



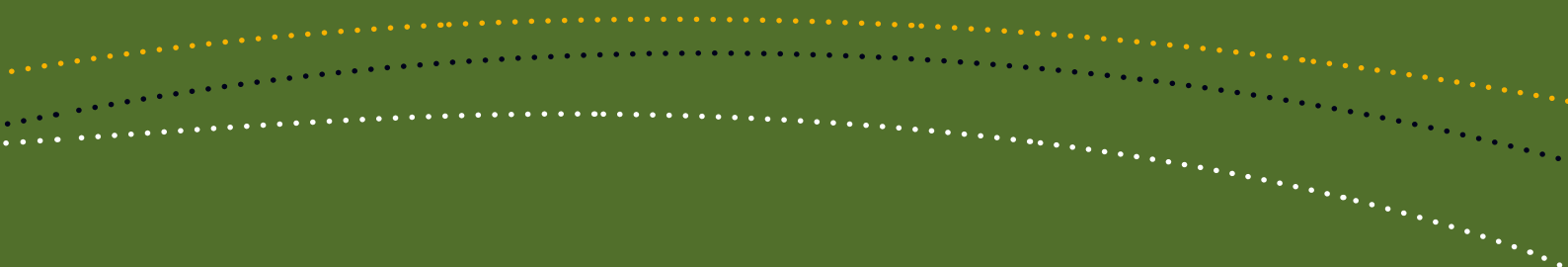
**Australian Government**

**Department of Sustainability, Environment,  
Water, Population and Communities**



# REFORMING NATIONAL ENVIRONMENT LAW

An overview





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Back (L-R)

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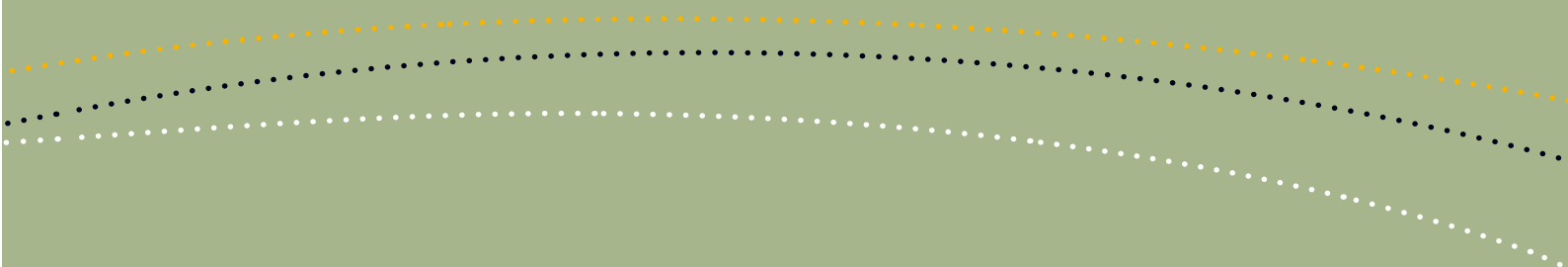
Internal images

Humpback whale (GBRMPA), Southern corroboree frog (Steve Wilson), Eurobin Creek (Trevor J Ierino), Oil refinery (Alex Zuk), Peppermint box woodland (Andrew Tatnell), Affordable housing (Alex Zuk), Barossa Valley (John Baker).



# REFORMING NATIONAL ENVIRONMENT LAW

An overview



# INTRODUCTION

Australia is known around the world for its stunning natural environment. We also enjoy a strong national economy and a high standard of living. To ensure we continue to protect our environment while growing the economy we need effective national environment law.

The *Environment Protection and Biodiversity Conservation Act 1999* is the primary piece of national environmental legislation. When it was introduced more than 10 years ago, it provided substantial powers to the Australian Government to regulate matters of national environmental significance and conserve biodiversity.

But over the decade since, our environmental management has evolved and the economy has continued to transform. Reform is needed to ensure this important legislation continues to work effectively in a modern Australia.

