

Submission on Australia's Nature Positive Plan

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The NSW Young Lawyers Environment and Planning Law Sub-Committee and Animal Law Sub-Committee (**Sub-Committees**) makes the following submission in relation to Australia's Nature Positive Plan.

NSW Young Lawyers

NSW Young Lawyers is a Committee of the Law Society of New South Wales that represents the Law Society and its members on issues and opportunities arising in relation to young lawyers i.e. those within their first five years of practice or up to 36 years of age. Through its 15 sub-committees, each dedicated to a substantive area of law, NSW Young Lawyers supports practitioners in their professional and career development by giving them the opportunity to expand their knowledge, advance their career and contribute to the profession and community.

The Environment and Planning Law Sub-Committee is comprised of a group of volunteers and subscribers interested in our natural and built environment. The Sub-Committee focuses on environmental and planning law issues and raising awareness in the profession and the community about developments in legislation, case law and policy. The Sub-Committee also takes an interest in international environmental and climate change laws and their impact within Australia.

The Animal Law Sub-Committee comprises a group interested in laws regulating the treatment of animals. The Sub-Committee aims to raise awareness and provide education to the legal profession and wider community, while increasing understanding about the importance of protecting animals from abuse and neglect. A common theme amongst the Sub-Committee is a passion and desire to use legal skills and the law to improve protections for animals.

As set out in its Climate Change and the Law Policy Statement of 1 November 2019, NSW Young Lawyers accepts the science and wide-ranging effects of climate change, including as outlined by the United Nations Intergovernmental Panel on Climate Change in its leading expert reports. NSW Young Lawyers considers that Australia has the ability and a responsibility to rapidly reduce emissions and actively help to keep the world's emissions within its remaining 'carbon budget'.

NSW Young Lawyers recognises that there is a climate emergency, posing an unprecedented challenge for human rights and the rule of law. In order for there to be intergenerational equity and climate justice, as well as interspecies equity and ecological sustainability, the law needs to enable and require Australia to rapidly decrease CO₂ (and other greenhouse gas) emissions and to be legally accountable for their adverse contributions to the impacts of climate change.

Summary of recommendations

The Sub-Committees welcome the publication of the Nature Positive Plan: *better for the environment, better for business* (December 2022) (**NPP**) by the Commonwealth Department of Climate Change, Energy, the Environment and Water (**Department**), which the Sub-Committees view as a crucial step towards ensuring the reform of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**).

This submission was substantially drafted by the Sub-Committees prior to the public release of *the Nature Positive (Environment Protection Australia) Bill 2024*, *Nature Positive (Environment Information Australia) Bill 2024*, and *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024* (**Bills**), which were introduced into Parliament on 29 May 2024. To the extent that the Bills address the issues discussed below, we confirm that this submission is not inconsistent with the text of the Bills as at the date of this submission. While the Sub-Committees are considering those Bills in greater detail and may make a supplementary submission in future, in the interim the Sub-Committees make the following recommendations to the Department for its consideration, to ensure the NPP achieves the best legal outcomes for Australia's environment:

Climate change

1. There should be a climate trigger included in the NPP to provide a measure for accessing what may constitute unacceptable levels of carbon emissions of a project.
2. Further detail should be released regarding the extent to which climate change adaptation measures will be considered against other project approval factors.
3. Climate adaptation should be a mandatory consideration for all projects.
4. The detail of the anticipated climate modelling should be made available in full to the public for further consultation, and include specifics about how the climate modelling will be factored into or impact project approvals. This detail should also include specific guidelines on climate change adaptation measures.

Conservation planning

5. Section 3(2)(e)(iv) of the EPBC Act should be amended to emphasise the need to protect threatened and endangered species.
6. Section 3(1)(c) of the EPBC Act should be amended to specifically refer to the conservation of flora and fauna by revising the objective as follows, "to conserve the biodiversity of all flora and fauna in Australia to the fullest extent".
7. Strong regulatory standing should be given to all conservation planning documents in environment impact assessment and approval processes.
8. Conservation planning documents should give due weight to the assessment of cumulative impacts so as to prevent habitat degradation and fragmentation.

