Discussion Paper

Ideas for a New Environment Protection and Sustainability Act

to Replace the EPBC Act

A Law and Implementation Mechanisms for the 21st Century

Discussion Draft

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1. Introduction - A vital policy project

This Discussion Paper has been prepared by the Chifley Research Centre and the Labor Environment Action Network1 as part of a joint project – "Protecting Australia's Natural Environment – 21st century laws".

The Chifley Research Centre is the Labor Party's official think tank. The Labor Environment Action Network advocates within the Party for effective environment policies at all levels of government.

We have jointly initiated this project – Environmental Laws for the 21st Century – as a key contribution to the Labor Party's preparation for the responsibilities of future government.

Our project is designed to achieve these goals:

- assist the Labor Party in developing its commitments for environmental law reform in more detail rather than needing to await taking government nationally
- engage the support and enthusiasm of the Labor Party and labour movement for reforming the EPBC Act, by
    - identifying the scale and urgency of the problems for our natural heritage, and the central importance of effective Federal environmental laws to the remedying of these problems
    - identifying the distinctively Labor elements of the challenge and articulating the connection between Labor's legacy of environmental protection and this new task
- in keeping with Labor's commitment to consultation as a key element of environmental law reform, discuss the issues with stakeholders - collectively representing as many facets of the wider Australian community as possible - to learn more about their perspectives of the details of the problem and gain insights into elements of the solution, and to build a broad base of genuine support for change
- develop some detailed, practical approaches, proposals and options for legislative and institutional change that Labor can deliver confidently and comprehensively when it achieves government.

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[1] The Chifley Research Centre (CRC) is the official think tank of the Australian Labor Party. CRC's mission is to champion a Labor culture of ideas. The Labor Environment Action Network (LEAN) is a non-factional, grassroots organisation of Labor members and supporters whose purpose is to drive environmental protection and sustainability, to put environmental protection and sustainability at the centre of Labor's culture, values and policy, and to ensure Labor is the leading party of the environment in Australia.

2. What this Discussion Paper Does

The purposes of this Paper are:

- ***To provide an information and ideas resource for LEAN's advocacy for Environment Laws for the 21st Century***
- ***To make a case for replacing the EPBC Act with a new Australian Environment Act and for creating a Commonwealth EPA as part of the implementation meechanisms for this Act),***
- ***To suggest practical and achievable ideas for framing a new Australian Environment Act.***
- ***To stimulate constructive feedback that will improve the usefulness of this document for the above purposes.***

As such this Paper is to be regarded as a "Living Document", one that will be reviewed and improved at intervals

3. Our Progress

So far (August 2017), we have:

1. researched a range of published reviews and critiques of national environmental laws (not just the EPBC Act) and the positive suggestions for improvement they contain.

   From this research, we have drafted this discussion paper that:

   - summarises and collates these reviews and critiques, and their suggestions for improvement
   - makes (for the purposes of engendering discussion, comments, constructive feedback) propositions to help achieve the above goals
2. Condensed the critiques into a separate paper " Whats wrong with the Wallabies and the Parrots- An Overview and Summary of Federal Environmental Law and Its Implementation"
3. Informed by these documents, prepared a Brochure " Environment Laws for the 21st Century – Stronger, Smarter, Simpler"
4. Canvassed the key ideas with Federal Labor MPs and Senators
5. Initiated a campaign to tencourage Labor to commit to deliver new Federal Environment Laws and a Federal Environmental Protection Agency in order to properly protect Australia's natural heritage.

4. The Problem and Its Solution

It is clear from these critiques that the EPBC Act has not been and is not being effective at protecting the environment and conserving biodiversity in Australia, and that this situation will deteriorate further because of climate change and population growth. It is also clear that between the critiques there is significant consensus about the key reasons for this situation.

Our research points to the following being the keys to the solution:

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- Enact effective **Federal leadership and responsibility** for environmental protection and sustainability
- Define a goal or goals for this legislation, so that it focuses on the imperative, in an accountable and effective manner, to protect, conserve, restore, and promote sustainable, diverse, resilient human and environmental use of Australia's natural environment, notwithstanding the pressures from climate change and from economic and population growth
- Have the legislation require
    - the definition of measurable forward looking environmental outcomes that would represent progress towards the goal(s) of the legislation - outcomes that use the framework provided in the 5 yearly State of the Environment Reports
    - an effective process to be established and implemented accountably, by which States and territories create and implement strategies and plans to make measurable, accountable, progress towards these outcomes – responding to the information in the 5 yearly State of the Environment Reports
    - the 5 yearly State of the Environment Report to account for progress towards these outcomes and hence the goal(s) of the legislation, and to identify where improvements in strategies and plans or adjustment of the sought for outcomes are required
    - clear and robust forward looking, risk based, practicable, negotiated environmental outcomes to be defined for Federal Development Approvals of projects (whether private sector or public sector projects) – project outcomes that support the attainment of the overall outcomes and the goal of the legislation
    - require the establishment of regulations and regulators empowered and resourced to enforce these projects to achieve these outcomes
- Change the institutional mechanisms for implementing the legislation to be:
    - focussed on, and accountable for, measurable progress towards the goals and overall environmental outcomes sought by the legislation
    - implementers of the principles of democracy, respect and protection of the rights of civil society's involvement in environmental matters
    - genuinely national institutions that hold state institutions and their processes, as well as individuals and corporations to account
    - rigorously accountable to ministers and acting based on evidence
    - resourced and mandated, and with the expertise and capacity to work with the States / Territories, to improve the state of our environment over time

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5. Labor is Committed to Environmental Law Reform

Labor understands that the environment isn't an impediment to our prosperity, it's an asset that underpins it:

Bill Shorten, 2016 Labor federal election policy.

Labor is committed to get environmental law reform. This discussion paper suggests this starts with replacing the EPBC Act with a new Environment Protection and Sustainability Act in Labor's next first term of government:

Delivering Labor's commitments to reform Australia's environmental law and implementation frameworks will

- **Add to Labor's legacy of environmental stewardship**
- **Help Australia's economic, environmental and social resilience in the face of impacts from extreme and more uncertain weather patterns brought by climate change**
- **Produce economic benefits by getting rid of defects in the current EPBC Act and its implementation mechanisms**
- **Preserve our environment's ability to benefit future generations, by lessening current rates of degradation and promoting restoration of degraded ecosystems.**

Labor has committed to improve environmental law and frameworks for environment protection when it returns to national government[2]. The commitments are to:

- Restore national leadership and responsibility on environment matters
- Develop new frameworks for truly national protection and management of Australia's natural environment
- Explore options for an independent environment protection structure
- Reinstate democracy, respect and protection of rights for civil society involvement in environmental matters
- Improve environmental protection while streamlining environmental approval processes
- Commence work with experts from all sectors (including environment groups, industry and unions) and all levels of government on the detail of implementation of these commitments within the first 100 days of government

In its 2015, National Platform Labor committed to developing improved environmental law. Labor reconfirmed this commitment in its 2016 election policy, in the following terms:

> *In order to improve environmental protection and streamline the environmental approval process, making it more efficient and transparent for developers and the public at large, a Shorten Labor Government will;*
>
> - *Re-establish the Federal Government's responsibility for protection of matters of national environmental significance.*

[2] 2015 National Platform chapter 4; 2016 federal election policy

- *Retain Federal Government powers of approval under federal laws.*
- *Streamline assessment processes with States and Territory Governments to remove unnecessary duplication.*
- *Develop new frameworks for truly national protection and management of Australia's natural environment.*
- *Explore options for an independent environment protection structure*
- *Reinstate the principles of democracy, respect and protection of rights for civil society involvement in environmental matters including funding for Environment Defenders Offices (EDOs).*

Labor will convene an expert reference group within the first 100 days of forming government to work in partnership with environmental groups as well as industry to develop the detail of the new environment laws. This group will include environmental law experts, tourism, energy, mining, agriculture and other business groups, unions, community representatives as well as representatives from State and Local Governments.

In its 2015 Platform and 2016 Federal election policies Labor put forward its strongest suite of environment commitments yet.

Labor understands that the environment isn't an impediment to our prosperity, it's an asset that underpins it.

Labor believes all Australian Governments have an enduring responsibility to protect matters of national environmental significance and a Shorten Labor Government will act on this belief.

In its 2016 election policies Labor

- recognised the threats posed to the Australian economy by unmitigated climate change, including in agriculture, tourism, infrastructure, water security and natural disasters
- committed to reducing Australia's greenhouse gas emissions by at least 45% on 2005 levels by 2030, and achieving at least 50% of electricity generation from renewable sources by 2030
- committed to securing just transitions to clean energy and clean technology in new and existing industries, and securing the job and investment opportunities offered by a clean energy economy
- committed to developing a climate change trigger for Federal environment laws.

On environment protection more broadly, Labor responded to long standing criticism of current laws Federal environment laws [1] and committed to some key principles and a re-assessment of the current laws (as re-stated above).

These election policy commitments confirmed the commitments made in Labor's National Platform adopted in 2015:

33. The Australian government has an enduring responsibility to protect matters of national environmental significance. Labor has a proud history of national environmental protection laws. These have been instrumental in protecting Australia's greatest natural treasures for

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decades. Labor will not support handing approval powers under the Environment Protection and Biodiversity Act 1999 to state and territory governments.

34. Labor will develop new frameworks for truly national protection and management of Australia's natural resources. This will include:

- *Management, governance and decision making structures and responsibility, including the independence of institutions involved in environmental protection;*
- *Consistent standards and adequate data for decision making;*
- *Efficient and certain regulation including streamlined environmental assessment processes;*
- *Fair and efficient management of Australia's environment as a foundation for ecologically sustainable jobs;*
- *Enhancing biodiversity for the benefit of current and future generations; and*
- *Resilience in the natural environment.*

35. Labor will consider the appropriateness of a climate change trigger in the Environment Protection and Biodiversity Act 1999 and or successive framework, in the context of a comprehensive response to climate change. Labor will consider the appropriateness of a trigger to cover Australia's system of national parks.

6. Why these commitments matter

Australia's unique natural environment matters to us. The amazing continent on which we live is a source of pride. Its koalas, platypus and emus are embedded in the national identity.

Governments have a responsibility to protect and sustain the Australian community's social and economic opportunities and its well-being by ***looking after the Australian natural environment properly.***

Australia's natural environment is the foundation of our way of life, and our economic and social well-being. Degradation of this environment imperils this.

Australians are right to expect Australian governments to provide leadership and effective laws that protect and sustain our natural environment, just as they are right to expect them to provide leadership and effective laws that foster economic and social progress.

