Biodiversity Council

Submission to the Productivity Commission inquiry - Investing in cheaper, cleaner energy and the net zero transformation

About The Biodiversity Council

The Biodiversity Council brings together leading experts including Indigenous knowledge holders to promote evidence-based solutions to Australia's biodiversity crisis. The Council was founded by 11 universities with the support of Australian philanthropists.

The University of Melbourne · Australian National University · Macquarie University · The University of Western Australia · The University of Queensland · The University of Sydney · University of Canberra · Monash University · The University of Adelaide · UNSW Australia · Deakin University

Introduction

The Biodiversity Council welcomes the opportunity to provide feedback on the Productivity Commission's inquiry *Investing in cheaper, cleaner energy and the net zero transformation*.

Our understanding

The inquiry report states that environmental and other regulatory approvals for infrastructure projects are slowing down the energy transition. The report states that the law be changed to treat projects that support Australia's clean energy transition differently from other projects, so that they can be assessed more quickly. Faster approvals are considered to support productivity growth by reducing emissions, reducing costs for developers, attracting investment and making energy cheaper.

The detailed recommendations are:

1) The Australian Government should reform environment laws to expedite approvals for clean energy projects and better protect the environment. The reforms should:
    a) introduce national environmental standards
    b) facilitate regional planning, particularly within renewable energy zones, with stricter statutory deadlines for assessing projects in 'go zones'
    c) provide accessible, high-quality information about the environment and past assessment decisions
    d) make offsetting arrangements more efficient, such as by enabling developers to meet their offset obligations by contributing to an Australian Government offsets fund
    e) set clear expectations about engagement with local communities and Aboriginal and Torres Strait Islander people.
2) The Department of Climate Change, Energy, the Environment and Water should set up a strike team focused on priority renewable energy projects. The strike team should:
    a) be adequately resourced to ensure all priority projects can be efficiently assessed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)
    b) integrate environmental and clean energy expertise
    c) be issued with clear expectations, tools and escalation procedures
    d) work with state and territory counterparts to reduce duplication and share information and expertise.
3) The Australian Government should establish an independent Clean Energy Coordinator-General for priority renewable energy projects. The Coordinator-General should:
    a) track the progress of all approvals needed to start construction
    b) investigate and help resolve delays
    c) report on progress to the Energy and Climate Change Ministerial Council

d) provide advice based on objective criteria about the composition of the National Renewable Energy Priority List.

4) The EPBC Act should be amended to require the minister to consider the needs of the energy transition when deciding whether to approve an energy project that will have a significant impact on a matter of national environmental significance.

Overall

The Biodiversity Council broadly supports the following recommendations:

- the introduction of national environmental standards
- the development of regional plans.
- the provision of accessible, high-quality information about the environment and past assessment decisions, including increased investment in the collection synthesis and analysis of biodiversity data.
- setting clear expectations about engagement with local communities and Aboriginal and Torres Strait Islander people.
- increased resources to expedite project assessments against Standards and EPBC Act regulations.

The Biodiversity Council has concerns about some aspects of the inquiry's recommendations and our policy positions are outlined below.

Policy positions

1. **Fundamental problems with centralised funds for offsets must be resolved or they should not be used**

There is no evidence that centralised funds work. There are several problems that have been identified in the operation of these funds:

1) They weaken the price signals intended to deter impacts on valuable biodiversity assets. In the current offset market, biodiversity values that are rare or costly to restore command higher offset prices, creating a financial incentive for proponents to avoid impacting them in the first place.[1]

2) They increase the risk that ecologically equivalent offsets will not be delivered. These funds are most attractive to proponents when offsets are scarce—precisely when

[1] See for example evidence from the Planning Institute of Australia and Environmental Defenders Office in the 2022 Parliamentary Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme. ttps://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2822
For a broader discussion of increasing flexibility weakening signal see: zu Ermgasen, S. O. S. E., Maron, M., Walker, C. M., C., Gordon, A., Simonds, J. S., Strange, N. Robertson, M. and Bull, J. W. (2020) The hidden biodiversity risks of increasing flexibility in biodiversity offset trades *Biological Conservation* **252:** 108861 https://www.sciencedirect.com/science/article/pii/S0006320720309198?via%3Dihub

direct sourcing would be costly or time-consuming. This reduces transaction and holding costs but creates a significant risk that equivalent offsets may not be delivered or will be significantly delayed. The New South Wales Auditor General found that credit supply issues created "a risk that the BCT [Biodiversity Conservation Trust] will not be able to continue to routinely acquit credits on a like-for-like basis".[2]

3) They are likely to exacerbate time-lags between ecological impact and compensation. A review of New South Wales's offset scheme shows that there are significant time-lags (up to 20 years) between when native vegetation is cleared and when the 'gains' (ecological improvements to compensate for impact) are realised.[3] The combination of the difficulty in sourcing scarce offsets and absence of approvals conditions for developers to source offsets within a set timeframe, increases the risk that offsets will be delayed. Similar problems have occurred in Queensland and South Australia as large state-run offset funds accumulate.

