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Nature Conservation Saves for Tomorrow

Date: 21 May 2026

Minister Murray Watt
Environment and Water

Submitted via DCCEEW website https://consult.dcceew.gov.au/environment-protection-reform-consultation-subordinate-legislation

Comments provided on consultation papers as below:

Consultation Paper 1 – A smooth transition to the National Environmental Protection Agency

Consultation Paper 2 – More certainty for projects and environment protection

Consultation Paper 3 – Reducing Duplication

Dear Minister,

The Blue Mountains Conservation Society (the Society) is a community-based volunteer organisation with over 900 members. Our mission is to help protect, conserve and advocate for the natural environment of the Greater Blue Mountains. In fulfilling its mission, the Society advocates for the protection of the Greater Blue Mountains World Heritage Area.

The Society's area of concern includes the entire Greater Blue Mountains World Heritage Area (GBMWHA) and adjoining natural, protected areas.

The Society's members, as for other Australian citizens, have a deep dedication to the protection of Australia's biodiversity, and expect the Federal government to implement the strongest laws that will be effective in ensuring no further loss of our natural places, plants and animals.

The Society comments on the three documents listed above are attached on the following pages. The Society has focused on sections which are likely to impact our areas of concern, while recognising that UNESCO considers developments or projects outside the World Heritage Area need to be assessed to determine if an action will adversely impact the Outstanding Universal Value of the GBMWHA.[1]

Thank you for the opportunity to comment on these important issues.

Yours sincerely,

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[1] https://whc.unesco.org/en/guidance-toolkit-impact-assessments/

Consultation Paper 1 – A smooth transition to the National Environmental Protection Agency

The Society has commented on sections 1.1, 2.1, 4 and 6 of this consultation paper.

1.1 A smooth transition to the National EPA

The following statement is on page 5:

"The new National Environmental Protection Agency (EPA) will be an independent regulator for **some o**f Australia's national environmental laws." (emphasis added).

The fact that the new EPA will be independent is welcomed. However, the Society questions why the EPA will only be an independent regulator for SOME of Australia's national environmental laws.

Recommendation

The use of the word "some" needs to be replaced by "all" or the reason for limiting the EPA to be an independent regulator for only some of the laws need to be explained to the public.

2. Supporting rules and regulations for auditor registration and transparency registers New powers and penalties

2.1 Background

Page 7

Increased penalties

The Society welcomes an increase in penalties for both civil penalties for individuals and for a body corporate for serious breaches of the legislation. However, such breaches could risk a species becoming extinct, but a corporation may make profits far exceeding the penalty units that are listed in the draft consultation paper, while breaching the legislation. The penalty stated is too low, especially for corporations.

Recommendation

The Society is therefore of the opinion that the maximum penalties for breaches by corporations should be increased and that these increased penalties be stated in this document.

4 New powers and penalties
4.1 Background

Environmental protection orders
Page 13

A new power to be introduced as part of the reforms includes issuing of an “Environmental Protection Order” (EPO) or “stop work orders”. One of the reasons listed for the issuing of an EPO or “stop work orders” is where “it is necessary to manage any damage” and shows the significant harm posed to the environment.

Recommendation

There is no mention in this section as to who will be paying for the restoration of the damage; the Society is of the view that the individual or body corporate should be responsible for the clean-up and restoration of the damaged environment.

6 Rules to ensure transparency of National EPA decisions and compliance outcomes
On page 20 there is the following statement:

“Together, these Rules establish a clear and consistent framework for what mandatory regulatory, compliance and enforcement information administered by the National EPA will be publicly available, and where it can be found.”

The Society welcomes increased transparency about such information which will be publicly available.

Recommendation

The Society is of the opinion that the compliance and enforcement information publicly available (referred to above) should include details of those who have not complied with rulings and what they are required to do to repair any damage to the environment.

Consultation Paper 2 – More certainty for projects and environment protection

The Society finds some of the new statements and rulings in Consultation Paper 2 to be beneficial in providing increased protections for the environment. However, there are also some concerns and areas needing further attention. Some of the language used is legally weak and will not ensure adequate protection of biodiversity.

In the submission, we have set out our comments following the organisation of the draft document.