This new national approach to the protection of Australia's environment and biodiversity will be better for the environment, better for business and will lead to better cooperation.

The approaches in this environmental reform package ensure that we protect a healthy natural environment, as the foundation of our national prosperity and wellbeing. It will streamline national environment law and build better cooperation between government, industry and the wider community.

The Australian Government is committed to working in partnership with states and territories to implement this reform package.





## Key elements of the reform package

Major elements of the reforms are:

1. **New strategic approaches**—*taking a more proactive approach to protecting Australia's environment through more strategic assessments and regional environment plans.*
2. **A more streamlined assessment process**—*cutting red tape for business and improving the timeliness of decision making.*
3. **New national standards for accrediting environmental assessment and approval processes**—*ensuring Commonwealth and state systems are better aligned.*
4. **A new biodiversity policy for consultation**—*delivering an Australian Government biodiversity policy to help protect our ecosystems across the continent.*
5. **Improving the listing of species for protection**—*producing a single national list of threatened species and ecological communities to reduce inconsistencies between jurisdictions.*
6. **Identifying and protecting ecosystems of national significance**—*identifying and assessing ecosystems of national significance through regional environment plans, strategic assessments or conservation agreements.*
7. **Better regulating international trade in wildlife**—*streamlining permits process while continuing to meet our international obligations and ensuring a rigorous approach to wildlife trade.*
8. **Providing more public information**—*making more information publicly available, including making it standard practice to publish the departmental recommendation reports for the Minister's decisions under national environment law.*
9. **More cooperative approach to developing environmental standards**—*seeking partners for a new National Centre for Cooperation on Environment and Development that will bring together industry, scientists, non-government organisations and governments to work together on environmental standards, guidelines and procedures.*
10. **Better processes for heritage listing**—*introducing a more transparent listing process based on a single assessment list, and more open discussion about heritage values with stakeholders.*
11. **A draft environmental offsets policy**—*to provide transparency, consistency and better guidance to determine offsets in environmental impact assessment under the EPBC Act.*



## Why do we need reform?

### Protecting and conserving our biodiversity

Biodiversity is at the heart of a healthy natural environment—which is essential for a sustainable Australia.

Healthy, resilient ecosystems are essential for living creatures, providing clean air and water, healthy soil for food production, and natural materials for buildings and products.

Biodiversity decline, through extinctions and reduced species populations, affects the capacity of ecosystems to provide these essential services.

Australian governments have already agreed to Australia's Biodiversity Conservation Strategy 2010–2030 ([www.environment.gov.au/biodiversity/strategy/index.html](http://www.environment.gov.au/biodiversity/strategy/index.html)), which will guide how governments, the community, industry and scientists manage and protect Australia's plants, animals and ecosystems over the next 20 years.

The Australian Government is now complementing the national strategy with a policy framework for its own decision making on biodiversity—the Australian Government Biodiversity Policy—which is being released for public consultation as part of this reform package.

In delivering this environmental reform package, the Australian Government is providing national leadership to conserve Australia's biodiversity and maintain healthy functioning ecosystems for generations to come.

### Supporting sustainable development

A key role of our national environment law is to enable the assessment and approval of major development projects that may affect parts of the environment that are nationally protected.

Many major development projects require multiple environmental approvals from different levels of government. This imposes a significant and, at times unnecessary, cost to proponents and the economy. Nationally, demand for approvals under the EPBC Act is increasing significantly as is the complexity of the assessments. The legislation has been in force for more than a decade, yet half of all the approvals given have been granted in the past three years.

As a result, the timeliness of environmental decisions is not keeping pace with the growth in the economy. The percentage of project approval timeframes met is now below 70 per cent, compared with a target of 95 per cent.

Because proponents are currently not required to contribute towards the cost of assessments, the resources available to undertake these assessments have not kept pace with the demand for environmental decisions.



A new funding system that sees business contributing to the costs of assessments will ensure that the resources available to undertake these assessments are linked with demand.

Business benefits directly from a robust and effective environmental assessment process. Business also has a direct stake in timely assessments.

