

## **Our last, best chance – national environment laws that protect nature and power the net zero economy**

Address to the National Press Club by Ken Henry

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I begin by acknowledging the traditional owners of the land on which we meet today, the Ngunnawal people, and I pay my respects to their Elders past and present

I am addressing you today in my capacity as the Chair of the Australian Climate and Biodiversity Foundation (ACBF). The ACBF is a not-for-profit, founded in 2021 to help decision-makers find means of securing the restoration of Australia's natural environment in ways that support a thriving 21st century economy.

We bring together leaders from business and environmental organisations, together with subject matter experts, to develop economically rational policy approaches to securing Australia's net zero climate goals and its commitment to the Global Biodiversity Framework's goal to halt and reverse the loss of nature by 2030.

I am here to make the case for the urgent reform of Australia's broken national environment laws, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC).

Clearly, this is not a small task. There have been three failed attempts in the past 15 years.

But reform is essential. And this is the time to get it done.

The EPBC Act has patently failed to halt the degradation of Australia's natural environment.

Report after report tells the same story. The environment is not being protected.

Biodiversity is not being conserved. Nature is in systemic decline.

Independent reviews confirm that the environmental impact assessment systems embedded in the laws are not fit-for-purpose. Of particular concern, they are incapable of supporting an economy in transition to net zero and they are undermining productivity.

We cannot afford slow, opaque, duplicative and contested environmental planning decisions based on poor information, mired in administrative complexity.

It's not just the net zero challenge. Housing construction, not keeping pace with a growing population, must be accelerated. The resilience of agricultural production must be enhanced. We must exploit opportunities to develop a sophisticated, more diverse economy, including capability in advanced manufacturing. Environmental laws should help, not hinder.

Recently, the Treasurer, in this place, presented a cogent argument for an economic policy program focused on productivity, resilience and budget sustainability.

Reforming our broken environmental laws is an obvious lever to enhance resilience and lift moribund productivity growth. And reforms provide an opportunity to cut the cost to government dramatically.

Of course, I can think of other reforms to boost productivity. Some even harder, though none more important. And if we can't achieve environmental law reform, then we should stop dreaming about more challenging options.

Moreover, environmental law reform provides an opportunity to reconstruct the cooperative federal reform capability we developed in the 1990s but have since lost.

A strong federal reform capability will be required to deliver other, even more challenging, economic reforms. Environmental law reform can provide the template.

I am the third speaker since 2021 to address the National Press Club on the need for the reform of national environment laws, following former Environment Ministers Sussan Ley and Tanya Plibersek.

Both Ministers detailed myriad problems with the existing laws. Both pledged to implement the far-reaching reforms recommended by the Independent Review, chaired by my long-time reform comrade Graeme Samuel during 2019 and 2020.

Yet, despite the quality of Graeme's review, and the strong commitment of these Ministers, from opposite sides of the political fence, here we are, in the winter of 2025, and nothing has changed.

There has been plenty of activity. Policy papers have been drafted and endorsed at the highest levels of government. Bills have been drafted and debated. There have been endless rounds of consultation. Acres of literal and virtual newsprint have been generated by those arguing the merits and costs of reforms. Parliamentary committees have come and gone.

But the laws haven't moved an inch.

Not a single reform has been implemented.

Why?

You might think there is something special about this area of public policy; something that distinguishes it from all others.

You might assume, for example, that this policy paralysis is simply a stalemate in an inescapable contest between development and the environment. And it's true that protagonists in environmental policy debates often encourage the view that if one side wins, then the other necessarily loses. It might not surprise you, therefore, that the political system finds it impossible to make a choice.

But this is not what has been going on.

For a start, if this is merely a contest between the environment and development, then somebody needs to explain why it is that, whilst the pace of environmental degradation has been accelerating, our economic performance has also been deteriorating.

This is not a 'win-lose' outcome. This is 'lose-lose'.

Coincidence? I don't think so.

I look at our debates over environmental law reforms, and I am reminded of some of the indulgent economic policy debates of the 1970s. Understandable, perhaps. But indulgent, certainly. And costly.

There is nothing reasonable about policy paralysis, not in any area of public policy. In a country that must secure higher productivity growth to meet the legitimate expectations of its young people, policy paralysis must be unacceptable.

The title of this address is 'our last, best chance'. Last, because if we don't secure these reforms in this term of parliament, then neither the net zero nor Global Biodiversity Framework commitments will retain any credibility. And best, because the solutions and remedies to fix the mess are not only clear, but they also enjoy broad stakeholder support.

That doesn't mean reforms will be easy. No reform is.

Commercial and political vested interest is always tempted to exploit the moments of uncertainty generated by any reform proposal.

And for some, the stakes are high. After all, we have whole industries with business models built on the destruction of the natural world.

