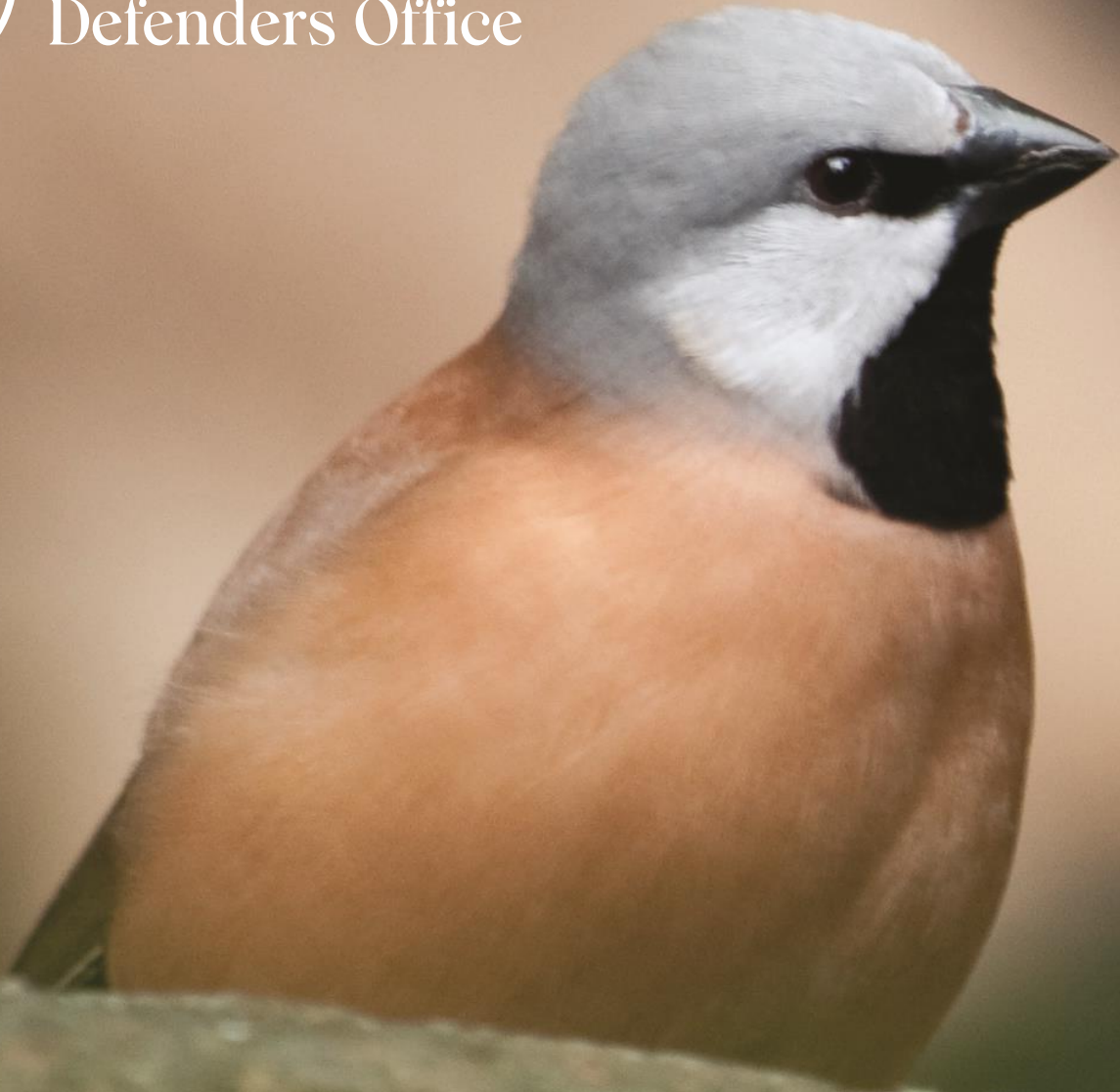




Environmental  
Defenders Office



# The EPBC Act in review

Revel Pointon, EDO Ltd

11 March 2020





Environmental  
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**EPBC Act:**  
*Environment  
Protection and  
Biodiversity  
Conservation Act  
1999 (Cth)*

- Australia's key environmental law
  - Designed to protect environmental values we consider to be of national environmental significance
- e.g. our World Heritage Areas, the Great Barrier Reef, and threatened species of national importance, such as the koala (listed for Qld, NSW and ACT), whales and many other flora and fauna species.*



# Australia's national environmental laws are failing



Environmental  
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We have an extinction crisis in Australia

Australia is in the top 7 countries responsible for 60% of extinction globally

We have had at least 90 species extinctions

Loss of native vegetation (habitat!) is one of the major drivers in species decline

From: Ward, M.S. et al. 2019. Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia. *Conservation Science and Practice*.