Environment Information Australia

9. A National Environmental Standard (**NES**) on data gathering and monitoring of EPBC Act effectiveness ought to be established, and a timeline set as soon as practicable for the establishment of that NES.

10. Clear mechanisms and responsibilities ought to be established, either through the NES or the EPBC Act, for the sharing of information between relevant bodies in ecological and animal management and regulation, including Commonwealth and State bodies and non-environmental groups affected by such regulation (including relevant animal welfare organisations).

Environment Protection Australia

11. There should be a clear delineation between EPA's and the Minister's statutory functions and responsibilities to ensure efficiency, clarity and independence.
12. The framework of regulations over which the EPA has regulatory functions should be developed in accordance with robust expert technical and legal advice and put on exhibition for public consultation as soon as possible.
13. Consideration should be given to the introduction of a legal mechanism for an "applicant-only" merits review and, if it eventuates, that further consultation occur in respect of this.

Environmental Assessment and Approval

14. Proposed draft legislation arising from the NPP, which the Sub-Committees understand may be addressed in the Stage 3 reforms, should reform the current assessment and approvals process under the EPBC Act.
15. Proposed draft legislation arising from the NPP should propose an accreditation process that addresses the recommendations of the Samuel Review and clearly define any applicable transitional arrangements.
16. Proposed draft legislation arising from the NPP should be released to the public as a matter of urgency and ensure that any public consultation period on the draft legislation be of sufficient length to enable due and thorough consideration by industry, business and the community.

National Environmental Standards

17. Considering NES represent the core of the proposed environmental reforms, draft NES must be released for expert and public consultation as soon as possible.

A. Introduction

1. The Sub-Committees welcome the opportunity to comment on the NPP released by the Department.
2. This submission addresses the following aspects of the NPP:
 - a. Climate Change;
 - b. Conservation Planning;
 - c. proposed Environment Information Australia;
 - d. proposed Environment Protection Australia;
 - e. Environmental Assessment and Approval; and
 - f. National Environmental Standards;

B. Climate Change

3. Climate change is one of the biggest risks to the environment. In Australia, extreme temperatures caused by climate change put Australian lives at risk since more Australians die because of heatwaves than from bushfires, cyclones, floods, and severe storms combined.¹ In that context, it is not unexpected that the Climate Change Authority's second Annual Progress report found that Australia is not on track to meet its 2030 emissions reduction target, and that further work is required to ensure climate change is accounted for in policies.²

Improved transparency in project assessments

4. The NPP states that projects assessed under national environmental law will be required to provide estimates of emissions expected across the life of a project. These estimates will be required to include emissions released and removed from the atmosphere, including Scope 1 and Scope 2 emissions.
5. While providing estimates of emissions is useful to determine the impact of a project, the absence of a 'climate trigger', or threshold of emissions at which approval of a project is automatically denied, means that there are no grounds for refusing approval for new projects on the basis of their carbon emissions. This may allow projects with unacceptable outcomes to be approved despite the levels of Scope 1 and Scope 2 emissions.
6. The Sub-Committees submit that while the NPP provides a useful baseline for recognising the inextricable link between climate and nature, the actions suggested do not go far enough in preventing approvals of projects which have unacceptable impacts on climate change and the environment. The Sub-Committees submit that:

¹ Climate Council, '2023 named hottest year on record as scorching temps sweep Australia', *Climate Council Resources/Media Releases* (Web page, 12 March 2024) <<https://www.climatecouncil.org.au/resources/2023-named-hottest-year-record-scorching-temps-sweep-australia/>>.

² Climate Change Authority, *2023 Annual Progress Report* (Report, October 2023) <[climatechangeauthority.gov.au/sites/default/files/documents/2023-11/2023 AnnualProgressReport_0.pdf](https://climatechangeauthority.gov.au/sites/default/files/documents/2023-11/2023%20AnnualProgressReport_0.pdf)>.