But Australia's environment protection systems are not working effectively, as the following executive summary copied from the 2016 State of the Environment report makes clear:

> ***In the past 5 years (2011–16), environmental policies and management practices in Australia have achieved improvements in the state and trends of parts of the Australian environment. Australia's built environment, natural and cultural heritage, and marine and Antarctic environments are generally in good condition.***
>
> ***There are, however, areas where the condition of the environment is poor and/or deteriorating. These include the more populated coastal areas and some of the growth areas within urban environments, where human pressure is greatest (particularly in south-eastern Australia); and the extensive land-use zone of Australia, where grazing is considered a major threat to biodiversity.***

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In Australia, the key drivers of environmental change are population growth and economic activity. The extent to which these drivers lead to environmental impacts depends on a range of factors, including:

- ***how many of us there are***
- ***where and how we live***
- ***the goods and services we produce (for both domestic and export markets) and consume***
- ***the technologies we use to produce our energy, food, materials and transport***
- ***how we manage the waste we produce.***

Keeping impacts within limits is one key to a sustainable future.

If not managed well, drivers can generate pressures that have immediate and long-term negative consequences for the environment. If managed well, however, drivers can be harnessed to achieve environmental benefits.

The main pressures facing the Australian environment today are the same as in 2011: climate change, land-use change, habitat fragmentation and degradation, and invasive species. In addition, the interactions between these and other pressures are resulting in cumulative impacts, amplifying the threats faced by the Australian environment.

Evidence shows that some individual pressures on the environment have decreased since 2011, such as those associated with air quality, poor agricultural practices, commercial fishing, and oil and gas exploration and production in Australia's marine environment.

During the same time, however, other pressures have increased—for example, those associated with coal mining and the coal-seam gas industry, habitat fragmentation and degradation, invasive species, litter in our coastal and marine environments, and greater traffic volumes in our capital cities.

For some parts of the Australian environment, at least, effective policy and management have contributed to improved outcomes for the environment and for people. For example, early indications are that environmental watering in the Murray–Darling Basin driven by the 2012 Murray–Darling Basin Plan, along with the effects of natural floods, have contributed to ecological benefits for stream functioning and biodiversity. In the marine environment, the formation of the National Offshore Petroleum Safety and Environmental Management Authority in 2012 has increased scrutiny of offshore petroleum environmental management. This has resulted in better understanding of activity impacts,

greater focus on industry compliance and increased levels of preparedness for unplanned events.

However, a number of key challenges to the effective management of the Australian environment remain:

- ***An overarching national policy that establishes a clear vision for the protection and sustainable management of Australia's environment to the year 2050 is lacking. Such a program needs to be supported by***
    - ***specific action programs and policy to preserve and, where necessary, restore natural capital and our unique environments, taking into account the need to adapt to climate change***
    - ***complementary policy and strengthened legislative frameworks at the national, state and territory levels***
    - ***efficient, collaborative and complementary planning and decision-making processes across all levels of government, with clear lines of accountability.***
- ***Poor collaboration and coordination of policies, decisions and management arrangements exists across sectors and between different managers (public and private).***
- ***Follow-through from policy to action is lacking.***
- ***Data and long-term monitoring are inadequate.***
- ***Resources for environmental management and restoration are insufficient.***
- ***The understanding of, and capacity to identify and measure, cumulative impacts is inadequate, which reduces the potential for coordinated approaches to their management.***

Meeting these challenges requires:

- ***integrated policies and adaptive management actions that address drivers of environmental change and the associated pressures***
- ***national leadership***
- ***improved support for decision-making***
- ***a more strategic focus on planning for a sustainable future***
- ***new, reliable sources of financing.***

And it is well recognised that the capacity of the natural environment to sustain healthy human societies, and economic activity in areas from agriculture to tourism, is being eroded.

> *Maintenance and restoration of natural ecosystems and the services they provide is essential to sustained community wellbeing, economic prosperity and efficiency: Department of the Environment and Energy, Ecosystem services: Key concepts and applications (2010)*

Apart from its own inherent value, a healthy environment delivers value to the Australian community, including in amenity and quality of life, air quality, public health, and economic benefit

from use of natural resources.

This is a point reinforced in the 2016 State of the Environment Report which states:

> ***A healthy environment sustains our economy and wellbeing***
>
> ***The environment provides significant intrinsic values to society, and many consider that the natural world has innate worth regardless of whether or not it has values that benefit humans.***
>
> ***At a more practical level, the environment is fundamental to Australia's economy and wellbeing—without a healthy environment, we cannot thrive.***
>
> ***Understanding the effects of environmental degradation on economic activity and social wellbeing is therefore critical to creating a sustainable future. This includes understanding how ecosystem modification, resource extraction, production, consumption and waste disposal can affect the health and resilience of our natural capital and the ecosystem services it provides.***
>
> ***Natural capital is the stock of natural assets, including geology, soil, air, water and all living things, from which humans derive ecosystem services that make human life possible (World Forum on Natural Capital 2015). Ecosystem services are the benefits that people obtain from ecosystems (Millennium Ecosystem Assessment 2005). The most obvious ecosystem services include the food we eat, the air we breathe, the water we drink, and the plant materials we use for fuel, building materials and medicines ('provisioning services'). Native ecosystems also provide many less visible ecosystem services, such as climate regulation and natural flood defences ('regulating services'), formation of soil and the pollination of crops by insects ('supporting services'), and recreational, aesthetic and spiritual benefits ('cultural services') (Millennium Ecosystem Assessment 2005).***
>
> ***The complexity of natural and cultural systems, and the irreversibility of some environmental change (e.g. species extinction) mean that replacing natural capital with manufactured or human capital is often expensive, difficult or impossible, or carries significant risks.***
>
> ***We need to fully understand the value of our natural capital and the consequences of its loss. This understanding will fuel the drive to get our environmental policies and management right to ensure that our natural capital is maintained.***

The Australian people are entitled to expect that our laws and institutions will be fit for purpose in sustaining our way of life, for current and future generations. It has become all too clear that our

environmental laws and institutions are not up to this standard.

A truly national system for environment protection – where the Commonwealth government provides leadership, and each level of government, industry and landholders and the community all play their part – is lacking.

There is a lack of integration of different areas and levels of planning and decision making – for example land-use decisions that affect water availability.

Instead of providing long term landscape planning to deliver better environmental outcomes, the current Commonwealth laws and institutions often provide little more than a piecemeal process for consideration of individual development projects - at once more costly for industry and less effective for the environment than a comprehensive strategic approach. By themselves, individual developments may have an insignificant impact on the environment, but when combined, their cumulative impact can result in long-term damage to Australia's land, water and marine ecosystems.

Our laws and institutions fail to ensure that the costs of activities to protect the environment are met, and shared appropriately, and the benefits of environmental protection are recognised and accounted for.

Accountability including monitoring, reporting and evaluation of environmental outcomes is patchy.

In an era of accelerating human caused climate change, the urgency of addressing these defects in environmental law and institutions has only increased.

These points have been made repeatedly during the life of the Environment Protection and Biodiversity Conservation Act, from a wide range of perspectives.

Australia's environmental laws have been criticised

- by environmental advocates
- by environmental law experts
- by different business sectors
- by expert reviews, ranging from reports by the Productivity Commission and its predecessor body the Industry Commission, to the Hawke Review of the Environment Protection and Biodiversity Conservation Act under the previous Labor government.

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7. So what is the Legislative Problem?

Notwithstanding widespread recognition and support for a national environmental law, and for the role of the national government in managing matters of national environmental significance, there is are problems with the EPBC Act that impede Australia's ability to protect and sustain its environment in the face of the drivers for change described in the 2016 State of the Environment Report. Dealing with these problems would benefit the Australian environment, its economy, and its society.

The problems with the EPBC Act include:

- ***Its relationship with State / Territory environment and planning legislation***
- ***The Act operates by seeking to minimise negative environmental outcomes on a project by project basis, and only for a limited set of Matters of National Environmental Significance. It does not set and require progress towards, or compliance with, measurable objectives for positive environmental outcomes to be achieved at the scale of bioregions, and of administrative regions (such as States / Territories, or Nationally).***
- ***This means that there are:***
    - ***Defects in the Goals / Objects of the Act***
    - ***Gaps & Limitations in Legislation and Policy***
    - ***Governance Failures / Fragmentation***
    - ***Failures and variable standards in implementation***
    - ***Deficiencies in generation and dissemination of environmental knowledge***
- ***The well documented and evident adverse consequences of the above defects will become more severe in light of the changing environmental, economic, social needs of Australia in the 21st Century. Climate change impacts on our environment, economy and society will exacerbate these adverse consequences***.

The 2016 State of the Environment Report makes the following assessment:

> ***Despite continued improvement, a number of key constraints on management effectiveness in Australia remain, including:***
>
> - ***lack of an overarching national policy that establishes a clear vision for the protection and sustainable management of Australia's environment to the year 2050, which is supported by***
>   - ***specific action programs and policy to preserve and, where necessary, restore natural capital and our unique environments, taking into account the need to adapt to climate change***
>   - ***complementary policy and strengthened legislative frameworks at the national, state and territory levels***
>   - ***efficient, collaborative and complementary planning and decision-making processes across all levels of government, with clear lines of accountability***
> - ***poor collaboration and coordination of policies, decisions and management arrangements across sectors and between managers (public and private)***
> - ***a lack of follow-though from policy to action***
> - ***inadequacy of data and long-term monitoring, which interferes with our ability to apply effective policy and management, and establish adequate early warning of***

threats. For example, our understanding of even the most iconic and well-known species in Australia is often patchy, and sufficient knowledge of ecosystem processes that maintain the 99 per cent of species that account for Australia's biodiversity is missing

- ***insufficient resources for environmental management and restoration***
- ***inadequate understanding and capacity to identify and measure cumulative impacts, which reduces the potential for coordinated approaches to their management.***

In general, the outlook for Australia's environment depends on our ability to effectively address the complex mix of drivers, pressures and risks. This includes decoupling the economy from environmental harm, and mitigating and adapting to climate change.

Providing for a sustainable environment both now and in the future is a national issue requiring leadership and action across all levels of government, business and the community. The first step is recognising the importance and value of ecosystem services to our economy and society.

Addressing Australia's long-term, systemic environmental challenges requires, among other things, the development of a suite of stronger, more comprehensive and cohesive policies focused on protecting and maintaining of natural capital, and ongoing improvements to current management arrangements.

Effective management of the Australian environment in the future also requires efficient, collaborative and complementary planning and decision-making processes, with clear lines of accountability; improved support for decision-making; a more strategic focus on planning for a sustainable future; and new, reliable sources of funding.

With the right choices, policies, management and technologies, Australia has the capacity to ensure economic prosperity and meet people's health, education, social and cultural needs, while protecting the environment for future generations.

Appendix A summarises and discussed critiques of the effectiveness of Australia's environmental laws, at the national centre of which is the Environment Protection and EPBC Act.

