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Environment Protection Reform Consultation – Subordinate Legislation

Property Rights Australia (PRA) welcomes the opportunity to provide comment on the proposed subordinate legislation supporting the *Environment Protection Reform Act 2025* and associated amendments to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

PRA has participated extensively throughout the EPBC reform process and has consistently raised concerns regarding the lack of genuine engagement with landowners, the increasing centralisation of environmental decision-making, the absence of meaningful protections for property rights, and the growing disconnect between environmental policy development and the realities faced by rural and regional Australians.

Unfortunately, the subordinate legislation currently under consultation does not address those concerns. Instead, it reinforces them.

Far from providing certainty, transparency and confidence, the proposed framework expands Commonwealth regulatory powers while leaving fundamental questions unanswered. It creates new mechanisms for intervention, new opportunities for regulatory expansion, and new uncertainty for landowners whose properties increasingly bear the burden of delivering environmental outcomes without corresponding recognition, compensation or procedural protections.

PRA remains deeply concerned that the Commonwealth continues to pursue one of the most significant expansions of environmental regulation in Australian history without adequately addressing the impact on private property rights, agricultural productivity, regional communities and public confidence in environmental governance.

The Fundamental Flaw Remains Unchanged

PRA's primary concern throughout the EPBC reform process has been that governments continue to treat private land as a public environmental asset while refusing to recognise the corresponding rights and interests of the people who own and manage that land. The subordinate legislation further entrenches this approach.

The proposed framework expands the Commonwealth's ability to influence, restrict and regulate private land use through:

- Protection Statements;
- Ministerial and agency rulings;
- unacceptable impact provisions;
- expanded audit powers;
- reconsideration powers;
- environmental information systems;
- increased compliance mechanisms; and
- broader regulatory discretion.

At no point within the consultation material is there any meaningful discussion of compensation, property rights protections or mechanisms to address the economic impacts imposed upon affected landowners. The underlying assumption appears unchanged: environmental obligations can continue to be transferred onto private landowners without recognition of the costs imposed. Such an approach is neither equitable nor sustainable.

Lessons Ignored from Previous Consultation Rounds

Property Rights Australia is disappointed that many of the concerns repeatedly raised by landowners, farmers, rural communities and property rights advocates throughout earlier stages of the EPBC reform process remain largely unaddressed.

Over several years of consultation, PRA and many other stakeholders have consistently warned that environmental reform cannot succeed if it is built upon the progressive erosion of private property rights, increasing regulatory uncertainty and a failure to genuinely engage with those most affected by proposed changes. Unfortunately, the subordinate legislation demonstrates that these warnings have largely been ignored.

Throughout previous consultation rounds, PRA raised concerns regarding:

- the absence of meaningful protections for property rights;
- the growing reliance on environmental mapping and modelling;
- increasing regulatory complexity;
- expanding federal intervention into land management decisions;
- inadequate recognition of landowner stewardship;
- the absence of fair compensation mechanisms; and
- consultation processes that occur after key policy decisions have already been made.

Rather than addressing these concerns, the current proposals further entrench them.

The consultation documents repeatedly refer to improving environmental outcomes, increasing transparency and delivering certainty. Yet there remains no meaningful discussion regarding the rights of those whose land will increasingly be relied upon to deliver those outcomes. This omission is particularly concerning given that private landowners manage more than half of Australia's land mass and are responsible for a substantial proportion of the country's biodiversity, environmental assets and productive landscapes.

The reforms continue to assume that environmental obligations can be imposed upon private landowners without corresponding recognition of the economic, operational and legal consequences that follow.

PRA is concerned that the Commonwealth has approached consultation as a process of informing stakeholders how reforms will be implemented rather than genuinely seeking input on whether aspects of those reforms are appropriate, proportionate or workable. Consultation loses credibility when the same concerns are raised repeatedly over multiple years yet remain absent from the final policy framework.

The cumulative effect is a growing perception across rural and regional Australia that consultation has become a procedural exercise rather than a genuine opportunity to influence outcomes. This perception presents a significant risk to the long-term success of environmental policy.

Effective environmental reform requires public confidence. Public confidence requires trust.

Trust cannot be built where stakeholders believe decisions have already been made, concerns have already been dismissed, and consultation exists primarily to validate predetermined outcomes.

PRA submits that the Commonwealth should undertake a comprehensive review of the concerns raised throughout previous consultation rounds and publicly identify how those concerns have been addressed, modified or rejected, together with the reasons for doing so. Such a process would improve transparency, rebuild confidence and demonstrate that consultation is being undertaken in good faith rather than merely as a statutory requirement. The reforms currently before stakeholders provide little evidence that this has occurred.

