



POLICY SUBMISSION

EIANZ feedback on Environmental Protection Reform Consultation Paper 2: More certainty for projects and environmental protection

21 May 2026

1.1 About EIANZ

The Environment Institute of Australia and New Zealand (EIANZ) is the not-for-profit, multidisciplinary association of environmental practitioners across Australia and New Zealand. Our members include scientists, ecologists, planners, engineers, lawyers, economists, and policy specialists, many with direct experience in designing, assessing, approving, delivering, monitoring, and enforcing environmental offsets under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

This submission reflects practitioner experience and draws on consultation across EIANZ specialist groups, including biodiversity offsets, heritage, ecology and impact assessment.

1.2 Executive Summary

EIANZ supports the intent of Consultation Paper 2 and the early commencement of subordinate legislation and associated instruments designed to provide greater certainty for projects and environmental protection. EIANZ notes that the *Environment Protection Reform Act 2025* has already been enacted, and that this consultation focuses on supporting Rules, Regulations, and commencement arrangements to operationalise parts of the new framework from 1 July 2026. DCCEEW states that the reform bills were passed by Parliament on 28 November 2025, that the next stage of supporting laws is proposed to come into effect on 1 July 2026, and that feedback on the primary Acts is not being considered because those laws have already passed Parliament.

These measures are supported in principle. However, certainty will only be improved if the new tools are clear, timely, scientifically robust and practical for proponents,

decision-makers, environmental practitioners and the community. Early commencement should therefore be accompanied by clear implementation guidance, careful attention to terminology, and regular review of how the new tools operate in practice.

2.1 Protection Statements

EIANZ supports the introduction and early commencement of Protection Statements. If well designed, they have the potential to provide clearer upfront guidance on what must be protected to support the survival and recovery of listed threatened species and ecological communities.

Protection Statements are dealt with in new sections 298A to 298H of the EPBC Act, inserted by the *Environment Protection Reform Act 2025*. Section 298B(1) requires a Protection Statement to include information about what must be protected to ensure the survival and recovery of the relevant listed threatened species or ecological community. Section 298B(2) provides for additional content, including matters such as critical habitat, irreplaceable habitat and restoration contribution charge information.

Implementation guidance should clearly explain the legal and practical relationship between Protection Statements, recovery plans, conservation advice, threat abatement plans, policies and other statutory documents. Section 298A(3) requires the Minister to have regard to matters including recovery plans and approved conservation advice when making a Protection Statement, but this is not the same as consolidating those instruments into a single document.

Without this clarity, Protection Statements may add another layer to an already complex system rather than improving certainty. Future consolidation of relevant recovery plans, conservation advice, policies and other legislative guidance should be considered where this would improve clarity and reduce duplication, without weakening existing protections or losing important species-specific information.

Protection Statements should also be supported by clear preparation priorities, review timeframes and publication expectations. EIANZ members have observed instances where conservation advice and related instruments have remained in draft or outdated form for extended periods, creating uncertainty for practitioners and proponents.

A published forward work program would help practitioners, proponents and the community understand which species and ecological communities will be prioritised for Protection Statements, and why.

Each Protection Statement should identify how it is intended to be used in decisions, including monitoring expectations, restoration priorities and review triggers.

2.2 Rulings

EIANZ supports the use of Rulings, which provide clearer, more consistent, and more transparent interpretations of how the EPBC Act, regulations, or standards apply in particular circumstances. Used well, Rulings could assist proponents, practitioners and decision-makers by reducing uncertainty and improving consistency.

Rulings are dealt with in Part 19C of the EPBC Act, comprising sections 514YL to 514YT, inserted by the *Environment Protection Reform Act 2025*. The provisions include Minister's rulings, CEO's rulings, public consultation, variation, revocation, five-year review and use of Rulings by decision-makers.

There are positive safeguards in the framework, including public consultation before making a Ruling under section 514YO and mandatory five-year review under section 514YS. However, Rulings are not legislative instruments under section 514YM(8), while National Environmental Standards are legislative instruments.

In EIANZ's view, Part 19C outlines the scope of the environmental law provisions to which the Rulings apply, and the processes for developing and administering them. However, the provisions appear to be open-ended and do not appear to constrain a decision-maker from making rulings that have the potential for adverse environmental consequences.