But high stakes were also a feature of the economic reforms of the 80's and 90's. These reforms mostly enjoy broad business and political support today. But they were not easy at the time, and for the same reason.

Yet they, too, were necessary.

Graeme's review made 38 recommendations to change the trajectory of nature loss, and to ease the burden of the complexity, confusion and meaningless process that has been a cause of frustration to landholders and the business community, and which has undermined national productivity.

He found that the EPBC Act is '*outdated and requiring fundamental reform*,' that it is '*complex and cumbersome*,

'powerless to stem the '*rate of ongoing and accelerating*

*decline*,' not '*fit to address current or future environmental challenges*'.

The review concluded that '*good outcomes for the environment, including heritage, cannot be achieved*

*under the current laws.'*

Remarkably, the wide-ranging set of recommendations was supported by both business and environmental organisations.

Support from both camps remains strong today, despite two parliamentary terms marked by a failure to pass the necessary legislation.

In the meantime, the world has become increasingly uncertain, even hostile.

Democratic systems of governance are on the back foot, all around the world. But democracy is not broken here in Australia. We have the opportunity, right now, to show the world what 'good' looks like. Just as we did in the 1980s and 1990s. And it is vital that we do so.

We cannot afford the policy complacency of recent decades. Opportunities of goodwill and alignment cannot be wasted. The cost is simply too high.

So, what is at stake in environmental law reforms?

According to the Australian Energy Market Operator (AEMO), we will need \$122 billion invested in new large scale renewable generation, storage and transmission to deliver a reliable and decarbonised grid. We will need to triple grid-scale renewable capacity by 2030 and increase it sixfold by 2050.

And yet, the average time for EPBC assessment and approval of a wind farm or solar farm blew out from 505 days in 2018 to 831 days in 2021.

According to the Clean Energy Investor Group, in the years 2018 to 2024, 124 renewables projects in Queensland, NSW and Victoria required assessment under the EPBC Act, with just 28 being either approved or rejected.

According to the Climate Change Authority, if we are to achieve net zero by 2050 then we are going to have to sequester about two and a half times as much carbon in the Australian landscape every year as is estimated to be taken out of the atmosphere this year.

Extracting new supplies of critical minerals is also essential to decarbonisation efforts, with lithium, nickel, cobalt, and graphite required for storage batteries and new supplies of copper deemed essential for new and extended energy transmission systems.

The Australian Government has an ambition to massively increase critical minerals exports and downstream processing here in Australia. This means more mines, new industrial facilities, and more pressure being loaded onto broken EPBC project assessment and approval processes.

The Government has also targeted the construction of an additional 1.2 million homes by 2030, implying the need for more residential land, more greenfield development sites, more transport corridors and more interaction with the EPBC assessment and approval processes.

These projects, be they wind farms, solar farms, transmission lines, new housing developments, land-based carbon sequestration projects, new and enhanced transport corridors or critical minerals extraction and processing plants, must be delivered quickly and efficiently.

And they must be delivered in a way that not only protects, but restores, nature.

To put it bluntly, there is no chance of Australia meeting stated targets for net zero, renewable energy, critical minerals development, housing and transport infrastructure without very high-quality national laws that set clear environmental standards for major projects, a strong national regulator respected by all parties, and significant improvement not only in Commonwealth environmental protection systems, but also in those of the States and Territories.

And all these projects will be critical to enhancing economic resilience and lifting flagging productivity growth. Boosting productivity and resilience relies upon environmental law reform.

But the biggest threat to future productivity growth comes from nature itself; more particularly, from its destruction.

Gradually, economic policy minds around the world have woken up to the fact that time is fast running out for the natural world, the foundation of all life on earth. It is now well accepted that a degraded natural world poses myriad threats to food systems, the provision of clean air and water, and the continuing supply of other ecosystem services critical to production.

And it is well accepted that things are getting worse, much worse, not better.

Australia's natural wealth, for example, is undermined by invasive species, climate change, land clearing, habitat destruction, and poor fire management.

In our remnant forests, the habitat of endangered species, including the Koala and the Greater Glider, continue to be logged and cleared.

About 100 million hectares of forests have been cleared since 1788 and remarkably the practice continues with an average of 400 000 hectares of primary and second forest cleared each year between 2015 and 2019.

The most recent National State of the Environment Report confirms a state of crisis, finding that *'our inability to adequately manage pressure will continue to result in species extinctions and deteriorating ecosystem condition, which are reducing the environmental capital on which current and future economies depend.'*

105 Australian species have been recorded extinct, including 10% of all known mammal species. A further 21% of all remaining mammal species are currently threatened with extinction.

741 species have been added to the threatened species list since 2000. In total, 2 138 animal and plant species are now considered to be at threat of extinction.

Rachel Carson's *Silent Spring* is happening, here in Australia. Not driven by pesticides so much as a determined commitment to clear the bush and to destroy the natural world.

