

Policy Agenda

January 2022

It's time for a new generation of national environmental laws

The second 10 yearly review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was released to the Australian public in January 2021. The Review is a damning assessment of current national environmental protection laws, and reinforces the call from the Places You Love alliance and many others that our national environmental laws are in need of fundamental reform:

Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat. They are not sufficiently resilient to withstand current, emerging or future threats, including climate change.

The EPBC Act is outdated and requires fundamental reform. It does not enable the Commonwealth to effectively fulfil its environmental management responsibilities to protect nationally important matters. The Act, and the way it is implemented, results in piecemeal decisions, which rarely work in concert with the environmental management responsibilities of the States and Territories. The Act is a barrier to holistic environmental management which, given the nature of Australia's federation, is essential for success.

The Samuel Review is a clear call for the Australian Government to step up to a new form of national leadership on the environment.

Progress to date has been limited, and the Federal government's proposed reforms are focussed mainly on streamlining environmental approvals. Much more is required to stem the decline of our iconic places, the extinction of our threatened plants, animals and ecosystems and protect our unique environment and heritage for future generations.

Overarching principles - getting the direction right

Reform of Australia's national environmental laws needs to be based on the following overarching principles:

- **Stronger Australian Government leadership.** The Australian Government needs to step up, not step back and adopt a new model of leadership in a federal system based on the recommendations of the Samuel Review.
- **Delivering environmental outcomes.** The Samuel Review found that the current EPBC Act is too focussed on processes rather than outcomes. Legislative and administrative reform is required to ensure that our national environmental laws are strategic and outcomes focussed, rather than reactive.
- **Effective environmental laws.** Efficiency in decision making is important, but the Morrison government's current focus is almost exclusively on streamlining assessments and approvals under the EPBC Act. This focus must move to improving the overall effectiveness of federal environmental laws, and improving environmental outcomes especially given the threat of climate change.
- **Fit for purpose.** Australia's environmental laws need to be appropriate to the challenge of addressing Australia's ecological crisis, and consistent with our international responsibilities including the commitments in the evolving post-2020 Global Biodiversity Framework.
- **Recognise the need for fundamental reform.** Australia's signature national environmental law has been found to be not fit for purpose. Reforms need to be far-reaching, not weakening or just tinkering with the current failed system.
- **Increased investment in nature protection.** Implementation and enforcement of Australia's environmental laws has been chronically underfunded. A major investment is needed to accompany stronger, more effective environmental laws to address the extinction crisis.

- **First Nations knowledge, customs and interest are recognised and valued in the development and administration of Australia’s national environmental laws.** The Samuel Review identified the failures of the EPBC Act with respect to Indigenous Australians and recommended a series of key reforms to address these failures. Implementing these reforms as a matter of priority is a crucial part of fixing Australia’s environmental laws.
- **A central role for the community.** Australia’s environment impacts us all and Australia’s citizens have a right to be involved in decisions that will affect the use and health of our environment. This must include timely access to information, opportunities to meaningfully contribute to decisions and planning processes, and the right to scrutinise and challenge decisions and enforce the law.

Overview - reforms needed to Australia's national environmental laws

- Set strong national environmental standards enshrined in law to protect and restore Australia's nationally threatened wildlife and ecosystems and our nationally and internationally significant wetlands and heritage places.
- Create an independent and well resourced Federal compliance and enforcement regulator to safeguard Australia's environment.
- Create an independent and well resourced national Environment Assurance Commission to audit performance and oversee implementation of national environmental standards.
- Invest heavily in conserving and recovering Australia's species and ecosystems, and tackling key threats to nature, committing to preventing extinctions.
- Provide community access to justice and participation in environmental decision making, including ensuring open standing and merits review for environmental decisions, providing for third-party enforcement rights to hold decision-makers to account.
- Respect First Nations rights and aspirations in relation to land and sea and management of country, and ensure Indigenous knowledge, customs and interest are recognised and valued under national environmental laws.
- Improve monitoring, data collection and evaluation.