The Consultation Paper states that the new nature laws are designed to contain "changes to give more certainty to projects about how the laws apply." (page 5)

2 Protections statements[2]

2.1.1
Page 6

These "Protection statements" are presented as:

- a new tool which "have been introduced to implement the Samuel Review recommendation for clearer up-front guidance."
- "an **optional tool** that can be used to clarify approval considerations for actions affecting listed threatened species or ecological communities." (emphasis added)

The development of protection statements may be useful, but they are "optional". Whilst the Consultation Paper also states that: "Other statutory documents such as recovery plans, and conservation advices can still be taken into account where relevant", the Consultation Paper does not make clear what will be used if recovery plans and conservation advices are not in place and the optional protection statement is not available. Nor is it made clear what determines if a protection statement will be made.

Not all threatened species or communities have a recovery plan or conservation advice, and in many cases these documents are not up-to-date. Thus there will be a risk that there is no adequate advice available to provide the guidance detailed in the Samuel Review.

Furthermore, the Consultation Paper does not make clear what action will be taken if the protection statements "are considered or taken into account" but the proponent does not make the action consistent with these statements.

Recommendations

- Use of protection statements to guide approval considerations must be mandatory and not optional.

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[2]" Protection statements include information about what must be protected to ensure the survival and recovery for threatened species or ecological communities. These statements can help clarify and combine aspects of existing Recovery Plans, Conservation Advices, and policies to guide decision-making under the EPBC Act." page 6 Consultation paper 2

- Language related to implementation of protection statements must be strengthened; “considered” or “taken into account” are to be replaced by “must be followed”.

- There must be clearly detailed consequences for proponents who fail to implement protection statements or follow the guidance they provide.

2.1.5 Review of protection statements

The Consultation Paper refers to the new Part 13, Subdivision BA of the EPBC Act five-year cycle of review of protection statements. This review process is welcomed as a means to ensure that these statements are relevant to the changing requirements over time of threatened species. The Society does however, have the following concerns.

Comments

1. Often these statements (recovery plans, conservation advices) and reviews of statements have not been put in place for species/communities requiring them, which means they cannot be reviewed.

2. The proposal is to conduct reviews on a five year cycle - this may be too long a time gap for critically endangered species as things can change rapidly and a species may be lost in that time. The Society suggests for critically endangered species this review process should be a three yearly review.

3. Frequently, these required reviews miss the deadline in the current system. What will be put in place to ensure that this does not happen in the future?

Recommendations

- The Minister must ensure that all required protection statements are in place in a timely manner.

- For critically endangered species, reviews should be every three years.

- Sufficient funding is required to ensure that production and review of protection statements are done according to the agreed timeline.

2.1.3 Making a protection statement

Page 8

On page 8 the following statement is made:

“A new subsection will be added to the EPBC Regulations to support the new provisions requiring the Minister to have regard to the following additional matters when making a protection statement new Section 298A(3)(e) of the EPBC Act:

- any reports from the Restoration Contribution Holder that identifies a general restoration action **was not available** to compensate for a residual significant impact

on the relevant listed threatened species or ecological community concerned (or the relevant part of that species or ecological community).” (emphasis added)

There is a statement that the new provisions require the Minister to “have regard to” when a “general restoration action was not available”, but there is no statement made in this document about **the action** the Minister will take if the restoration action is not available.

Recommendations:

- There needs to be a clarifying statement about the action required of the Minister if the restoration action is not available.
- If a restoration action is not available to compensate for a residual significant impact, then the initial detrimental action should not have been allowed to occur in the first place.

Rulings

3.1.1 Background

Page 9

The following sentence in relation to rulings is included on page 9:

“Future decisions of decision makers **must also not generally be inconsistent with** Rulings. If there is any inconsistency between a Ruling and a decision, then the reasons for this inconsistency must be published.”

It is welcoming to read the inclusion of the requirement to publish reasons for “inconsistency”. However, it is disappointing to read the weak language included in this sentence “must also not generally be inconsistent with”

Recommendation:

- Replace “must also not generally be inconsistent with” with the stronger language of “Future decisions of decision makers must be consistent with Rulings.”

4 Unacceptable impact definition

4.1.1 Background

Page 10

The Society is pleased to see the introduction of a defined criteria of an unacceptable impact for each protected matter under the EPBC Act, which was lacking in the previous Act and recommended by the Samuel Review.