It is clear from these critiques that the EPBC Act has not been and is not being effective at protecting the environment and conserving biodiversity in Australia, and that this situation will deteriorate further as a result of climate change and population growth. It is also clear that between the critiques there is significant consensus about the key reasons for this situation.

The salient points in many of these critiques include:

1. **The environmental outcomes are poor – with declines across virtually every category of environmental indicator, such that the major indices of the health of our natural world (including native species, pests and weeds, soils and protection of freshwater) are all worse than they were four decades ago when Commonwealth environment laws began**[3]:

[3] Adapted from: An Implementation Plan for Strong National Environment Laws, Policies and

2. **The EPBC Act assessment and approval processes have caused and continue to cause major cost and time imposts to projects and to the economy more broadly. They have also engendered dissatisfaction among key stakeholders in a significant number of projects:**
   - One of the major concerns of business about the operation of the EPBC Act lies in the duplication of state and Commonwealth environmental assessment processes and uncertainty about the expectations of different regulators. Businesses are legitimately concerned about the uncertainty, delay and expense of environmental impact and approval processes for projects that require assessment and decision under State / Territory Planning and Environmental law and the EPBC Act.
   - Communities are increasingly cynical about the current system and unrest is growing substantially as major projects are being proposed.
   - Disputation including court challenges are on the increase.

3. **The problems with the EPBC Act derive from its framing and content, and from its implementation mechanisms.**
   - Although it contains positive features worth retaining, the problems with the EPBC Act mean that taken it does not effectively manage biodiversity conservation, and nor does it effectively manage the cumulative impact of multiple developments[4].
   - The continued decline in the condition of Australia's land, water and marine resources will only intensify with climate change and population growth, and the expanding global demand for energy, food and minerals.
   - Australia also faces the challenge of accommodating a projected 14 million more people in 2050, and most of this will be through urban development in sensitive coastal areas.
   - By themselves, individual developments may have an insignificant impact on the environment, but when combined, their cumulative impact can result in long-term damage to Australia's land, water and marine ecosystems.
   - By far the most effective way to "deliver better environmental outcomes" is to invest in doing the long-term landscape-scale planning to determine where, and under what conditions, development can safely occur
   - For better environmental outcomes, there is a need to shift away from individual project-by-project development assessment and approvals, towards a more strategic and long-term approach to guiding development and sustainable use of natural resources, and managing the collective impacts of development on the environment. This will also create a greater level of certainty for developers and the community.

   This is further illustrated by the critique of current arrangements from the Australian anel of Environmental Law Experts [APEEL], which includes:

Institutions, PYL, 9 May 2016

[4] Adapted from: Statement On Changes To Commonwealth Powers To Protect Australia's Environment, Wentworth Group, Sept 2012

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- Fragmentation of governance – Bioregional planning may be a way to reduce fragmented management by creating a framework (or if necessary legal requirements) within which environmental, land use, social and other plans could be brought together into a unified system … if well implemented [bioregional plans] could provide more systemic protection of biodiversity and other values an at the same time provide greater clarity for land users and developer and reduce the transaction costs of fragmentation.
- There is a lack of integration between water and land use planning … changing land uses (e.g. hobby farms and increasing number of dams) have the potential to affect water quality and volumes. Decisions on water availability have significant consequences for communities that rely on irrigation, and will shape future land use and have urban planning consequences. Ensuring effective and efficient management of land use and water systems requires that they be managed as closely coupled systems.
- Limitations of EIA and development approval processes – project-by-project approach misses cumulative impacts, fails to consider relevant future changes (e.g. population), fails to acknowledge inherent dynamism of environment, fails to monitor and enforce compliance with approval conditions and is often claimed to be pro-development. Failure of this stagnant methodology to accommodate for things like the impacts of climate change.
- Market instruments including "biodiversity offsets" – designed to ensure "maintain or improve"/"no net loss". There are serious problems. Lack of "like-for-like" offsetting, entrenching a pro-development culture, don't first seek to minimize loss, failure to establish "no go zones", poor success rates, failure to monitor, lack of long-term security.
- Inadequacies in monitoring, evaluation and reporting – "…Australia's environmental data infrastructures are under-developed, which severely constrains the ability of Australian governments to develop and enact evidence-based environmental policy."
- Implementation deficits – the "… lack of an independent body to drive innovation and contribute to state accountability is a significant concern … it is only one illustration of a lack of Australian mechanisms to ensure implementation of environmental governance arrangements, and to ensure that there is a transparent evaluation of the effectiveness of legal and market instruments and public policy.
- Reform: "There are two fundamental challenges: managing the tension between private rights to exploit nature and the public interest in the sustainable use of nature; and the fundamental problem of finding sufficient resources for effective stewardship. It has been estimated (subject to many caveats and assumptions) that an amount roughly equivalent to the national expenditure on defence is required for landscape protection and restoration, and only a fraction of what is required in being invested.

4. **A number of reviews of the EPBC Act have identified these problems, and made recommendations. The problems and pathways to solutions are therefore not new – they are known. However, there has not been a determined enough approach by Government to achieving the solutions:**
   - There have now been several reviews of the operation of state and Commonwealth development assessment processes: A Senate inquiry into the operation of the EPBC Act in 2009; the statutory 'Hawke Review' of the EPBC Act in 2009; and a Productivity Commission report into planning, zoning and development assessments in 2011.
     - The Productivity Commission's research report found that the different local, state and Commonwealth planning, zoning and development assessment systems constitute one

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of the most complex regulatory regimes in Australia. It highlighted a set of leading practices, including simplifying development instruments, improving development assessment criteria and processes, and public participation and transparency standards.

- The Hawke Review, through a rigorous and consultative review process, found that the effectiveness of the EPBC Act would be improved by:
  - clarifying the purpose and objects of the Act;
  - reducing or removing confusion about the different roles of the Commonwealth and the States and Territories in environmental regulation;
  - improving the relationship between the Commonwealth and the States and Territories to encourage collaboration in environmental management;
  - earlier engagement by the Australian Government in the planning process as a means of streamlining environmental regulation;
  - including further matters of NES for possible inclusion as triggers under the Act;
  - alternative approaches to biodiversity conservation, including decision‐making at a landscape scale and the potential to better implement an ecosystems approach to environmental management so as to manage cumulative impacts and threats to biodiversity, such as climate change;
  - improved arrangements for performance auditing and compliance, including auditing Regional Forest Agreements (RFAs) and other bilateral agreements;
  - increasing transparency of decision‐making;
  - greater access to merits review; and
  - dealing with concerns relating to administration, including the development of better policy advice.
- The Hawke Review proposed a comprehensive package of reforms to improve, expand and refine the Act "directed at better placing the Australian Government to manage the environmental challenges of the future." These included
  - Increased focus on strategic approaches to environmental management (rec.1) including strategic assessments (rec.4) and bio-regional planning, including capacity for the Commonwealth to initiate regional planning (rec.6)
  - Reduced duplication of processes (rec.1)
  - Clarification and enhancement of the place of ecologically sustainable development principles in decision making (rec.2)
  - Clarification of the objects of the legislation (rec.3)
  - Greater use of joint processes and public processes in environmental assessment (rec.4)
  - Development by the Commonwealth of monitoring, performance audit and oversight capacity and powers (recs 4, 61)
  - Development of a national bio-banking system including provision for bio-banking as part of project approvals (rec.7)
  - Recognition of ecosystems of national significance (rec.8)

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- Recognition of vulnerable ecological communities as a matter of national environmental significance (rec. 14)
- Inclusion of a greenhouse trigger in federal environmental law (rec.10)
- Improved provision for recovery and threat abatement plans including regular review, regional scale and linkages to funding opportunities (rec.18)
- Improved identification of key threatening processes across the range of matters of national environmental significance (rec.19)
- Development of an industry code of conduct for environment consultants (rec.24)
- Clarified assessment powers, processes and decision criteria, including
- power to consider full range of environmental matters affected if a project triggers assessment under the Act (recs 25, 27);
- clarification of power for Environment Minister to request information on alternatives to proposals referred to approval (rec.26); and
- requirements for decisions to be based on best available information and consistent with ESD principles, relevant international obligations, and prescribed principles and management plans (rec.43)
- Improved heritage listing processes and management arrangements including World Heritage area management plans (recs 28-35)
- Independent performance auditing and compliance monitoring for Regional Forest Agreements (recs 38, 39)
- Increased provision for public participation and transparency of processes under the Act (recs 44-46, 56) including expanded standing provisions and revised costs provisions on review (recs 50-53)
- Consideration of expanded provision for merits review (rec 49)
- Establishment of an Environment Reparation Fund (rec 60)
- Improved cost recovery mechanisms (rec 62)
- Development of a system of national environmental accounts (rec.67)
- Establishment of an independent National Environmental Commissioner and National Environment Commission (rec. 71)

- These reforms have only been partially adopted or implemented by the government, and a number of recommendations aimed at strengthening the Act have been ignored. Many of the problems identified by the Hawke Review remain un-addressed – to the detriment of the economy, the environment and the people of Australia.

8. This Discussion Paper's Ideas and Labor's Existing Commitments

The ideas in this Discussion Paper are provided to prompt and inform discussion and constructive feedback.

They identify possible ways to implement and strengthen the effectiveness of the ALP's existing commitments "*to improve environmental protection and streamline the environmental approval process, making it more efficient and transparent".*

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This table indicates how the ideas in this Discussion paper relate to Labor's existing commitments.

The ALP's existing commitments	Addressed by the Ideas in this Document?
In order to improve environmental protection and streamline the environmental approval process, making it more efficient and transparent for developers and the public at large, a Shorten Labor Government will:	
• *Re-establish the Federal Government's responsibility for protection of matters of national environmental significance.*	Yes
• *Retain Federal Government powers of approval under federal laws.*	Yes
• *Streamline assessment processes with States and Territory Governments to remove unnecessary duplication.*	Yes
• *Develop new frameworks for truly national protection and management of Australia's natural environment.*	*Yes, in part. Improvements in other legislation and their administrative processes would also be required, but are beyond the scope of this document*
• *Explore options for an independent environment protection structure*	Yes
• *Reinstate the principles of democracy, respect and protection of rights for civil society involvement in environmental matters including funding for Environment Defenders Offices (EDOs).*	*Yes, in part. Improvements in other legislation and their administrative processes would also be required, but are beyond the scope of this document*
Labor will convene an expert reference group within the first 100 days of forming government to work in partnership with environmental groups as well as industry to develop the detail of the new environment laws. This group will include environmental law experts, tourism, energy, mining, agriculture and other business groups, unions, community representatives as well as representatives from State and Local Governments.	*It is proposed this expert reference group be tasked:* ● *As its highest priority, with further development of the specific propositions in this document – with a view to establishing within Labor's first term of government, the new Act and the new / reformed institutions and mechanisms for the implementation of the new Act - including transition arrangements from the EPBC Act to the new Act* ● *As its 2nd priority, with providing advice and recommendations on reform of other relevant legislation*

9. Our Approach and Indicative Timeline

The next Table outlines our approach and indicative timeline for consultation leading to improved ideas to help Labor implement its commitments.

