



**Central, Northern, Tiwi and Anindilyakwa Land
Councils submission to**

**Australian Senate Environment and Communications
Legislation Committee**

***Inquiry into Environment Protection Reform Bill 2025
and six related bills***

19 November 2025

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Executive Summary

The Land Councils' recommendations and proposals centre around the following key issues:

1. Ensuring participation of Indigenous peoples in all key processes, decisions and determinations under the reformed EPBC Act, including via the Indigenous Advisory Committee (**IAC**) and more appropriate consultation periods. Indigenous peoples' leadership and expertise must be thoroughly *embedded* throughout the reformed EPBC Act, not merely *invited* in relation to discrete aspects of it;
2. Expanding the water trigger;
3. Ensuring environmental integrity through better balancing Ministerial discretions, transparency, devolution and the clear, certain and robust application of national environmental standards (including in relation to First Nations engagement); and
4. Requiring key decisions and determinations regarding development / actions and associated impacts to take account of the changing climate and related risk modelling and adaptation planning.

It is imperative that the environmental reforms deliver:

- Critical protections and gains for the environment (ecologically and culturally) including species and significant water resources;
- Protections and pathways for Indigenous participation embedded in the Act, as well as supported through subordinate regulations and instruments (flexibility can be useful, but back-stops are essential);
- Requirements to consider and transparently address the views and expertise of traditional owners, as well as other experts in the community, in relation to key processes and decisions / determinations under the reformed EPBC Act;
- Outcomes consistent with Australia's international commitments to reduce emissions, and minimizing the impacts of climate change on Indigenous people.

Introduction

The following submission is made by the Central Land Council (**CLC**), Northern Land Council (**NLC**), Tiwi Land Council (**TLC**) and Anindilyakwa Land Council (**ALC**) (together the **land councils**) in relation to the proposed statutory reforms of federal environmental laws.

The land councils are corporate Commonwealth entities established under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)*, with statutory responsibilities for Aboriginal land acquisition and land management in the Northern Territory. The land councils are governed by elected representative Councils of community delegates. Through our Councils we represent the interests and aspirations of traditional landowners and other Aboriginal people resident in our regions. We advocate for our people on a wide range of land-based and socio-political issues to ensure that our families can continue to survive and thrive on their land. Our specific consultative and representative functions under the Land Rights Act, and – in the cases of the CLC and NLC – our roles as native title representative bodies under the *Native Title Act 1993 (Cth)* give us a clear interest in the development of new national environmental laws, on behalf of our constituents.

The land councils have serious concerns about the way that current reforms have been developed, selectively consulted upon, and rushed into Parliament. Coupled with parallel public submissions and hearings (prior to the closure of the submission period) under this Senate Committee Inquiry, the approach has left little room for proper review, engagement and scrutiny of complex amendments to a nationally important law.

The land councils have statutory responsibilities to assist and protect the interests of Aboriginal people across most of the Northern Territory, with unique roles in relation to both NT land rights and native title. Land councils have previously made submissions about environmental law reform, including responding to the review undertaken by Professor Graeme Samuel AC (April, 2020)¹, the Nature Positive Laws consultation paper (April, 2024)² and the Senate Inquiry into Nature Positive Laws (July 2024)³. The present submission relates to the reforms as currently proposed, but there is broad consistency across the matters historically raised by land councils.

The land councils also share many of the concerns raised by environment groups who have made written submissions to the Senate Committee Inquiry prior to 19 November 2025. Rather than reiterating those matters, this submission focuses on distinct aspects of these reforms that affect Aboriginal Territorians and Australians.

Nevertheless, we must state clearly and unequivocally that climate change is impacting our constituents lives now and the climate predictions for the near future of North Australia are grim. In recent years, forecast temperature rises have been exceeded in both Darwin and Alice Springs. Aboriginal people living remotely are bearing the brunt of unaffordable power and power disconnections, extreme weather events including flooding and extended road closures and community isolation, poorly designed housing, a lack access to shared cool spaces and observable changes in the natural environment. Fires are burning hotter and more often and the window for active engagement of our ranger teams applying ancient knowledge and expertise to managing country is narrowing, as the number of very hot days increases. This Bill is currently not fit for purpose to stem these impacts unless courageous decisions are made to close its glaring loopholes and stem the flow of approvals for fossil fuel projects. We expect no less than this from our Federal government.

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) runs to over 1,000 pages across two volumes. The proposed reforms are extensive, complicated and contained in seven bills (plus extensive explanatory memoranda). The ‘closed door’ approach to the current reforms and rushed Parliamentary process undermines public confidence and opportunities for appropriate participation of Aboriginal and Torres Strait Islander peoples nationally. This disregards traditional owners’ millennia of custodianship and expertise, risks incomplete legislation with potential adverse impacts and fails to fulfil the Government’s commitments to work with Indigenous peoples.

¹ <https://www.clc.org.au/wp-content/uploads/2021/03/20200416-ANNEXURE-A-Central-Land-Council-EPBC-Act-Submission.pdf>

² <https://www.clc.org.au/wp-content/uploads/CLC-submission-on-new-Nature-Positive-laws-EPBC-Act-reform-Oct-and-Dec-2023-consultation-materials.pdf>

³ https://www.clc.org.au/wp-content/uploads/Nature-Positive-Environment-Protection-Australia-Bill-2024-Provisions-and-related-bills_Redacted.pdf

The nature, volume and complexity of materials presented as part of the current reform process warranted early, open and constructive engagement with land councils and other First Nations representative organisations. Ending closed door consultations was a recommendation of the CLC in its submissions on the proposed Nature Positive Laws, but unfortunately, that did not occur with these reforms. While the CLC is listed in the Department of Climate Change, Energy, the Environment and Water's (DCCEEW's) submission to this Inquiry as having been consulted, that consultation consisted of a telephone conference with Ministerial and departmental officials prior to being given access to the draft bills, provision of extracts from those draft bills one and two days prior to their introduction into Parliament and an approximately 15 minute meeting with the Minister after their introduction. This very limited 'consultation' only occurred after all four Northern Territory land councils issued a public statement highlighting their concerns about the lack of consultation and the impact of the bills on Aboriginal and Torres Strait Islander people.