The Society is further pleased to see the inclusion of the statement “that If the Minister believes an impact will be unacceptable, the impact must be avoided and cannot be offset.”

5 Minor or Preparatory works while controlled action is under assessment

Page 12

The Society supposes that the consideration of minor or preparatory works while controlled action is under assessment, is to enable works to be progressed more quickly once an action is approved. However, we have concerns about the potential adverse impact of approving such works, in particular if the final works are not approved. In fact, consideration and approval of minor or preparatory works sends a clear message to the proponent that the proposed controlled action will be approved.

The sorts of minor works which may be considered could include clearing of habitat and whilst some may consider this action to be easily reversed, restoration of cleared habitat is always detrimental. Individual animals and plants are lost, soil is lost and there is a time delay (sometimes a quite substantial time delay) between removal of mature habitat and the time it takes for lost vegetation to be replaced and become mature.

It is important to understand that each individual member of a threatened species population is important to contribute a greater level of genetic diversity, to increase the number of offspring being produced and to ensure maintenance of habitat.

Additionally, if a proponent is granted permission for minor or preparatory works, then following assessment, the project is not allowed, then proponents may claim that they have been financially disadvantaged. This can potentially lead to lobbying to ensure that the full project goes ahead.

Recommendation:

- The introduction of these new proposed regulations should be reconsidered and in general, disallowed but if they are introduced, they should only be used in rare and exceptional circumstances.

8 Other minor changes

Page 20

On page 20 under the heading *Provisions"* is the following dot point:

- "Under the reforms there are new and updated requirements for the Minister to be satisfied that any approval decision (s34C, s52(2), s138, and s146J,) and unacceptable impacts (s527F) **are not inconsistent with Australia's obligations** under the Ramsar Convention, the Australian Ramsar Management Principles, and any management plan prepared for the relevant Ramsar wetland. The EPR Act also introduces new and updated requirements for the Minister to consider these Ramsar obligations under any bioregional planning schemes (s177AD, s177AJ, and s177AP)."

This statement uses weak language in relation to Australia's obligations under the Ramsar Convention, which is an international obligation. Australia must ensure it abides by its international obligations with the utmost diligence.

Compare this language to the changes to regulations on pages 21 - 22 under:

“Ramsar changes to the EPBC Regulations will include:

- Assessments will be clearer, allowing decision-makers to identify whether an approval **would be consistent with** Ramsar principles and any wetland management plan.”

Recommendations

- Replace “are not inconsistent with Australia’s obligations” with “are consistent with” in dot point on page 20 under the heading “Provisions”.
- The use of stronger legal language which will lead to better outcomes for biodiversity.

Consultation Paper 3 – Reducing Duplication

2 Bilateral agreements

Page 4

The Society understands that proposed changes to bilateral agreements with states and territories will reduce duplication, costs and time for environmental assessments to occur, and states that these agreements will bolster environmental protections. (page 4)

The Society's view is that for this change to provide sufficient environmental protection, the standards, processes and manner of assessment must be equally strong across all states and territories. There is mention of a "new test" for bilateral agreements with additional requirements that these agreements must meet (page 6) and reference to the new Section 46 of the EPBC Act.

Recommendations:

- It is crucial that the Commonwealth Government implements and maintains strong and effective oversight of the assessments conducted under such bilateral agreements.
- Such oversight measures, including the ability to suspend or cancel a bilateral agreement, are welcome but they must be diligently implemented by the EPA.
- Outcomes of assessments under bilateral agreements are to be made available to the public via government communication channels.
- Members of the public should be able to seek information from the EPA about bilateral agreements and processes used under these agreements.

2.4 Consideration of bioregional plans

Page 9 contains the following statements:

"We are proposing that the Minister ***should have regard*** *to* relevant bioregional plans and bioregional guidance plans when accrediting a management or authorisation framework for the purposes of a bilateral agreement." (emphasis added)

"While the Minister ***is free to consider*** bioregional plans under current settings in the Act, and ***is required*** by **subsection 46(3)(l)** ***to consider*** relevant matters before accrediting, the addition of a specific reference to bioregional plans in the regulations would clearly set out that ***having regard*** *to* bioregional plans ***should be part of*** standard practice."