Clear criteria, consultation requirements and review mechanisms should support the making and use of Rulings. Rulings should be published with reasons and reviewed where new scientific information, case experience, changes to National Environmental Standards or changes to relevant conservation instruments indicate that revision may be needed.

The Regulations or supporting guidance should also clarify that Rulings must not be inconsistent with National Environmental Standards, Protection Statements or relevant conservation planning instruments

2.3 Unacceptable impacts

EIANZ supports the introduction of defined unacceptable impact criteria. A clearer unacceptable impact framework has the potential to improve certainty, strengthen environmental protection, and help identify impacts that cannot be made acceptable through offsets or conditions.

EIANZ has previously supported the concept of unacceptable impacts, while emphasising that definitions for each matter of national environmental significance must be scientifically robust, clearly articulated and subject to adaptive management as ecological conditions evolve. EIANZ's December 2025 Senate submission made this point directly in Recommendation 2.

Further guidance will be needed on how unacceptable impact criteria will be interpreted in practice, including how they interact with Protection Statements, Rulings, conservation advice and recovery planning documents.

Particular care is needed with the use of “critical habitat” terminology. New section 207A(1AA) distinguishes between critical habitat and registered critical habitat, while section 207A(1AB) confirms that nothing requires the Minister to include particular critical habitat on the register.

This creates a practical interpretation issue. Habitat may meet the scientific definition of critical habitat in section 207A(4) but not be registered as critical habitat. DCCEEW should publish clear guidance, with practical examples, explaining how “critical habitat”, “registered critical habitat,” and “habitat critical to the survival of a species” should be applied in referral, assessment and decision-making contexts. Unclear terminology can create both environmental risk and project risk, because inconsistent interpretation may lead to inconsistent significance assessments.

2.4 Minor or preparatory works

EIANZ supports the proposed early commencement of provisions relating to minor or preparatory works while a controlled action is under assessment. These changes should help reduce unnecessary administrative burden where proposed works are genuinely minor or preparatory components of a larger action.

The relevant statutory framework is in new section 74AA(2A) to 74AA(2D) of the EPBC Act, inserted by item 168 of Schedule 1 to the *Environment Protection Reform Act 2025*. Section 74AA(2A) refers to an action that is a “minor or preparatory component of a larger action”, with the Minister’s written agreement in accordance with any regulations prescribed for that purpose.

Guidance should define the types of works that may be considered minor or preparatory, and the circumstances in which they should not proceed. The framework should ensure that early works do not cause impacts that are difficult or unable to be repaired, prejudice assessment outcomes, or enhance expectations for future approval of the proposal.

Section 74AA(2B) allows regulations to make provision for applications, matters the Minister is to be satisfied of or have regard to, notice and publication of decisions, and when the Minister’s decision has effect. Examples of works likely to be acceptable and unacceptable under this pathway would assist proponents, practitioners and decision-makers.

2.5 Reconsiderations

EIANZ supports the proposed changes to reconsideration processes where they reduce unnecessary administrative burden and provide clearer pathways for dealing with changes in information, circumstances or assessment requirements.

These processes should be efficient, but they must also preserve transparency and procedural fairness. Guidance should explain when reconsideration may occur, what information must be provided, how affected parties will be notified, and how reasons for decisions will be published.

2.6 Lapsing Not Controlled Actions

EIANZ supports the proposed changes to lapsing Not Controlled Action decisions. These changes should provide greater certainty about when older decisions can continue to be relied upon and when a proposal should be referred again.

Environmental conditions, species distributions, listing status, threat profiles, land use context and scientific knowledge can change over time. Extension requests should include enough information to demonstrate that the action remains materially consistent with the original decision and that relevant environmental circumstances have not materially changed.

2.7 Other minor changes

EIANZ generally supports the other minor changes identified in Consultation Paper 2 where they improve decision-making, public transparency and administrative clarity.

Given the technical complexity of the EPBC Act and the proposed early commencement of multiple reforms, all consequential amendments should be checked carefully before commencement. Where provisions are being brought forward before the broader reform

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