The current reform process falls well short of that recommended in the final report of the second independent statutory review of the EPBC Act undertaken by Professor Graeme Samuel AC (**Samuel Review**), which called for:

"...sustained engagement with Indigenous Australians to co-design reforms that are important to them – the culturally respectful use of their knowledge, effective national protections for their culture and heritage, and working with them to meet their aspirations to manage their land in partnership with the Commonwealth."
(p 24 Final Report).

It is imperative that the reforms protect the rights and interests of Aboriginal and Torres Strait Islander people, and provide pathways for genuine partnership, proactive engagement and shared expertise in tackling critical decline and restoration challenges. This is particularly relevant to cumulative impact assessment and planning at a landscape and seascape level. These matters were supported and recommended by the Samuel Review.

Despite urging for these outcomes, the current reforms miss a critical opportunity to improve Australia's national environmental law and respect Indigenous peoples' interests and expertise for the benefit of all Australians.

The Senate Committee has an opportunity to help address gaps in the proposed reforms in the time before it is due to report in March 2026. We implore you to do so and to use that time, for example, to call additional hearings once submissions close to allow you to hear from a broader range of affected groups, or to seek further submissions on targeted questions identified during these hearings and in early written submissions. We are ready to support the work needed to address key deficiencies and risks in the current reform package. These are discussed in more detail below.

Key reform issues and recommendations

1. Indigenous engagement and participation

In his review, Professor Samuel dedicated a chapter of his final report to Indigenous culture and heritage. He identified a culture of tokenism and symbolism in implementation of the current EPBC Act where Indigenous knowledge or views were not fully valued in decision making. He

observed that Indigenous Australians were seeking stronger protections during the assessment and approvals phase of developments, not only through last minute interventions. He identified a series of key reforms that he considered would address those issues.

The amendments proposed in the Environment Protection Reform Bill 2025 (**Reform Bill**) fall well short of the recommendations set out in the Samuel Review. They do not ensure appropriate Indigenous peoples' participation.

As an example, changes to the listing process for threatened species and ecological communities '*invite*' persons proposing specific species for listing (and therefore protection) to '*consider*' whether traditional knowledge is relevant to the proposed listing and, if so, identify the knowledge or people who may be able to provide that knowledge (eg: proposed subsection 194E(2)(ba)).

The expanded functions of the Indigenous Advisory Committee (**IAC**) are welcomed, however more is needed.

Decisions regarding impacts on the environment, including biodiversity, water systems, coastal and offshore areas and air intrinsically affect traditional owners of areas impacted by proposed development actions. Impacting natural systems impacts culturally significant species, landscapes and seascapes. Traditional owners must be better engaged in relation to proposals affecting the environment within areas of their traditional custodianship and must have better opportunities to participate in decision making about these proposals. Indigenous peoples have unique rights, interests and responsibilities, including traditional knowledge and expertise, which can benefit all Australians (including project proponents). Timeframes for consideration, consultation and participation in decisions must accommodate cultural processes and afford traditional owners opportunities to present views and recommendations (separately from general public rights to make submissions on proposals).

1.1 Indigenous Advisory Committee

The IAC must be given a stronger and more proactive role that allows it to monitor and advise the Minister on various matters, including the impact of the EPBC Act on Aboriginal and Torres Strait Islander people. To do this effectively, the IAC needs to:

- be properly resourced;
- include representatives from all Australian jurisdictions;
- have an independent nomination and appointment process, with limited powers for removal by the Minister; and
- have the qualifications required for membership prescribed in the Reform Bill, to ensure the IAC retains appropriate technical and cultural expertise.

Recommendation 1.1.1. Give the IAC new powers, in addition to the functions proposed in the Reform Bill, including:

- A.** An explicit function requiring it to be consulted in the development and review of each NES (not only the first nations engagement standard) to examine its impact on Indigenous peoples and their interests;
- B.** A power to seek independent advice, outside of DCCEEW, including both technical advice (including but not limited to advice from other Committees established by the

EPBC Act) and advice from specific traditional owner groups who are, and whose country is, affected by referrals, assessments, approvals, proposals, decisions, documents and instruments;

- C.** A power to give advice to the Minister on referrals, assessments and approvals under the EPBC Act, not just the operation of the EPBC Act itself;
- D.** Mandatory requirements to advise or be consulted, and for the Minister to consider associated advice before making key decisions or determinations, such as decisions to accredit a management or authorisation framework (and related variations, suspensions or revocations), determinations regarding accredited management or authorisation frameworks in bilateral agreements, Part 9 approval decisions, national interest proposal determinations, a decision to grant a national interest exemption, decisions to make a bioregional plan (and related variations, suspensions and revocations) and decisions to endorse strategic assessment plans, policies or programs and approve actions under these;
- E.** A requirement that if the Minister does not accept the advice or recommendation of the IAC, that the Minister publish the IAC advice or recommendations and the Minister's reasons for not accepting all or part of that advice or recommendations;
- F.** A regular review and public reporting function to examine how implementation of the Act affects Indigenous people; and
- G.** Full time appointments and adequate resourcing to allow it to fulfil these functions.

