

# EPBC LAW REFORM PACKAGE – MEDIA BRIEFER

**Date:** 10 November 2025

**Source:** Environmental Justice Australia (EJA)'s legal analysis of the Albanese Government's seven-bill, 1,500-page environment reform package.

## Overview

Australia's national environment law – the Environment Protection and Biodiversity Conservation Act 1999 – is meant to be a safety net to prevent unacceptable destruction. After years of promises, the government's reform package aims to overhaul that system. EJA's legal experts have assessed the package against what's needed to genuinely protect nature and climate.

### 1. Climate damage – no real change

**Current law:** The EPBC Act is effectively silent on climate change. Environment ministers can approve new coal and gas projects without considering the climate harm they cause to species, ecosystems, or communities.

**What's in the reform package:** Projects above a certain threshold must disclose their scope 1 and 2 emissions and outline how they plan to manage them – but there's no requirement to reduce emissions, disclose scope 3 emissions, or assess climate harm. Ministers are not required to take emissions information into account when deciding whether to approve a project.

**What this means:** Projects can continue to be approved even if they would worsen climate impacts on nationally protected species and ecosystems. Offshore oil and gas projects assessed by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) could even avoid key safeguards and consultation requirements.

**Result:** No climate test, no prevention of climate damage.

**EJA recommends:**

- Make climate mitigation and adaptation explicit objects of the Act.
- Require all projects to disclose full scope 1, 2 and 3 emissions.
- Embed a legally enforceable climate test so no project can be approved without assessing its contribution to climate harm.
- Align all decisions with Australia's international climate obligations, including the Paris Agreement.

### 2. Deforestation and land clearing – loopholes remain wide open

**Current law:** Logging covered by *Regional Forest Agreements* (RFAs) is exempt from national environmental assessment. The "continuation of use" clause allows land clearing that began before 2000 to continue indefinitely without review. These loopholes have left threatened species like the greater glider and swift parrot unprotected.

**What's in the reform package:** Both exemptions remain. The reforms promise that new National Environmental Standards will apply to deforestation, but the standards are not yet defined, and their application will be largely discretionary – left to the Minister's judgment.

**What this means:** Logging and agricultural clearing can continue to destroy threatened species habitat without national oversight.

**EJA recommends:**

- Repeal the RFA and “continuation of use” exemptions.
- Apply strong, legally binding national standards to all clearing and logging.
- Strengthen enforcement so destruction is detected and prosecuted, not ignored.

### 3. National standards – weak rules, too much discretion

**Current law:** There are no binding national environmental standards – a gap the 2020 Samuel Review identified as the core failure of the EPBC Act.

**What's in the reform package:** The bills empower the Minister to make national environmental standards, but they are not mandatory and contain vague language. Decision-makers only need to “have regard to” the standards or be “satisfied” their decisions are “not inconsistent with” them. Key standards on community participation and First Nations engagement haven't been released.

**What this means:** Without enforceable standards, decisions will continue to depend on politics rather than law. The proposed “unacceptable impact” test is set too high and only applies to limited cases. A “non-regression” clause exists but can be overridden for 18 months after new standards are made.

**EJA recommends:**

- Require all approvals, rulings and agreements to comply with national standards.
- Strengthen definitions of unacceptable impact and non-regression.
- Remove “pay-to-destroy” offsets and ensure standards are genuinely binding.

### 4. Independent umpire – a good start, but not independent enough

**Current law:** There is no federal environmental watchdog. Ministers both make and enforce decisions, and compliance action is slow or non-existent.

**What's in the reform package:** A new National Environment Protection Agency (NEPA) will be established with powers to enforce the law, issue orders and penalties, and conduct audits. However, NEPA remains subject to ministerial direction and will make project decisions only as a delegate of the Minister.

**What this means:** While NEPA is an overdue step toward accountability, it falls short of being an independent decision-maker. The Minister will still have broad powers to override or direct the agency.

**EJA recommends:**

- Create a fully independent NEPA led by an expert board, not a ministerial appointee.
- Give NEPA authority to assess and approve projects.

- Strictly limit “national interest” overrides to exceptional cases.

## 5. First Nations rights – advisory, not empowered

**Current law:** There is no requirement for Free, Prior and Informed Consent (FPIC). The Indigenous Advisory Committee can only provide broad advice to the Minister.

**What’s in the reform package:** The Committee’s advisory role is expanded, and it will help develop a future First Nations Engagement Standard — but the standard itself hasn’t been released. There are no new rights of consent or clear mechanisms for Traditional Owners to stop destructive projects.

**What this means:** First Nations voices remain peripheral to decisions on their own Country.

**EJA recommends:**

- Co-design a strong First Nations Engagement Standard before the bills pass.
- Embed FPIC in law so projects cannot proceed without consent.
- Recognise and protect cultural knowledge and law as central to environmental care.

## 6. National leadership – more devolution, weaker safeguards

**Current law:** The Commonwealth is responsible for protecting matters of national environmental significance, such as threatened species, World Heritage areas and water resources. States cannot currently approve projects that trigger federal protections for large coal or gas developments affecting water.

**What’s in the reform package:** The bills would allow more delegation of federal powers to state and territory governments and potentially non-government bodies. States could be authorised to approve coal and gas projects that impact water resources. The Minister could also waive federal assessment for offshore gas projects regulated by NOPSEMA.

**What this means:** Instead of fixing the patchwork, the reforms expand it – increasing inconsistencies and potential conflicts of interest.

**EJA recommends:**

- Keep federal responsibility for national environmental matters.
- Don’t devolve powers unless states meet strict, independently verified national standards.
- Remove new offshore and NOPSEMA exemptions.

## 7. Threatened species – some progress, undermined by offsets

**Current law:** Recovery plans are required but often ignored. There are no “no-go zones,” and biodiversity offsets allow developers to destroy habitat if they promise to restore or buy equivalent habitat elsewhere.

**What’s in the reform package:** The reforms strengthen recovery planning in parts but introduce a new “restoration contributions” scheme – effectively a pay-to-destroy offsets fund. This lets companies make payments instead of delivering real habitat protection.

**What this means:** Species protection will remain dependent on promises of future restoration rather than preventing damage in the first place.

**EJA recommends:**

- Remove the restoration contributions (pay-to-destroy) scheme.
- Legislate a strict mitigation hierarchy: avoid harm first, offset only as a last resort.
- Make recovery and conservation plans binding and science based.

## 8. Fair and transparent system – less accountability than before

**Current law:** The EPBC Act gives the Minister broad discretion to interpret the law and approve harmful projects. Communities face barriers to accessing information or challenging decisions.

**What's in the reform package:** Discretion is expanded. The Minister and NEPA CEO could issue “rulings” on how the Act should be interpreted – similar to the tax office’s power to issue binding advice – creating risk of politicised decisions. A new “streamlined assessment” pathway could fast-track projects with less scrutiny, and the “national interest” exemption is widened.

**What this means:** The reforms concentrate even more power in ministerial hands, undermining transparency and legal certainty.

**EJA recommends:**

- Guarantee transparency by default: publish environmental information and decisions.
- Protect communities’ rights to participate and challenge unlawful decisions.
- Remove the rulings power and narrow the national-interest exemption.

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**More information:** [www.envirojustice.org.au/environment-law-reform-scorecard/](http://www.envirojustice.org.au/environment-law-reform-scorecard/)

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