We are passing to future generations a legacy of decades of unsustainable plunder, compounded by the impacts of a rapidly changing climate.

Globally, humanity's degradation of nature has contributed to recursive environmental dynamics, characterised by tightly integrated vicious cycles involving pollution of the atmosphere, hydrosphere and biosphere.

We have created deserts. We have rendered waterways so toxic that they are incapable of supporting marine life fit for human consumption, or even any marine life at all.

Crops have been failing with increasing frequency and severity. Millions of hectares of land on this continent have been rendered unfit for agricultural activity, or condemned to very low productivity, due to the leaching of nutrients, acidification, soil erosion and chemical toxicity, covered in herbicide-resistant exotic weeds and feral pests.

Instead of affording protection from wild weather events, the natural environment is now their accelerator.

We have turned nature against us. Our destruction of the natural environment now poses an existential threat to everything we value.

We need to change course. And that won't happen without high integrity laws and regulation.

We need a new collective mindset that understands the state of nature in the 21st century, that accepts that nature needs repair, and that understands that that necessarily imposes constraints on the choices we make.

We do need faster, more certain project approvals processes. But we also need a more resilient and nature rich environment. With due acknowledgement of the genius of AC/DC, there is no point in building a faster highway to hell.

The concept of Ecologically Sustainable Development (ESD), which seeks to balance economic, social, and economic goals, and which has been the foundation of environment policy in Australia for the past 30 years, needs serious rethinking.

ESD lies at the heart of the EPBC Act. But, as Graeme Samuel found in his review, *'the Act lacks clear national outcomes and effective mechanisms to address environmental decline.'*

*Ecologically Sustainable Development is a key principle of the Act, but it is not being applied.'*

And it cannot be applied project by project, in the manner anticipated by the Act. Project by project application of ESD is simply nuts.

It is time we stopped pretending we have the cognitive discipline to choose a sustainable balance among economic, social and environmental goals, project by project.

Project by project, we will always undervalue natural capital, for two simple reasons. The first reason has a spatial dimension. Nature is so vast that one project's negative impact will always seem immaterial. Ignoring the environmental impact of a single project is a form of free riding. The second reason has a temporal dimension. The cost of nature's degradation is overwhelmingly borne by future generations, not by us. We have found it very difficult to stop ourselves stealing from the future. This is a form of intergenerational myopia.

Free riding and intergenerational myopia can only be addressed by collective action. In respect of environmental degradation, that means legislation and regulation.

That's why we have the EPBC Act. But it is not fit for purpose.

As Graeme Samuel found, the EPBC Act has done little more than record the degradation of the natural world, one project at a time. And without major reform, that is all it will ever do.

I have previously described our failure to steward our natural resources as an intergenerational tragedy, as intergenerational theft, and as a wilful act of intergenerational bastardry. I guess I'm in danger of running out of printable descriptions to convey the gravity of the situation.

Clearly, I am angry at our failures. But we should all be angry at our collective failure to design economic structures, including environmental regulations, that underpin confidence in a better future for our children and grandchildren.

We have known about these problems for years now. Environmental policy's 'too hard basket' is overflowing with important ideas. The too hard basket is an indictment of those who have been prepared to sacrifice the nation's future.

In other policy areas affected by free riding and myopia, economists usually argue the case for binding constraints on behaviour or, at the very least, transparency mechanisms that modify decision-making. This is where the *Charter of Budget Honesty* came from, for example.

The case for recognising the immutable laws of nature as binding constraints on human activity is unarguable.

After all, if we breach too many of these laws, then humanity ceases to exist.

That's a bleak message.

The good news – and this is why I am talking to you today – is that we still have time to get this right.

We should choose to do so with glistening ambition. Our ambition should be to build an efficient, jobs rich, globally competitive, high productivity, low emissions, nature-rich economy.

Surely.

Realising that ambition will take time, of course. Decades, probably. But this Parliament can put in place the key policy settings that will be required.

Like most of the other things that will be required to boost productivity, our federal system of government is going to have a special role to play.

Historically, environmental policies have been characterised by occasional outbreaks of national leadership separated by much longer periods of sullen bickering between the Commonwealth and the States and Territories.

We need a new approach. We need national leadership. We need real funding support from the Commonwealth. And we need a stronger effort from the States and Territories. Genuine cooperation in pursuit of a shared goal.

And we need new policy instruments.

The EPBC Act lacks effective instruments. It was constructed around the consolidation of preexisting but separate pieces of Commonwealth legislation in operation from the late 1990's, concerned with the management of development impacts upon defined Matters of National Environmental Significance (MNES), including World and National Heritage, listed threatened species and ecological communities, listed migratory birds, important wetlands, Commonwealth marine areas, nuclear actions and water resources impacted by unconventional gas development and large coal mines.