In addition, the Reform Bill should address restrictions in proposed new section 505B. This provision proposes a process to be followed if the IAC considers it does not have the appropriate expertise to provide advice, and includes a requirement to advise the Minister that the IAC is unable to provide such advice. Amendments are needed to enable the IAC to seek external advice, including to nominate external cultural experts to provide advice where relevant or required to respect cultural protocols governing who can talk for country.

Recommendation 1.1.2. Address restrictions in proposed new section 505B by:

- A.** Introducing a new subsection to enable the IAC to seek external advice, including to identify or nominate external cultural experts where the IAC membership does not have appropriate expertise to provide the relevant advice; and
- B.** Amending proposed subsection 505B(5)(b) to require the IAC to advise the Minister that it is unable to provide the relevant advice if the IAC is unable obtain the required external advice.

The land councils consider these additional powers for the IAC to be critical if the IAC is to be fully effective, able to advise the Minister and others, and represent Indigenous views clearly. Its broader remit than, for example, the Committee on Aboriginal Water Interests (another committee auspiced by DCCEEW), makes it critical that the IAC is fully resourced, able to obtain independent advice and consult with traditional owners as it considers necessary.

It should not, however be seen as a replacement for direct consultation with traditional owners and their representative bodies in relation to actions and proposals.

1.2 Consultation with, and participation of, traditional owners

The minimum timeframes afforded for consultation on key decisions and processes under the Reform Bill (and existing EPBC Act) are not sufficient. Similarly, public and traditional owner consultation requirements are proposed to be removed from some key processes, including the 'streamlined assessment' approach. These measures are not aligned with free, prior and informed consent principles. If engagement is to be genuine, it needs to be tailored to the impacts of a project and the cultural concerns of each particular group. It should not be bound by arbitrary timeframes. Sometimes it takes a long time for real engagement to occur.

For example, the Reform Bill proposes a new Part 8 Division 5A 'streamlined assessments' approach to replace three assessment approaches under the current EPBC Act (assessment on referral information, preliminary documentation and by public environment report). Related amendments to Part 11 Div 5 (section 170A) are proposed, which will no longer require regular publication of information relating to streamlined assessments. Each of the three assessment processes proposed for replacement by the streamlined assessment approach include steps for publication of draft reports for comment. These proposed amendments mean there are no requirements for publication or public comment on streamlined assessment 'recommendation reports' prior to the Minister's approval decision regarding actions that qualify for this assessment approach. That is a very significant change from the current EPBC Act and substantially reduces the opportunity for traditional owner involvement assessments and draft decisions that affect them and their country. The land councils cannot support streamlined assessments in the form proposed.

Recommendation 1.2.1. The Reform Bill needs to be amended to require streamlined assessment 'recommendation reports' to be published and allow public and traditional owner submissions on recommendation reports (or draft decisions).

Recommendation 1.2.2. Require The Minister to consider submissions and advice received in making any approval decision and to publish reasons for the Minister's decision, including how issues raised in submissions have been addressed. An adequate timeframe should be provided for public and traditional owner consultation on recommendation reports and/or draft decisions.

In general, timeframes for consultation need to be extended under the Reform Bill to enable more appropriate Indigenous engagement and submissions to inform associated decisions. Proposed key consultation timeframes typically have a statutory minimum of 30 business days, which does not support informed consultation processes. Arbitrary timeframes should be avoided if engagement is to be genuine and principles of free prior and informed consent are adhered to. Nevertheless, at a minimum, most consultations need to last for at least 90 business days particularly in relation to proposals affecting remote Indigenous Australians. The Reform Bill is an opportunity to improve engagement and participation of First Nations peoples, not exacerbate issues of the past.

Recommendation 1.2.3. Remove arbitrary timeframes for traditional owner consultations or increase them to, at minimum, 90 business days.

Steps to encourage consideration of traditional owner interests and expertise in relation to listing threatened species and ecological communities is noted, however more can be done.

Recommendation 1.2.4. Embed requirements in the Reform Bill for the consideration of Indigenous heritage values and Indigenous cultural values in relation to protection and management of most environmental matters protected by the EPBC Act (beyond World Heritage National Heritage places and the Commonwealth Heritage List).

Currently, certain management plans and principles contemplate identification of Indigenous cultural values, however more needs to be done to ensure these and broader measures have practical effect – and attract associated protections.

Recommendation 1.2.5. Amend the Reform Bill to embed consultation processes for traditional owners and requirements for advice and involvement of the IAC to establish substantive and administrative involvement of First Peoples more broadly in the management of matters of national environmental significance.

The First Nations Engagement national environmental standard must be developed through wide-ranging Indigenous consultation (including the land councils and other representative groups) and be broadly accepted by them. That process will take time. It must be developed and implemented as a priority, to ensure it can operate from commencement of the reformed statutory framework. It is one of several core standards that are essential to the proper operation of the reformed statutory regime.

Indigenous people will be disadvantaged if the development and implementation of that standard is delayed. Not only is it important for Indigenous people, but when a broadly accepted standard is adopted it will give developers confidence in their engagements. To that end, it must be drafted in terms appropriate for environmental laws and avoid, for example, language that permits (should, may, etc) in favour of language that mandates (must, will).

