

c/o: Secretary Mr Palethorpe  
Inquiry into Australia's extinction crisis  
Senate Environment and Communications References Committee  
By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

9 April 2024

Dear References Committee,

**RE: Supplementary submission to the Inquiry into Australia's extinction crisis on the need for reform of the EPBC Act**

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Committee regarding the compelling need for reform of the *Environment Protection and Biodiversity Conservation Act 1999* ('EPBC Act').

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

ALCA is happy for this submission to be published in full.

### **The need for reform**

Australia's nature is in crisis. Our unique nature, so core to our social and cultural values as a nation and a cornerstone of our prosperity – with half of Australia's GDP being moderately to highly dependent on nature<sup>1</sup> – is in accelerating decline. As per the Federal Government's 2021 State of the Environment Report:

*“Overall, **the state and trend of the environment of Australia are poor and deteriorating** as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction... Multiple pressures create cumulative impacts that amplify threats to our environment, and abrupt changes in ecological systems have been recorded in the past 5 years...*

*Our inability to adequately manage pressures will continue to result in species extinctions and deteriorating ecosystem condition, which **are reducing the environmental capital on which current and future economies depend. Social, environmental and economic impacts are already apparent.**”<sup>1</sup>*

Environmental law reform is one of a several necessary pathways to reverse Australia's nature crisis.

In his foreword to the Final Report of the Independent Review of the EPBC Act in October 2020, Professor Graeme Samuel AC made the compelling case for the wholesale reform of Australia's Federal environmental law:

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<sup>1</sup> Australian Conservation Foundation, *The nature-based economy: How Australia's prosperity depends on nature*, Sep 2022; <https://www.acf.org.au/the-nature-based-economy-how-australias-prosperity-depends-on-nature>

*“The EPBC Act is out dated and requires fundamental reform. It does not enable the Commonwealth to effectively fulfil its environmental management responsibilities to protect nationally important matters... The resounding message that I heard throughout the Review is that Australians do not trust that the EPBC Act is delivering for the environment, for business or for the community.”<sup>2</sup>*

Broadly speaking, the need for reform does not appear to be contested by sectors with a keen interest in the EPBC Act, yet delivering that necessary reform has thus far escaped successive Federal Governments. ALCA strongly supports the need for holistic EPBC Act reforms that deliver for Australian nature and for the Australian community that relies upon it for their social, cultural and economic prosperity.

**Recommendation 1:** That the EPBC Act is in compelling need of holistic reform which should be progressed as a matter of urgency commensurate to the seriousness and urgency of Australia’s nature crisis.

### **Funding – a inescapable pillar of reform**

In the current development of EPBC Act reforms, the focus to date has understandably been upon their technical and legislative detail. Getting this detail right is of course critical to the effective operation of any eventual legislative package.

However, this focus has appeared to distract the public debate from the need for legislative reform to be accompanied by serious Federal investment into nature. Currently the Federal Government spends less than 0.1% of the Federal budget on Australia’s biodiversity<sup>3</sup> – an amount that is desperately inadequate to address the urgency and scale of Australia’s nature crisis.

When the EPBC Act was introduced by the Howard Government, it was but one pillar of a two-pillar approach – meaningful legislative reform **complemented by serious investment in Australia’s nature:**

*“The loss of biodiversity represents the greatest environmental challenge facing Australia. **The Howard government has demonstrated its commitment to addressing this challenge by establishing the largest environmental program in Australia’s history—the Natural Heritage Trust. The bill now provides a substantially improved legal framework for the conservation and sustainable use of Australia’s biodiversity to complement the Natural Heritage Trust.**”<sup>4</sup>*

The Howard Government was right to recognise how the need for investment is inescapable for any Australian Government serious about the conservation of Australia’s nature, and ALCA calls on any successive Government to recognise and pursue this same approach.

<sup>2</sup> Prof. Graeme Samuel AC, Foreword, *Independent Review of the EPBC Act*, <https://epbcactreview.environment.gov.au/resources/final-report/foreword>

<sup>3</sup> Best estimate based on the methodology used in the 2021 State of Environment report, see Fig. 53, <https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-biodiversity.pdf>

<sup>4</sup> 2<sup>nd</sup> Reading, *Environment Protection And Biodiversity Conservation Bill 1998 (No. 2)*, p211, Senate Hansard, 12 November 1998; <https://www.aph.gov.au/binaries/hansard/senate/dailys/ds121198.pdf>

With the Natural Heritage Trust now a mere shadow of its size at its inception, **the need for any serious environmental law reform to be complemented by serious investment has never been greater.**

Further, whilst there is a role for private sector investment in Australian nature – the private land conservation sector that ALCA represents is evidence of the potential – this does not obviate the need for sizeable cornerstone investment. In short, private sector mechanisms like the Nature Repair Market may well be valuable, but are insufficient in isolation to address the nature crisis.

**Recommendation 2:** For any meaningful environmental legislative reform package to succeed, it must be accompanied by serious Federal Government investment in Australian nature.

### **An independent EPA and Ministerial call-in powers**

**ALCA strongly supports the creation of an independent statutory Environment Protection Agency (EPA).** However, an independent EPA must also be strong to be effective. Some of this strength must be legislative in character, but a sustained increase of funding for its functions is also crucial.

ALCA reserves final judgement on the strength of any proposed EPA until a final version becomes publicly available.

**Recommendation 3:** A strong and independent statutory EPA be legislated as part of any broader and holistic EPBC Act reform package.

Ministerial call-in powers related to areas of EPA decision-making have, rightfully, also been the subject of much scrutiny and discussion.

ALCA supports the embedding of democratic accountability in our Federal environmental laws and supports Ministerial call-in powers to help provide that direct avenue of democratic Ministerial responsibility.

However, the Minister's call-in powers do need to be fettered in order that the Government be appropriately accountable and to build confidence in EPA decision-making. Whilst it is welcome that there intends to be a requirement for the Minister to provide reasons for decisions made using Ministerial call-in powers, this is not sufficient – there should also be clear criteria under which Ministerial call-in powers can be activated, even if those criteria are broad in nature.

This is essentially the same conclusion as made by Prof. Samuel:

*“The activities of government should be consistent with the [National Environmental] Standards, noting that an elected government should always retain the ability to exercise discretion in individual cases. **Such discretion should be a rare exception, demonstrably justified in the public interest, with reasons and environmental implications transparently communicated.**”*<sup>5</sup> [ALCA's highlight]

<sup>5</sup> Prof. Graeme Samuel AC, Foreword, *Independent Review of the EPBC Act*, <https://epbcactreview.environment.gov.au/resources/final-report/foreword>

**Recommendation 4:** Ministerial call-in powers related to EPA decision-making should only be utilised in extraordinary circumstances. When they are used, they must be fettered by a set of legislated public interest criteria. The reasons for the Minister's decision must then be published and structured against each of the public interest criterions upon which the Minister seeks to rely.

Thank you again for the opportunity to provide a submission to the Committee regarding the compelling need for reform of the EPBC Act.

ALCA and its member organisations look forward to continuing to engage with the Government, Parliament and the Committee to enhance Australia's environmental law reform agenda.

If you have questions regarding the submission, please do not hesitate to contact ALCA via [michael@alca.org.au](mailto:michael@alca.org.au) (Mr Michael Cornish, Policy Lead).

Yours sincerely,



**Dr Jody Gunn**  
**Chief Executive Officer**  
**Australian Land Conservation Alliance**