulldozed with no assessments undertaken, and no approvals granted.²²

Recommendations

The EPA Bill should be amended to:

1. Give the EPA objects, functions and duties to ensure the community has a reasonable opportunity to participate in environmental decision-making, including in consultation with project proponents.
2. Include requirements regarding the types of information that proponents must provide, such as information about the proponent, the proposed action and any Environmental Impact Assessment relevant to the decision.
3. Require the decision-maker to demonstrate how submissions from the community have been taken into account when making a decision.

The EPBC Amendments Bill should be amended to:

4. Allow any person to request the Minister to request referral of a proposal.
5. Increase the minimum period for public comment to 40 days, excluding public holidays and holiday periods.

Other changes needed to avoid EPA administering broken legislation

Deforestation and Regional Forest Agreements (RFAs)

Action is urgently needed in Stage 2 of the reforms to address governance challenges and grave threats to biodiversity caused by the exemption of logging activities within RFAs from processes and requirements in the EPBC Act.

Native forest logging within RFAs is directly linked with increased risk of extinction. In particular:

- As at 2020, after decades of operation of the RFAs, more than a quarter of all federally-listed forest-dependent threatened species that were listed as threatened when the RFAs were signed were closer to extinction.²³ In the four years since, yet more

²² Wilderness Society. (2024, March 25). *Joint deforestation investigation exposes broken national environment law*. Retrieved July 12, 2024, from <https://www.wilderness.org.au/news-events/joint-deforestation-investigation-exposes-broken-national-environment-law>

²³ Wilderness Society. (2020). *Creating Jobs, Protecting Forests? The State of the Nation's RFAs*. (p. 5) Retrieved from https://www.wilderness.org.au/images/resources/Creating_Jobs_Protecting_Forests_REPORT.pdf



forest-dependent federally listed species for which logging is a key threatening process, have been listed, or uplisted.

- In 2018, four forest-dependent species affected by logging under RFAs (Leadbeater's Possum; Swift Parrot; Western Ringtail Possum; Regent Honeyeater) were identified as being among the 20 bird and 20 mammal species most likely to become extinct by 2038, demonstrating the acute impact of logging operations.²⁴
- In 2022, the status of the combined koala populations in Queensland, NSW and the ACT was uplisted from “vulnerable” to “endangered” under the EPBC Act. The koala is projected to be extinct in NSW by 2050, yet logging and land clearing continues in its habitat, much of it under-assessed, or not assessed at all, under the EPBC Act.

RFAs are 20-year agreements between the Commonwealth and the NSW, Victorian, Tasmanian and WA governments made between 1997 and 2001. While touted as a framework for sustainable native forest management that balances environmental and industry objectives, RFAs have comprehensively failed to achieve such outcomes. This is widely acknowledged, including by Professor Samuel in his Review of the EPBC Act.²⁵ One in four forest-dependent threatened species are closer to extinction since the establishment of the RFAs. The native forest logging industry's production and employment have substantially declined since RFAs began.

The Samuel Review considered the operation of the RFAs in relation to the EPBC Act, as part of the inquiry into the broader operation and effectiveness of the EPBC Act. Professor Samuel found (at p. 106) that:

- “the environmental considerations under the RFA Act are weaker than those imposed elsewhere for MNES and do not align with the assessment of significant impacts on MNES required by the EPBC Act” and
- “that there is insufficient Commonwealth oversight of RFAs and the assurance and reporting mechanisms are weak”.

Professor Samuel recommended that the level of environmental protection afforded in Regional Forest Agreements (RFAs) be increased, and specifically that “the Commonwealth should immediately require, as a condition of any accredited arrangement, States to ensure that RFAs are consistent with the National Environmental Standards” (p. 108).

Currently, NSW and Tasmania remain as the only two native forest logging states. In 2023, WA announced an end to native forest logging in that State by 2024. In 2023 Victoria followed with the end of native forest logging taking effect from 1 January 2024, and the termination of Victoria's RFAs by 1 January 2025.