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Step	Indicative Timeline (subject to change)	Tasks
1	Early April to end June 2017	• Initial stakeholder consultation – drawing on Chifley and LEAN resources
2	July 2017	• From the consultation revise the Discussion Paper • Plan the 2nd phase of consultation with the stakeholders
3	August to October 2017	• 2nd Phase of Consultation
4	Nov and Dec 2017	• Finalise Discussion Paper to contain:

10. Topics of Recommendations from the Critiques

The following table:

- lists the topics for which recommendations have been made on Australian environmental law by various bodies - see Appendix A for discussion.
- flags which key defects in the EPBC Act or in its implementation could be reduced if these recommendations were adopted.
- Identifies which of the recommendations have been adopted or reflected in the ideas suggested for framing a new Act, because
    - They are grounded in long standing critiques by diverse entities, and therefore might be capable of receiving widespread support:
    - They appear both necessary and also practicable to implement

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Ideas for a New Environment Protection and Sustainability Act to Replace the EPBC Act
A Law with Implementation Mechanisms for the 21st Century

Table 1: Recommendations in EPBC Critiques

(Note: This Table is a work in progress, and under review)

EPBC Act Defects That Could Be Reduced By Recommendations in Critiques							Recommendations In Critiques of Australian Environmental Law					Recommended in Critique By:										
Goals / Objects of Act not achieved	Failures in Implementation	Gaps & Limitations in Law and Policy	Governance Failure / Fragmentation	Variable Standards, variably applied	Deficiencies in generation and dissemination of environmental knowledge	Act inadequate for changing economic, social, environmental needs and climate change in 21st century	Topic	Recommendation	*Covered by Propositions in this Discussion Paper?*	*Industry Commission*	*Hawke review*	*APEEL*	*Productivity Commission*	*Wentworth Group*	*NSW EDO*	*Environmental Justice Australia*	*PYL*	*Victorian Climate Bill*	*EIANZ*	*National EDO*
Y			**Y**	**Y**		**Y**	**Single unifying statute**	Single unifying statute in each jurisdiction on natural resource and environmental management	**No – This paper focusses on Commonwealth only**	**Yes**	**Yes**	**Yes**								
Y	**Y**	**Y**		**Y**		**Y**	**Environmental duty of care**	General environmental duty of care comparable to duty in Work Health and Safety laws	**Yes**	**Yes**		**Yes**								
Y	**Y**			**Y**	**Y**	**Y**	**Independent environment agency**				**Yes**	**Yes**	**Yes -2013**	**Yes**	**Yes**					
			Y	**Y**	**Y**	**Y**	**National Environmental Accounts**	Develop system of national and regional environmental accounts	**Yes**		**Yes**			**Yes**						
		Y			**Y**	**Y**	**Data**	Regular State of the Environment reporting	**Yes**			**Yes**	**Yes -1999**							
								Improve collection of and access to spatial information	**Yes**	**Yes**		**Yes**	**Yes (2012, 2013)**							
	Y		**Y**	**Y**		**Y**	**Use of Bilateral agreements**	Use bilateral agreements to reduce duplication and raise State + Territory systems to consistent high standard	**Yes**					**Yes**		**Yes**				
								Monitor and report on outcomes of bilateral agreements					**Yes -2013**							
								Use bilateral agreements with national standards to reduce duplication in assessments, and approvals					**Yes -2013**	**Yes**	**Yes**	**Yes (assessments only)**				
		Y	**Y**		**Y**	**Y**	**Strategic assessments**	Increase use of strategic assessments	**Yes**		**Yes**	**Yes**	**Yes -2013**	**Yes**						
								Legislative standards for strategic environmental assessments including information requirements, outcomes tests, and requiring consideration of cumulative impacts	**Yes**					**Yes**	**Yes**				

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EPBC Act Defects That Could Be Reduced by Recommendations in Critiques							Recommendations in Critiques of EPBC Act													
										Recommended in Critique By:										
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						Y	**Regional planning and assessment**	Increased use of bio-regional planning	**Yes**		**Yes**	**Yes**		**Yes**						
								Assess impacts on landscape or regional scale	**Yes**				**Yes -2016**							
	Y		**Y**	**Y**	**Y**	**Y**	**Enhanced monitoring and accountability**	Enhance Commonwealth monitoring, performance audit and oversight powers and capacity and duties	**Yes**		**Yes**	**Yes**			**Yes**					
								Independent performance auditing and compliance monitoring for Regional Forest Agreements:			**Yes**				**Yes**					
		Y	**Y**			**Y**	**ESD across government**	Enhance ESD in decision making across government within Commonwealth and through Ministerial Councils					**Yes -1999**							
			Y	**Y**	**Y**	**Y**	**Democracy**	Increase use of joint and public processes			**Yes**									
								Increased provision for public participation and transparency of processes under the Act	**Yes**		**Yes**	**Yes**							**Yes**	
		Y			**Y**	**Y**	**Rights**	Rights to know, and duties to inform and consult on environmental risks		**Yes**		**Yes**								
								Provide for right to safe and healthy environment				**Yes**								
								Provide for key procedural rights including right to information, right to public participation and access to justice on environmental matters	**Yes**			**Yes**						**Yes**	
								Consider other rights based elements in environmental law				**Yes**								
								Environmental disclosure requirements under consumer law				**Yes**								

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EPBC Act Defects That Could Be Reduced by Recommendations in Critiques							Recommendations in Critiques of EPBC Act														
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Goals / Objects of Act not achieved	Failures in Implementation	Gaps & Limitations in Law and Policy	Governance Failure / Fragmentation	Variable Standards, variably applied	Deficiencies in generation and dissemination of environmental knowledge	Act inadequate for changing economic, social, environmental needs and climate change in 21st century	**Topic**	**Recommendation**	*Covered by Propositions in this Discussion Paper?*	*Industry Commission*	*Hawke review*	*APEEL*	*Productivity Commission*	*Wentworth Group*	*NSW EDO*	*Environmental Justice Australia*	*PYL*	*Victorian Climate Bill*	*EIANZ*	*National EDO*
						Y	**Climate**	Provide for 2050 net zero and interim emissions targets in law										**Yes**		
								Require relevant statutory decision makers to have regard to climate impacts	**Yes**									**Yes**		
								Require whole of government consideration of climate mitigation and adaptation	**Yes**									**Yes**		
					Y	**Y**	**Heritage**	Improved heritage listing processes and management arrangements including World Heritage area management plans			**Yes**									
		Y	**Y**			**Y**	**Indigenous peoples**	Recognise unique circumstances of indigenous peoples in environmental law				**Yes**									
								Integrate customary rights into environmental management					**Yes -2016**							
	Y	**Y**				**Y**	**Legislative design**	Support use of precautionary principle	**Yes**			**Yes**	**Yes -2013**								
								Incorporate prevention principle in Australian environmental law	**Yes**			**Yes**									
								Clarify objects of environment legislation	**Yes**		**Yes**	**Yes**									
								Review ESD as societal goal				**Yes**									
	Y	**Y**	**Y**	**Y**	**Y**	**Y**	**Expanded use of and provision for economic measures**	Greater use of natural resource markets with well-defined property rights		**Yes**			**Yes (2006, 2016)**								
								Extend existing tradeable pollution rights (e.g. salts and nutrients in runoff		**Yes**											
								Use market mechanisms to price greenhouse gas pollution				**Yes**	**Yes -1999**								
								Develop national bio-banking system			**Yes**										
								Require future fund to have regard to environmental factors				**Yes**									
								Greater use of industry developed standards including environment management plans		**Yes (Voluntary)**		**Yes (Mandatory)**									

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EPBC Act Defects That Could Be Reduced by Recommendations in Critiques							Recommendations in Critiques of EPBC Act														
										Recommended in Critique By:										
Goals / Objects of Act not achieved	Failures in Implementation	Gaps & Limitations in Law and Policy	Governance Failure / Fragmentation	Variable Standards, variably applied	Deficiencies in generation and dissemination of [illegible]	Act inadequate for changing economic, social, environmental needs and climate change in 21st	Topic	Recommendation	*Covered by Propositions in this Discussion Paper?*	*Industry Commission*	*Hawke review*	*APEEL*	*Productivity Commission*	*Wentworth Group*	*NSW EDO*	*Environmental Justice Australia*	*PYL*	*Victorian Climate Bill*	*EIANZ*	*National EDO*
	Y	**Y**	**Y**			**Y**	**Reserves and conservation on private land**	Complete National Reserve System and enhance connectivity				**Yes**								
								Extend and encourage use of voluntary conservation agreements on private land		**Yes**			**Yes -2004**							
								Develop process for sharing costs of conservation on private land:				**Yes**	**Yes -2004**							
								Review tax system treatment of actions to benefit environment		**Yes**		**Yes**								
						Y	**Guidance for business**	Improved guidance for business to reduce compliance work						**Yes**						
								Greater use of industry developed standards including environment management plans	**Yes**	**Yes (Voluntary)**		**Yes (Mandatory)**								
	Y	**Y**	**Y**			**Y**	**Matters of national environmental significance**	Commonwealth to retain role in assessment and approval for MNES	**Yes**											**Yes**
								Expand list of matters of national environmental significance	**Yes**			**Yes**								
								Greenhouse trigger in federal environmental law			**Yes**				**Yes**					
								Vulnerable ecological communities as matter of national environmental significance	**Yes**		**Yes**	**Yes**								
								Recognise ecosystems of national significance	**Yes**		**Yes**				**Yes**					
								Include impacts on National Reserve System as federal law trigger							**Yes**					
								Ensure application of impact analysis to environmental regulation including new Federal triggers	**Yes**				**Yes -2013**							
								Include land clearing trigger in federal environmental law							**Yes**					

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EPBC Act Defects That Could Be Reduced by Recommendations in Critiques							**Recommendations in Critiques of EPBC Act**														
										Recommended in Critique By:											
Goals / Objects of Act not achieved	Failures in Implementation	Gaps & Limitations in Law and Policy	Governance Failure / Fragmentation	Variable Standards, variably applied	Deficiencies in generation and dissemination of environmental [illegible]	Act inadequate for changing economic, social, environmental needs and climate change in 21st century	**Topic**	**Recommendation**	*Covered by Propositions in this Discussion Paper?*	*Industry Commission*	*Hawke review*	*APEEL*	*Productivity Commission*	*Wentworth Group*	*NSW EDO*	*Environmental Justice Australia*	*PYL*	*Victorian Climate Bill*	*EIANZ*	*National EDO*
	Y		**Y**	**Y**		**Y**	**Improved Standards**	Certification of documentation and process by 'suitably qualified and experienced' persons for greater reliability of process, and for assurance that appropriate standards of ethical good practice environmental management were being achieved.	**Yes**										**Yes**	
								Raise standards of environmental impact assessment; transparency of project information and decision-making processes; community engagement and access to justice; and monitoring, reporting and enforcement requirements	**Yes**										**Yes**	**Yes**
								Commonwealth to raise States to a higher level of environmental standards	**Yes**											**Yes**

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11. Why A New Act?