Quick  
refresher:

What does  
the EPBC Act  
cover?

Environmental  
assessment and  
approval of 'controlled  
actions':

*Actions that will, or are  
likely to, have a  
significant impact on  
matters of national  
environmental  
significance*

Also provides for  
management of actions  
around these matters

*e.g. making recovery  
plans, monitoring  
populations etc*





What should a national  
Environment Act do?

How well does the EPBC  
Act perform?





# 1. Effectively address the major threats to biodiversity:



- Land clearing
- Cumulative impacts
- Climate change

From the State of the Environment  
Report 2016



# Failure to address land (habitat) clearing

- **7.7 million hectares lost between 2000 and 2017 – i.e. 4 million Melbourne Cricket Grounds**
- **93% of this clearing was unregulated (M Ward et al)**

## Why is the Act failing to address land clearing?

- **No overarching tree clearing trigger – reliant on species impacts**
- **The Act is not adequately enforced, relies on landholders to be aware they need to refer their activity**
- **Significant discretion of decision maker (Minister) – and lack of accountability mechanisms e.g. merits Court review**
- **‘Offsets’ are not used effectively**



# Cumulative impacts

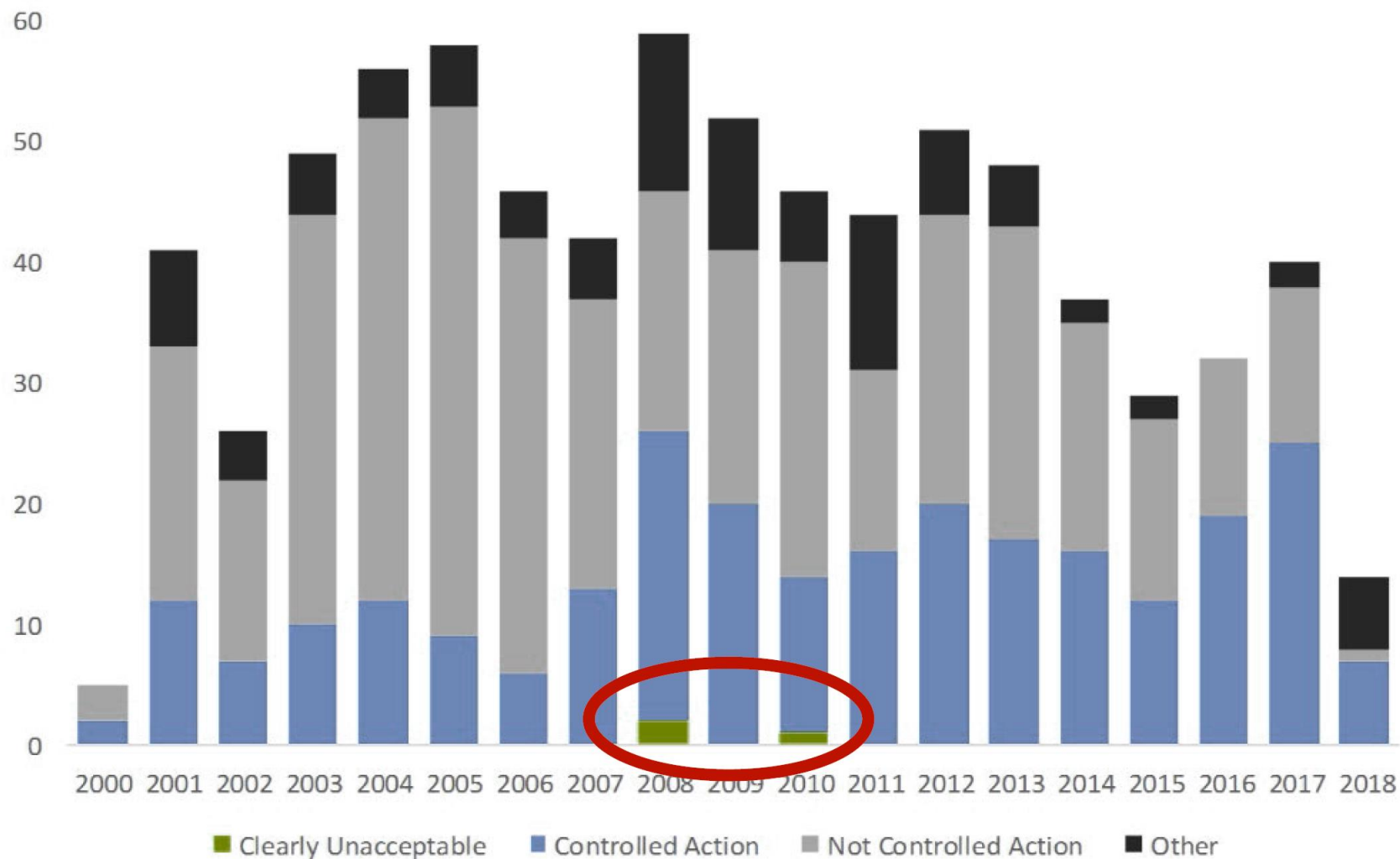
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- Only 'significant impacts' are regulated
- Activity based, site specific assessment
- Reliance on proponent studies on site and surrounds - no single compiled database of species and ecosystem studies
- No requirement in Act to consider cumulative impacts
- For example: regulation of impacts to the Black Throated Finch

