



THE LAW SOCIETY
OF NEW SOUTH WALES

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4 September 2025

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON, ACT 2612

By email: xenia.taunt-rivers@lawcouncil.au

Dear Dr Popple,

INVESTING IN CHEAPER, CLEANER ENERGY AND THE NET ZERO TRANSFORMATION

Thank you for the opportunity to contribute to the Law Council's submission to the Productivity Commission (PC) in response to its Interim Report on "Investing in Cheaper, Cleaner Energy and the Net Zero Transformation" (Interim Report). The Law Society's Climate Change Working Group and Indigenous Issues and Environmental Planning and Development Committees contributed to this submission.

General

The Law Society welcomes the long overdue proposals to reform the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). We also support, in principle, measures that will provide greater transparency and accountability for all parties in the approval process, including the general principles underpinning Draft Recommendation 3.1 "Set up a climate risk information data base covering all climate hazards"¹, and Draft Recommendation 3.4 "Give the Climate Change Authority responsibility for monitoring, evaluation and learning regarding adaptation policy"².

As a general comment, we note that the Interim Report raises the broad objective of reducing emissions from greenhouse gases as an important national priority, which we support. We note the importance of both mitigation measures, such as emissions targets, and adaptation measures, as explored in the Interim Report in relation to housing, in acting consistently with the Paris Agreement.³

¹ "The Australian Government should coordinate with relevant federal, state and territory organisations to support development of a central climate-risk information database to cover all climate hazards in different parts of Australia. The database should enable the public, builders, developers, insurers, government planners and policymakers to get granular and accessible climate risk information." See the Interim Report, p 57.

² "The Australian Government should legislate for the Climate Change Authority to take responsibility for monitoring, evaluating and learning to inform governments and the public about progress in adapting to climate change, and whether policies are effective. Progress reports should be published every two years and include recommendations about how to improve adaptation policy." See the Interim Report p 68.

³ United Nations (2015) Paris Agreement, United Nations Framework Convention on Climate Change, https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

We do not propose commenting on the sector-specific proposals but comment on some general proposals below.

Reform national environmental laws - Draft Recommendations 2.1

We agree that overdue reforms to national environmental laws to introduce national environmental standards, facilitate regional planning, and clarify engagement requirements are a priority.

Subject to our comments below, we agree with the specific actions set out in Draft Recommendation 2.1, which are as follows:

The Australian Government should reform environment laws to expedite approvals for clean energy projects and better protect the environment. The reforms should:

- introduce national environmental standards
- facilitate regional planning, particularly within renewable energy zones, with stricter statutory deadlines for assessing projects in 'go zones'
- provide accessible, high-quality information about the environment and past assessment decisions
- make offsetting arrangements more efficient, such as by enabling developers to meet their offset obligations by contributing to an Australian Government offsets fund
- set clear expectations about engagement with local communities and Aboriginal and Torres Strait Islander people.

As stated by the PC, "a significant proportion of land suitable for renewable energy projects is located on land over which Aboriginal and Torres Strait Islander people have legal rights and interests".⁴ Some of our members have suggested exploring initiatives to expedite claims and transfers of Aboriginal and Torres Strait Islander owned land, or land over which native title exists, to support clean energy projects.⁵ It is suggested that stronger support for Aboriginal and Torres Strait Islander community-controlled organisations to develop, own and operate clean energy projects⁶ and stricter statutory deadlines for approvals of such projects, will assist timely activation of suitable land for renewable projects. In our view, such initiatives align with the PC recommendation that "appropriate resourcing of Aboriginal and Torres Strait Islander groups could make their engagement with clean energy developers more effective and efficient" and that such capacity building is "particularly pressing for projects identified as high priority for fast approvals".⁷ We also suggest an approach of early, meaningful and ongoing partnership with Aboriginal and Torres Strait Islander people should be emphasised under the proposed national standards for engagement⁸ as vital to securing timely approvals.⁹

⁴Interim Report, 45.

⁵ For example, our members have reported that significant amounts of the land in and around sub-stations in regional communities in NSW, being the land that is most commercially viable for solar farms, is Crown land under Aboriginal land claims.

⁶ We note that this would directly support Target 8 of the Closing the Gap outcome: *Strong economic participation and development of Aboriginal and Torres Strait Islander people and communities* – see [Closing the Gap targets and outcomes](#). See also Australian Public Policy Institute, Professor Heidi Norman et al, "Local Aboriginal Land Council Powershift Sharing the benefits of the energy transition", June 2025, [Local Aboriginal Land Council Powershift](#), 28-30.

⁷ See the discussion on proposed national standards of engagement in the Interim Report, 46.

⁸ Ibid.

⁹ Ensuring Aboriginal and Torres Strait Islander communities have access to clear, timely information and services, framed around the principle of free and informed consent is consistent with Target 17 of the Closing the Gap outcome: *Aboriginal*

Consider the energy transition in approval decisions – Draft Recommendation 2.4

Draft recommendation 2.4 “Consider the energy transition in approval decisions” states:

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) 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.

The Interim Report acknowledges that the Minister must currently consider a number of factors, including the principles of ecologically sustainable development and “economic and social matters”.¹⁰ It is suggested that the requirement to consider the needs of the energy transition would not be a determinative factor, but rather a relevant consideration, like the “economic and social matters” the Minister must already consider.¹¹ In this context, we consider that it would remain important for the national environmental standards and impact assessment processes to be applied consistently to actions across all areas, rather than resulting in what is arguably a different environmental standard applying to assessment of a subset of projects that will have a significant impact on a matter of national environmental significance. The criteria for the Minister’s discretion would then be considered on the basis of appropriate information and assessment.

We would also be supportive of streamlining approvals processes in a way that leverages existing state and local government approvals and eliminates the need for replication or duplication to the maximum extent possible.

The Safeguard Mechanism should cover more industrial facilities and carbon leakage provisions should be improved - Draft Recommendation 1.2

Our members acknowledge the feedback that the facility threshold is too high and the proposal for it to be lowered. We note that the need for a lower threshold is also being considered in other contexts, with the NSW Environment Protection Authority (EPA) currently consulting on proposed licensing requirements for NSW’s large greenhouse gas emitters. The EPA is proposing a range of requirements on licensees that emit 25,000 tonnes or more of carbon dioxide equivalent of Scope 1 and Scope 2 emissions per year.¹²

We recognise that it is important to ensure that a project can meet all the requirements (whether State or Federal) in a way that does not create suboptimal outcomes.

In an earlier submission to the EPA, we noted that it is critical that any proposed State approach and requirements interact with the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the Safeguard Mechanism in a complementary way and are consistent with the regime operating at the Commonwealth level.¹³ We will reiterate this view in our response to the EPA’s consultation.

and Torres Strait Islander people have access to information and services enabling participation in informed decision-making regarding their own lives. See Closing the Gap targets and outcomes, n6.

¹⁰ EPBC Act, s136.

¹¹ Interim Report, 51.

¹² EPA Consultation page [Climate Change Licensee Requirements | NSW Environment Protection Authority](#).

¹³ [Letter from the Law Society of NSW to the EPA dated 4 July 2024](#).



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We would appreciate the opportunity to consider any draft legislation implementing the PC's recommendations.

Thank you for the opportunity to comment. Questions at first instance may be directed to Liza Booth, Head of Commercial and Advisory Law Reform, at (02) 9926 0202 or Liza.Booth@lawsociety.com.au.

Yours sincerely,

Jennifer Ball
President