Preparation and passage of a new Australian Environment Act obviously presents a substantial task. The EPBC Act has already been subject to multiple amendments and it may well be asked why not implement Labor's environmental law reform agenda through further amendments to the existing legislation.

In our view, the range of common issues raised by the diverse critiques of the EPBC Act means that it would be simpler and more straightforward to craft a new Act than to amend the existing Act. If attempts were to be made to amend the existing Act so that the issues which have been raised were adequately dealt with, the scope of changes would amount to a new Act.

Also, to embark on crafting a new forward looking Act for the Australia of the 21s Century could be a positive exercise – one that may be easier to attract and benefit from positive and constructive contributions from all stakeholders. At its simplest, "Amend pretty much most of sections 1 to 527E of the EPBC Act. Cth, and the definitions in s.528, and insert some new institutions and accountability mechanisms", while perhaps engaging enough for some few lawyers, may not be a very engaging rallying call for anyone else.

This perspective is supported in particular by the Hawke Review, by the Australian Paned of Experts on Environmental Law, and the Places You Love Alliance.

11.1. The Hawke Review

A strong case for creating a new Act was made by the Hawke Review which found that:

- The Act's current title is arguably misleading as it covers some aspects of the legislation but not all. Some submissions called for heritage to be added to the title. To specify all the matters dealt with in the Act would create a cumbersome title. Heritage values and social, economic and cultural qualities and characteristics of places all fall within the concept of 'environment'. This concept should be reinforced in the legislation.
- A change in the Act's title to the Australian Environment Act would embrace the all-encompassing nature of the environment and the Act's role as national legislation.
- It is clear from comments that many people, including professionals, find the Act hard to understand and navigate. The Act is currently repetitive, lengthy, unnecessarily complex, often unclear and, in some areas, overly prescriptive. As a consequence, many provisions need to be re-drafted.
- The simplest way to achieve the necessary reordering and redrafting would be to repeal the Act and replace it with a new Australian Environment Act. A complete redraft will enable legislators to use modern drafting techniques which will also aid simplification and clarity of the Act in general, although the effect of many of the provisions that exist currently in the Act will not change.

The Hawke review then made the following recommendations:

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Recommendation 1

The Review recommends that the *Environment Protection and Biodiversity Conservation Act 1999* be repealed and replaced with a new Act, the *Australian Environment Act*, which will:

(1) be restructured and drafted to modernise, clarify, simplify and streamline both language and process;

(2) reduce duplication of processes; and

(3) increase the focus on strategic approaches to environmental management.

Recommendation 2

The Review recommends that the Act:

(1) confirm ecologically sustainable development (ESD) principles as the overarching principles underpinning decision-making under the Act;

(2) emphasise that environmental considerations are to be considered first when making decisions under the Act – 'decision-making should integrate both long-term and short-term environmental, social, economic and equitable considerations effectively'; and

(3) emphasise ESD principle (d) – 'the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making'.

Recommendation 3

The Review recommends that the objects of the Act be revised along the following lines:

(1) the primary object of this Act is to protect the environment, through the conservation of ecological integrity and nationally important biological diversity and heritage.

(2) in particular, this Act protects matters of national environmental significance and, consistent with this, seeks to promote beneficial economic and social outcomes.

(3) the primary object is to be achieved by applying the principles of ecologically sustainable development as enunciated in the Act.

(4) the Minister and all agencies and persons involved in the administration of the Act must have regard to, and seek to further, the primary object of this Act.

(5) in pursuing the primary object, the Minister should:

(a) encourage public participation in the making of decisions that impact on the environment;

(b) promote cooperation with State, Territory and Local government in environmental protection and management;

(c) assist in the co-operative implementation of Australia's international environmental responsibilities;

(d) recognise the role of Indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity;

(e) promote the use of Indigenous peoples' knowledge of biodiversity with the involvement of, and in cooperation with, the owners of the knowledge; and

(f) promote fair and efficient decision-making.

11.2. The Australian Panel of Experts on Environmental Law

The Australian Panel of Experts on Environmental Law (APEEL) is comprised of experts with extensive knowledge of, and experience in, environmental law. Its membership includes environmental law practitioners, academics with international standing and a retired judge of the Federal Court. Its stated aim is "to set out a blueprint for the next generation of Australian

environmental law that ensures we have a healthy, functioning and resilient environment which benefits people for generations to come. In so doing, it will propose a system of environmental laws that is as transparent, efficient, effective and participatory as possible"

The APEEL has developed a series of technical discussion papers on the following themes:

1. The foundations of environmental law
2. Environmental governance
3. Terrestrial natural resources management
4. Marine and coastal issues
5. Climate law
6. Energy regulation
7. The private sector, business law and environmental performance
8. Democracy and the environment

The APEEL suggests that a new generation of environmental laws is needed to address the urgent and complex environmental challenges that Australia presently faces. **The APEEL believes that environmental law has evolved to the point where it is possible to build these new laws on a solid legal foundation that is largely lacking in the present system.** We suggest that the core components of this foundation are *goals, objectives, principles and norms*. These basic components must be clearly reflected in the design of the next generation of environmental legislation.

In other words the APEEL has not just replacement of the EPBC Act in its contemplation, but sees the need for "a new generation of environmental laws ", including a replacement of the EPBC Act

11.3. The Places You Love Alliance (PYL)

The Places You Love Alliance is an alliance of over forty environment groups representing more than 1.5 million Australians. The PYL considers that;

- Australia's national environmental law, the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), was written at a time when many pervasive threats to our environment and their management were less well understood including (for example): the extent of the impacts of global warming; the importance of protecting and rebuilding carbon stocks in the natural landscape; the cumulative impacts of various developments; adaptive management.
- The resulting failure impacts us all. It undermines our productive base and deprives future generations of their ecological and cultural inheritance. Soil and water quality are in decline. Invasive species are degrading our farms and bushland alike. Thousands of native species are listed as threatened, yet the legal protection listing entailed has not lead to their recovery. Australia has the worst rate of mammal extinctions in the world.
- The Australian Government should lead the development of a new national system of environmental protection that includes **a new Commonwealth *Environment Act*** and that draws on the strengths of each level of government in our federal system to deliver effective environmental protection. Responsibilities should be allocated logically, allowing the Australian Government to drive improvements in standards, decrease duplication of activities and ensure major issues are resolved.

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12. Framing the new Act – Ideas to Initiate Consultation

The following ideas have the express purpose of eliciting feedback and suggestions for improvement. They have been drawn from:

- the range of critiques of the EPBC Act and associated recommendations or proposals to deal with the deficiencies of the Act and its implementation mechanisms and institutions, particularly in the context of Australia's short, medium and long term challenges and opportunities
- many of the ideas and recommendations articulated in the APEEL papers. It is recognised that the scope of the APEEL papers is much broader than just the matters relating to the EPBC Act and the need for its replacement. However, for the purposes of this Chifley-LEAN project, the focus is specifically on the attributes of a new Act to replace the EPBC Act in a way that builds on that Act's positive features and achievements.

Constructive feedback and suggestions for enhancement or improvement will be sought via a programme of consultation with interested stakeholders (see Section XX).

12.1. Idea for the Fundamental Goal for the new Act

A possible Fundamental Goal of the new Act is:

> ***In an accountable and effective manner, to protect, conserve, restore, and promote sustainable, diverse, resilient human and environmental use of, Australia's natural environment, namely its:***
>
> - ***Land and its soils, biological resources, minerals, surface water, groundwater, terrestrial ecosystems and habitats***
> - ***Coasts, and marine areas in its exclusive economic zone, and their sediments, biological resources, minerals, aquatic ecosystems and habitats***
> - ***Air environment***

This suggested goal could be further developed through consultation and consensus building, involving reflection on the existing goal of ecologically sustainable development and emerging, broader sustainability-based approaches.

The resulting goal would:

- Enable the new Act to be directed towards society's broader goals, whether reframed following adequate societal consultation, or as currently expressed in the goal of Ecologically Sustainable Development (ESD), in the 1992 National Strategy for Ecologically Sustainable Development (NSESD; and as a result
- Reflect society's environmental values and its overarching goal for the management of the environment.