The emphasis in the document is on compliance. Fines have been increased substantially to a level which could wipe out a family operation.

Transparency is mentioned often but not acted upon.

The CEO of the EPA and the EPA will be given substantial powers to cancel or amend permits and licences but with no clear indications of the circumstances under which this will be done. The CEO has been awarded a great deal of power without any formal indication of the limits of those powers. This is not accountability nor transparency. There must be rights of appeal to any decisions.

We are hearing that landowners will have circumstances under which they will not have to self-refer and that some landowners, after conversations with DCCEEW, have been told that they do not need to self-refer. However, estimates hearings have established that that verbal advice has no legal standing and that landowners could still face compliance requirements in spite of departmental verbal advice.

It speaks volumes that some of the country's largest pastoral companies who have access to legal and ecological advice have put management plans on hold. In some cases that has been done with a warning that unintended ecological consequences can occur when country is not managed and becomes a monoculture.[1]

The dangers of monocultures and thickening have been underestimated by government under the influence and lobbying of environmental Non-Government Organisations NGOs rather than listening to those who observe the land and its interactions every day.

Consultation Continues to Occur After Decisions Have Been Made

PRA remains concerned that the Commonwealth continues to seek consultation on implementation details after the principal legislative architecture has already been enacted. A concern that has been repeatedly raised during earlier consultation processes.

[1] https://www.theaustralian.com.au/nation/routine-farming-operations-criminalised-by-new-epbc-green-tape/news-story/9fcebd9b7414737a57bd3d65579d643f

Meaningful consultation requires stakeholders to have an opportunity to influence policy outcomes before decisions are made. Instead, landowners have been placed in the position of responding to subordinate legislation designed to implement legislative reforms that have already passed Parliament.

The consultation papers themselves acknowledge that key operational elements of the new framework remain under development. This raises a fundamental question - how can landowners provide informed feedback on a regulatory system when many of the standards, definitions and decision-making criteria that will ultimately govern that system have not yet been finalised?

PRA considers this process fundamentally flawed.

The people most affected by these reforms should have been consulted before the legislation was passed, not after.

1.1 Transition to National EPA

The National EPA Represents a Significant Concentration of Regulatory Power

PRA remains concerned about the cumulative effect of the reforms establishing the National EPA. The proposed audit, investigation and compliance powers represent a substantial expansion of federal enforcement capability. Combined with expanded environmental data systems, increased reporting requirements and broader regulatory discretion, the reforms create a framework characterised by greater surveillance, greater intervention and greater enforcement.

The consultation materials repeatedly describe these powers as necessary to improve compliance. However, there appears to be little recognition that most environmental management on private land already occurs voluntarily and at the expense of landowners themselves.

The reforms risk damaging the cooperative relationships necessary to achieve genuine environmental outcomes by replacing trust with enforcement.

The Commonwealth continues to claim these reforms will reduce duplication, yet the practical experience of many landowners is that every new layer of environmental regulation introduced over the past two decades has been accompanied by promises of simplification and efficiency. The result has been the exact opposite. Landowners today face more agencies, more assessments, more approvals, more reporting requirements and more uncertainty than at any point in the history of environmental regulation in Australia. The National EPA risks becoming another layer of administration rather than a solution to the problems successive governments have created.

The new ‘civil penalty formula’ for increasing civil penalties above 5000 penalty units ($1.65million) for an individual is extremely concerning. This could result in bankruptcy and loss of a family farm if an individual was found guilty of an “unapproved action causing significant impact on a threatened species or community”. Ascertaining “significant impact” is subjective and there is no mention if the Court assesses impact only on the property in question or on the entire national population of the threatened species.

1.2 New audit arrangements

There is no mention within auditor conduct that an auditor must notify or request access to the property, adhere to biosecurity protocols and abide by workplace safety requirements of the

audited property. Compliance auditors cannot pose risk to agricultural properties and must abide by rules and inductions for visitors.

As an independent regulator, there is no mention if the national EPA will be bound by the Australian Privacy Principles as per federal *Privacy Act 1988*. The public electronic register of compliance outcomes should not include landowner's name, contact details and property identity (e.g. Lot/Plan) for privacy reasons. The federal government and national EPA must protect landholder privacy rights from potential anti-farming activist campaigns targeting deforestation and conservation, similar to how the Farm Transparency Project has used public registers of regulated abattoirs and intensive livestock facilities to generate an Australian location map to host rallies and farm invasions https://www.farmtransparency.org/. PRA does not support the Rules for publication of information for registrable decisions where the "*person or entity it relates to*" is also publicly published.

Some landowners have already been subjected to intimidation by vigilante environmental groups claiming illegal clearing long before these amendments were introduced. Family farmers should not be subject to intimidation which is a very likely outcome if the register is made public.