The Australian Government is committed to consulting closely with business and other stakeholders in the introduction of new cost recovery arrangements for environmental assessments.

At the same time, the Government will be pursuing reforms to streamline environmental assessment processes.

Bilateral agreements between the Australian and state and territory governments—which allow a single assessment process under national and state environmental laws—have been in place for some time. The Australian Government is committed to working with the state and territory governments to improve this integrated environmental decision making process.

Streamlining individual decisions is only part of the solution. There is strong support across all sectors for taking a more strategic landscape-scale approach. To do this, decisions need to focus on good environmental outcomes at a regional or ecosystem level.

This is reflected in the findings of the 2009 Senate Inquiry into the operation of the EPBC Act, and in the many submissions from a variety of sectors received during the independent review.





## Outline of the reform package

The reform package will deliver benefits for Australian industry, the environment, the economy and the community.

An independent review of the EPBC Act was conducted by Dr Allan Hawke AC and a panel of experts (the independent review). Comprehensive consultations on reforms to national environment law have subsequently been conducted with community and business groups and with scientists and other experts.

In developing the reform package, the Australian Government considered a wide range of views, including feedback from stakeholders as well as the formal review.

This comprehensive reform package also builds on the regulatory reform work carried out by the Council of Australian Governments (COAG).

### 1. Better for the environment

National environment law must be strategic, focused on matters of national environmental significance and operate in a way that is complementary to state and territory regulatory systems.

We need to be more preventative and proactive in our approach to environmental management. Currently, national environment law tends to be reactive. We consider most projects individually, rather than on a regional scale, which makes it hard to consider cumulative impacts on the environment. It is better to identify and avoid potential environmental risks upfront.

Ecosystem-scale management, which looks to conserve the environment across the whole landscape, is a more effective way of protecting habitats and the animals and plants that depend on them, while ensuring we meet the social and economic needs of communities in the long term.

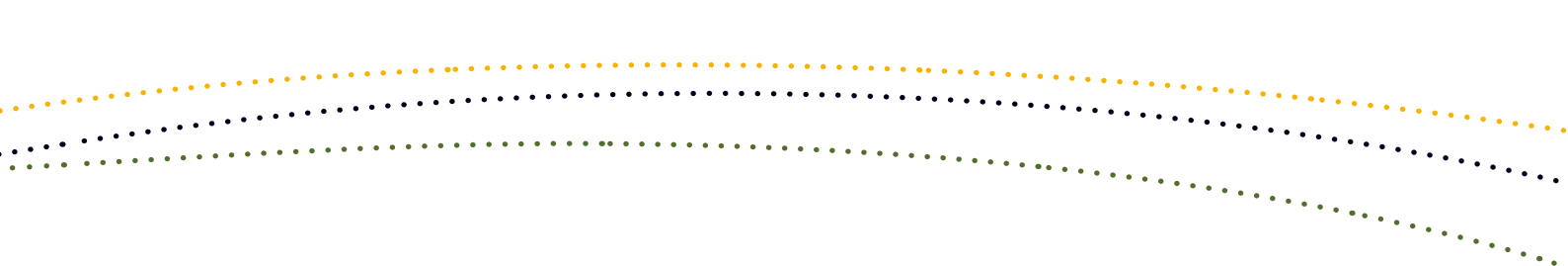
#### Strategic approaches

The reforms will take a more strategic approach to environmental assessment, including:

- considering environmental, social and economic matters together
- considering these early in the development process
- assessing geographical regions on a broader scale, rather than assessing individual projects
- working with states and territories to reduce duplication.

Strategic approaches to environmental assessment can include strategic assessments of plans, policies or programs, regional environment plans or conservation agreements.





We will deliver more regional environment plans and strategic assessments in priority areas. These will identify, at a regional scale, where development can occur, and which areas are environmentally important and should be managed accordingly.

Strategic assessments provide a big-picture study of a plan, policy or program, to assess how national environmental matters can be best protected while allowing sustainable development in that area. They ensure long-term environmental protection by looking at impacts on the environment over the whole landscape before development begins, rather than just at individual projects.