Key environmental outcomes

The Australian Government must create laws that:

- Ensure the Federal Government assumes responsibility and leadership for reversing the decline in Australia's environment;
- Safeguard the natural and Indigenous cultural values of Australia's protected areas, heritage places, and other conservation tenures;
- Prevent the extinction of native fauna and flora;
- Protect and recover key biodiversity areas, threatened ecological communities and threatened species including strict protection for their critical habitats;
- Substantially reduce Australia's greenhouse gas pollution and increase carbon sequestration in biodiverse landscapes;
- Ensure zero destruction of primary, remnant, old-growth or high-conservation value forests and bushland;
- Safeguard freshwater and marine ecosystems, including from extractive and industrial processes;
- Reduce, to as close to zero as possible, air pollution, plastic pollution and chemical pollution across Australia;
- Maintain and strengthen the prohibition on domestic nuclear power, enrichment and reprocessing whilst advancing responsible domestic radioactive waste management.
- Prevent the introduction of, and reduce the current extent, spread and population size of invasive species that are threatening biodiversity;
- Effectively protect Australia's wildlife from commercial exploitation including illegal wildlife trade and unsustainable fishing.

Our reform proposals - policy detail

1. A new model of national leadership on the environment

1.1 National environmental standards

New, legally enforceable standards were recommended by the Samuel's Review as the foundation for a new, national outcomes focussed approach to the Australian Government's environmental responsibilities. Legally enforceable standards would form the foundation for a consistent national approach to environmental protection and restoration, as well as a new foundation for reforms in a range of other areas including offsets and indigenous engagement.

The Federal Government has proposed new national standards for Matters of National Environmental Significance (MNES). However the proposed standards merely paraphrase current provisions of the EPBC Act and are inconsistent with the outcome focused standards proposed in the Samuel Review recommendations and draft standards developed by a range of stakeholders during the course of the review.

The Australian Government should:

- Adopt the outcome focused MNES standards recommended by the Samuel Review.
- Commit to the continued review and improvement of the initial standards for MNES, and develop new standards as recommended by the Samuel Review including environmental restoration, offsets, compliance and enforcement, environmental monitoring and data, and Indigenous engagement and participation in decision-making.
- Immediately introduce legislative reform to create a legal framework for national environmental standards, including a longer term commitment for reforms that thoroughly integrate standards into Federal environmental law.

1.2 Commonwealth led national and regional planning for conservation and restoration

A clear message from the Samuel Review is that the current EPBC Act is not up to the task of protecting current environmental values or reversing the current trajectory of environmental decline.

The EPBC Act does not facilitate the maintenance or restoration of the environment. The current settings cannot halt the trajectory of environmental decline or manage cumulative impacts.

The settings of the Act cannot mobilise the large-scale restoration needed and support future development in a sustainable way.

The way the Act currently operates is overly transactional. A suite of complementary planning approaches are required to guide the protection and restoration of Australia's environment.

The Australian Government should:

- Prioritise reforms necessary to deliver National Environmental Standards and institutional reforms to ensure that planning focuses on delivering environmental outcomes, and that plans are subject to rigorous oversight and review.
- Develop strategic national plans to deal with significant and cross cutting national issues.
- Lead regional planning approaches which:
 - Integrate regional recovery planning for threatened species and ecological communities, guiding strategic and coordinated public and private investment in protection and restoration.
 - Identify and manage environmental impacts, with a requirement to avoid and mitigate harm, and rely on biodiversity offsets that deliver a net gain, only as a last resort.

- Focus on protection and restoration. Regional planning should only be used as a substitute for individual environmental approvals where a demonstrably better outcome will be achieved. This means that there must be an adequate regulatory system and sufficient resourcing in place to deliver on the regional plan, and robust review and oversight mechanisms to respond to new information or changes in circumstances.
- Develop regional plans collaboratively, at an appropriate scale and informed by the best available science and data, and provide a comprehensive framework to guide public and private investment through carbon and biodiversity markets.

1.3 Conservation planning reformed

Listing and management of threatened species and ecological communities and key threatening processes under the EPBC Act is a key function of the Act, and an area in which the Federal Government has a critical role to play in leadership and coordination of the protection and recovery of threatened species and communities.

The Commonwealth's leadership role, and the need for a much stronger emphasis on halting extinctions, is a strong theme of the post-2020 Global Biodiversity Framework under the Convention on Biological Diversity which will be finalised in mid 2022.

The Australian National Audit Office is currently undertaking a performance audit of listing and Management of Threatened Species and Communities under the EPBC Act and will report in March 2022.

The Federal government is currently progressing plans to dispense with the need for recovery plans for all but about 10% of threatened species and ecological communities.

A new Threatened Species Strategy for 2021-2031 includes a 5 year action plan, but this only focuses on recovery actions for 100 selected species and ecological communities.

The Australian Government should:

- Cease actions to dispense with the need for recovery plans for most threatened species and ecological communities, and consult with experts and the Australian community on a reformed approach to conservation planning.