2.1 and 2.2 Protection Statements and Rulings

Protection Statements and Rulings Represent Regulation Without Parliamentary Scrutiny

PRA is deeply concerned by the proposed use of Protection Statements and Rulings.

While presented as administrative tools intended to improve consistency, these mechanisms have the potential to become highly influential policy instruments that shape land use outcomes across Australia.

Protection Statements will influence environmental decision-making. Rulings will influence how legislation, standards and regulations are interpreted. Yet neither mechanism receives the level of scrutiny ordinarily associated with primary legislation.

The practical effect is that major policy settings may increasingly be determined through administrative instruments rather than parliamentary debate. This risk creates a system where regulatory burdens expand over time without corresponding democratic accountability.

PRA submits that any instrument capable of materially affecting land use rights should be subject to the highest level of transparency, scrutiny and parliamentary oversight.

2.3 Unacceptable impacts

"Unacceptable Impacts" Creates Regulatory Uncertainty on an Unprecedented Scale

PRA is particularly concerned by the introduction of "unacceptable impact" provisions.

The consultation material proposes a framework under which certain impacts may be categorised as unacceptable and therefore incapable of approval. While the concept may appear reasonable in principle, the practical problem is that neither landowners nor project proponents currently have certainty regarding where those thresholds will ultimately be drawn. The consequence is the creation of a powerful regulatory tool whose practical operation remains largely undefined.

The Commonwealth is effectively asking Australians to accept a regulatory framework before disclosing how that framework will be applied. This creates significant uncertainty for:

- agricultural expansion,
- water infrastructure,
- regional development,
- energy projects,
- transport infrastructure,
- housing development, and
- investment in regional Australia generally.

Property owners cannot make informed decisions where the criteria for approval remain subject to future interpretation. There is no review provision to amend unacceptable impacts as more ecological knowledge becomes available or if critical habitats change due to natural disasters, climatic variability or advances in threatened species survival.

Environmental Data Is Becoming a Regulatory Tool

PRA has consistently warned against the increasing reliance on environmental datasets that have not been independently verified and which frequently fail to reflect on-ground conditions. The subordinate legislation further embeds environmental information systems into decision-making processes. This should concern every landowner in Australia.

Across multiple jurisdictions, landowners have experienced:

- inaccurate native vegetation mapping;
- incorrect biodiversity classifications;
- flawed habitat modelling;
- outdated environmental datasets; and
- regulatory decisions based on desktop assessments rather than field verification.

As environmental datasets become increasingly integrated into federal decision-making, there is a growing risk that landowners will effectively lose practical control over land use decisions because of information they neither generated nor can easily challenge.

PRA strongly rejects any system where government mapping acquires quasi-regulatory status without robust review and appeal rights. No Australian should be required to prove government data wrong in order to exercise reasonable use of their own property.

2.5 Reconsiderations

Reconsideration Powers Undermine Investment Confidence

The proposed reconsideration provisions further erode confidence in the regulatory system. The ability to revisit decisions after they have been made creates ongoing uncertainty for landowners, businesses and regional communities. Investment decisions are made on the basis of known regulatory settings.

If approvals can be reopened due to changing information, changing policy priorities or revised environmental datasets, the practical value of obtaining approval is substantially diminished. This is

particularly concerning for agriculture, where investments often have planning horizons measured in decades rather than years.

Even with reduced timeframes for third party reconsiderations to 28 business days agricultural landowners are likely to subject to frivolous applications by vigilante environmental groups. There needs to be a provision to declare early that a complaint is not justified. There also needs to be an accessible appeals process.

The Commonwealth is effectively asking landowners to accept an ever-expanding body of environmental obligations based on the promise of regulatory certainty. Yet these same reforms introduce mechanisms that reduce the finality of decisions and increase the prospect that previously settled matters may be revisited. Certainty cannot be promised with one hand while reconsideration powers are expanded with the other.

Property Rights Are the Missing Pillar of Environmental Reform

Perhaps the most striking feature of the consultation documents is what they do not contain. There is extensive discussion of environmental outcomes. There is extensive discussion of regulatory powers. There is extensive discussion of compliance and enforcement. There is virtually no discussion of property rights.

At no point does the reform package establish:

- a property rights charter;
- mandatory compensation principles;
- protection against regulatory acquisition;
- independent review of environmental mapping;
- recognition of stewardship contributions; or
- meaningful safeguards against cumulative regulatory burden.

The omission is not accidental. Property rights remain largely absent from a reform process that will profoundly affect private landowners. This represents a fundamental failure of policy design.