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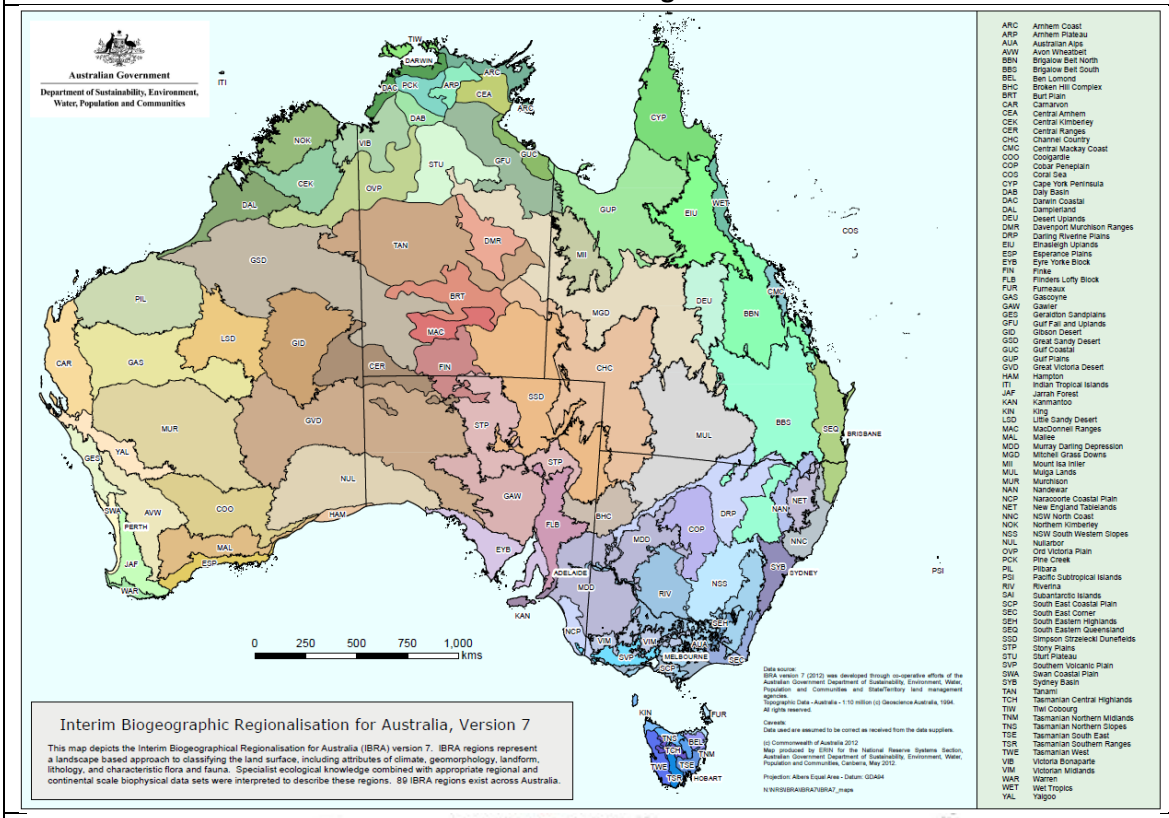
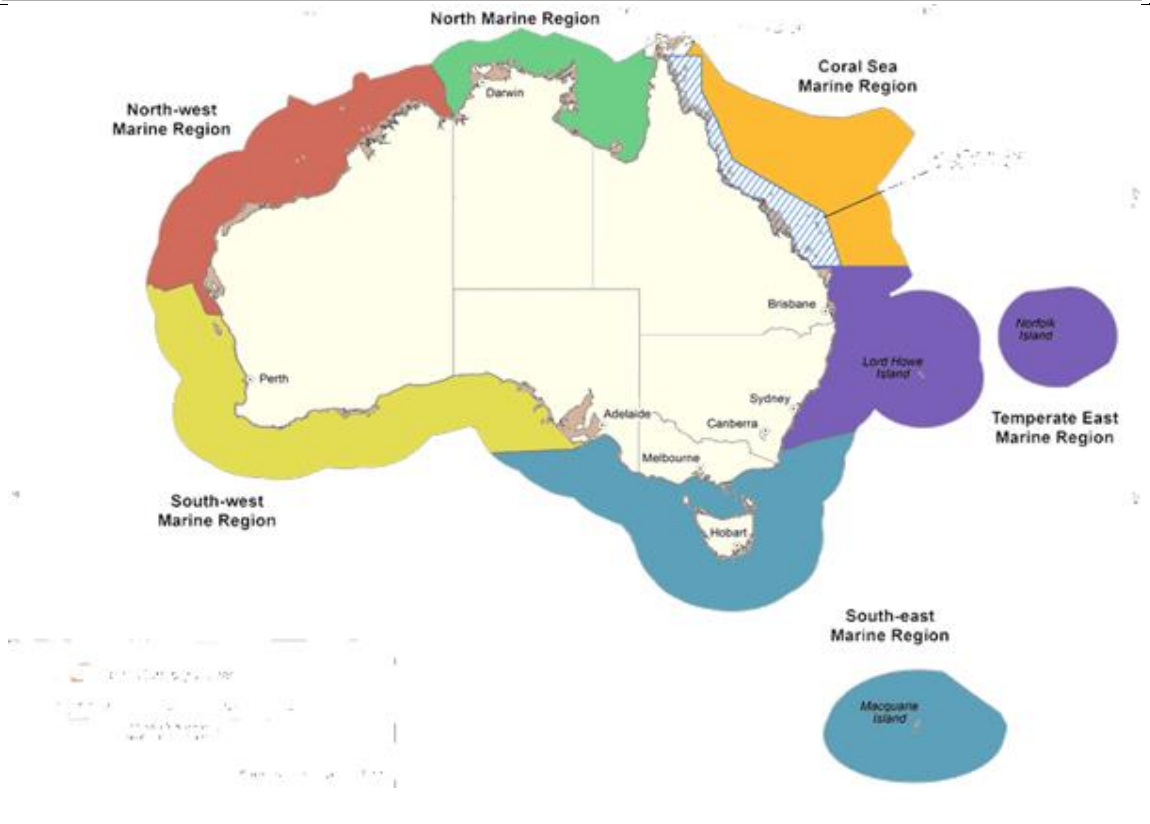
12.2. Ideas for Objects for the new Act

Possible objects of the new Act could be to:

- ***Provide the Federal Government with the responsibility and the powers, institutions and mechanisms for making measurable progress each year towards the above goal in respect of matters of national environmental significance (see below)***
- ***Clarify the definitions of matters of national environmental significance so that duplication of responsibilities (for achieving the above goal) with lower tiers of government are avoided to the extent practical***
- ***Require progress towards the goal of the Act to be measured using the approach and framework used in the 5 yearly State of the Environment Reports (See Section 12 below and https://soe.environment.gov.au/how-why/how-report-written#SoE_2016_framework) to enable progress towards the above goal to account for:***
    - ***Drivers and pressures on the state of the environment***
    - ***The state and trends in the state of the environment***
    - ***The effectiveness of management of the state of the environment***
    - ***The outlook for the state of the environment, taking account of the above and also resilience and risk factors***
- ***Provide principles and processes for the establishment and achievement of enforceable measurable environmental outcomes that would, in aggregate, provide a judicious mix leading and lagging indicators of materially significant progress towards the goal of the Act and that would:***
    - ***Enable revised, updated strategies and plans with accountable milestones to be published each 5 years that would identify***
        - ***The roles and responsibilities of the National Government***
        - ***The roles and responsibilities of State and Territory Governments***
    - ***Enable progress towards the achievement of the above goal to be accounted for and reported each 5 years along with the next revision of the strategies and plans***
        - ***Nationally***
        - ***By State or Territory***
        - ***For each land or marine bioregion (see below)***
    - ***Enable projects to be permitted on condition of demonstrable and transparent compliance with defined project specific measurable environmental outcomes that contribute to progress towards the above goal***
    - ***Enable projects to be refused permits or to have permits rescinded on the grounds of material or un-remedied non-compliance with the defined measurable project***

Australia's Bioregions





12.3. Ideas for Design Principles for the new Act

Ideas for design principles for the new Act include:

- ***Principles re smart regulation;***
- ***Principles supporting the use of economic measures;***
- ***Principles that endorse specific regulatory tools and mechanisms;***
- ***Principles in support of environmental democracy;***
- ***A principle of flexible and responsive environmental governance; and***
- ***A principle of non-regression***

12.4. Ideas for Directing Principles for the new Act

Ideas for directing principles for the new Act include:

- ***The precautionary principle;***
- ***The prevention principle;***
- ***Principles for environmentally sustainable innovation - a highest environmental quality principle, and a best available techniques principle; and***
- ***A principle of environmental restoration***

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12.5. Ideas for Norms for the new Act

Ideas for norms (rights and duties) for the new Act include:

- ***Duties-based norms***
  - ***duty of care to avoid causing environmental harm***
  - ***duty to restore or rehabilitate***
  - ***duty of government to monitor, analyse and publicly report on environmental matters, and to provide "open access" to environmental information***
- ***Rights-based norms***
  - ***The right for participation, either individually or through organised or representative bodies, in decision-making processes, either at the formative or implementation stages for***
    - ***individual projects, developments of activities***
    - ***plans, programs and policies***
    - ***the making of regulatory instruments***
  - ***the right for "any person" to access fair, efficient and responsive legal remedies and dispute resolution and the financial capacity to do so***
  - ***the right for "any person" to challenge and obtain judicial or administrative review of government administrative processes and decisions made or to undertake enforcement proceedings, with exceptions for clearly identified classes of persons, the public interests, or unreasonable interference in private rights***
  - ***the rights of Aboriginal and Torres Strait Islander communities in relation to actions affecting them:***
    - ***to exercise free, prior and informed consent (FPIC) rights protective of their land and resources, including their ownership, use and control;***
    - ***rights to redress in circumstances of the interference with their rights;***
    - ***rights to conservation and protection of the environment and productive capacity of lands, territories and resources;***
    - ***rights protective of cultural heritage and traditional knowledge;***
    - ***rights to determine priorities and strategies for development.***

13. Suggested Matters of Commonwealth Environmental Interest

It is suggested that the new Act contain a Statement of Matters of Commonwealth Environmental Interest (MCEI). This would be analogous to and replace the list of Matters of National Environmental Significance (MNES) in the EPBC Act. Many of the Matters in the Statement of MCEI can be found in the list of MNES.

The following Table provides ideas for this Statement of Matters of Commonwealth Environmental Interest (MCEI) and they include:

- matters that can trigger its environmental assessment and approval process (i.e. for which the Commonwealth could be the primary environmental assessor, decision maker and regulator); and
- matters for which the Commonwealth can develop and adopt various kinds of national environmental instruments and, where necessary, pursue pre-emptive regulatory action where a State or States has failed to cooperate with respect to the implementation of any such instruments.

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Category	Suggested Matters of Commonwealth Environmental Interest (MCEI)	Is This Currently a Matter of National Environmental Significance (from COAG 1997, and EPBC Act 1999)?	Suggested Commonwealth environmental assessment, approval and regulatory process to apply	Suggested subject to national environmental instruments and, where necessary, pre-emptive Commonwealth regulatory action
General	1. Matters, additional to the following, that are from time to time agreed by the Commonwealth and the States as being matters of Commonwealth Environmental Interest	Yes	Yes	Yes
	2. Matters relating to proposals on Commonwealth lands and waters and proposals which are beyond the jurisdiction of States and Territories (e.g. foreign aid proposals)	Yes	Yes	Yes
Environments	3. World Heritage properties	Yes	Yes	Yes
	4. RAMSAR listed wetlands	Yes	Yes	Yes
	5. The Great Barrier Reef Marine Park	Yes	Yes	Yes
	6. Commonwealth marine areas	Yes	Yes	Yes
	7. Terrestrial, Coastal and Marine National Parks	Yes	Yes	Yes
	8. Nationally significant terrestrial, coastal and marine bioregions	No	Yes	Yes
Species, Communities, Ecosystems	9. Native vegetation and fauna	Yes	Yes	Yes
	10. Nationally endangered or vulnerable species and communities	Yes	Yes	Yes
	11. Listed endangered species and ecological communities	Yes	Yes	Yes
	12. Listed Migratory species and cetacean	Yes	Yes	Yes
	13. Nationally significant feral animals and weeds	Yes	Yes	Yes