- Reform conservation planning under the EPBC Act based on a credible and effective integrated set of conservation planning approaches (national strategies, regional recovery planning, recovery and threat abatement plans, and conservation advices) which increases accountability for implementation.
- Provide adequate funding for all aspects of conservation planning.
- Develop National Environmental Standards to support effective conservation planning (MNES, recovery planning and restoration etc).
- Lead in the development of a consistent national approach to conservation planning building on the nationally consistent approach to listing developed through the 2015 Common Assessment Method adopted by the Commonwealth, State and Territory governments.

2. Institutional reforms to drive environmental outcomes

2.1 Strong and independent national EPA and improved compliance and enforcement

The Samuel Review painted a damning picture of compliance and enforcement of Australia's national environmental laws:

Surveillance, compliance and enforcement under the EPBC Act is ineffective. There has been limited enforcement of the Act over the 20 years it has been in effect, and the transparency of what has been done is also limited.

The Places You Love Alliance believes that the best way to address the problem is by establishing an independent federal authority responsible for compliance and enforcement under the EPBC Act. We support the reforms proposed by non-government Bills currently before the House of Representatives and the Senate which would establish a new National Environment Protection Authority (EPA).

The Australian Government should:

- Pursue legislative reforms and allocate funding for a well resourced and independent National Environment Protection Authority responsible for compliance and enforcement under the EPBC Act.

- Commit to a renewed focus on improving compliance and enforcement under the current EPBC Act.

2.2 National Environment Commission

Places You Love has long advocated for an independent National Environment Commission to lead the development of plans, strategies and standards under the EPBC Act, to oversee the implementation of conservation planning, monitor performance and administration of the Act, and to gather and publish data on environmental conditions and trends.

The Samuel Review recommended the creation of a new independent statutory position, the Environment Assurance Commissioner, to monitor and audit the operation and performance of assessment and approval systems, whether these systems are accredited or directly managed by the Commonwealth. The Review also recommended a new Ecologically Sustainable Development Committee to provide advice in the development of Standards and plans.

The Federal Government has proposed legislation for an Environment Assurance Commissioner (EAC). However this proposal falls short in ensuring that the Commissioner has the independence, powers and functions necessary to fulfil even the narrow remit of audit and oversight of assessment and approvals.

The Australian Government should:

- Create an independent and well resourced National Environment Assurance Commission with the full range of powers and functions to audit performance and oversee implementation of national environmental standards.
- If proceeding with the current proposed Environment Assurance Commissioner, amend current proposals to ensure that the EAC is independent, well resourced and has the full range of powers and functions to carry out its audit and assurance functions.

2.3 Reformed, independent advisory committees

Credible, authoritative and independent scientific, cultural and other advice is central to the administration of the Act, and will be important in development of key reforms proposed by the Independent Review, such as Standards.

The Australian Government should:

- Adopt the recommendations of the Samuel Review for changes to the existing committees and advisory bodies under the EPBC Act.

3. Climate ready nature protection laws

One of the biggest threats facing Australia's environment is the impact of climate change. Our national laws and frameworks must be strengthened to address the challenge of climate change and ensure we can mitigate, adapt to and be resilient in the face of a warming world.

The Samuel Review recommended stronger integration of climate change in decision making and planning functions under the Act, and that the National Environmental Standards recommended by the Review require development proposals to consider climate impacts under specified climate scenarios, and to disclose the full emissions of the proposal.

The Australian Government should:

- Ensure that the impact of climate change on nationally protected matters is thoroughly integrated into all decision making processes and planning functions under national environmental protection laws.
- Adopt National Environmental Standards which require development proposals to consider climate impacts under specified climate scenarios, and to disclose the full emissions of the proposal.
- Adopt institutional reforms and improve monitoring and data collection to ensure that climate change threats are recognised and acted upon.

4. First Nations recognition and engagement

The Places You Love Alliance supports recognition and respect for Indigenous knowledge, customs and interest under national environmental laws.

The Samuel Review included findings very critical of current approaches, and called for significant reform:

The EPBC Act heavily prioritises the views of western science, with Indigenous knowledge and views diminished in the formal provision of advice to decision-makers. This reflects an overall culture of tokenism and symbolism, rather than one of genuine inclusion of Indigenous Australians.