Currently, RFAs exempt native forest logging from the EPBC Act's ordinary assessment and approval requirements and from prohibitions of actions likely to significantly impact listed threatened species without EPBC approval. By removing the exemption, logging operations would be subject to the EPBC Act's assessment and approval process and its critical

²⁴ Geyle, Hayley M., et al (2018) *Quantifying extinction risk and forecasting the number of impending Australian bird and mammal extinctions*. Pacific Conservation Biology. Retrieved from <https://doi.org/10.1071/PC18006>

²⁵ Samuel, G. (2020). *Independent review of the EPBC Act - final report* (p. 106-108). Department of Agriculture, Water and the Environment, Commonwealth of Australia. Retrieved from <https://epbcactreview.environment.gov.au/resources/final-report>



safeguards to prevent significant impacts on threatened species and other protected matters.

State forestry agencies, departments or similar should be required to refer proposed logging operations that are likely to have a significant impact on listed threatened species for assessment and approval, like all other sectors. Logging operations would then be unable to proceed without assessments of the impacts on some of the most imperilled species in the country that are threatened by continued logging of their breeding and foraging habitat (e.g. mapped important breeding habitat of the Swift Parrot in Tasmania and forests inhabited by the Greater Glider in NSW).

Recommendation

- 6. The EPBC Amendments Bill should be amended to add a provision that removes the exemption for RFA forestry operations contained in s 38 EPBC Act. This should repeal sections 38-42 of the EPBC Act, and part or all of the Regional Forest Agreements Act 2002 (Cth).**

Deforestation and the “continuations of use” exemption

Action is also urgently needed in Stage 2 of the reforms to address accountability gaps and grave threats to biodiversity caused by the “continuations of use of land etc” exemption in the EPBC Act.

In Queensland, the Northern Territory, northern WA and western NSW, deforestation carried out by the agricultural sector is rarely referred for assessment under the EPBC Act²⁶, in part because of overly broad interpretations of section 43B of the EPBC Act as exempting such deforestation. Extensive deforestation is carried out across mapped, and likely to occur, threatened and migratory species habitat without referral for assessment and approval under the EPBC Act.²⁷ While case law about this provision is relatively sparse, the Wilderness Society is of the view that the exemption leads to both proponents and the regulator allowing deforestation that should be referred and assessed under the EPBC Act to happen without such oversight.

Enforcement action by the Federal Department rarely occurs, despite the Act’s existing prohibition of actions likely to have a significant impact on threatened species without assessment and approval.²⁸ Indeed, a 2020 Auditor General’s report found that despite the substantial impact of agriculture on the environment, agricultural projects are rarely referred to the federal regulator: of the more than 6,000 referrals received by the responsible department over 20 years of operation of the EPBC Act, only 165, or 2.7 per cent were for agricultural projects. Self-assessment, or avoidance

²⁶ Ward, M. S., et al. (2019). *Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia*. Conservation Science and Practice. The Society for Conservation Biology. Retrieved from <https://conbio.onlinelibrary.wiley.com/doi/10.1111/csp2.117>

²⁷ Brown, A. (2024, March 6). *Land clearing: two million hectares of Queensland forest destroyed in five years, new analysis shows*. The Guardian. Retrieved July 12, 2024, from <https://www.theguardian.com/australia-news/2024/mar/06/queensland-land-clearing-deforestation-data-analysis>

²⁸ Taylor, M., & Shoo, A. (2022) *Double standard: The failure of Australia’s national environment law to prevent the pastoral industry bulldozing threatened species habitat in Queensland*. Australian Conservation Foundation. Retrieved from https://assets.nationbuilder.com/auscon/pages/21249/attachments/original/1668483392/Old_land_clearing_report_Nov_2022.pdf?1668483392



of assessment, were cited as two potential reasons for this low number.²⁹ The Wilderness Society and other civil society groups have repeatedly notified the Federal Department of such clearing without seeing any enforcement actions in response.³⁰ State and Territory laws are likewise inadequate in scope and application to stop such deforestation.

From its inception, EPA must not inherit the timidity of existing regulators in halting the routine, unsupervised and extensive clearing of threatened species habitat described above. EPA must be empowered to ensure that clearing of threatened and migratory species habitat does not proceed without assessment and approval, given such action clearly has a significant impact on listed threatened and migratory species.

Two key changes to the EPBC Act are needed right now to ensure that EPA is not set up for failure in its crackdown on illegal deforestation.

