

## THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT

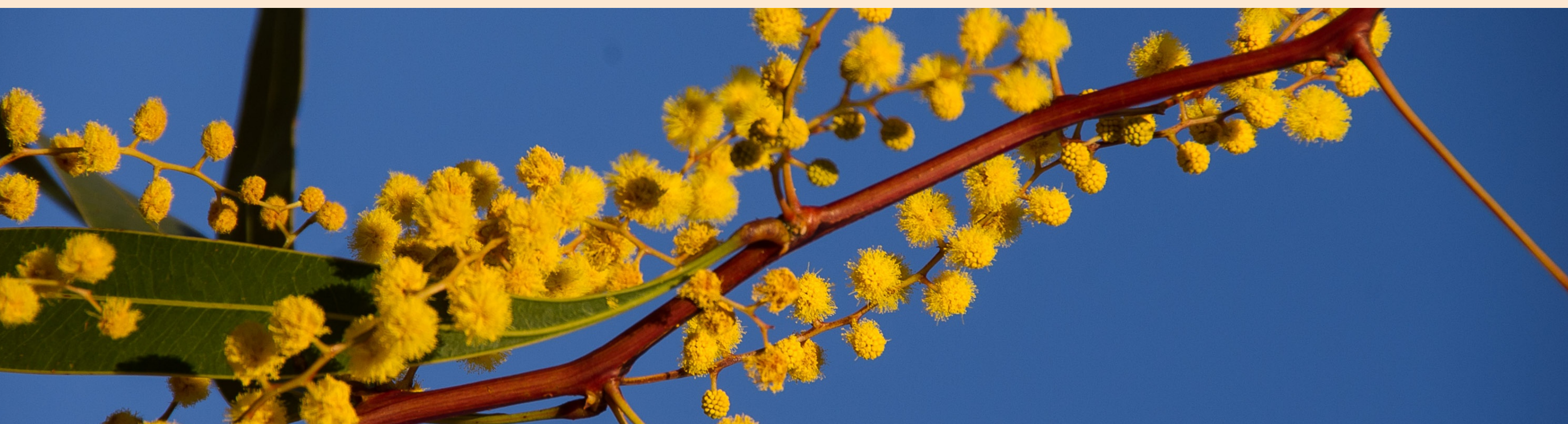
In our [last edition](#) of Just Now, we took a deep dive into the history leading up to the Uluru Statement from the Heart, and the current Indigenous Voice Co-Design Process. In this edition, we will examine the Environment Protection and Biodiversity Conservation 1999 (EPBC) Act, with proposed amendments to the Act currently facing a senate inquiry. Changes to the Act will have ramifications not only for the preservation of Aboriginal and Torres Strait Islander sacred sites, and their engagement and participation in the management of them, but also for endangered species and habitats, resource management and sustainable development.

The EPBC Act underwent its first review in 10 years in 2019-20, with the Final Report making the dire warning: *“Australia’s natural environment and iconic places are in an overall state of decline and are under increasing threat. They are not sufficiently resilient to withstand current, emerging or future threats, including climate change.”* This edition of Just Now will examine what the EPBC Act is, the recommendations of its 2019-20 review, and the government’s proposed amendments to the Act.

### WHAT IS THE EPBC ACT?

The EPBC Act was introduced in July 2000 as the Australian Government’s fundamental piece of environmental legislation, offering a legal framework for the government’s protection and management of matters of national environmental significance, including Australia’s flora, fauna, ecological communities and heritage places, with the states and territories having responsibility for matters of state and local significance. The Act guides assessment and approval processes for all major projects that may have an environmental impact. The EPBC Act stipulates that these decisions must be made alongside consideration of: conservation of native biodiversity; protection and management of important natural and cultural sites; ecologically sustainable development and use of natural resources; and involvement of Aboriginal and Torres Strait Islander Peoples. The nine matters of national environmental significance to which the EPBC Act applies are:

- world heritage properties
- national heritage places
- wetlands of international importance
- nationally threatened species and ecological communities
- migratory species
- Commonwealth marine areas
- the Great Barrier Reef Marine Park
- nuclear actions (including uranium mining)
- a water resource, in relation to coal seam gas development and large coal mining development.