Recommendation 1.2.6. A meaningful First Nations Engagement Standard should aim for the principles of free prior and informed consent and needs to ensure that:

- Engagement is genuine. It needs to be tailored to the impacts of a project and the cultural concerns of each particular group. Yet it needs to be drafted so as to have Australia-wide operation.
- It should not be bound by arbitrary timeframes. Sometimes it takes a long time for real engagement to occur.
- Engagement needs to be through traditional ownership groups and their chosen representatives, not hand-picked individuals.
- Information is gathered through processes led by First Nations people, not proponents.

1.3 Requiring advice from the IAC

Best practice approaches to engagement require engagement with traditional owners who have an interest in or may be affected by proposed decisions, actions, plans, programs, documents and instruments under the EPBC Act. To complement this, the current EPBC Act contains - and the Reform Bill proposes - discrete mechanisms to engage with the IAC.

These discrete mechanisms must be broadened and strengthened to embed requirements for advice from the IAC (and therefore ensure a greater level of Indigenous participation under the amended Act).

Examples of amendments needed to strengthen the role of the IAC include:

- adding provisions for the Minister to obtain advice from the IAC in relation to strategic assessments and proposed actions or classes of actions to be included in proposed plans, policies or programs and whether to approve actions under endorsed plans, policies or programs;
- adding requirements in proposed Part 12B of the Reform Bill to require the Restoration Contributions Holder to:
 - consult with the IAC, as well as the proposed Restoration Contributions Advisory Committee on appropriate restoration actions; and
 - to consult with the IAC and other Part 19 committees in relation to development of management plans for restoration actions, prior to their finalisation.
- adding detailed requirements to proposed s65C (reviews of bilateral agreements arranged by the CEO of the EPA within 3 years of commencement and then every 5 years), to set out key matters that must be addressed in reviews (eg: the operation of the bilateral agreement and general effectiveness). These mandatory review matters must include review of engagement with, and participation of, traditional owners in processes and decisions under bilateral agreements; and
- addressing the omission of the IAC from the list of bodies and persons engaged with in relation to protection statements. The Reform Bill provides for protection statements to be made for a listed threatened species or a listed threatened ecological community and applied to regulatory decisions relating to such a species or community. Disappointingly, there is no requirement for the Minister to obtain advice and consider Indigenous cultural values or knowledge (via appropriate engagement processes) in the making of protection statements. The Reform Bill contemplates that the Minister must have regard to advice from specified bodies (including Part 19 committees), however the IAC is omitted from the list of specified bodies/persons.
- The Reform Bill proposes new provisions regarding the making, content of, variation, revocation and review of ‘protection statements’ for listed threatened species and listed threatened ecological communities. These provisions do not sufficiently embed requirements to engage with traditional owners and Indigenous perspectives or consider Indigenous values. Proposed section 298A(3) should be amended to include Indigenous cultural values associated with **species** and communities. Similarly, proposed section 298B should be amended to require the content of a protection statement to include Indigenous cultural values and traditional knowledge in relation to species or communities (if permission has been obtained to include such traditional knowledge). In addition, proposed section 298D should be amended to:
 - require (rather than provide a discretion for) the Minister to obtain advice from the persons and bodies listed; and
 - include the IAC in the list of bodies and persons who provide advice on protection statements.

Recommendation 1.3.1. Broaden and strengthen the discrete mechanisms contained in the Reform Bill to embed requirements for advice from the IAC throughout, and thereby ensure a greater level of Indigenous participation under the amended Act.

1.4 Bioregional planning

The Reform Bill proposes a new Part 12A be included in the EPBC Act, which sets out requirements for bioregional plans and the process for making and administering such plans. Proposed provisions raise issues in terms of engagement and participation of traditional owners, as well as timeframes for comment on proposed plans.

The reforms propose a mandatory requirement for the Minister to seek advice from the CEO of the EPA in relation to bioregional plans and advice from expert committees (the Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development) if the proposed plan specifies relevant types of actions as ‘priority actions’. The reforms take a weaker approach with respect to engagement and advice from the IAC and Scientific Committee, where the Minister *may* obtain advice. Advice from these committees should be mandatory for all bioregional plans, given the intended purposes and operation of these plans.

Recommendation 1.4.1. Amend the Reform Bill to require the Minister to obtain advice from the IAC and Independent Expert Scientific Committee for all bioregional plans, as well as the CEO of the EPA and have regard to advice received.

In addition, the Reform Bill proposes a minimum consultation period on draft bioregional plans of 30 business days. This minimum period does not afford sufficient time for informed consultation on these important plans, particularly for Indigenous Australians who live in remote places.

Recommendation 1.4.2. Increase the consultation period on draft bioregional plans to, at minimum, 90 days.

Cultural values of different parts of country are unique, highly specific and may be impacted by developments in very different ways. The right to know about many cultural matters and places must be earned, not demanded. That means it can be culturally inappropriate for outsiders (including, for example, people developing a bioregional plan) to receive knowledge about culturally significant or sacred places.

In such circumstances, it will be difficult for a bioregional plan to comply with cultural protocols yet contain sufficient granularity for all cultural values, and the potential impacts upon them by the range of activities permitted by the plan, to be determined during preparation of the plan. It is therefore important for cultural assessments to be undertaken and complied with in relation to an activity permitted by a bioregional plan before that activity is approved or implemented, not merely before the bioregional plan itself is approved.

This protection is critical and, if not adopted, projects developed within bioregional plans may pose significant risks to cultural values in the plan area. The land councils propose that there a mandatory condition on all actions be included in every bioregional plan, the condition being a

requirement that all actions under that plan require a cultural values assessment to be made and complied with. There could be an exclusion or exemption pathway if certain criteria are met, with those criteria co-designed with traditional owners.