4) They are likely to result in shortfalls as agencies frequently underestimate the real costs of acquiring or restoring biodiversity values. Review of offset funds around Australia, New South Wales, Queensland and South Australia, have shown that the amount of money in offset funds *do not* cover the costs of acquisition or restoration. This means that either offsets do not sufficiently compensate for ecological impact or the public subsidises the private cost of providing an offset.

The government must clarify how it plans to address known issues with offset regimes, and the use of offset funds in particular, before making any announcements. These problems cannot be deferred to the design or implementation stages.

At a bare minimum, offset policies must be tightened to ensure that irreplaceable biodiversity values are not able to be destroyed and offset.

There must also be measures to ensure that offset funds do not displace government investments in biodiversity. Current onground investments for biodiversity total are less than 0.1% or 10c in every $100 of Commonwealth spending. If offset funding substitutes for this public investment rather than adds to it, the overall pool of biodiversity finance may remain inadequate or even shrink.

2. Regional plans must be legally binding and designed to deliver outcomes for biodiversity as well as streamlining approvals

Regional plans must be based on comprehensive biodiversity mapping that is undertaken at a scale that is ecologically meaningful, rather than reflecting administrative boundaries.

[2] NSW Auditor General (2022) *Effectiveness of the Biodiversity Offsets Scheme*. Performance Audit 30 August 2022. https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme

[3] Gordon, Al, Curtsdottter, A., Oliver, I., Hernandez, S., Cox, M. and Dorrough, J. (2025) Five years of offsetting native vegetation: The challenge of achieving no-net-loss *Ecological Indicators* **179**: 114180.

To ensure comprehensive protection of biodiversity, plans must assess the cumulative effects of multiple projects and the combined effects of all industries and activities. This includes agriculture, mining, urban development, and infrastructure projects.

Effective planning requires a zoning framework that clearly designates: areas where development is encouraged ('go' zones); areas where it is strictly prohibited ('no go' zones); and areas where development may be possible but only after thorough environmental assessments ('subject to assessment'). This tiered system supports both development and environmental stewardship. Designating an area as off-limits to development is not enough; these zones must be backed by enforceable legal protections (public ownership, on-title agreements) and sustained by adequate funding for their long-term management.

To be effective, regional plans must be legally binding. Plans that are advisory, or serve only as guidance, perpetuate the problems with broad discretion in development approvals. For instance, the Queensland Regional Planning Pilots are for 'guidance only'.

The provisions of Regional Plans must be legally enforceable, including any stipulation of any areas where harmful development is prohibited. Legislation should clearly state the legal status of the plan and the consequences of non-compliance.

3. **Renewable energy approvals should not be treated differently to other approvals under the EPBC Act**

The claim that the EPBC Act imposes an unreasonable regulatory burden is unfounded. In fact, 98% of all EPBC Act proposals go ahead. The conditions that are imposed on approvals represent critical safeguards to strike the appropriate balance between development and conservation.

The EPBC Act does not regulate all environmental impacts or developments. It is not designed to assess every local, regional or state environmental issue. Instead, it acts as a safeguard for Australia's environmental assets that are of national or international importance.

Treating renewable energy projects differently from other industries carries the risk of weakening the effectiveness of the EPBC Act. The claim that a particular industry provides unique public benefits and therefore deserves special treatment under the law is problematic, it could be argued by many industries. It is true that renewable energy offers significant environmental and social benefits, but so do many other industries— agriculture ensures food security, urban development increases housing supply and therefore affordability etc. Nearly every major industry could claim some public benefit and begin lobbying for similar treatment. Under the EPBC Act, all industries should share minimum levels of accountability for avoiding, minimising and compensating for impacts on MNES.

In summary

The failure of the EPBC Act to safeguard Australia's biodiversity has been known for some time.

The 2021 Samuel Review found that the *Environment Protection and Biodiversity Conservation Act 1999* focuses on bureaucratic processes, rather than delivering environmental outcomes; implementation and enforcement are weak; and the Act rarely works well with State and Territory regulatory regimes.[4] Many of the issues and recommendations in the 2009 Hawke Review[5] were echoed in the Samuel Review.

The Australian Government should implement the recommendations of the Samuel Review to protect the natural environment whilst also developing a more streamlined way in which decisions can be made—one that focuses less on process, and more on outcomes. This includes:

- Developing national environmental standards to increase regulatory certainty and ensure unacceptable impacts on biodiversity are avoided.
- Establishing a national EPA as an independent, expert regulator to undertake assessment and approval decisions according to the national standards and undertake best-practice compliance and enforcement. The EPA should be governed by an independent board, and accountable for both environmental protection outcomes as well as efficient decision making through transparent regulatory processes.
- Improving coordination with States and Territories to reduce duplication, particularly through effective regional planning under new national environmental standards that establish 'go' and 'no go' zones for development.
- Properly resourcing the department so that it can assess applications more quickly and improve compliance and enforcement of the Act. The reforms recommended by this inquiry cannot be properly implemented without significant greater resourcing.

[4] Samuel, G. (2020) *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October. CC BY 4.0.
https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf
[5] https://www.dcceew.gov.au/environment/epbc/our-role/review/epbc-review-2008