It identifies 8 separate objects and 16 goals, but it lacks a core purpose. It simply bundles together a hodge podge of things that had accumulated over the 25 years preceding it.

It contains a raft of exemptions and carve-outs that, collectively, make nonsense of its claims to environmental protection. It lacks powers to regulate or in any way address native forest logging operations, land clearing and deforestation. Nor does it have the power to address the impacts of climate change on the natural environment.

Concerns about the effectiveness and efficiency of the Act were raised from the outset, by the Opposition of the day, scientific experts and many in the environmental movement. By the time of the first independent review of the legislation which commenced in 2008, led by my former friend and colleague, the late Dr Allan Hawke, these concerns were ringing alarm bells.

Allan's final report made 71 recommendations, including a proposal to replace the Act in its entirety with a new piece of legislation, the Australian Environment Act, establish an Independent Environment Commission, develop environmental accounts and better data, make more use of strategic assessments and regional plans, undertake regular audits, introduce a greenhouse trigger to assess the environmental impacts of large new polluting projects, and improve the transparency of decision making.

These recommendations were not acted upon. Instead, the Abbott Government proposed to further weaken the role of the Commonwealth by handing final project approval powers to the States and Territories. Unsurprisingly, that proposal didn't make it through the Senate.

That was the background for Graeme Samuel's review.

Core to Graeme's proposed reforms is a set of binding National Environmental Standards and enforceable rules to apply to all environmental decision-making, nationwide.

The Standards would specify in detail, with a minimum of discretion, how Matters of National Environmental Significance would be managed, protected and, where required, restored.

Graeme recommended removing from the Act all the special carve-outs and exemptions. He also recommended clear and unambiguous principles, language and terms.

Standards would be backed by high integrity data and evidence that would inform decision making, replacing the project by project, species by species approach hardwired into the EPBC Act with a landscape and regional approach. Regional plans would enable the identification of areas that should not be developed, areas required for long-term restoration and those areas where development assessments could proceed rapidly.

ESD would be applied not project by project, but region by region. In this way, dealing with the spatial and intertemporal challenges to rational decision-making to which I referred earlier.

Taken together, these recommendations would deliver the 'quick no' and 'quick yes' sought by business.

Equally, strong environmental standards could provide instruments for accrediting decision-making systems at the State and Territory level. Sub-national jurisdictions would need to demonstrate that they can protect the national interest and deliver Commonwealth responsibilities. Accreditation would remove duplication and complexity and dramatically shorten the time lags confronting developers.

Finally, Graeme recommended independent oversight of significant parts of reformed laws, particularly in respect of compliance, enforcement and assurance. This was in recognition that *'the community and industry does not trust the EPBC Act and there is merit in their concerns.'*

Graeme's recommendations were backed by both business and environmental organisations.

Yet here we are. Five years on. And nothing.

In all reform proposals, the devil inhabits the detail, and the detail remains contested. Development interests have favoured the fast-tracking of those reforms that reduce complexity and facilitate accreditation. Environmental interests have preferred a focus on new protections.

We need to break the deadlock. Reforms must be delivered in one package.

Key elements of the reform package are these.

First, genuine cooperation and a shared purpose, among the Commonwealth and the States and Territories, business and environmental groups. Responsibilities to future generations are shared, after all.

Second, protecting and restoring MNES through: (1) insertion into the Act of a clear and overriding new object concerned with protection and restoration; (2) shifting the focus to regional planning; and (3) resourcing the newly established Environment Information Australia to identify MNES and monitor the achievement of the goal to protect and reverse the loss of nature by 2030.

Third, the urgent finalisation of effective National Environmental Standards to support clear decision making and to facilitate accreditation.

Fourth, an expert, independent and trusted decision-maker in the form of a national EPA, to work with the Government and Parliament to protect the national interest.

And fifth, enabling the operation of natural capital markets that assist in the achievement of both net zero and nature repair goals.

Economics is concerned with optimising choices. Optimisation exercises demand careful specification of what is being targeted and, just as importantly, the constraints that determine the set of feasible choices. If the constraints are mis-specified, then decisions will be sub-optimal.

Over the past 100 years or so, economics has, for the most part, ignored the most important constraints on human choices. These are embedded in the immutable laws of nature, in chemistry, physics and biology. Human development is necessarily constrained by these laws.

Our failure to recognise that the laws of nature affect the set of feasible choices available to us is now having a discernible impact on productivity. And things are getting worse, with accelerating speed. Lifting productivity growth is going to require much better articulation of the natural constraints affecting the choices available to us. These must be written into law, in the form of enforceable National Environmental Standards.

In reforming the EPBC Act, we can get this right. We have had all the reviews we need. All of us have had our say. It is now up to Parliament. Let's just get this done.