Recommendation 1.4.3. Require assessment of cultural values in relation to each activity proposed within bioregional plans prior to that activity's approval and require compliance with that assessment. Develop an exclusion or exemption pathway if criteria co-designed with traditional owners are met.

As additional examples of improvements required to proposed bioregional plan provisions, the Reform Bill should be amended to:

- ensure that bioregional plans promote environmental, cultural and biodiversity conservation and management principles and outcomes;
- specify that the Minister must have regard to comments received in response to notice of the draft bioregional plan from traditional owners of the area/s affected by the proposed plan (proposed section 177AM);
- in relation to 5-yearly reviews of bioregional plans:
 - include requirements to publish the draft review report;
 - invite public and traditional owner comment on the operation of the plan; and
 - require the Minister to consider the report and comments received in relation to public consultation on each review;
- require the Minister to have regard to cultural matters (alongside social and economic – proposed s177AM(b));
- apply the above matters to variations, suspension and revocation of bioregional plans; and
- impose additional safeguards in Part 12A to ensure EPBC Act protections cannot be weakened or circumvented by change in State or Territory laws (eg: by 'step in' and exemption powers under the *Territory Coordinator Act 2025* (NT)), and that if such change occurs it constitutes clear grounds for the Minister to suspend or revoke a bioregional plan.

Recommendation 1.4.4. Strengthen the purpose, transparency and consultation around bioregional plans and impose safeguards to ensure protections cannot be weakened or circumvented by State or Territory laws. Amend Division 4 of the new Part 12A to include these additional safeguards.

2. Expanded water trigger

Amendments to the Reform Bill are needed to expand the 'water trigger' so that any project (not just large coal mining, coal-seam gas or unconventional gas) that is likely to have a significant impact on a water resource must be referred for assessment and decision under the EPBC Act. This aligns with and addresses content on page 50 of the Samuel Review: *"it targets the activity of part of a specific sector, which results in regulatory inconsistency. Only large coal mining and coal seam gas projects are regulated under the 'water trigger', despite other activities conceivably posing the same or greater risk of irreversible damage"* (p50).

While land councils support the intent of the current water trigger, its limited scope is illogical in the context of fundamental principles of environmental and cultural heritage protection. To be clear, the land councils are not advocating for the removal of the current water trigger, instead it should be expanded. The current trigger excludes other sectors that pose substantial risks to significant water resources, including large-scale agriculture, industrial developments, and infrastructure projects. This gap undermines the intent of the trigger and fails to provide consistent national oversight and protect Australia's nationally significant water-dependent ecosystems and Aboriginal cultural values.

Water holds profound cultural, spiritual, and economic significance for Aboriginal people in the Northern Territory and across the country. Waterways, aquifers, and springs are integral to songlines, creation stories, and sacred sites, forming part of living cultural landscapes. When groundwater levels fall or water sources are degraded, the resulting harm extends beyond environmental damage to include loss of cultural identity, millennia of cultural practices, language, and heritage.⁴ The current EPBC Act does not adequately protect impacts on water-related Aboriginal cultural values and this should be addressed via the Reform Bill.

Groundwater management is a matter of national interest. The narrow scope of the current water trigger undermines its purpose to provide a consistent national framework to oversee, manage and protect Australia's nationally significant groundwater resources. The National Groundwater Strategic **Framework** developed by all state and territory governments recognises that groundwater is fundamental to Australia's environment and economic future:

*'Groundwater is the only reliable, cost-effective water source for large parts of Australia, which also sustains many environmentally significant dependent ecosystems, terrestrial vegetation systems, wetlands and stream base flows and coastal systems.'*⁵

The Framework also highlights that increasing demand and ongoing inconsistencies in jurisdictional management and deficiencies in data are undermining best practice and putting groundwater resources at risk. It states 'risk-based, consistent and efficient regulation of groundwater resources will provide confidence for investors and ensure long-term sustainability.'⁶

Groundwater-Dependent Ecosystems (**GDEs**) require comprehensive federal oversight through an expanded water trigger. GDEs have intrinsic ecological values and are important for maintaining regional biodiversity and ecosystem function. Over-extraction and contamination of GDEs will lead to the loss of endemic flora and fauna, reduced habitat for migratory birds, and degradation of vital ecological refuges for flora and fauna particularly during prolonged droughts and hot periods - predicted to increase with climate change.⁷ Without comprehensive federal oversight, cumulative impacts on these ecosystems remain poorly managed and under-monitored.

⁴ Donaldson, Susan Dale. Singleton Water Licence NT Aboriginal Cultural Values Assessment: ADDENDUM, p.1 Available as part of this submission to the NT EPA, commencing on page 403: <https://www.clc.org.au/submission-to-the-northern-territoryenvironmental-protection-agencysingleton-horticulture-projectreferral-of-proposed-action-submitted-by-fortune-agribusinessfunds-management-pty-ltd-andpublished-by-t/>

⁵ National Groundwater Strategic Framework, p2.

⁶ National Groundwater Strategic Framework, p9.

⁷ CSIRO (2018). *National Atlas of Groundwater Dependent Ecosystems*. research.csiro.au; DCCEEW (2021). *State of the Environment 2021 – Inland Water: Water Sources*. soe.dcceew.gov.au

Responsibility for matters of national significance cannot be left to jurisdictions when jurisdictions are not meeting national standards at a critical time for the environment. Jurisdictions are failing to comply with the National Water Initiative, and the Northern Territory is continuing to backslide in various key areas and erode water protections, transparency and accountability.⁸ This renders the findings of the Samuel's Review – that the water trigger should not be expanded given the responsibility of jurisdictions to manage their own water resources – no longer applicable. Professor Samuels' findings emphasise the importance of national commitments to the NWI and jurisdictions being held '*clearly accountable for the decisions they make*'.⁹ An expanded water trigger is a more appropriate vehicle to apply consistent assessment and management, and ensure there is accountability for decisions made.