Inclusion of consideration of bioregional plans is an important improvement in the new environmental laws, but the language highlighted in the paragraphs above is weak and easily allows the Minister to side-step his/her responsibilities.

Recommendations:

Strengthen language by using these replacements:

- "should have regard to" with "must have regard to"

- “is free to consider” with “must consider”
- “is required to consider” with “must consider”
- “having regard to bioregional plans should be part of” with “consideration of bioregional plans must be part of standard practice.”

3 Commonwealth accreditation

3.1 Background

Weak language is again used. Under the heading *Provisions; Environmental protections”* on page 10 is this statement:

“Tests in relation to protected matters under **paragraphs 34B(1)(b), 34B(2)(b), 34BA(1)(a), 34BA(2), 34C(1)(b), 34C(2)(b), 34D(1)(b), 34D(2)(b), 34E(1)(b)** and **34E(2)(b)** have been amended to ensure consistency with equivalent tests for single project approvals. The Minister is now required to be satisfied that the accredited process **is *not inconsistent* with** the relevant matter (e.g. the Australian World Heritage management principles), rather than the less specific requirement of being satisfied that the accredited process will *promote* or *enhance* the relevant matter.” (emphasis added)

Recommendation

- In the paragraph above, the term “is not inconsistent with” should be replaced by ‘is consistent with” to ensure a stronger legal requirement.

4 NOPSEMA[3] declaration

On Page 12 the Consultation Paper states:

- “The Environment Protection Reforms give the Minister the power to declare that certain activities do not need approval if they are covered by NOPSEMA’s environmental regulation.
- The Minister can only make this declaration if satisfied NOPSEMA’s environmental regulation meets requirements under the EPBC Act”

The new environmental reforms give the Environment Minister the power to formally declare certain types of offshore activities to be exempt from needing separate EPBC Act approval, as long as those activities are approved under NOPSEMA’s framework. This could potentially expand NOPSEMA’s role as the main decision-maker, reducing the need for separate federal environmental assessments.

The Society is of the view that these reforms will weaken environmental outcomes. Unless the Government actually strengthens NOPSEMA’s environmental assessment framework.

The Society is concerned that the Minister cannot be confident that offshore projects meet the requirements of the EPBC Act if there has not been a full environmental assessment.

[3] National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA)

Giving more approval powers to NOPSEMA is worrying because its approval system appears to focus mainly on managing risks so projects can proceed, rather than ensuring strong environmental protection. NOPSEMA uses a balancing and risk-management approach, where projects can still be approved if environmental harm is considered "acceptable" or "as low as reasonably practicable" (ALARP). This approach is outdated and should be updated in the new reforms to ensure full environmental protection before rushing these reforms through by 31 July 2026.

According to NOPSEMA's website, over the last decade, NOPSEMA has approved all eight large offshore project proposals (OPPs) and none were rejected. NOPSEMA has approved 97 per cent and only rejected 3 per cent of environmental plans since 2012[4].

The high rate of approvals raises serious concerns about whether environmental impacts are being properly considered and whether independent federal oversight is still needed to genuinely protect our environment.

Recommendations:

- NOPSEMA's environmental assessment framework needs to be strengthened to ensure adequate protection of the environment.
- This assessment framework needs to include rigorous assessment of environmental impacts of projects.
- The assessment framework and its implementation need oversight by the EPA.

4.2 Early Commencement of power to make a declaration

The Society does not support the "Early Commencement of power to make a decision" due to the reasons stated above.

Recommendations:

- The ALARP approach currently used by NOPSEMA is outdated and needs to be updated in the new reforms to ensure full environmental protection
- This must take place before the reforms are rushed through by 31 July 2026.

4.3 Applying NES

Page 15 of the Consultation Paper states:

"The intention of the NOPSEMA declaration power is to allow for the streamlining of Commonwealth environmental approvals for offshore petroleum and greenhouse gas projects under one regulator, while maintaining environmental protections equivalent to or stronger than those under the EPBC Act."

Whilst the Consultation Paper states that "the proposed policy is to prescribe all National Environmental Standards that would be relevant from an environmental protection

[4] https://www.nopsema.gov.au/community-resources/faq (Under Environment - environment management)

perspective, in the NOPSEMA context.", the Society does not have access to such a policy and is unaware if it has been written. Hence, we cannot comment on whether or not the policy referred to above is adequate.