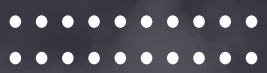




## 775 referrals to develop Black-throated finch habitat



From Dr April Reside, University of Qld



# Climate change

- Greenhouse gas emissions are one of biggest environmental impacts
- No trigger for GHG emissions assessment
- Can utilise trigger for GBR/ WHA, but need more specific trigger





## 2. Require independent objective decision-making

- Independent regulator (national EPA)
- Objective decision-making criteria (less discretion)
- Independently appointed and accredited consultants



ABC NEWS

LOCATION: Brisbane, Qld Change

Just In Politics World Business Analysis Sport Science Health Arts Fact

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## Adani water plan ticked off within hours despite lack of detail, internal CSIRO emails reveal

By environment, technology and science reporter [Michael Slezak](#)  
Updated 14 May 2019, 8:09am

**Internal CSIRO correspondence reveals the science agency was pushed to formally accept the Federal Government's approval of Adani's water plans in a single afternoon.**

Despite the Government saying Australia's top science agencies "confirmed" Adani's water plans had "met strict scientific requirements", the emails show CSIRO was determined not to give a "categoric" response.

The correspondence obtained by the ABC through



# Significant Ministerial discretion

**Weak criteria – no guidance as to what is and isn't allowable when assessing activities**

**No 'merits review' of decisions by independent Court**



### 3. Enshrine accountability mechanisms

- Resource effective compliance & enforcement
- Include review rights for third parties (including merits)
- Report on and respond to trends (environmental accounts)



# The context of this review process



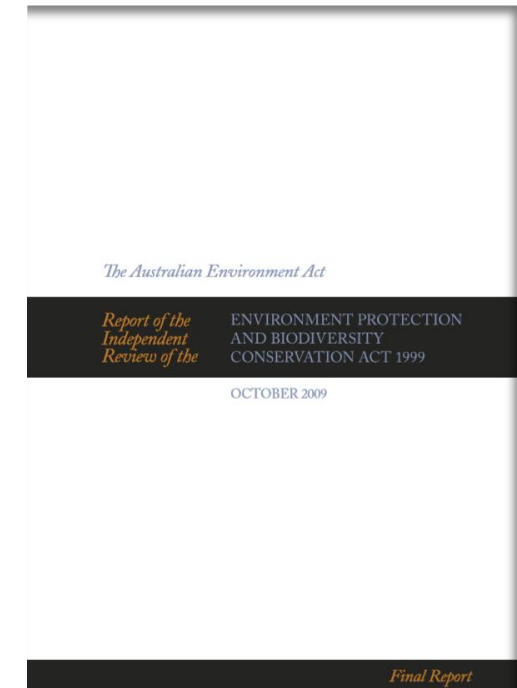


# The Hawke Review 2009

The first independent review. **71 Recommendations.**

These can be summarised into a reform package revolving around a nine point plan:

- (1) redraft the Act to reflect better the Australian Government's role, streamline its arrangements and rename it the Australian Environment Act;
- (2) establish an independent Environment Commission to advise the government on project approvals, strategic assessments, bioregional plans and other statutory decisions;
- (3) invest in the building blocks of a better regulatory system such as national environmental accounts, skills development, policy guidance, and acquisition of critical spatial information;
- (4) streamline approvals through earlier engagement in planning processes and provide for more effective use and greater reliance on strategic assessments, bioregional planning and approvals bilateral agreements;
- (5) set up an Environment Reparation Fund and national 'biobanking' scheme;
- (6) provide for environmental performance audits and inquiries;
- (7) create a new matter of national environmental significance for 'ecosystems of national significance' and introduce an interim greenhouse trigger;
- (8) improve transparency in decision-making and provide greater access to the courts for public interest litigation; and
- (9) mandate the development of foresight reports to help government manage emerging environmental threats.



[About us](#)[Legislation](#)[Environment Protection and  
Biodiversity Conservation  
Act 1999](#)[One-Stop Shop for  
environmental approvals](#)[About the EPBC Act](#)[Cost recovery](#)[What is protected?](#)[Do you need approval?](#)[Exemptions](#)[EPBC Act permits and forms](#)[Public notices and invitation  
to comment](#)[Compliance and enforcement](#)[Report a breach](#)

## One-Stop Shop for environmental approvals



The Australian Government is committed to delivering a One-Stop Shop for environmental approvals that will accredit state planning systems under national environmental law, to create a single environmental assessment and approval process for nationally protected matters. The One-Stop Shop policy aims to simplify the approvals process for businesses, lead to swifter decisions and improve Australia's investment climate, while maintaining high environmental standards.

On 16 October 2013, the Minister for the Environment, the Hon Greg Hunt MP, announced that the Government had approved the framework for delivering the One-Stop Shop. This includes a three-stage process with each of the willing jurisdictions, comprising:

1. signing a Memorandum of Understanding
2. agreement on bilateral assessments and updating any existing agreement with the state
3. negotiation of approval bilateral agreements within 12 months



**“We should protect the  
environment, but business must  
be freed from laws that strangle  
the economy”**

Minister Ley, November 2019





# Other reviews

[Productivity Commission Review of Resource Sector Regulation](#) - November 2019

[Inquiry into interactions between the EPBC Act and the agricultural sector](#) - June 2018

NOPSEMA on [Improving Consultation and Transparency of Offshore Oil and Gas – Draft Regulations](#) - November 2018

[Senate Inquiry into Australia's faunal extinction crisis](#) - September 2018

[Draft revision of Australia's Biodiversity Conservation Strategy](#) - March 2018

Australian Senate Select Committee on Red Tape about the effect of environmental assessment and approval 'red tape' on the economy and community - [Environmental assessments and approvals](#) June 2017

[Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities](#) -April 2017

[Productivity Commission Regulation of Agriculture](#), 2016

[Outcomes-based Conditions Policy](#), Oct 2015

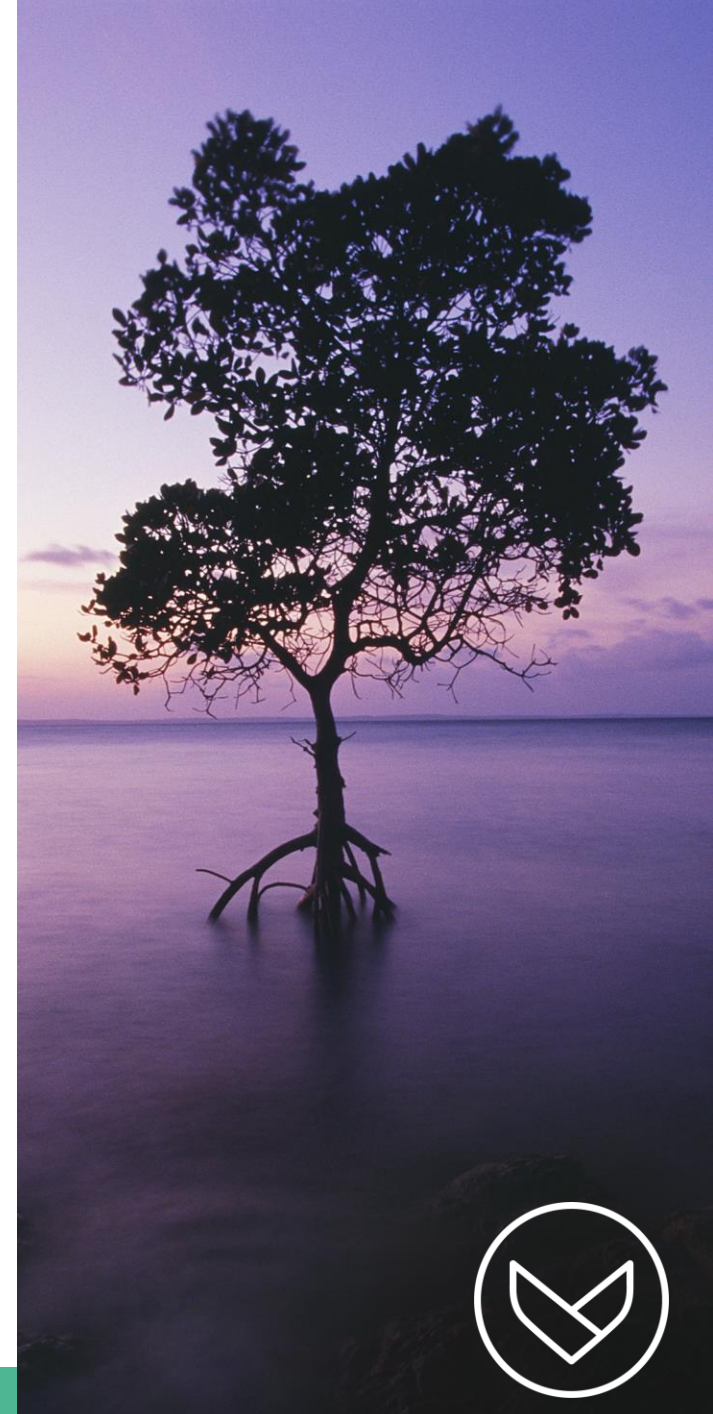
[AHRC Inquiry on Traditional Rights and Freedoms—Encroachments by Commonwealth Laws](#) - 2015

[Productivity Commission Inquiry into Major Projects Assessment](#), September 2013

[Inquiry into Environment Protection and Biodiversity Conservation Amendment \(Retaining Federal Approval Powers\) Bill 2012](#), January 2013

[House of Representatives inquiry into streamlining environmental regulation, 'green tape' and 'one stop shops' for environmental assessments and approvals](#), April 2013