Recommendation 2.1. Projects using water resources should be referred for assessment under the EPBC Act when any one or more of the below criteria are triggered:

- A.** relevant water planning legislative and policy frameworks governing the decision do not comply with the NWI (or National Water Agreement);
- B.** the proposed action (project) is in an area without a statutory water plan;
- C.** water allocations in relevant allocation area are above 70% of estimated sustainable yield/sustainable extraction limit, or would be as result of the proposed action (project);
- D.** the proposed action (project) poses a significant or uncertain risk to water, inflow dependent ecosystems and soil quality; or
- E.** the proposed action (project) poses a significant or uncertain risks to known or potential water-related and sacred sites in the drawdown area;
- F.** the water resource crosses state or territory boundaries;

and specifically in relation to groundwater impacts:

- G.** the relevant sustainable yield/sustainable extraction limit for the proposed project area is not within net recharge of the relevant water resource and based on best available science and cultural expertise;
- H.** an allocation exceeds a volume of over 5GL; or
- I.** the proposed action (project) poses significant or uncertain risks to ecologically or culturally significant groundwater dependent ecosystems in the drawdown area, including, for example, through a significant increase in depth from surface to groundwater.

The Reform Bill should be amended to apply to all proposed actions that plan to take a significant water entitlement, allocation or extraction from significant water resources.

Recommendation 2.2. Amend Subdivision FB (sections 24D and 24E of the existing Act) to capture any action that has or will have a significant impact on a water resource, or is likely to have a significant impact on a water resource (and related offences).

⁸ Productivity Commission, National Water Reform 2024: Inquiry report, Report no 105 28 May 2024

⁹ Samuels Review, p46

Recommendation 2.3. Expand the functions and remit of the Independent Expert Scientific Committee (IESC) in line with expanding the water trigger, to ensure the IESC:

- A.** has the expertise required to assess impacts on surface and groundwater systems, and
- B.** is required to obtain and consider advice from the IAC (and, through the IAC, relevant traditional owners for the project area) about risks to cultural values.

3. Climate Change

There are very real existential and cultural issues facing Aboriginal and Torres Strait Islander peoples because of climate change, as outlined in the recent National Risk Assessment. In the Northern Territory, extreme temperatures are becoming more frequent. In 2019, Darwin had 45 days above 35°C, *which exceeded the projections for 2030*. In Alice Springs, in the 100-day period leading up to early March 2025, there were 92 days with temperatures above 35°C. Again, *that exceeded the 2030 climate forecasts*.

That means a significant portion of Australia's Indigenous people are experiencing weather extremes that will make many parts of the Northern Territory unliveable in our lifetimes. Living conditions are further exacerbated for those living remotely and in poverty, with regular power disconnections, poorly designed housing that is often hotter inside than out and few cool places to escape to. Forecasts for the Territory are dire even if action is taken on climate change now.

The land councils were disappointed that the Reform Bill does not include a climate trigger. We hope that changes.

Regardless of whether a climate trigger is included, the Reform Bill should be strengthened to ensure that Australia meets, if not exceeds, other policies, laws and international commitments on emission reductions and for reducing climate harm. This requires that the Minister consider climate impacts when assessing or approving projects, including their Scope 3 emissions.

Recommendation 3.1. Amend the Reform Bill to require the Minister to consider climate impacts when assessing or approving projects.

Recommendation 3.2. Amend the bill to disallow streamlined assessment of fossil fuel projects

The Reform Bill proposes measures to incentivise the disclosure of 'greenhouse gas emissions information'. Provision of that information, including Scope 3 emissions, should be mandatory at the referral stage (not voluntary – see proposed section 72(4)), with a mechanism to prescribe exclusions in regulations (for example for low emissions / small scale actions below a threshold emissions level).

Not requiring greenhouse gas emissions information at referral stage (in similar manner to new section 84A) carries inefficiencies and risks basing decisions on incomplete information (noting options to subsequently provide greenhouse gas emissions information for the purposes of

qualifying for a ‘streamlined assessment’). Again, fossil fuel projects should be exempted from any streamlined process and ensure there is adequate community consultation, particularly with Aboriginal traditional owners.

Recommendation 3.3. Mandate disclosure of greenhouse gas emission information, including Scope 3 emissions, with all referrals. Do not allow fossil fuel projects to be assessed or approved through streamlined assessments.

In addition to early provision of greenhouse gas emissions information, the Reform Bill should be amended to require that assessment and approval pathways (including alternative pathway processes) require assessment of the impacts of a proposed action against likely modelled climate change scenarios (and consistency with national climate change risk assessment projections and national adaptation plans).

Embedding these measures in an amended Reform Bill will help to better identify acceptable and unacceptable development in a cumulative context and over the life of a proposed project.

Recommendation 3.4. Assess impacts against modelled climate change scenarios.

In addition, the EPBC Act pre-dates the Paris Agreement and should be modernised for consistency with, and to support the implementation of Australia’s commitments – particularly where these commitments intersect with natural systems, the environment and biodiversity.

Recommendation 3.5. Amend the proposed definition of ‘*designated international agreement*’ in the Reform Bill to include reference to agreements under the UNFCCC.