As stated above NOPSEMA has approved eight OPPs in the last decade; all of these projects are large greenhouse gas (GHG) emitters. Approvals such as these projects show that current climate policy is failing to ensure the phasing out of polluting fossil fuel projects.

The Barossa Area Development will emit an average of **3.4 million tonnes of CO_2-equivalent ($MtCO_2$-e) per year** from offshore operations alone and is estimated to emit between 270 and 380 MT of CO2 over its 25 year lifespan. Including Scope 3 emissions, this project is described as a climate bomb. This project was approved by NOPSEMA; its approval is not taking into account the negative effects on the environment and biodiversity.

Recommendation:

- The commencement of NOPSEMA declaration power cannot occur until the proposed policy has been written, made available for comment and found to be adequate.

4.4 Definition of the NOPSEMA management or authorisation framework

This proposal's goal is to simplify the approval process and make law easier to apply in order for the Minister to rely on the NOPSEMA approval system when deciding if certain projects do or do not need separate approval under the EPBC Act. This proposal risks weakening environmental protection as it gives NOPSEMA greater powers and certain projects may avoid separate federal environmental assessment.

Recommendation:

- The Society does not support this proposal unless the revised proposal includes a mandatory federal assessment process for high-risk or highly polluting projects.

Overall Comment

The Society is aware that the Climate Trigger is not included in the EPBC Act reforms; however, we cannot protect the environment without a holistic approach and all impacts from developments and Offshore Gas and Petroleum projects must be assessed for all aspects including GHG Emissions.

These projects are the biggest polluters of our environment and if the EPBC Act and NOPSEMA's approval processes do not adequately take into account the effects of GHG emissions on the environment and biodiversity, then the reforms are not protecting the environment. The current Act is not protecting the environment in the way it should be intended.

5 Greenhouse gas emission reporting

Page 16 of the Consultation Paper states:

“The reforms introduce a new Section 84A of the EPBC Act that will require proponents over a certain threshold to disclose a **‘reasonable estimate’** of the scope 1 and scope 2 greenhouse gas emissions from their proposal, along with any strategies and measures for managing these emissions.” (emphasis added).

The term “reasonable estimate” is not defined and so could become a “ball–park figure” or “best guess”. Evidence shows that current drilling projects have grossly underestimated their emissions including loss of methane at the bore site.

Scope 3 emissions are not taken into account, neither is the Climate Trigger. This is an important failure of the current reforms and if the Government is serious about protecting our environment and biodiversity, both Scope 3 and the Climate Trigger must become part of the big picture. Climate Change is the biggest threat to our environment.

In the new requirements reporting will be limited to projects whose emissions are above the threshold in the EPBC Regulations[5]; this clause excludes smaller projects and therefore does not take into account cumulative emissions. In addition, there is a real risk that a project could stage or split a project thus avoiding reaching the threshold and therefore staying below reporting limits.

Recommendation:

- "Reasonable estimate" - there must be a definition to define what 'reasonable estimate' is with clear criteria.
- GHG Emission reporting should be assessed by an independent body to ensure that GHG emissions are reported correctly and not underestimated.
- If a company underestimates their emissions and breaches the 'reasonable estimate' criteria, then the breach should be referred to the 'Independent EPA' and appropriate fines should be given in accordance with the severity of the breach.
- For accurate emission reduction targets on a national level and transparency, all projects should report their emissions.
- For smaller emitters, a simplified reporting system could be a reasonable solution.

5.2 Threshold for reporting

It is the Society’s understanding that the aim of the EPBC Act is to ensure greater consistency with other Government policies such as the Safeguard Mechanism. In the Safeguard mechanism, projects that exceed their baseline must manage their excess emissions, often by purchasing Safeguard Mechanism Credits (SMCs).

This results in big polluters buying a type of Offsets instead of effectively reducing their emissions, leading to mismanagement of emissions reductions.

[5]“ If proponents are under the threshold they will need to provide a certificate confirming that they are under this amount.” page 16 of Consultation Paper

Recommendations

- The EPBC Act should avoid the use of any type of Offsets.
- If this creates inconsistency with other Government policies, then the policies must be reviewed to avoid the use of offsets.