This means working with the states and territories to take account of all environmental assets in an area, including heritage values, habitats, species, ecological communities, geographical features, native vegetation and water supplies. It gives us an understanding of how these aspects of the environment interact, and how best to minimise the impacts of natural events and human activity.

Under regional environment plans and strategic assessments, broad classes of actions can be approved. Where subsequent individual projects are consistent with the approved plans, they will usually not require further individual approval.

This provides greater certainty for business to plan and invest. It also ensures better environmental outcomes.

Under the reforms, important and healthy ecosystems will also be eligible for direct protection as 'ecosystems of national significance'. This is a more proactive approach to conserving Australia's healthiest and most important environmental assets in the long term, rather than waiting until threats become significant. Consistent with existing national agreements, the Government will develop this reform in consultation with states and territories.

Unlike threatened species and ecological communities, there will not be a public nomination process for ecosystems of national significance. Listings of ecosystems of national significance would only happen through the preparation of a regional environment plan by the federal and state governments, or a similar strategic approach. This gives certainty to business because it sets out upfront what activities are compatible with a healthy environment.

### **Ecosystems of national significance**

An example of a potential ecosystem of national significance is the cassowary movement corridors around Mission Beach in North Queensland. Cassowaries are large flightless birds that serve an important ecological function in their rainforest habitat by distributing the seeds of more than 150 plant species. They are protected under national environment law.

Listing of cassowary corridors could help to build the ecological resilience of the local rainforest, and support its role in ecosystem services, such as improving water quality in the Great Barrier Reef catchment.

## New policies to support the new law

Despite a significant global decline in biodiversity, Australia still has more unique animals and plants than almost anywhere on earth. We have a vast array of land and freshwater ecosystems, from the tropical north to the cool-temperate south, and our seas are rich in different species and habitats.

We need to take a more integrated approach to biodiversity. A new Australian Government Biodiversity Policy will deliver this integrated approach in tackling the challenge of biodiversity conservation in a changing climate. It will reflect our international obligations under the *Convention on Biological Diversity* and will underpin the Australian Government's role in delivering *Australia's Biodiversity Conservation Strategy 2010–2030* jointly with state and territory governments.

This new policy approach will also complement existing initiatives, including Caring for our Country, the National Wildlife Corridors Plan, Environmental Stewardship and Regional Sustainability Plans.

The draft Australian Government Biodiversity Policy will provide, for the first time, a guiding framework for all Australian Government action on biodiversity conservation, including regulatory action under national environment law. It will also underpin implementation of the overarching national strategy—*Australia's Biodiversity Conservation Strategy 2010–2030*.





## Draft Australian Government Biodiversity Policy

### Vision

- Australia's biodiversity is healthy and resilient to threats, and valued both in its own right and for its essential contribution to our existence (*Australia's Biodiversity Conservation Strategy 2010–2030*).

### Commitment

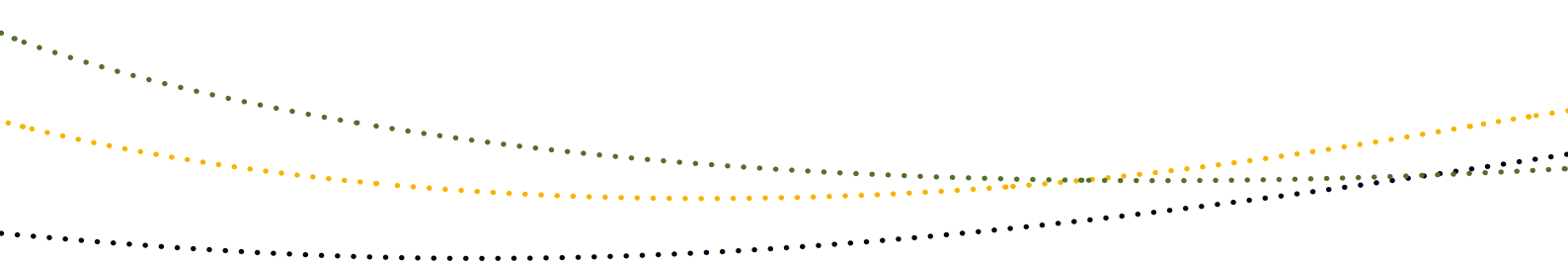
- The Australian Government's commitment is to provide national leadership in conserving Australia's biodiversity and maintaining healthy functioning ecosystems, consistent with the roles of different levels of government in our federal system.