4. Ministerial discretions, transparency and robust safeguards

4.1 Ministerial discretions

The land councils support concerns raised in other submissions to the Senate Committee Inquiry and published prior to 19 November 2025 about the scope of discretion afforded to the Minister under the Reform Bill. Efficient regulation and secure environmental protection require consistency and certainty which cannot exist within such broad discretions.

The Reform Bill includes several significant Ministerial powers and discretions, some of which must not be delegated (including to a national EPA) (see proposed subsections 515AAA(2) and 515(1A)).

These powers and discretions include broad powers to determine that a specified action is a ‘national interest proposal’ and to grant a ‘national interest exemption’ for an action (from various protections and processes).

In addition to these broad and substantial proposals, the Reform Bill also proposes more discrete yet significant discretions, that risk material environmental impact and potential mismanagement of stakeholder interests. For example, the Reform Bill proposes to allow the Minister, by agreement in accordance with any regulations, to allow a proponent to undertake a minor **or** preparatory component of a larger action (which has not yet been assessed / approved). Such flexibility is not appropriate, particularly given it may apply to components that are not ‘minor’ (but are ‘preparatory’) and are not needed or appropriate in the context of other significant amendments that introduce streamlining and exemptions.

Recommendation 4.1.1. Remove the proposed inclusion of subsections 74AA(2A) and (2B) from the Reform Bill.

The proposed inclusion of national interest proposals and associated modifications to safeguards that otherwise apply to consideration of proposed actions weaken environmental protections and increase Ministerial discretion. Coupled with provisions allowing for ‘national interest exemptions’ from requirements for environmental approvals (Part 3) and/or environmental assessment and approval measures (Chapter 4), there are material loopholes in relation to environmental protections for actions that will or may have significant (or unacceptable) impacts on matters protected under Part 3 of the Act.

Amendments are needed to limit national interest exemptions and national interest proposals to actions required to address a national emergency, including a national security or defence event, that are needed during the period of that emergency (or to address impacts of that emergency).

Recommendation 4.1.2. Amend proposed s157B (applications for a determination that the taking of an action is a ‘national interest proposal’) to limit national interest exemptions and national interest proposals to actions to be undertaken by a government/government agency or authority only (not any person) consistent with precisely defined national emergency / national security triggers.

Recommendation 4.1.3. Amend proposed section 157K to limit the class of persons who can apply or seek a ‘national interest exemption’.

Recommendation 4.1.4. Amend the Reform Bill to:

- A.** limit grounds for a national interest exemption (to reflect only national emergencies and national security events);
- B.** remove the power to vary exemptions (a new exemption should be sought if an existing exemption is not adequate); and
- C.** include a requirement for the Minister to obtain and take into account advice from each Committee under Part 19 of the amended Act, including the IAC, when deciding whether to grant or vary an exemption and in making national interest decisions (national interest proposals and national interest exemptions).

The Reform Bill includes National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) amendments. The proposed Part 4 Division 2A stipulates that certain actions do not require a Part 9 approval, provided that the action is taken in accordance with an approved ‘NOPSEMA management or authorisation framework’ and a Ministerial declaration.

Under these provisions, the Minister has the power to make such declarations provided that the Minister is satisfied that certain conditions are met – once again providing greater Ministerial discretion without consultation requirements. These new provisions allow the Minister and

NOPSEMA to disregard key safeguards for offshore gas and petroleum projects, including by weakening consultation with traditional owners.

Traditional owners have spiritual connections to sea country and important knowledge about marine and coastal environments. This knowledge is critical for conducting proper risk assessments and risk mitigation. Offshore gas projects should be subject to the same assessment as other projects under the EPBC and require proper consultation with traditional owners.

Recommendation 4.1.5. Remove the proposed new section Part 4A Division 2A (Actions covered by Ministerial declarations and NOPSEMA management or authorisation frameworks).

4.2 Bilateral agreements and accredited management or authorisation frameworks

The land councils have recently and consistently raised concerns in relation to bilateral agreements that enable the authorisation of actions in the Northern Territory, particularly with uncertain safeguards under the *Territory Coordinator Act 2025* (NT). The Reform Bill should ensure that First Nations perspectives are included in the development of bilateral agreements and the Minister's accreditation of a management or authorisation framework for the purposes of a bilateral agreement.

Recommendation 4.2.1. Amend proposed section 46(3) to require the Minister to be satisfied that matters raised by traditional owners and the IAC have been considered and addressed prior to the accreditation of an authorisation framework for the purposes of a bilateral agreement.

In addition, amendments are needed to:

- require advice from the IAC before accreditation (similar to proposed section 46B regarding advice from the CEO of the EPA);
- cause IAC advice on a proposed accreditation of a management or authorisation framework for the purposes of a bilateral agreement to be tabled by the Minister along with other relevant documents under proposed s46A of the Reform Bill; and
- include a mandatory undertaking in proposed section 48A to require advice from the IAC about actions covered by the accreditation (that the appropriate State or Territory Minister will obtain and act consistently with advice of the IAC (or relevant experts nominated by the IAC)), unless it publishes a statement of reasons regarding why relevant advice has not been followed (in whole or in part).

Recommendation 4.2.2. Require advice from the IAC prior to accreditation, tabling of that advice and compliance with that advice by the accredited framework, unless it publishes reasons for not complying with it.

To be clear, given the current legislative and regulatory framework in the Northern Territory, the land councils consider that the Northern Territory should not be accredited as a management and authorisation framework such that it and its institutions could be permitted, via a bilateral agreement, to make approvals required by the EPBC Act.