Discussion Draft

Category	Suggested Matters of Commonwealth Environmental Interest (MCEI)	Is This Currently a Matter of National Environmental Significance (from COAG 1997, and EPBC Act 1999)?	Suggested Commonwealth environmental assessment, approval and regulatory process to apply	Suggested subject to national environmental instruments and, where necessary, pre-emptive Commonwealth regulatory action
Resources	14. Forests of national significance	Yes	Yes	Yes
	15. Water: a. Surface Water catchments that extend across State or Territory boundaries b. Groundwater aquifers and their areas of recharge that extend across State or Territory boundaries	Water resources with significant impact from coal seam gas development and large coal mining development	Yes	Yes
	16. The biological resources in or dependent on c. The marine and coastal environment d. Surface water catchments that extend across State or Territory boundaries e. Groundwater aquifers and their areas of recharge that extend across State or Territory boundaries	No	Yes	Yes
	17. Air quality required for human and environmental use of the above listed Environments, Species, Communities, Ecosystems, and Resources	No	Yes	Yes
Places	18. Places of national significance	Yes	Yes	Yes
	19. National heritage places	Yes	Yes	Yes
Human Activities and Man-made substances	20. Nuclear activities	Yes	Yes	Yes
	21. Conservation or Protection of National Infrastructure and the above listed Environments, Species, Communities, Ecosystems, Places or Resources, against impacts from climate change	Not in these terms	Yes	Yes

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Category	Suggested Matters of Commonwealth Environmental Interest (MCEI)	Is This Currently a Matter of National Environmental Significance (from COAG 1997, and EPBC Act 1999)?	Suggested Commonwealth environmental assessment, approval and regulatory process to apply	Suggested subject to national environmental instruments and, where necessary, pre-emptive Commonwealth regulatory action
	22. Emissions of greenhouse gases	Yes		Yes
	23. Ozone depleting substances and their emissions	Yes		Yes
	24. Agricultural, veterinary and industrial chemicals	Yes		Yes
	25. Genetically modified organisms	Yes		Yes
	26. Hazardous wastes relating to Commonwealth obligations arising from the Basel Convention	Yes		Yes
	27. International trade in wildlife arising from obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora	Yes		Yes
	28. Mineral exploration and exploitation on land or in coastal or marine areas that has the potential to impact on one or more of the above listed Environments, Species, Communities, Ecosystems, Places or Resources	Not in these terms.	Yes	Yes
	29. 'National interest' environmental matters as covered by the Telecommunications Act 1997	Yes		Yes
	30. Aviation airspace management including aircraft noise and emissions	Yes		Yes
Environmental Management and Environmental	31. Declaring, applying and enforcing measurable environmental outcomes to protect, conserve, restore, and promote sustainable, diverse, resilient human and environmental use of the above listed Environments, Species, Communities, Ecosystems, Resources and	No		Yes

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Category	Suggested Matters of Commonwealth Environmental Interest (MCEI)	Is This Currently a Matter of National Environmental Significance (from COAG 1997, and EPBC Act 1999)?	Suggested Commonwealth environmental assessment, approval and regulatory process to apply	Suggested subject to national environmental instruments and, where necessary, pre-emptive Commonwealth regulatory action
Information	Places			
	32. Measuring and reporting progress towards and compliance with the declared measurable environmental outcomes to protect, conserve, restore, and promote sustainable, diverse, resilient human and environmental use of the above listed Environments, Species, Communities, Ecosystems, Resources and Places	No. Only reporting of drivers pressures, state, trends, outlook for the environment		Yes
	33. Implementation of the National Strategy for Ecologically Sustainable Development Matters requiring National Environment Protection Measures	Yes		Yes
	34. Policies and practices of a State resulting in potentially significant adverse external effects in relation to the environment of another State, where the States involved cannot resolve the problem.	Yes		Yes
	35. Quarantine matters	Yes		Yes
	36. Conservation of biological diversity	Yes		Yes
	37. Applying uniform national emissions standards to motor vehicles	Yes		Yes
	38. Natural Heritage Trust Programmes	Yes		Yes

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14. Using the State of the Environment Report to Prioritise Actions

The information in this Section, about the State of the Environment Report, shows that it has the scope and depth to provide a sound basis for identifying, reviewing and refining priorities for better environmental outcomes – outcomes that would represent progress towards the goal of the new legislation.

This utility of the State of the Environment Report would be enhanced by more systematic synchronisation and integration of the equivalent reports produced by States and Territories, so that the National State of the Environment Reports can build on and integrate the information in those documents.

14.1. The Report's Conceptual Framework

The State of the Environment Report is published each 5 years, pursuant to a requirement of the EPBC Act – a requirement which would be continued in the new Act. Each report provides readers with (reference: 2016 State of the Environment Report):

- a comprehensive review of the state and trends of the environment
- information about the pressures on the environment and the drivers of those pressures
- information about the management initiatives that are in place to address environmental concerns, and the impacts of those initiatives
- information about the resilience of the environment and the residual risks that threaten it
- an overall outlook for the Australian environment

The following figure copied from the 2016 State of the Environment Report shows the conceptual framework used in that report to develop and provide that information.

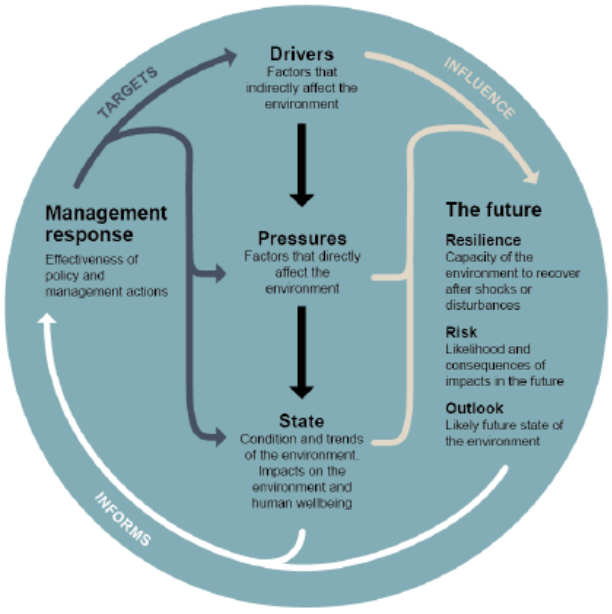

Figure APP1 State of the environment conceptual framework

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14.2. The Report's Themes

The "Themes" of the 2016 State of the Environment Report are the aspects of the environment that are reported on, namely:

- Atmosphere: Changes to Australia's atmosphere, particularly greenhouse gas emissions and climate change, and their effects on the Australian environment, as well as ambient air quality
- Built environment: The impacts of population and economic growth, and climate change on Australia's urban environments, and issues of strategic management across jurisdictions in a time of change
- Heritage: The extent and condition of Australia's rich natural, Indigenous and cultural heritage, the threats each faces from natural and human processes, and the challenges for management
- Biodiversity: The condition of Australia's living resources and highlights the challenges of management in the context of human dependence on biodiversity for ecosystem services
- Land: The state of our soil and terrestrial vegetation resources, the pressures they face, and issues and priorities for management
- Inland water: The evolving state of surface-water and groundwater resources in the world's driest inhabitable continent, in the context of the breaking of a major drought and ongoing water policy reform
- Coasts: The interface between the ocean and the land, the challenges to coasts posed by climate change and ongoing coastal development, and management responses to pressures on our coastlines
- Marine environment: The condition of Australia's oceanic habitats, communities and species groups; the existing pressures on our marine environments; and current management
- Antarctic environment: The global importance and evolving state of the Antarctic environment, the ongoing changes to marine and terrestrial ecosystems resulting from human activity, and the significance of climate change in the region.

14.3. The Drivers in the Report

Drivers are the main factors that generate the pressures on the environment. The 2016 State of the Environment Report summary of its position about drivers is that the key drivers for Australia are particularly those associated with changes in population and economic activity, and that:

> ***"Globally, the human-caused drivers of change to the environment are demographic, economic, socio-political, scientific, technological, cultural and religious. In Australia, the key drivers of environmental change are population and economic activity.***
>
> ***The extent to which these drivers lead to environmental impacts depends on a range of factors, including:***

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- ***how many of us there are***
- ***where and how we live***
- ***the goods and services we produce (for both domestic and export markets) and consume***
- ***the technologies we use to produce our energy, food, materials and transport***
- ***how we manage the waste we produce.***

Keeping impacts within limits is one key to a sustainable future.

If not managed well, drivers can generate pressures that have immediate and long-term negative consequences for the environment. If managed well, however, drivers can offer benefits for the environment, particularly through technological and institutional innovation, and changes in human behaviour that mitigate or reverse environmental impacts.

During the past 5 years, environmental policies and management practices in Australia have improved the state of parts of the Australian environment. The state of the environment (SoE) thematic reports indicate that Australia's built environment, natural and cultural heritage, and Antarctic and marine environments are generally in good condition.

There are, however, areas where the condition of the environment is poor and/or deteriorating. These include the more populated coastal areas and some of the growth areas within urban environments where human pressure is greatest—particularly in Australia's south-east.

If we are to prevent and remediate environmental degradation, policy and management actions need to focus on the drivers rather than only on the pressures, as has been the tendency of past approaches. We need improved knowledge, integration and cooperation to address the challenges of an increased population and growing economy. Positive signs are emerging of attempts to pursue integrated policy approaches in Australia. Coherent, multisectoral policy packages and other systemic approaches, including cooperation with other nations on such issues as climate change, are at the heart of sustainability"

14.4. The Report's Topics for Assessing Pressures on the Environment

Pressures are the factors that directly affect the environment and depend on the "theme" that is being considered. The 2016 State of the Environment Report's topics for the pressures affecting its "Themes" are:

- Atmosphere
  - Ambient Air Quality
    - Pollution types
    - Pollution sources
    - Increasing population
    - Industry
    - Motor vehicles
    - Domestic wood heaters
    - Commercial and other domestic sources
    - Prescribed burning and bushfires
    - Non regulated diesel engines (including shipping and non-road transport)
  - Climate
    - Increases in greenhouse gases
    - Effects of increased greenhouse gases
    - Australia's emissions in context
    - Kyoto protocol targets
    - Direct and indirect effects of pressures on climate
- Built Environment
  - Increased urban footprint
  - Increased traffic
  - Increased consumption
  - Increased pollution
  - Increased extreme weather events
  - Increased sea levels
- Heritage
  - Population growth
  - Economic growth
  - Climate change
  - Pressures on natural heritage
  - Pressures on indigenous heritage
  - Pressures on historic heritage
- Biodiversity
  - Availability of Information
  - Jurisdictional reporting on pressures
  - Spatial distribution of pressures
  - Global climate change and climate variability
  - Pollution
  - Consumption and extraction of natural resources

