



Photo credit: Rae Harvey Wild2Free

Community Rights in Decision Making November 2023

The 2020 review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) found a lack of trust in the Act due to poor transparency, inadequate opportunities for public participation in decision-making, limited pathways for legal review, and a lack of accountability in decision making. The review also found that the current Act fails to ensure integrity and accountability. This results in unacceptable outcomes for people and the planet.

Good environmental decision making embeds community rights from start to finish. That means engaging communities when policies and laws are being developed and when individual decisions are made, and ensuring there are community review rights for when bad decisions are made. Community rights in our new nature laws must be built around the right to access information, the right to have a genuine say in decision-making, and the right to appeal decisions that are made illegally or not in the public interest.

[The Places You Love alliance](#), led by the Wilderness Society and Environmental Defenders Office, have identified three key areas to strengthen community rights in our new nature laws:

1. Community Consultation and Participation

The Federal Government has committed to developing a community engagement standard as part of the nature law reforms. This standard must ensure that communities:

- Are informed by comprehensive information with easy access to relevant information in a timely manner;

- Are engaged in decision-making at all levels, early in the process and allowing sufficient time for adequate consideration (at least 40 business days);
- Receive clear, transparent feedback on whether and how their input has been included in a proposal and or a decision both by project proponents and by decision makers; and
- Are provided with clear reasons for all decisions, without cost.

The Government has also committed to developing a First Nations engagement and participation in decision-making standard. Consultation with First Nations communities in particular must be early, iterative, and culturally appropriate and the new laws must require Free, Prior and Informed Consent from First Nations peoples.

Both standards, and the laws more broadly, must ensure governments and proponents can be held to account in the way they undertake community consultation and that there is a clear role for the new Environment Protection Australia in enforcing the standards and receiving and considering community input. Appropriate community consultation must be undertaken in relation to all relevant aspects of the new laws, from project level assessment and decision making to regional planning.

2. Data and Information

Numerous reports have identified that the lack of clear and consistent national environmental goals, standards, indicators and data is a major barrier to effective environmental decision-making in Australia. Robust and accurate data is also vital for making informed decisions at a local level. Increased investment in developing and maintaining better data, and making it publicly accessible, is important for both better decision making and better community engagement. That's why it's pleasing that the Government has also committed to a new data and information standard aimed at improving access to information and ensuring that environmental outcomes can be achieved. The proposed new standard will set out requirements to ensure decision making is informed by appropriate data and information. It will also ensure there is a clear framework for collecting and assessing the validity of environmental data and determining its appropriate use. It will be important that the standard appropriately recognises and considers the wealth of citizen science that can contribute to informing decision making.

3. Access to Justice

There are four key access to justice features that our new nature laws must contain:

1. *Any* person must be able to review or appeal decisions made under the laws. Existing limitations on who can request a review or undertake an appeal must be removed.

2. The community must be able to seek judicial review (the ability to argue before a Court that a decision was unlawful) of all administrative decision-making.
3. Communities must have access to merits appeal (a re-hearing based on evidence) for all individual decisions (not just limited to some aspects of wildlife trade as is currently the case). The introduction of 'limited merits review' was a recommendation of the 2020 review of the EPBC Act and it is disappointing that the Government has not adopted this recommendation.
4. Any individual or organisation should be able to take action to ensure compliance with the laws and individual project approvals where this necessary.

We know that access to justice provisions like those listed above provide for better scrutiny of decisions and result in better decisions for the environment and our communities. Embedding community rights, supported by clear and accessible data, is important to ensure that decisions concerning the future of our iconic wildlife and their habitats demonstrate integrity, accountability and transparency and foster public confidence and trust.