# THE 2019-20 REVIEW OF THE EPBC ACT



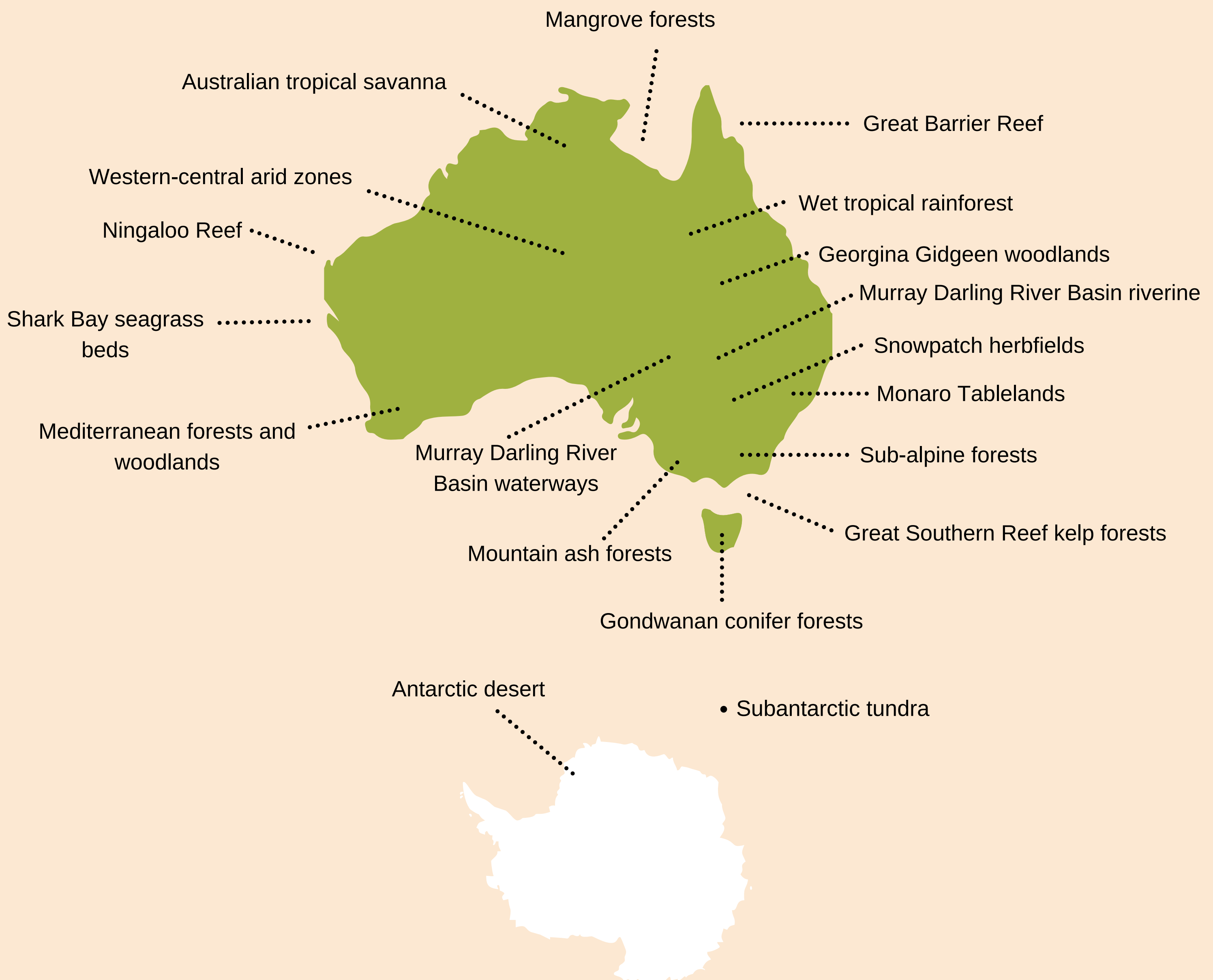
The EPBC Act stipulates that an Independent Review of the Act and the extent to which its objects have been achieved must take place at least every 10 years. The first review was undertaken in 2009.

On 29 October 2019, the Minister for the Environment, the Hon. Sussan Ley MP, commissioned the second Independent Review of the Act. She appointed Professor Graeme Samuel AC, a Professorial Fellow in Monash University's Business School and School of Public Health and Preventative Medicine and the former Chair of the Australian Competition and Consumer Commission, to conduct the Review.

Professor Samuels was accompanied by an Expert Panel consisting of:

- Bruce Martin, a Wik Ngathan man from the community of Aurukun on the Western Cape York Peninsula, who has worked for the Cape York Land Council and the Indigenous Land and Sea Corporation.
- Dr Erica Smyth AC who has worked in government approvals, corporate affairs and community consultation for BHP and Woodside.
- Dr Wendy Craik AM who is the current Chair of the Climate Change Authority

• **A recently published paper by 35 scientists found that 19 Australian-Antarctic ecosystems are at risk of collapse** •



# FINAL REPORT OF THE EPBC ACT REVIEW

Professor Samuels and the Expert Panel released their Final Report in October 2020, in which they recommended a complete overhaul of the EPBC Act. This was because:

- The Act is outdated and unable to address current and emerging environmental threats, including climate change
- The Act has been implemented in a way that results in piecemeal decisions that do not align with the environmental management responsibilities of the States and Territories
- Australians do not trust the Act, believing it is failing the environment, business and the community because it is not implemented in a holistic way
- The Act does not allow for Aboriginal and Torres Strait Islander knowledge and genuine participation and decision-making
- The Act does not have an independent monitoring and enforcement mechanism

The Final Report made 38 clear recommendations for a renewal of the Act, at the heart of which should be stronger and legally enforceable National Environmental Standards. The Standards should decree that all activities must contribute to national environmental outcomes, and all decisions made must be consistent with the Standards. Professor Samuels urged that his 38 recommendations be taken as a full suite to be developed and implemented with urgency.