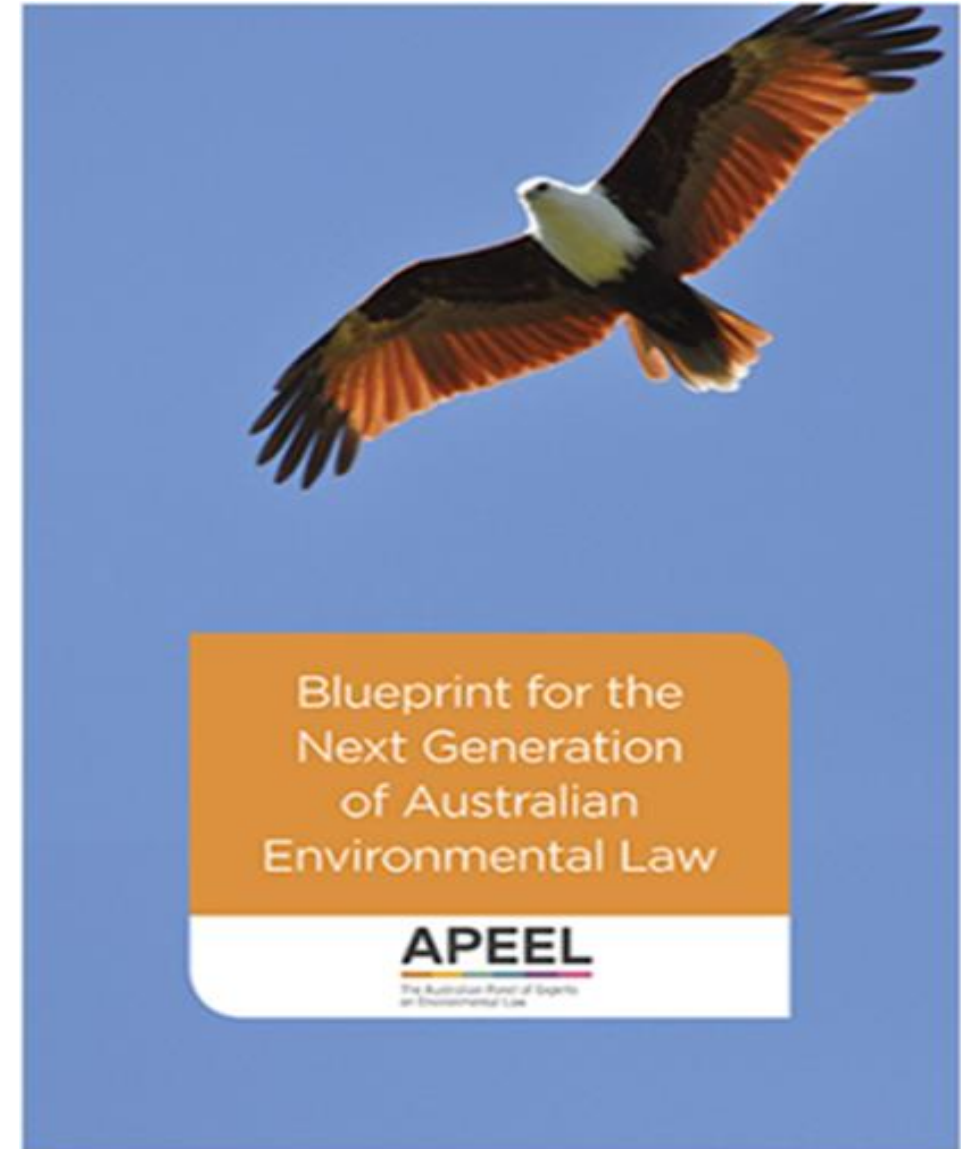
[Draft Framework of Standards for Accreditation of Environmental Approvals under the EPBC Act 1999](#), November 2012





# The APEEL project

APEEL was convened by the Places You Love Alliance in late 2014 to develop a blueprint for the next generation of federal environmental laws in Australia



## THE FOUNDATIONS OF ENVIRONMENTAL LAW

GOALS, OBJECTS, PRINCIPLES AND NORMS

## ENVIRONMENTAL GOVERNANCE

## TERRESTRIAL BIODIVERSITY CONSERVATION AND NATURAL RESOURCE MANAGEMENT

## MARINE AND COASTAL ISSUES

## CLIMATE LAW

## ENERGY REGULATION

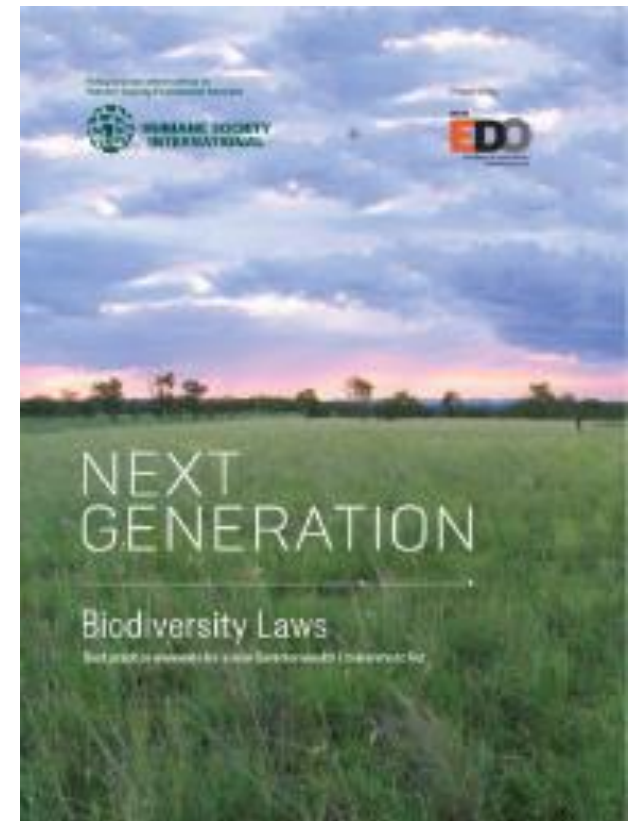
## THE PRIVATE SECTOR, BUSINESS LAW AND ENVIRONMENTAL PERFORMANCE