The Australian Government should:

- Ensure that First Nations people have a central role in the design of environment protection laws programs and policies.
- Fully respond to the recommendations in Chapter 2 of Samuel's Final Report, and commit to work with First Nations people to develop reforms that respond to these recommendations.
- Commit to developing National Environmental Standards for Matters of National Environmental Significance and other Standards which incorporate requirements for best-practice Indigenous engagement and participation, and develop a specific standard for Indigenous engagement and participation in decision-making.

5. Transparency, participation and accountability - restoring public trust in national environmental laws

Access to information, transparency in decision making and public participation in planning and decision making encourage public confidence in the administration of national environmental laws, and help support the delivery of the environmental outcomes the laws are intended to secure.

The Places You Love Alliance welcomes the recommendation from the Samuel Review to retain extended standing rights to enforce the Act and to seek judicial review of decisions. The Alliance also welcomes the suggestion that the Act should be amended to allow for merits review in appropriate circumstances.

The Australian Government should:

- Recognise the valuable role the community plays in the administration of the EPBC Act through administrative and legal processes.
- Support public participation in the administration of the Act through provision of timely and accurate information, transparency and open participation in decision making, and effective consultation.
- Extend current avenues for legal scrutiny of decisions as part of future reforms to the Act, including merits review.

6. Improved monitoring, data collection and evaluation

Improved monitoring, evaluation and reporting is a key element of the recommended move from process orientated administration of the EPBC Act to a focus on environmental outcomes recommended by the Samuel Review.

A key supporting reform is the development of a “national information supply chain” to support improved administration of the Act, and it is also critical to the success of proposals for a stronger emphasis on planning.

The Australian Government should:

- Fully respond to the Samuel Review recommendations in relation to environmental monitoring, evaluation and reporting, and data, information and systems, and develop a program of reforms to implement those recommendations including:
 - A national supply chain of information to inform the public and decision makers in the administration of the Act.
 - A long term strategy for developing data and information systems that support the implementation, monitoring and evaluation of National Environmental Standards under the Act.
 - Commit to lead the development of a harmonised national environmental

monitoring and evaluation framework, and a national system of environmental accounts.

- Immediately appoint a custodian for the “national information supply chain” and in the longer term commit to including oversight and coordination of data collection and management as a responsibility of a National Environment Commission.
- Implement a nationally consistent, timely and accurate vegetation monitoring program, such as a national SLATS.

7. Demonstrated commitment to reform - pathway and funding

The Samuel Review found that the current EPBC Act is unfit for purpose and not achieving its objectives. Nothing less than major reform is required in response to these findings. A sequenced approach is required commencing with priority legislative reforms and culminating in a thorough legislative overhaul.

The Federal Government released its “pathway for reforming national environmental law accompanied by a proposed timeline that outlines the government’s intended timing for reform and further engagement with stakeholders.”¹ The pathway fails to respond fully to the Samuel Review recommendations, and commitment to the full package of reforms is lacking. Only one ‘interim’ national environment standard (for all MNES) is slated to be in place before accreditation and devolution, with the full suite of final National Environment Standards not in place until after mid-2024. The government’s proposed ‘interim’ national environment standard (for all MNES) merely paraphrase current provisions of the EPBC Act and are inconsistent with the outcome focused standards proposed in the Samuel Review recommendations and draft standards developed by a range of stakeholders during the course of the review.

The Australian Government should as a priority:

- Fully and thoroughly respond to all of the Samuel Review recommendations, and develop a detailed long term reform proposal mapping out priority reforms and the long term reforms proposed. The response must comprehensively address all of the Samuel Review recommendations as a holistic package rather than cherry picking or

¹ <http://www.environment.gov.au/epbc/about/environmental-law-reform>

selectively prioritising reforms in a manner that fails to address the full range of issues identified by the Review.

- Ensure that the Department has the necessary resourcing and dedicated capacity to develop and implement the reforms.
- Commit appropriate levels of funding for the immediate improvements required in the administration of the Act and priority legislative reforms, together with support for the development and implementation of a major overhaul of Australia's national environmental laws.

About Places You Love

Places You Love is an alliance of more than 60 environmental organisations from across Australia which formed to advocate for stronger national environment laws. It is the largest collaboration across Australia's environmental movement and includes: WWF Australia, the Australian Conservation Foundation, The Wilderness Society, Humane Society International, Birdlife Australia, Australian Marine Conservation Society, Conservation Council of South Australia and Environmental Justice Australia.

The alliance was initially formed in 2012 in response to the proposed handover of approval powers to the State and Territory Governments and has since expanded its ambition to advocate for a new generation of national environment laws and institutions.