The recommendations cover such topics as:

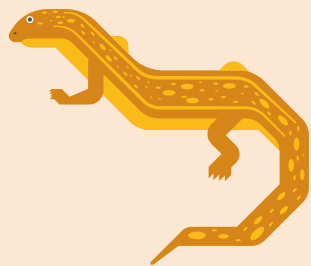
- matters of national environmental significance including climate considerations
- Commonwealth actions and those involving Commonwealth land
- transparent and robust decision-making processes, including:
  - judicial review
  - community consultation
  - disclosure of emissions profile
- Aboriginal and Torres Strait Islander engagement and participation in decision-making
- compliance and enforcement
- environmental monitoring
- environmental restoration and offsets
- wildlife permits and trade



***This Review has found compelling evidence that Australia's natural environment and iconic places are in an overall state of decline and are under increasing threat. The country is not on a trajectory to achieving the fundamental objective of the EPBC Act to protect the environment, conserve biodiversity and ensure that future development is ecologically sustainable. Nor is the Act set up to do so. Iconic places and critical parts of the environment have been compromised and continue to be in decline. This downward trend needs to be slowed through immediate reforms and reversed through longer-term reforms*** ~ Final Report, Independent Review of the EPBC Act, October 2020.

## Australian Fauna Declared Extinct under the EPBC Act in 2021

Christmas Island Forest Skink



Christmas Island Whiptail-skink

Desert Bettong



Nullarbor Dwarf Bettong

Capricorn Rabbit-rat



Broad-cheeked Hopping-mouse

Great Hopping-mouse



Lord Howe Long-eared Bat

Lord Howe Island Bat

Marl Western Barred Bandicoot

Butterfly Bandicoot

Nullarbor Barred Bandicoot

Long-eared Mouse



Blue-grey Mouse

Percy Island Flying-fox

Christmas Island Pipistrelle



Dusky Fruit Bat

South-eastern Striped Bandicoot

# GOVERNMENT RESPONSE TO THE REVIEW

The Minister for the Environment Sussan Ley announced proposed amendments to the EPBC Act after receiving the interim findings from the Independent Review of the Act in June 2020. She received much backlash for not waiting for the completion of the Review and its Final Report, and consequently the proposed amendments have now gone to a Senate Inquiry.

CRA made a submission to the inquiry, urging the government to reconsider its proposed amendments, pointing out elements of the Bill which will push Australia further towards an environmental crisis. Among our concerns were that the government had cherry-picked recommendations from the Independent Review, and we urged them to fully develop and implement all 38 recommendations as a holistically integrated package.

Also of concern was that the passing of the proposed Bill would ultimately “lock in” new National Environmental Standards that have been drafted by the government prior to receipt of the Final Report of the EPBC Act Review, and not released to the public for comment or consultation. You can read the full submission [here](#).

On July 8, the Senate Environment and Communications Legislation Committee released their final report of their inquiry into the Bill. They recommended that government's new National Environmental Standards be subject to review and only be interim, sunseting after 2 years. Unfortunately however they left room for the interim Standards to remain in place if Parliament could not come to an agreement on a new set of Standards. They also did not make any further recommendations about many of CRAs other concerns about the Bill.

## WHERE TO FROM HERE?

Further elements of the proposed Bill are still undergoing Senate Inquiries, which will need to be completed before Parliament will reassess the Bill. As it stands, the Bill will not be adequate to halt the devastating decline of Australia's flora and fauna. So what can you do?

- You can ask your local politician to stop the roll-back of Australia's environment laws by [signing a petition](#) put together by WWF-Australia, the Australian Conservation Foundation, The Wilderness Society, Birdlife and Humane Society International.
- On 25th May, Pope Francis launched the new 7 year *Laudato Si'* Action Platform. His call, based on the [Sustainable Development Goals](#), is to implement environmental sustainability across Catholic families, parishes, schools, hospitals, businesses, organisations, and religious communities. You can find out more about his action platform [here](#).
- The theme for this year's NAIDOC Week (4 - 11 July) is *Heal Country!*, calling for us to continue to seek greater protections for our lands and waters, including Indigenous sacred sites and cultural heritage, from exploitation, desecration, and destruction. Visit the [NAIDOC Week website](#) to see how you can get involved.
- In November 2021, world leaders will meet in Glasgow for the Climate Change Conference-UNCOP26. The leadup to this important event provides an opportunity to put pressure on the Australian government to match the many nations already committing to net zero emissions by 2050 (or earlier!). You can send a letter to the government using the template [here](#).

***In the face of possible risks to the environment which may affect the common good now and in the future, decisions must be made “based on a comparison of the risks and benefits foreseen for the various possible alternatives”. This is especially the case when a project may lead to a greater use of natural resources, higher levels of emission or discharge, an increase of refuse, or significant changes to the landscape, the habitats of protected species or public spaces. Some projects, if insufficiently studied, can profoundly affect the quality of life of an area due to very different factors such as unforeseen noise pollution, the shrinking of visual horizons, the loss of cultural values, or the effects of nuclear energy use. The culture of consumerism, which prioritizes short-term gain and private interest, can make it easy to rubber-stamp authorizations or to conceal information. ~***

Pope Francis, *Laudato Si*