- a. more detail is needed around the requirements on project assessments, including what constitutes unacceptable levels of emissions for projects; and
- b. the NPP should facilitate the approval of renewable projects which also protect the environment.

Recommendation 1:

There should be a climate trigger included in the NPP to provide a measure for assessing what may constitute unacceptable levels of carbon emissions of a project.

Improved planning and landscape-scale approaches to facilitate adaption to climate change

7. Under the NPP, regional plans, strategic assessments and other strategic planning will be required to consider climate change and include environmental adaptation and resilience measures. The extent to which this will be considered, and the value climate change adaptation measures will add against other factors in the approval process, is unclear.

The Sub-Committees submit that more detail should be provided as to the weight to be given to climate change and adaptation measures when considering project approvals. We submit that all project proposals should be required to specify climate change adaptation measures to ensure long-term sustainability.

Recommendation 2:

Further detail should be released regarding the extent to which climate change adaptation measures will be considered against other project approval factors.

Recommendation 3:

Climate adaptation should be a mandatory consideration for all projects.

Improved information and climate-impact modelling

8. The NPP states that the Australian government's existing climate change commitments will be underpinned by improvements in information and understanding of future climate scenarios, including information on climate-exposed habitats, species and places.
9. However, it is unclear how this information will extend beyond the current requirements around Matters of National Environmental Significance (**MNES**) which proponents are already required to report on, and consider, in the project application. The Sub-Committees make a similar submission in relation to Environment Information Australia below, noting that the information falling under its remit is largely already prepared and made publicly available.
10. The Sub-Committees submit that:
 - a. given the extensive data available in relation to climate scenarios, the NPP should introduce specific indicators and requirements to avoid further contributing to negative climate scenarios and outcomes;

- b. the data collected, as well as the indicators and requirements of the NPP, should be informed by both expert opinion and stakeholders across a broad range of relevant fields to capture the breadth of climate change impacts. The indicators could include elements relating to environmental and heritage outcomes, such as use of renewable energy, habitat destruction, the use of carbon offsets, and impacts on culturally significant and heritage sites; and
- c. in relation to adaptation, the NPP should include requirements to ensure projects are resilient and able to generally withstand extreme weather conditions which will occur as the impacts of climate change heighten.

Recommendation 4:

The detail of the anticipated climate modelling should be made available in full to the public for further consultation, and include specifics about how the climate modelling will be factored into or impact project approvals. This detail should also include specific guidelines on climate change adaptation measures.

C. Conservation Planning

- 11. The Sub-Committees support the stance expressed in the NPP that Australia's conservation planning approaches need to be more efficient, agile and effective in order to halt biodiversity decline and address the risk of extinction, collapse or ongoing loss and degradation faced by Australia's species, ecological communities and ecosystems.

Expanding the objects of the EPBC Act

- 12. The Sub-Committees refer to the NSWYL Environment and Planning Committee's and Animal Law Committee's joint submission to the Department of Environment and Energy in respect of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) Discussion Paper, dated 20 April 2020 (**Independent Review Submission**).
- 13. The Sub-Committees maintain that the objective of the EPBC Act 'to promote the conservation of biodiversity' is not reflected in the current state of Australia's fauna.
- 14. The Sub-Committees submit that the EPBC Act should include an express objective which promotes the protection (as well as the conservation, as s 3(1)(c) currently provides) of Australia's flora and fauna.
- 15. Accordingly, the Sub-Committees adopt the fifth and sixth recommendations of the Independent Review Submission.

Recommendation 5:

Section 3(2)(e)(iv) of the EPBC Act should be amended to emphasise the need to protect threatened and endangered species.

Recommendation 6:

Section 3(1)(c) of the EPBC Act should be amended to specifically refer to the conservation of flora and fauna by revising the objective as follows:

‘to conserve the biodiversity of all flora and fauna in Australia to the fullest extent’.