In the performance of our functions the land councils track applications for land clearing and water licences in the Northern Territory, and represent the interests of common law native holders in response to applications. Currently the Northern Territory Government does not notify land councils regarding land clearing applications.

This leaves referral as the only pathway for protecting native title interests, however the land councils consistently review applications for land clearing and water licences that meet thresholds for referral requirements that the proponent has not themselves referred. Research shows that between 2014-2021 in likely relevant EPBC Act areas in Queensland and the Northern Territory less than one quarter (22%) of clearing was referred under the EPBC Act.¹⁰

This illustrates the concerns the land councils hold that devolving responsibility to the Territory for environmental approvals will not adequately protect native title interests.

The land councils cannot see any future scenario in which traditional owners would have sufficient confidence to allow the Territory to take on those functions.

Recommendation 4.2.3. Do not devolve approval powers to the Northern Territory.

4.3 Transparency

In addition to addressing other recommendations set out regarding the publication of assessment recommendation reports and Ministerial reasons, in the interests of further transparency, the reforms should require the Minister to promptly publish:

- Advices of the IAC generally (subject to redactions instructed by the IAC for cultural sensitivity reasons) and the Minister's responses to each advice, including reasons for implementing or not implementing IAC advice; and
- Assurance reports in relation to bilateral agreements and accredited management and authorisation frameworks undertaken by the EPA CEO (as proposed in sections 36D (section 33 declaration assurance reviews) and 65D (bilateral agreement assurance reviews) of the Reform Bill).

The absence of a requirement to publish assurance reviews is in stark contrast to the inclusion of a requirement to publish more regular general reviews of section 33 declarations and bilateral agreements (proposed sections 36C and 65C respectively).

Recommendation 4.3.1. Improve transparency by requiring publication of:

- A.** IAC advice and the Minister's responses to it, including reasons for implementing it or not; and
- B.** assurance reports in relation to bilateral agreements and accredited management and authorisation frameworks

¹⁰ Thomas, H., Ward, M., Simmonds, J., Taylor, M. and Maron, M. (2024). Poor compliance and exemptions facilitate ongoing deforestation, Conservation Biology.

4.5 National environmental standards

The Reform Bill empowers the Minister to make national environmental standards in accordance with proposed Part 19B. Proposed provisions set out the process for making, varying and revoking an NES.

Proposed section 514YK relates to how a person uses an NES. The Reform Bill requires that a person must apply a NES prescribed for the relevant decision and apply it in the way prescribed. The ability for regulations (and amended regulations) to turn various NESs ‘on’ or ‘off’ with respect to key decisions or determinations of the Minister under the proposed reforms undermines central recommendations of the Samuel Review and environmental protection assurances.

Recommendation 4.5.1. Amend the Reform Bill to require essential or ‘core’ specified NESs to be established and maintained for identified key decisions. These should be identified in the amended Act (not prescribed by regulations, which may be subject to more frequent amendment and change).

Embedding specific NES requirements for identified decisions, determinations and processes provides greater certainty and assurance. Flexibility to prescribe that a NES applies to a decision (in whole or in part) should be reserved for future controls that need to be introduced to address emerging challenges to the environment.

Essential NESs will likely include those released for public consultation (as at the date of this submission), being the NES for matters of national environmental significance and the NES for environmental offsets, as well as the NES for First Nations engagement, the NES for community engagement, the NES for data and information and potentially the NES for restoration contributions and charges (to the extent key requirements for these contributions and charges are not addressed in regulations under the amended legislation).

Recommendation 4.5.2. Designate in the Reform Bill the following National Environment Standards as essential or ‘core’:

- A.** matters of national environmental significance
- B.** environmental offsets
- C.** First Nations engagement
- D.** community engagement
- E.** data and information
- F.** restoration contributions and charges

A further safeguard to ensure the robust operation of NESs would be to require *compliance* with relevant NESs (those existing at the outset and those prescribed in the future), rather than to require the Minister be satisfied that a decision, plan or program is *not inconsistent* with a NES for the purposes of that decision (*emphasis added*).

The current approach under the Reform Bill, to require a key environmental protection to operate on the basis that something is not inconsistent with its content, places significant

emphasis on the content, specificity and clarity of each NES, as well as the ‘on / off switches’ for application of all or part of an NES (as proposed by the Reform Bill).

Recommendation 4.5.3. Amend the Reform Bill to require compliance with essential specified NESs in their entirety (not require the Minister to be satisfied that a decision is not inconsistent with the relevant NES or allow parts of an NES to be turned on or off via regulations).

In relation to the NES for First Nations engagement, see section 1.2 above.

In relation to the IAC’s involvement in reviewing each NES for its impact on Indigenous people, see section 1.1 above.

5. Other matters

The land councils submit there are two further matters that require attention under the Reform Bill. Each is a missed opportunity to modernise the legislation and align with good practice.

Recommendation 5.1. Amend the Reform Bill throughout to ensure Indigenous cultural values and related matters are taken into account alongside economic, environmental and social matters in making relevant decisions under the Act. For example, section 136 EPBC Act requires the Minister to consider economic and social matters (s136(1)(b)). This should expressly require the Minister to consider economic, social and Indigenous cultural matters, and section 136(s) should extrapolate considerations to include Indigenous cultural values and expert knowledge.

Recommendation 5.2. Take the opportunity to update the definition of ‘traditional owners’ (section 368(4) of the Act) to include persons recognised as holding native title rights and interests pursuant to the *Native Title Act 1993* (Cth) as well as those recognised as traditional Aboriginal owners under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).