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  - Urban development
  - Livestock production
  - Pest species and pathogens
  - Altered fire regimes
  - Changed hydrology
  - Pressures facing aquatic ecosystems
  - Interactions among pressures
- Land
  - Climate change induced pressures
  - Regional and landscape – scale pressures: Bushfire
  - Regional and landscape – scale pressures: Land clearing
  - Regional and landscape – scale pressures: Invasive species
  - Contemporary land-use pressures
- Inland Water
  - Recent climate
  - Water resource development
  - Changing land use and management
  - Pests and invasive species
- Coasts
  - Population growth and urban development: Population growth
  - Population growth and urban development: Coastal development and land use
  - Population growth and urban development: Tourism and recreation
  - Energy and resource extraction and processing
  - Atmosphere
  - Coastal land
  - Coastal waters
  - Land- water interface
- Marine Environment
  - Climate and system variability
  - Climate change
  - Commercial and recreational fishing
  - Traditional use of marine resources
  - Marine oil and gas exploration and production
  - Marine mining and industry
  - Marine renewable energy generation
  - Marine vessel activity
  - Anthropogenic noise
  - Marine debris
  - Toxins, pesticides and herbicides
  - Dumped wastes
  - Additional pressures
- Antarctic Environment
  - Human influence on Antarctica
  - Pressures on the marine environment
  - Pressures on the terrestrial environment
  - Pressures on Antarctic historic heritage

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14.5. The Report's Topics for Assessing the State and Trends of the Environment

In assessing the state and trends of the environment for each theme, the 2016 State of the Environment Report covers the following topics:

- Atmosphere
  - Air Quality Index
  - Air Toxics
  - Carbon monoxide
  - Coarse Particulate Matter (PM10)
  - Fine Particulate Matter (PM2.5)
  - Lead
  - National Air Quality Standards
  - Nitrogen Dioxide
  - Ozone
  - Rainfall
  - Sulfur Dioxide
  - Temperature
  - Volatile organic compounds
- Built Environment
  - Livability: Air and water quality
  - Livability: Housing
  - Livability: Natural Environment
  - Livability: Transport
  - Livability: Urban Amenity
  - Urban Environmental Efficiency: Energy Efficiency
  - Urban Environmental Efficiency: Land Use
  - Urban Environmental Efficiency: Waste generation and recovery
  - Urban Environmental Efficiency: Water Efficiency
- Heritage
  - Condition and Integrity: Listing Jurisdictions
  - Condition and Integrity: Types of Heritage
  - Identification: Listing Jurisdictions
  - Identification: Types of Heritage
- Biodiversity
  - Availability of Information
  - Coastal and Marines species and ecosystems
  - Freshwater species and ecosystems
  - Terrestrial ecosystems and communities
  - Terrestrial Plant and Animal species: Birds
  - Terrestrial Plant and Animal species: Invertebrates
  - Terrestrial Plant and Animal species: Mammals
  - Terrestrial Plant and Animal species: Plant species and fungi
  - Terrestrial Plant and Animal species: Reptiles and amphibians
  - Terrestrial Plant and Animal species: Threatened Species Lists

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    - Genetic and species diversity
- Land
    - Land use and management
    - Soil: Carbon dynamics
    - Soil: Formation and erosion
    - Soil: Salinity and acidifcation
    - Soil: Understanding
    - Vegetation
- Inland Water
    - Ecological processes and species populations
    - Groundwater resources
    - Water flows and levels
    - Water quality
- Coasts
    - Biodiversity: Ecological pressures
    - Biodiversity: Habitat forming species
    - Biodiversity: Species groups
    - Biodiversity: Threatened species
    - Coastal heritage
    - Coastal land
    - Coastal waterways
    - Land- water interface
- Marine Environment
    - Marine ecosystem health: Ecological processes
    - Marine ecosystem health: Physical, biogeochemical and biological processes
    - Marine biodiversity: Quality of habitats and communities
    - Marine biodiversity: Species groups
- Antarctic Environment
    - Australian Antarctic Program's station environment: Contaminated sites and pollution
    - Australian Antarctic Program's station environment: Operation indicators
    - Heritage values
    - The living environment: Marine and terrestrial
    - The living environment: Vetebrate populations
    - The physical environment: The atmosphere – climate and weather patterns
    - The physical environment: The cryosphere
    - The physical environment: The Southern Ocean

The following extract from the 2016 State of the Environment Report describes the framework used in that report

Discussion Draft

SoE 2016 framework

SoE 2016 builds on the internationally accepted approach for reporting on the environment—the drivers, pressures, state, impact, response (DPSIR) framework—to structure its assessments:

- Drivers are addressed in the *Drivers* report.
- Pressures are discussed in the 'Pressures' sections within each theme and the *Overview* report.
- State and impact are discussed in the 'State and trends' sections within each theme and the *Overview* report.
- Response is discussed in the 'Management effectiveness' sections within each theme and the *Overview* report.

The *Overview* and thematic reports also examine the future outlook for the environment, taking into account the drivers, pressures, current state and trends, and management response, along with the resilience of the environment and the remaining risks that threaten it.

This framework reflects that adopted in SoE 2011. Refer to SoE 2011 for further information on the development and approach of the framework (State of the Environment 2011 Committee 2011).

The framework (Figure APP1) is based on the concept that drivers (underlying natural and human-caused forces) exert pressures (immediate factors) on the environment that lead to changes in the state of the environment. These changes can affect society, which responds to changes and impacts through policy and management actions.

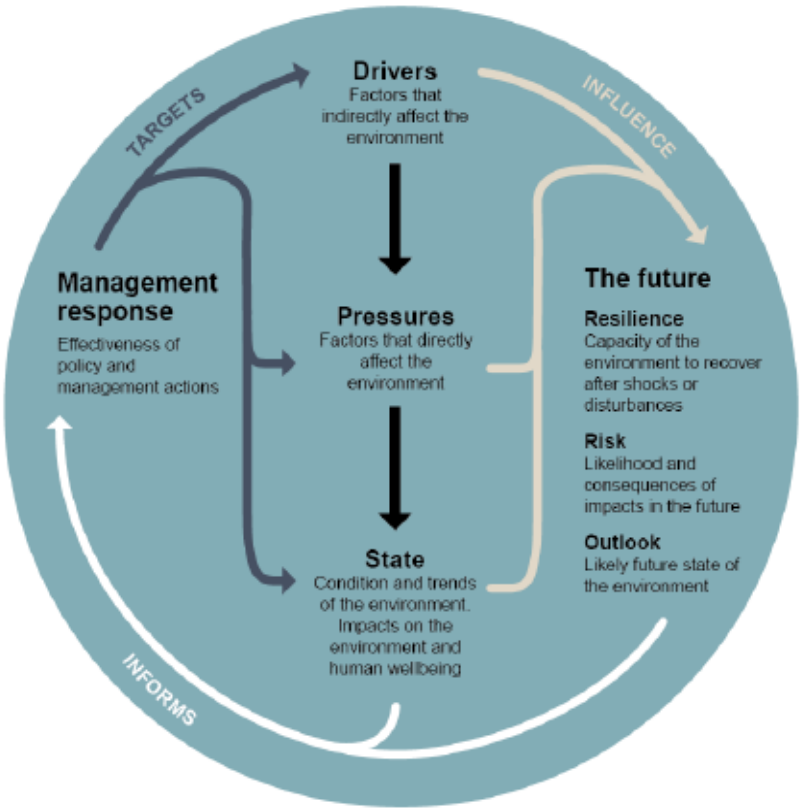

Figure APP1 State of the environment conceptual framework

15. Ideas for Commonwealth and State / Territory Roles for Environmental Assessment, Approvals, Regulation for Projects

The purpose is to establish Environmental Assessment and Approval and Regulatory processes that are streamlined and avoid duplication, while recognising and accommodating the facts that:

- Projects require planning approvals under State or Territory Legislation, and such approvals can require environmental aspects to be considered concurrently with planning assessment and approval processes
- Environmental assessment and approvals
    - Have State or Territory dimensions
    - May have Commonwealth dimensions, if a Matter of Commonwealth Environmental Interest is involved
- Planning and Environmental assessment and approval processes are, or should be, integrated and concurrent
- Panel hearings and equivalent forms of public inquiry into planning and environmental processes and decisions occur under State or Territory legislation

15.1. Deciding who is the Responsible Agency for Environmental Assessment, Approvals and Regulation

The proposition is that there be one responsible Agency – suitably resourced – for environmental aspects of each project.

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Types of Matter of Commonwealth Environmental Interest for which the Commonwealth will be the Environmental Assessment and Approval Agency and Regulator, using the relevant State(s) and Territory(ies) as advisory referral agencies so that State / Territory legislation, policy, regulations are accounted for. Where a State or Territory planning system requires a project gain environmental approval as part of (or as a pre-requisite for) a planning approval, then the Commonwealth, in its role as Environmental Assessment and Approval Agency and Regulator, must coordinate and synchronise its processes and outcomes with the State or Territory planning assessment, approval and regulation processes. It is envisaged that bi-lateral agreements would establish the mechanisms, procedures and standards that would apply to: • The referrals; and • The coordination and synchronisation needed The agreements would provide a mechanism for the State or Territory to intervene in (and if necessary challenge in court) the Environnmental assessment, approval and regulation processes, if it had valid reasons to consider that the mechanisms, procedures and standards that would apply to the referrals had not been implemented diligently, transparently, or rigorously.	Matters 1 to 20 in the Listed Matters plus: • All projects to do with nationally connected renewable energy generation and transmission infrastructure • All projects to do with fossil fuel extraction, or to do with power generation using fossil fuels – because of their contribution to greenhouse gas emissions nationally or globally • All nuclear waste disposal or power generation projects • All projects on Commonwealth land • All projects to do with or impacting Australia's territorial waters or exclusive economic zone • All projects to do with land or marine national parks
Types of Matter of Commonwealth Environmental Interest for which the relevant State or Territory (provided it has an accredited assessment, approval and regulatory regime) will be the Environmental Assessment and Approval Agency and Regulator, using the Commonwealth as advisory referral agency so that the new Act and other relevant Commonwealth legislation is accounted for where relevant. It is envisaged that bi-lateral agreements would establish the mechanisms, procedures and standards that would apply to the referrals. The agreements would provide a mechanism for the Commonwealth to intervene in (and if necessary challenge in court) the Environmental assessment, approval and regulation processes, if it had valid reasons to consider that the mechanisms, procedures and standards that would apply to the referrals had not been implemented diligently, transparently, or rigorously.	All other projects

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15.2. Better Coordination of Planning and Environmental Assessment and Approvals

Yet to be written

15.3. Inquiries into Commonwealth Assessment, Approvals and Regulation Processes and Decisions

Yet to be written

15.4. Need for, Purpose and Scope of a new COAG Agreement(s)

Yet to be written

Discussion Draft

Discussion Draft