Recommendations

The EPBC Amendments Bill should be amended to:

- 7. Remove section 43B of the EPBC Act, which exempts actions that are “lawful continuations of use of land etc”.**
- 8. Insert a provision in the EPBC Act that compels referral of planned native vegetation clearing within threatened or migratory species habitat or areas where such species are likely to occur, within a threatened ecological community, or within the Great Barrier Reef catchment, for assessment under the EPBC Act.**

National Environmental Standards

The Wilderness Society finds it deeply concerning and regrettable that provisions to enable the inclusion of outcomes-focused National Environmental Standards have also been jettisoned to the uncertain third stage of reforms that has no timeframe and may indeed never happen. Inclusion of such standards was a key recommendation made by Professor Samuel and a key element of the reforms envisaged in the Nature Positive Plan.

The making of standards should be prioritised in stage 2 for a range of reasons, including for outcomes-based operation of the Act, for improving stakeholder trust and confidence in decision-making, and to ensure the EPA has clear rules on which it can base its assessment decisions and enforcement activities.

In his independent review, Professor Samuel was clear that “(f)or the Standards to work, implementation needs to be supported by the provision of expert advice, transparency of

²⁹ Commonwealth of Australia (2020) *Referrals, assessments and approvals of controlled actions under the Environment Protection and Biodiversity Conservation Act 1999*. Auditor-General report no. 47 2019-20 performance audit. Prepared by the Australian National Audit Office. Report available here:

<https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act>

³⁰ Wilderness Society. (2024, March 25). *Joint deforestation investigation exposes broken national environment law*. Retrieved July 12, 2024, from <https://www.wilderness.org.au/news-events/joint-deforestation-investigation-exposes-broken-national-environment-law>



decision-making, access to data and information, strong independent compliance and enforcement, effective monitoring and evaluation, access to justice and investment in restoration”.³¹

Professor Samuel recommended that:

- National Environmental standards be mandatory, clear and consistently applied;
- The EPBC Act should require that activities and decisions made under the Act be consistent with these National Environmental Standards;
- There be strong audit and independent oversight powers (like “those of the Auditor General”) to give confidence that decision-makers are adhering to the National Environmental Standards.³²

The government committed to five standards in the Nature Positive Plan: Matters of National Environmental Significance, First Nations engagement and participation in decision-making, community engagement and consultation, regional planning and environmental offsets.

A number of standards have been subject of discussion and some stakeholder consideration in the ‘lock up consultations’. There has been widespread concern about the substance and strength of draft standards to date, and detailed feedback regarding required improvements has been provided on a number of occasions.³³

If there is to be a standards-based regulatory approach, the standards need to include clear and more specific details on the outcomes required, and these outcomes need to be enforced.

Excessive levels of discretion, ambiguous language and subjective decision-making criteria that characterise the EPBC Act cannot be carried forward, or duplicated, in the new laws generally, nor in any standards specifically. The language and scope of National Environmental Standards should ensure that the decision making framework provides strong, clear and objective tests for environmental protection.

The legislative reforms should apply the standards to all decisions and functions under the Act from the outset, with no exceptions to the application of the standards across government agencies, industries, sectors, jurisdictions or tenures.

It is the Wilderness Society’s view that the following standards ought be prioritised in stage 2 at a minimum:

- Matters of National Environmental Significance (MNES) (including a definition of unacceptable impact): The Nature Positive Plan committed to Standards for MNES which would: avoid unacceptable and unsustainable impacts on matters of national environmental significance; and deliver net positive outcomes for Matters of National Environmental Significance. The language and scope of an MNES standard should ensure that the framework provides strong, clear and objective tests for environmental decisions that must be applied and will ensure the protection and recovery of protected matters. The

³¹ Samuel, G. (2020). *Independent review of the EPBC Act - final report* (p. 4-5). Department of Agriculture, Water and the Environment, Commonwealth of Australia. Retrieved from <https://epbctreview.environment.gov.au/resources/final-report>

³² Samuel, G. (2020). *Independent review of the EPBC Act - final report*. Department of Agriculture, Water and the Environment, Commonwealth of Australia. Retrieved from <https://epbctreview.environment.gov.au/resources/final-report>

³³ See, e.g., Places You Love submission to the [Senate Inquiry into Australia's extinction crisis](#) (9 April 2024) and annexures.



standard must also set out clear and acceptable definitions for ‘critical habitat’ and ‘areas of high environmental value’, as well as be clear about how ‘cumulative impacts’ will be taken account of.