The High Court of Australia may need to resolve disagreements between federal and state governments over some of the new proposed laws. While federal law can override state law (as per Section 109 in the Australian Constitution), there are limits to federal Parliament's powers. Federal Government is responsible for obligations under international treaties (e.g. World Heritage Areas) whereas state and territory government powers protect the natural environment.

PRA awaits federal recognition of Queensland's Property Map of Assessable Vegetation PMAV as a landowner's right on land title to sustainably manage vegetation regrowth using best practice methods and frequency. In conflict, the federal government is imposing a regulatory approval process if land has not been cleared in the past 15 years, regardless of bioregion or drought durations, etc. Similarly, the federal government needs to recognise clearing for allowable agricultural activities on Category 1 and 2 land in New South Wales can occur without approval, as per *Local Land Services Act 2013* and Native Vegetation Regulatory Map.

The Missing Principle: No Net Loss of Property Rights

Throughout the EPBC reform process, governments have repeatedly emphasised concepts such as "no net loss" of biodiversity, improved environmental outcomes and stronger environmental protections.

PRA supports the objective of maintaining and improving Australia's environmental assets. However, there is a glaring inconsistency at the centre of the reform agenda. While the Commonwealth has adopted principles intended to prevent the loss of environmental values, it has failed to adopt any corresponding principle preventing the loss of property rights. The result is a reform framework in which environmental protections are strengthened while property rights protections are weakened, diminished or ignored. This imbalance sits at the heart of many of the concerns raised by landowners throughout the consultation process.

The reforms create new mechanisms capable of restricting, influencing or regulating the use of private land through:

- environmental standards;
- unacceptable impact provisions;
- protection statements;
- environmental datasets;
- compliance powers;
- audit powers;
- mapping systems;
- reconsideration powers; and
- future regulatory instruments.

Yet nowhere within the reform package is there a corresponding commitment that private property rights will not be diminished without due process, informed consent or fair compensation.

PRA submits that environmental reform should be guided by a <u>simple and fundamental principle</u>:

> **There should be no net loss of property rights as a consequence of environmental regulation without the agreement of the landowner or the provision of just compensation.**

This principle is neither radical nor unreasonable. It reflects longstanding legal traditions that recognise private property as one of the foundations of a free and democratic society. It also recognises a practical reality that governments continue to overlook. The overwhelming majority of Australia's environmental assets exist on land that is privately owned or actively managed by private individuals. Environmental outcomes are therefore most likely to be achieved where landowners are treated as partners rather than regulatory targets.

The current reform package moves in the opposite direction. It expands government powers while offering few additional protections to those whose rights may be affected by those powers. It increases obligations while providing little recognition of existing stewardship. It creates new restrictions while remaining largely silent on compensation. It strengthens environmental protections while failing to strengthen protections for property owners. PRA submits that this imbalance is both unjust and ultimately counterproductive.

History demonstrates that environmental programs are most successful where they operate through cooperation, incentives and voluntary participation rather than regulatory coercion. Landowners who feel respected and fairly treated are more likely to engage constructively in conservation efforts. Landowners who feel increasingly constrained, monitored and ignored are less likely to have confidence in the institutions responsible for environmental management.

If the Commonwealth genuinely seeks enduring environmental outcomes, future reforms must be built upon a framework that recognises environmental protection and property rights as complementary objectives rather than competing interests. Until such a principle is adopted, concerns regarding the cumulative erosion of property rights will continue to grow, and public confidence in the environmental reform agenda will continue to decline.

PRA therefore calls upon the Commonwealth to formally adopt a "No Net Loss of Property Rights" principle as a cornerstone of future environmental policy and regulatory reform.

Conclusion

PRA remains unconvinced that the subordinate legislation will deliver the certainty, transparency or confidence repeatedly promised by government. Instead, the reforms create a framework characterised by:

- expanded Commonwealth control;
- increasing regulatory discretion;
- growing reliance on environmental datasets;
- reduced certainty for landholders;
- diminished democratic accountability;
- increased compliance burdens; and
- continuing disregard for property rights.

The cumulative effect is a system in which private landowners bear increasing obligations while receiving fewer protections.

Environmental protection and property rights should not be viewed as competing objectives. Strong environmental outcomes are most likely to be achieved where governments work with landowners, respect property rights, provide certainty, and recognise that those who manage the landscape are not obstacles to environmental protection but essential partners in achieving it.

Until the Commonwealth addresses the property rights implications of these reforms, PRA cannot support the proposed subordinate legislation and urges the Government to substantially revise the framework before implementation proceeds.

Further information

If you require further information or clarification on any points raised in the submission, please contact PRA by email on pra1@bigpond.net.au or phone 0493 667 561.