### Principles

- It is better to prevent biodiversity decline before it happens.
- Biodiversity should be valued according to its real worth through market-based approaches.
- We need to take an adaptive approach to build the resilience of biodiversity to climate change.
- Effective conservation requires well-targeted investment.
- Biodiversity is complex and a shared responsibility—it needs cooperation.
- We need to manage biodiversity at a landscape scale, over the long term.
- Biodiversity is a renewable resource but we must not undermine its capacity to renew itself.
- Credible information and knowledge is essential for good decisions.
- Commonwealth environmental regulation should be strategic, focused on matters of national environmental significance, and complementary to state and territory legislation.

The Government will also promote the use of market mechanisms to achieve better environmental conservation, including 'biodiversity banking' schemes.

Some 'biodiversity banking' schemes already exist in Australia. These schemes allow proponents to offset the impacts of development on the environment by purchasing 'biodiversity credits' from third parties who manage land for conservation. Biodiversity credits also provide a new opportunity for farmers and other land managers to increase biodiversity on their land while also adding an additional form of income through selling their credits.



The Government has initiated a national discussion with the states and territories to develop national standards for biodiversity banking schemes. This will encourage cooperation across all jurisdictions, ensure public transparency and accountability, and help deliver cost-effective market-based environmental offsets for proponents.

Properly valuing biodiversity through market mechanisms will allow us to develop more effective approaches to biodiversity management and to invest in our ecological infrastructure.

The Australian Government is also developing a new policy on environmental offsets. This will provide guidance for developers and the community as to how these offsets will be assessed and what would be acceptable. It will promote transparency and consistency in decision making about the use of offsets.

The new policy will cover environmental offsets generally, not simply the market-based approach to offsets found in biodiversity banking. A consultation draft of the new policy is being released for public comment.

### What are environmental offsets and biodiversity banking?

**Environmental offsets** are measures taken to compensate for the environmental impacts of proposals where those impacts cannot be adequately avoided or minimised to an acceptable level. Offsets do not reduce the impacts of an action. Instead, they provide environmental benefits to counterbalance residual impacts, after steps to avoid or minimise impacts have been taken.

Offsets do not make proposals with unacceptable impacts acceptable. They simply provide an additional tool that can be used during project design and environmental impact assessment to deliver ecologically sustainable development.

Offsets can be direct and indirect. Direct offsets are parcels of land that are secured in perpetuity and managed for conservation. Indirect offsets are other measures to better manage or benefit existing protected matters. Examples of indirect offsets are funding more Indigenous rangers to improve land management, or funding research projects.

**Biodiversity banking schemes** are a market-based mechanism for supplying environmental offsets. By placing a financial value on biodiversity, land managers such as farmers can continue their work managing land for conservation, and 'sell' the resulting environmental gains as an offset for environmental impacts elsewhere. They provide certainty to business, a diversified income stream for rural landholders and improved environmental outcomes. There are two schemes operating in Australia: BushBroker in Victoria and BioBanking in New South Wales.





## 2. Better for business

Assessment decisions under the EPBC Act are not keeping pace with growth. Just over one third of all approvals granted under the Act over the past 11 years have been issued in the past two years. One half of all approvals have been issued in the past three years.

Currently, some 420 proposed developments are referred for assessment each year. Under the current approach, each development is considered individually. For business, this can involve uncertainty and, in many cases, complex decision processes. Unnecessary approval delays can add millions of dollars in additional project costs.