- Community consultation and participation: Because communities should be able to participate meaningfully in environmental decision-making, informed by comprehensive information within reasonable timeframes, and have access to justice mechanisms in cases where decisions are not taken in line with the relevant laws; a strong Community Consultation, Participation and Access to Justice Standard should reflect these principles, and work to foster public confidence and trust in environmental decision making.
- Data and compliance: Professor Samuel, in his review of the EPBC Act, noted that under the EPBC Act, “[t]he collection of data and information is fragmented and disparate,” and that “Independent compliance and enforcement functions that are not subject to actual or implied political direction are needed” (pp. 21-22). Standards on both data and compliance/enforcement are needed now to enable more effective decision-making and more successful compliance and enforcement functions, and to provide critical guidance to Environment Information Australia, most of whose functions centre on ensuring availability and use of high quality information and data.³⁴

Critically, other standards, including offsets, and perhaps regional planning, must not be advanced in the absence of the above standards.

Concerns remain about regional planning. The Wilderness Society considers that any new regional plans must be conservation-led and comprehensively protect environmental values, and be capable of accommodating new information about risks and what needs to be protected as this information emerges. Critically, areas of high conservation value must be protected under legislation, not just defined in any regional plans, which goes to the importance of definitions, a strong MNES standard, and up front protections for nature.

We note that there are processes underway regarding a First Nations standard and encourage the Committee to seek information and advice as to the satisfaction of those processes and any draft standard relating to First Nations’ rights and aspirations, and environmental or development decisions. It may be that further work is needed to deliver a First Nations Participation national environmental standard that has been meaningfully co-created with the Indigenous Advisory Committee (IAC) and other First Nations representative bodies.

Recommendation:

- 9. The EPBC Amendments Act should be amended to include a strong legislative framework for the development and review of legally binding standards in the form of legislative instruments, in accordance with the Government’s commitment, and the recommendations of the Samuel Review relating to centrality of standards to effective EPBC reform.**

³⁴ EIA Bill, s 11.



EPA and Sea Dumping Act

The draft EPA Bill includes amendments to the *Environment Protection (Sea Dumping) Act 1981* (Sea Dumping Act) that would move administration of the Sea Dumping regime from DCCEEW into the proposed new EPA. These amendments would also move responsibility for Sea Dumping decisions from the Minister for Environment to the proposed EPA CEO.

The Sea Dumping Act gives effect to Australia's commitments under international law related to the dumping and abandonment of waste in the marine environment. It is an older regulatory instrument and is severely deficient in terms of community consultation and transparency.

Currently the public has no visibility of applications for dumping and there is no legislated requirement for proponents to consult on proposals. All the public can access is a permit (only after it has been approved) via a quarterly government gazette, with very little information about the activity that has been approved and with no explanation detailing the information or basis on which a decision has been made. This lack of transparency and consultation makes it impossible for the public to meaningfully participate in decisions relating to sea dumping activities with potentially significant environmental impacts.

Two such areas where sea dumping is increasingly being pursued by proponents and where the public has a strong, and demonstrated, interest in engaging are:

1. Proposals to abandon old and disused offshore oil and gas structures in the ocean: Oil and gas infrastructure can contain heavy metals, radioactive materials, hydrocarbons and plastics, that can leach into the surrounding environment if not fully removed.³⁵ Even more inert materials such as concrete and steel may have a negative impact on the marine environment as they break down over the long term.
2. Proposals to dump carbon pollution in the marine environment: Proposals to dump greenhouse gas emissions beneath the seafloor present long term risks to the climate, through emissions re-entering the atmosphere, and the marine environment, if stored emissions leak into the ocean. Carbon pollution dumping projects also risk worsening the climate crisis by being presented as a false solution to reducing emissions and justification of fossil fuel expansion. Despite over 40 years of research and billions of dollars in investment, carbon pollution dumping projects have underperformed and failed to deliver emissions reduction in any meaningful way.³⁶ They continue to be novel and high risk.