Prevention of habitat degradation and fragmentation

16. The Sub-Committees support the call by the Department for strong regulatory standing for all conservation planning documents in environment impact assessment and approval processes in order to prevent habitat degradation and fragmentation.³
17. Significant pressure has consistently been placed on the long-term viability of vulnerable habitats and ecosystems due to insufficient regulatory protection, land-clearing, fragmentation, inadequate protections for whole ecosystems, and inappropriately streamlined approvals.⁴
18. Habitat loss is a primary driver of species reduction and extinction in Australia. For example, while the rate of land-clearing had reduced nationally in the decade leading up to 2016, fragmentation and modification of habitat “remains one of the most significant pressures on biodiversity”.⁵ Logistically and temporally, the threshold for habitat protection is too high for some individual assessments, such that clearing and development is likely to be approved unless sites are each given internationally recognised status.⁶
19. Furthermore, the cumulative impacts of projects require more robust and holistic consideration under conservation plans.⁷

Recommendation 7:

Strong regulatory standing should be given to all conservation planning documents in environment impact assessment and approval processes.

Recommendation 8:

Conservation planning documents should give due weight to the assessment of cumulative impacts so as to prevent habitat degradation and fragmentation.

³ Commonwealth Department of Climate Change, Energy, the Environment and Water, *Nature Positive Plan: better for the environment, better for business* (Report, December 2022) 12.

⁴ The Sub-Committees also made the same recommendation in their Independent Review Submission at page 14, available at <https://www.lawsociety.com.au/sites/default/files/2021-04/20202004_EPBC_Act_Submission.pdf>.

⁵ Ian Cresswell and Helen Murphy, *Australia State of the Environment 2016: Biodiversity* (Report, 2017) 160 <<https://soe.dceew.gov.au/sites/default/files/2022-05/soe2016-biodiversity-launch-version2-24feb17.pdf>>.

⁶ The Sub-Committees made the same submission in their Independent Review Submission at page 14.

⁷ The Sub-Committees also made the same recommendation in their Independent Review Submission at page 14.

D. Environment Information Australia

20. In the Sub-Committees' view, information sharing and systematising is a critical part of any effective national information initiative. The Sub-Committees are supportive of a well-resourced, comprehensive and clear system of environmental information gathering and sharing. The Sub-Committees welcome government actions 30-33 of the NPP in this regard.
21. The Sub-Committees are also pleased by the proposed establishment of Environment Information Australia (**EIA**) (formerly, the proposed Data Division) as part of the NPP.
22. However, the Sub-Committees note that much of the information proposed to fall under EIA's purview is already information that is being prepared and made publicly available. Also, much of that information is reflective of the underperforming of Federal (and State) environmental protection and conservation laws.⁸ As such, substantive improvements (not just 'form' changes) will also need to be made for this aspect of the proposed reforms to make a positive contribution. For example, the development of a standard for data and information, as proposed in government action 31, should occur as soon as possible.
23. The establishment of a National Environmental Standard (**NES**) on data gathering and monitoring of EPBC Act effectiveness (government action 33) would be a welcome component of those improvements. The Sub-Committees submit that a clear timeline for this part of the broader NES to be implemented should be set. Please see section G of this submission for further comments on the NES.
24. Establishing an effective information sharing connection between relevant Commonwealth and State bodies will be particularly important for a number of reasons:
 - a. Incompatibilities in objectives ought to be avoided – for example, a number of legislative and policy reviews are currently being undertaken at State (e.g. the NSW Invasive Species Management Review) and Commonwealth (e.g. Draft Threat Abatement Plan for Competition and Land Degradation by Unmanaged Goats) levels in respect of unmanaged/invasive species management. Sound information sharing between these two reviews will assist in producing more comprehensive, considered and consistent environmental outcomes in that regulatory space.
 - b. A more holistic approach to information gathering and consideration could assist in reducing the risk of habitat isolation and fragmentation. Land clearing facilitated at a State or Local level (those State and Local bodies potentially operating without an adequate connection to Federal environmental information, objectives and considerations) is a primary driver of it.⁹ The risks posed by fragmentation between states and localities could be addressed (in part) by better, regular, consultation and information sharing between levels of government. This is particularly important where environmental impacts are exacerbated by climate change.
 - c. Non-environmental groups are also interested in, and can contribute to, information gathering and interpretation. For example, animal welfare considerations are often separated from