## DEMOCRACY AND THE ENVIRONMENT



# Next generation Biodiversity laws

- A. Objects for a new Australian Environment Act
- B. Commonwealth leadership on biodiversity protection
- C. Governance and institutions
- D. Listing threatened species and other protected matters
- E. New triggers, impact assessments and strategic tools
- F. Public participation, transparency and access to justice
- G. Indigenous knowledge, engagement & leadership in biodiversity land management
- H. Outcomes monitoring, reporting and improvement
- I. Compliance and enforcement
- J. International obligations & transboundary protections







Environmental  
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## 2. The official details

- **Terms of Reference**
- **Reviewer and Panel**
- **Timeframe**
- **Process**





## The independent review of the Environment Protection and Biodiversity Conservation Act 1999

The statutory review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) commenced on 29 October 2019. Professor Graeme Samuel AC has been appointed as the independent reviewer. An Expert Panel will support and provide advice to Professor Samuel on specific issues.

Over the next 12 months, the review will look at how the EPBC Act has been operating, and any changes needed for Australia to support ecologically sustainable development into the future. All Australians are invited to participate in the review.

<https://epbcactreview.environment.gov.au/>

# Review scope – Terms of Reference

1. In accordance with section 522A of the EPBC Act, the review will examine:
  - a. the operation of the Act, and
  - b. the extent to which the objects of the Act have been achieved.
2. The review will make recommendations to modernise the EPBC Act and its operation to address current and future environmental challenges, including consideration of:
  - a. The objects in section 3(1)(a)-(g) of the Act
  - b. Australia's international environmental responsibilities
  - c. Indigenous peoples' knowledge and role in the management of the environment and heritage
  - d. implementation of relevant agreements between the Commonwealth, States and Territories
  - e. other legislation that may relate to the operation of the Act
  - f. recommendations of previous reviews and inquiries and significant publications regarding the operation of the Act and potential reform
  - g. broad consultation, including with State, Territory and other levels of government, non-government organisations, Indigenous peoples, members of the community, industry and academia, and
  - h. costs and benefits of recommendations.
3. The review will be guided by the principles of:
  - a. protecting Australia's unique environment through strong, clear and focused protections
  - b. making decisions simpler, including by reducing unnecessary regulatory burdens for Australians, businesses and governments
  - c. supporting partnerships to deliver for the environment, supporting investment and creating new jobs
  - d. improving transparency to ensure better use of information, accountability and trust in the system, and
  - e. streamlining and integrating planning to support ecologically sustainable development.
4. The Independent Reviewer will provide a report to the Minister for the Environment within 12 months of the commencement of the review.



# The Reviewer and Panel



## **Reviewer**

Professor Graeme Samuel AC

## **Panel assisting the Reviewer**

- **Bruce Martin** – Indigenous representative with community development sector experience
- **Erica Smyth** – NOPSEMA industry perspective
- **Wendy Craik** – Agriculture policy perspective
- **Andrew Macintosh** – Environmental law expert

Secretariat support is provided by the **Department of Energy & Environment**

James Tregurtha

First Assistant Secretary, Environment Protection  
Reform Taskforce

# Timeline of the review





# How can you participate?

- **Write a submission!**
- **Address one or more of the questions raised in the Discussion Paper.**
- **Examples or data from your own experience are valuable!**
- **EDO Community submission Guide can help**

# Resources

- <https://epbcactreview.environment.gov.au/> - Review website 2019
- [www.edo.org.au](http://www.edo.org.au) – Law reform reports and submissions
- <http://www.placesyoulove.org/> - Next generation laws campaign
- [www.a Peel.org.au](http://www.a Peel.org.au) – Blueprint for next generation law
- <https://wentworthgroup.org/> - Statement on Commonwealth powers 2012
- [https://www.aph.gov.au/Parliamentary\\_Business](https://www.aph.gov.au/Parliamentary_Business) - Previous Inquiries & Bills
- <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/epbc-review-2008> - Hawke Review 2009
- <http://www.environment.gov.au/epbc/information-for/farmers/agriculture-review> - EPBC & Agriculture review 2019





Thank you.