Under these reforms, the increased emphasis on strategic approaches will reduce the number of environmental impact assessments carried out project-by-project. This will deliver more upfront certainty and quicker decisions. Of course, these strategic approaches will not always be suitable, and there will always be a need for individual project assessments as well. The reform package will streamline project assessment processes, without compromising public transparency or consultation.

### **The Melbourne Urban Growth Boundary strategic assessment**

In 2009, the Victorian Government, in partnership with the Australian Government completed a strategic assessment of plans to provide for Melbourne's population growth to 2030 (*Delivering Melbourne's Newest Sustainable Communities*). Four new growth precincts will be established within 24,615 hectares, including 284,000 new houses. Some 250 separate EPBC referrals will no longer be required for these developments.

The strategic assessment was the first to be completed under national environment law. As a result of the assessment, 15,000 hectares of reserve will be set aside.

This was a major shift in sustainable planning and in the protection of native vegetation. Requiring individual developers to set aside fragments of native vegetation can have limited long-term conservation benefits.

In Melbourne, offset funds will purchase the highest-quality remnants of native grassland vegetation to create a new, consolidated reserve on the outskirts of the city. The reserve will be owned and managed by the Victorian Government as a national park or similar status. It will protect 20 per cent of remaining threatened native grasslands on the 2.4 million hectare Victorian volcanic plains bioregion. Currently only two per cent is protected.

Sustainable regional development increases certainty by giving better upfront guidance for appropriate development. It identifies areas suitable for development and those needing long-term protection.

By dealing with all environmental issues in a region and establishing certainty for future developments, strategic assessments and regional environment plans significantly reduce the regulatory burden on industry.

Where proponents design their projects in line with broad approvals given under the strategic approach, there is no additional requirement to refer individual projects for environmental assessment. This reduces delay and unnecessary compliance costs, and gives greater certainty about future development.

The reforms will include a new mechanism to allow the Government to make legally binding determinations on whether certain actions do not trigger national environmental law. Currently, guidelines produced by the department do not give legal certainty around whether a project needs assessment under national environmental law.

In fact, many proponents submit their proposal for legal certainty, even if it is highly likely that if they carry out the project according to published guidelines, the action will be found not to need an assessment.

This change can substantially reduce the number of referrals, removing delay for business and allowing the system to focus more efficiently on projects that require assessment.

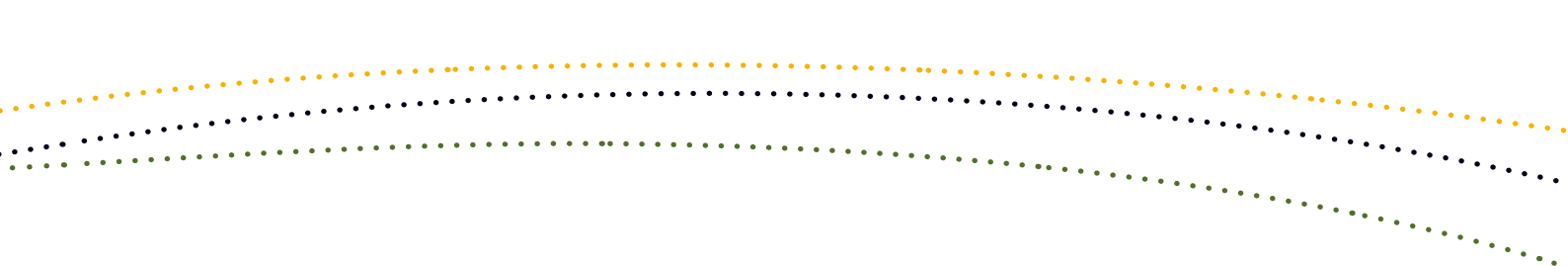
Many of these reforms will provide an added incentive for proponents to engage early with government, at the project scoping stage.

For example, a new process to allow 'approval on referral information' will create an incentive for proponents to submit fully developed, 'decision-ready' project documentation. Well-designed and fully documented lower-impact projects will be eligible for approval within 35 business days, without the need for full-scale assessment. Importantly, this process will retain a public consultation period.