⁸ Examples are cited in the proposed reform materials, but see, for example, biodiversity and marine health results in Ian Cresswell and Helen Murphy, *Australia State of the Environment 2016: Biodiversity* (Report, 2017) <<https://soe.dcceew.gov.au/sites/default/files/2022-05/soe2016-biodiversity-launch-version2-24feb17.pdf>>.

⁹ *Ibid.*

environmental management considerations, even where governments and communities have interests in and responsibilities for both. A failure to pool information between those categories of groups could result in clashes in objectives. Strong lines of communication and information sharing between the EIA and those groups would, in the Sub-Committees' view, assist in addressing this. For example, established animal advocacy groups,¹⁰ could be meaningfully consulted on a regular basis as part of this process.

25. While development need not be overburdened with assessment and approval processes, the Sub-Committees recommend that any efficacy pursued in streamlining approvals (see section F of this submission) should be replicated in the streamlining of data collection and sharing, and strategic planning, to ensure that development and environmental protection are equally facilitated in the right places at the right times.¹¹
26. To that end, the Sub-Committees submit that the EIA ought to have clear, strong connections with other relevant agencies around the country to ensure that:
 - a. existing and emerging resources are maximised;
 - b. State and Commonwealth bodies work collaboratively to develop a clearer environmental information picture, rather than siloed groups with differing focus areas;
 - c. various environmental law regimes can work in parallel and with the benefit of a shared pool of information and strong communication; and
 - d. habitat management is prioritised.

Recommendation 9:

A NES on data gathering and monitoring of EPBC Act effectiveness ought to be established, and a timeline set as soon as practicable for the establishment of that NES.

Recommendation 10:

Clear mechanisms and responsibilities ought to be established, either through the NES or the EPBC Act, for the sharing of information between relevant bodies in ecological and animal management and regulation, including Commonwealth and State bodies and non-environmental groups affected by such regulation (including relevant animal welfare organisations).

¹⁰ Some of which are already well-recognised, respected and have an established connection to and/or role within government – e.g. the RSPCA at State and Federal levels, and/or the Australian Alliance for Animals (which itself is a coordinated and collaborative body inclusive of groups with environmental initiatives).

¹¹ The Sub-Committees also made the same recommendation in their Independent Review Submission at page 14.

E. Environment Protection Australia

47. Through the NPP, the Australian Government has committed to establishing an independent national environment protection agency – to be known as Environment Protection Australia (**EPA**). The Sub-Committees note that the *Nature Positive (Environment Protection Australia) Bill 2024* was introduced to Parliament on 29 May 2024, which proposes to establish the EPA.

EPA decision-making responsibilities

48. The Sub-Committees note that EPA will be responsible for issuing permits and licences, project assessments, decisions and post-approvals, compliance and enforcement, and assuring states, territories and other Commonwealth decision-makers apply NESs per accredited arrangements.
49. In relation to issuing permits and licences, project assessments, and decisions and post-approvals, it is not clear how these responsibilities will differ, if at all, from the Minister's current responsibilities under the EPBC Act. To this extent, there is some risk that EPA will overlap with the role of the Minister under the current legal framework. Whether the Minister will retain any responsibilities under the EPBC Act which appear to overlap with the EPA is not clear.
50. For EPA to fulfil its legal responsibilities and functions in a manner that is more efficient and effective than what the Minister can currently achieve, it will require significant and sustainable funding and resourcing.
51. Additionally, we understand that the Minister will have a 'call-in' power over decisions that would otherwise be made by EPA. It is proposed that this would be two-way, meaning developers can call on the Minister to exercise their discretion.¹² The Sub-Committees generally view this as a balanced and positive step, noting that developers can use it to their advantage (e.g. to maximise the possibility of an action being declared "not a controlled action"), while also providing third party objectors the ability to mount public pressure on the Minister to call in certain applications. However, it will have narrow utility given the 'call-in' power will not apply to decisions made under the accredited process (see section F) and of course, EPA independence must be maintained.
52. When establishing EPA as a statutory body, the Sub-Committees recommend that there be a clear delineation between EPA and the Minister's statutory functions and responsibilities to ensure efficiency, clarity and independence.