The stark deficiencies in the Sea Dumping Act in terms of consultation and transparency make this regime inconsistent with other similar regulatory systems (e.g. EPBC Act approvals, NOPSEMA environment plan approvals) and Australia's international commitments, including under the International Covenant on Civil and Political Rights, the Rio Declaration on Environment and Development and the UN Declaration on the Rights of Indigenous Peoples. It also falls far short of community expectations of government transparency—and risks exacerbating the crisis of public mistrust in environmental decision-making identified by Professor Graeme Samuel in his independent review of the EPBC Act.

³⁵ Hook, S. E., et al. (2023). *The distribution of metal and petroleum-derived contaminants within sediments around oil and gas infrastructure in the Gippsland Basin, Australia*. *Marine Pollution Bulletin*, 193, 115196. Available from <https://doi.org/10.1016/j.marpolbul.2023.115196>

³⁶ Morrison, K. (2024, July 10). *Why carbon capture and storage is not the solution*. Institute for Energy Economic and Financial Analysis. Retrieved from <https://ieefa.org/resources/why-carbon-capture-and-storage-not-solution>



The EPA Bill’s proposal to move Sea Dumping assessments to within a new EPA is a critical opportunity to reform the Sea Dumping Act to include community consultation and transparency in line with international standards for public participation in environmental decision-making.³⁷

Recommendation

The EPBC Amendments Bill should be amended to:

10. Make further amendments to the Sea Dumping Act to include community consultation and transparency at a minimum in line with international standards for public participation in environmental decision-making.

Establishment of EIA, and definition of nature positive

While the Wilderness Society supports the establishment of a national data office, the EIA Bill should be strengthened in several key respects:

- **The definition of “nature positive” must include a measurable baseline.** “Nature positive” is a critical concept for the functioning of the proposed new suite of nature positive reforms. The definition of “nature positive” must be meaningful both for Australia’s international reporting obligations, but also so it can be used to galvanise policy change and identify priorities. In line with the goals agreed to by Australia under the Global Biodiversity Framework, the definition of “nature positive” must have clear, time-bound targets, as well as a clear baseline. Specifically, it must recognise the need to increase in the natural diversity, abundance, resilience and integrity (meaning the completeness, functionality and health) of species, populations and ecosystems with a goal of halting and reversing nature loss by 2030 and achieving full recovery by 2050, measured against a 2020 baseline. A measurable and defined baseline is crucially important. **Rather than requiring the Head of EIA to establish a baseline, the baseline should be built into the legislative definition of nature positive in this way.**
- EIA should be tasked with capturing and managing data that will enable and support nature protection and recovery, including tracking threatened species recovery. The EIA Bill currently lacks an explicit requirement for EIA to monitor and evaluate the development and implementation of conservation planning documents; this should be rectified. EIA should have additional functions relating to collection of data and reporting in relation to these conservation planning documents, including on threatened species recovery trajectories and progress against recovery actions. These additional functions will ensure

³⁷ See, for example: the Rio Declaration on Environment and Development (Principle 10); the International Covenant on Civil and Political Rights; the UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, Archon Fung’s framework for public participation outlined in “Varieties of Participation in Complex Governance” (2006).



EIA data is meaningful, granular, and can be used on the ground to make a difference to the species and ecosystems the EPBC Act is supposed to protect and restore.

- EIA should be required and empowered to undertake State of the Forest reporting. EIA should have a role in collating forest data and publishing the State of the Forests Report. It should be required to do so more frequently than the current five-yearly requirement, given the at-risk health of Australia's native forests. In conjunction with State of the Forest reporting, EIA should be involved in the implementation of a new national deforestation and ecological restoration monitoring program based on the latest remote sensing technology that includes regular, detailed data made publicly available, and including raw GIS data, interactive maps and detailed breakdowns of vegetation extent, condition and loss by land use.

Recommendations

The EIA Bill be amended to:

- 11. Include revised definition of “nature positive” that includes a measurable baseline.**
- 12. Require and empower EIA to capture and manage data that will enable and support nature protection and recovery, including tracking threatened species recovery.**
- 13. Establish a national deforestation and ecological restoration monitoring program based on the latest remote sensing technology that includes regular, detailed data made publicly available and task the EIA with the program's implementation.**

List of confidential annexures provided to the Committee:

Annexure A - Wilderness Society community events calling for nature laws that work in May 2024.

Annexure B - Individuals who have co-signed this submission

-ENDS-