These reforms will also deliver more streamlined processes for industry, including online applications, which will support more efficient decision-making.

For example, we will shift from the cumbersome process of individual permits in the wildlife trade permit system towards accrediting management arrangements for companies and industries. These accredited management arrangements will be subject to reporting and review.





### More efficient and effective wildlife trade management

In 2010, more than 20 000 wildlife trade permits were issued, including for crocodile skins, kangaroo hides and other plant and animal products. Under the current system, a permit must be issued for each individual export shipment, package or specimen.

This is another unnecessary regulatory burden. In consultation with stakeholders, the Government will streamline these processes and move to assessing and accrediting management arrangements for companies and/or industry sectors.

This new approach will cut red tape while ensuring Australia continues to meet its international obligations under the Convention on International trade in Endangered Species of Wild Fauna and Flora.

The reforms also include a more flexible approach to heritage management. Currently, management plans for nationally-listed heritage places must meet prescriptive requirements under EPBC Regulations. Often these result in specific plans just to comply with these regulations, even if they duplicate existing plans. This can cost up to \$150 000. Under the reforms, the Government would recognise suitable existing management arrangements—focusing on good outcomes, rather than process.

### 3. Better cooperation

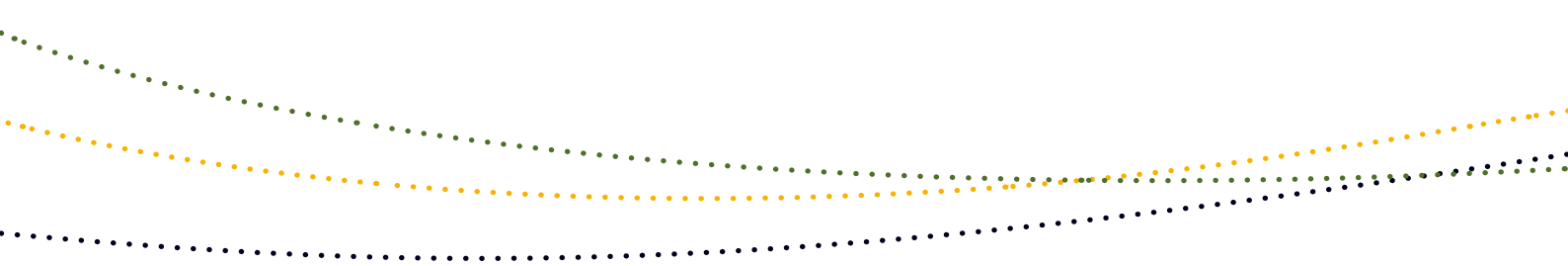
The community has an important role to play in environmental decision-making. Ensuring communities having a say in planned development is an important feature of the new reform package.

Feedback to date has raised concerns about the challenges communities face in having input into environmental approvals. A new focus on strategic approaches, rather than project-by-project assessment, will improve community consultation by ensuring high standards of consultation on environmental, economic and social issues. It will also help individuals and groups to gain more information about environmental and development issues across a region.

The Australian Government also wants to make sure community participation is user friendly, and to improve community understanding of national environment law.

To do this, we will publish new policies and guidelines, proposals under assessment and decisions made. These policies and guidelines will cover particular industries, activities and locations, matters of national environmental significance, and processes such as the use of environmental offsets.

We will also make more documents available to the community, including by routinely publishing departmental recommendation reports and the advice of expert councils and committees. Also, the public comment periods that apply when development proposals are first referred will be increased from 10 to 11 business days. This will make it easier for the community to participate in the process by including two weekends.



Both industry and the community will also benefit from better cooperation between the Australian and state and territory governments. While all governments have agreed to a partnership approach to environmental protection nationwide, the various environment protection regimes retain significant differences and incompatibilities. Much remains to be done to achieve an integrated, seamless and efficient system of environmental assessments and approvals.

### Better cooperation

Most major projects require environmental approvals across multiple jurisdictions. The Australian Bureau of Agricultural and Resource Economics and Sciences estimate a total pipeline of resources investment of more than \$380 billion.