Functions

53. The Sub-Committees note that EPA's regulatory functions will extend to wildlife trade regulation and the Sea Dumping, Ozone and Synthetic Greenhouse Gas Management, Hazardous Waste, Product Emissions Standards, Recycling and Waste Reduction, and Underwater Cultural Heritage Acts.
54. The Sub-Committees note that the *Nature Positive (Environment Protection Australia) Bill 2024* does not go into fulsome detail regarding the complete breadth of EPA functions. As such, this detail will not be entirely discernible until the draft Regulations are made available.

¹² Commonwealth Department of Climate Change, Energy, the Environment and Water, *Nature Positive Plan: better for the environment, better for business* (Report, December 2022) 4, 29.

55. Accordingly, the Sub-Committees recommend that the new framework be developed in accordance with robust expert technical and legal advice and put on exhibition for public consultation as soon as possible.

Appeals

56. The Sub-Committees note that the Australian Government will not introduce a right to limited merits review of decisions. According to the NPP, quality decision-making will be assured and improved by legislating NES and establishing an independent EPA.¹³
57. However, the extent to which these measures will improve quality decision-making is unclear. While the Sub-Committees acknowledge that introducing a legal avenue for limited merits review may prevent projects from proceeding in a timely manner, refraining from including any option for merits review risks restricting decision-making accountability. An alternative option, that could balance these competing concerns, may be the introduction of an “applicant-only” merits review. This would:
- a. maintain the availability of merits review in circumstances where a project is refused;
 - b. minimise potential delays to projects caused by merits review applications by confining the right to merits review to applicants only (as opposed to a broader right to merits review open to all parties related to a project, including objectors); and
 - c. improve avenues for decision-making transparency and accountability beyond the decision-makers in the first instance.
58. The Sub-Committees recommend that consideration be given to the introduction of a legal mechanism for an “applicant-only” merits review and, if it eventuates, that further consultation occur.

Recommendation 11:

There should be a clear delineation between EPA’s and the Minister’s statutory functions and responsibilities to ensure efficiency, clarity and independence.

Recommendation 12:

The framework of regulations over which the EPA has regulatory functions should be developed in accordance with robust expert technical and legal advice and put on exhibition for public consultation as soon as possible.

Recommendation 13:

Consideration should be given to the introduction of a legal mechanism for an “applicant-only” merits review and, if it eventuates, that further consultation occurs in respect of this.

¹³ Commonwealth Department of Climate Change, Energy, the Environment and Water, *Nature Positive Plan: better for the environment, better for business* (Report, December 2022) 5.

F. Environmental Assessment and Approval

62. The current federal environmental regulations are highly complex, and the complicated nature of the EPBC Act can make it difficult, expensive and time-consuming for project proponents and members of the public to understand their legal rights and obligations. This complexity can lead to inconsistent decision-making and undue regulatory burdens for project proponents. As such, the Sub-Committees commend the intention set out in the NPP to streamline the existing assessment and approval pathways available under the EPBC Act.¹⁴
63. As part of the effort to streamline the assessment process, the NPP proposes a number of reforms.¹⁵
64. Unfortunately, the NPP does not provide further specific details as to the content of the streamlining reforms. The Sub-Committees understand that this detail is intended to be provided in the forthcoming draft legislation. Therefore, until such time as the draft legislation is released for public consultation, any feedback is limited to a review of high-level reform concepts.

Accreditation

65. The NPP refers to an updated accreditation assessment process by which States and Territories may apply for accreditation as an assessment and approval body to assist with establishing 'single-touch decision-making'.¹⁶ However, the Sub-Committees note that, under the current intergovernmental agreements between the Commonwealth and the States and Territories regarding environmental regulation, attempts to accredit the States and Territories to make approval decisions consistent with the EPBC Act have been unsuccessful.¹⁷
66. The NPP does not contain specific details about how the proposed reforms will address this issue. As such, it is currently unclear:
- a. whether there will be separate accreditation processes for the States and Territories in relation to assessment and approval accreditation;
 - b. what the assessment and/or approval accreditation process will include;
 - c. how the potential implications of changes to State or Territory environmental legislation subject to the accreditation process will be addressed; and
 - d. how the decision-making responsibilities may be divided between the Commonwealth and the States and Territories, particularly where a State or Territory has not achieved accreditation.
67. Generally, the Sub-Committees consider that the proposed assessment and approval pathway reforms (including the proposed accreditation method) must, at a minimum, respond to the findings and recommendations set out in the Samuel Review.¹⁸ Additionally, any transitional arrangements must be clearly defined and communicated to all stakeholders prior to any reforms coming into

¹⁴ Commonwealth Department of Climate Change, Energy, the Environment and Water, *Nature Positive Plan: better for the environment, better for business* (Report, December 2022) 23-24.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, 3, 18.

¹⁷ Professor Graeme Samuel AC, *Independent Review of the EPBC Act - Final Report*, (Report, October 2020) Chapter 5.1.1.

¹⁸ Professor Graeme Samuel AC, *Independent Review of the EPBC Act - Final Report*, (Report, October 2020).

force, particularly proponents who have already had a pre-referral meeting for an EPBC Act assessment or those projects currently under assessment.

68. The Sub-Committees note that the intention to streamline the assessment process must not come at the expense of rigorous assessment practices and should endeavour to avoid replacing one complex and administratively burdensome system of assessment and approval pathways with another.

Proposed draft legislation arising from the NPP should:

Recommendation 14:

Reform the current assessment and approvals process under the EPBC Act;

Recommendation 15:

Propose an accreditation process that addresses the recommendations of the Samuel Review and clearly define any applicable transitional arrangements; and

Recommendation 16:

Be released to the public as a matter of urgency and ensure that any public consultation period on the draft legislation be of sufficient length to enable due and thorough consideration by industry, business and the community.

G. National Environmental Standards

72. Noting the analysis and recommendations of the Samuel Review, the proposed NES represent an opportunity to ensure the new federal environmental regime is more effective and outcomes-based than the EPBC Act.
73. The Sub-Committees consider it essential that the NES drafting is informed by both expert opinion and stakeholders across the broad range of relevant fields, including environmental and climate change science, carbon offsetting, and First Nations cultural heritage and engagement.
74. Further, the key priority of each NES should be to define and regulate environmental and heritage outcomes that have sufficient specificity to be measured, monitored and enforced. Where environmental and heritage outcomes lack specificity due to the absence of sufficient scientific knowledge or, in instances where cultural heritage cannot be adequately quantified, the precautionary principle should be applied to the outcomes and impact thresholds incorporated into the NES.
75. Separately, the Sub-Committees recognise that although the provisions of each NES must be able to operate in isolation, it is likely that projects requiring environmental approval at the federal level will need to engage with multiple NESs due to the typically complex nature of projects at this scale. As such, each NES should also reference and work in tandem with other NES and broader federal environmental regulation, including the regulatory and oversight functions of the EPA.
76. It will also be critical to define and communicate to all stakeholders prior to the enactment of the NES how any transitional arrangements regarding the NES will operate, especially for project

proponents who have already had a pre-referral meeting for an EPBC Act assessment or those with projects currently under assessment.

Recommendation 17:

Considering NES represent the core of the proposed environmental reforms, draft NES must be released for expert and public consultation as soon as possible.

H. Concluding Comments

NSW Young Lawyers thank you for the opportunity to make this submission. If you have any queries or require further submissions, please contact the undersigned at your convenience.

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