Reducing inconsistency between federal and state or territory environmental assessment processes will cut red tape for proponents, communities, governments and the economy, and improve environmental outcomes. Better cooperation with the states will focus on:

- improving coordination of statutory processes
- improving government performance on timeframes
- investigating national standards for environmental impact assessment
- investigating opportunities for joint assessment panels.

Through the Council of Australian Governments, the Australian Government and states and territories have already implemented one round of measures aimed at streamlining environmental assessments and approvals.

The Council of Australian Governments has initiated a new national reform agenda on environmental assessment and approvals, to take streamlining and harmonising significantly further. The national reform agenda will cover the development of national standards for environmental impact assessment that can be consistently applied across all jurisdictions.

Specific elements of the reform package related to better cooperation with the states and territories include:

- more effective environmental assessment and approval processes across all jurisdictions, including through the development of new national standards for environmental assessments, accreditation of state processes and the establishment of joint assessment panels
- greater use of strategic approaches to streamline approvals and increase business certainty
- the development of a national threatened species list to reduce duplication and increase business certainty
- the development of national standards for biodiversity banking and environmental offsets.



### Single national list for protected species

At the moment, multiple lists of threatened species and ecological communities exist across jurisdictions. Some species are listed differently at a state/territory level and nationally. A single national list of all protected species and ecological communities will provide a greater certainty and consistency.

A single source will explain the protection provided to species and ecological communities across Australia.

This will also help to standardise the listing processes across jurisdictions, to reduce unnecessary duplication. Currently, when a state or territory lists a species or changes the listing for a species, the Australian Government must do a separate assessment under the EPBC Act if the species is also nominated for national listing.

The proposed new approach would allow the Australian Government to accredit state and territory listing processes. This could enable national protection without the need for a separate assessment. The new list will be based on nationally agreed and scientifically robust criteria, consistently and rigorously applied.

### National Centre for Cooperation on Environment and Development

Environmental protection can generate conflict, as competing community interests clash. The Government is looking to improve decision making by trying to build greater consensus earlier in the process.

The Government is calling for expressions of interest for a new National Centre for Cooperation on Environment and Development to promote better decision making. Subject to resources being available, we will then enter into discussions with potential partners.

The new centre would provide a neutral forum for industry, scientists, non-government organisations and governments to work together to develop recommendations for national environmental standards, guidelines and procedures under national environment law.

Potential partners in this centre could include universities, research institutions, government and non-government organisations. The intention is to seek partners who share the goal of better cooperation to deliver better results in environmental decision making.



## Public consultation on cost recovery to support the reforms

This reform is about taking a smarter approach to environmental protection and biodiversity conservation. We need to be more proactive and use strategic approaches to deal with the complex issues that pose a threat to Australia's environment. A more effective and efficient national environment law will allow environmental assessments to keep pace with Australia's growing economy.

Environmental assessments require resources, and it is appropriate that those who derive a private benefit from an approved activity should bear that cost.

To achieve all of the benefits of the Government's reform agenda, additional resources will be required. The introduction of cost recovery is essential to providing the necessary resources and allowing the full package of reforms to be implemented. Without cost recovery, the extent and sequencing of the reforms would need to be revisited.

The Government will consult stakeholders shortly on cost recovery options, in accordance with the government's cost recovery guidelines (see [www.finance.gov.au/publications/finance-circulars/2005/09.html](http://www.finance.gov.au/publications/finance-circulars/2005/09.html)). A cost recovery consultation paper will be released for discussion.

Prior to the introduction of cost recovery, the proposed approach will be set out in a draft Cost Recovery Impact Statement, and stakeholders provided the opportunity for input.



## Where to get more information

For more information on national environment law reform go to:

[www.environment.gov.au/epbc/reform](http://www.environment.gov.au/epbc/reform)

email [EPBC.reform@environment.gov.au](mailto:EPBC.reform@environment.gov.au)

or call 1800 003 513.



