

Environment and Communications References
Answers to questions on notice
Climate Change, Energy, the Environment and Water Portfolio

Inquiry: Australia's extinction crisis
Question No: IQ24-000061
Hearing Date: 17 April 2024
Division/Agency: Environmental Permitting and Compliance Division
Topic: EPA
Question Date: 18 April 2024
Question Type: Written

Senator Hanson-Young asked:

1. Will the EPA be housed within the department?

Answer:

1. It is proposed EPA will initially operate within the Department of Climate Change, Energy, the Environment and Water before it becomes an independent statutory authority on July 1, 2025 under the *Public Governance, Performance and Accountability (PGPA) Act 2013*.

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Inquiry: Australia's extinction crisis
Question No: IQ24-000063
Hearing Date: 17 April 2024
Division/Agency: Environmental Permitting and Compliance Division
Topic: Infringement notices
Question Date: 18 April 2024
Question Type: Written

Senator Hanson-Young asked:

1. Regarding APLNG's infringement notice for breach of condition 4 of EPBC 2017/7881, please detail exactly what the breaches were and what the fine was issued for. Which improvement and monitoring requirements were not complied with, and which species did they relate to?
 - a. If they breached condition 4 (implementation of OAMP), did they also breach conditions 5 and 6?
 - b. Was there an offsets agreement as per condition 3, and can you provide this? Was this approved by the Minister/Dept?
 - i. This is required to be published by the proponent, as is the OAMP. Have they complied with these conditions?
 - c. Further, did the company report their non-compliance as per condition 28?
 - d. Were any other conditions of their approval breached?
2. How many of the infringement notices issued (both paid and unpaid/resolved and unresolved) in this term of parliament relate to breaches of offsets conditions? Can you provide a list of the companies, the breaches and the fine and/or compliance requirements.

Answer:

1. Failure to implement the approved OAMP specified under condition 4 of the approval.
 - a. The approval holder is compliant with condition 5.
The approval holder is non-compliant with condition 6.
 - b. Yes.
No, as the offset agreement is a legal arrangement between the approval holder and a private landowner.
The offset agreement is not required to be approved by the Minister or the department.
 - i. The offset agreement is not required to be published.
 - c. No.
 - d. Yes, conditions 7 and 27.
2.
 - a) Within this term of parliament, fourteen infringement notices have been issued that relate to offset conditions.
 1. *Under ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION REGULATIONS 2000 - REG 14.03 Infringement notices, a person has 28 days to pay the infringement notice penalty, and if they prefer, they can have the matter*

dealt with by a court instead. Additionally, a person can request the delegate considered withdrawing the infringement notice if new information is available. As such the compliance investigation is considered open until the infringement is paid in full.

- b) Within this term of parliament, six infringement notices that relate to offset conditions have been paid and are published on the department's website.
1. Australia Pacific LNG Pty Ltd were issued one infringement notice for contravening condition 4 of EPBC 2017/7881.
 2. Wonbindi Coal Pty Ltd were issued one infringement notice for contravening condition 13 of EPBC 2013/7036; and
 3. FQM Australia Nickel Pty Ltd were issued one infringement notice for contravening condition 2 of EPBC 2001/172.
 4. Evolution Mining (Cowal) Pty Limited were issued one infringement notice for contravening condition 15 of the EPBC 2017/7989.
 5. Evolution Mining (Cowal) Pty Limited were issued one infringement notice for contravening condition 16 of the EPBC 2017/7989.
 6. Soho Living (Keilor Downs) Pty Ltd were issued one infringement notice for contravening condition 7 of EPBC 2016/7734.

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Inquiry: Australia's extinction crisis
Question No: IQ24-000064
Hearing Date: 17 April 2024
Division/Agency: Environmental Permitting and Compliance Division
Topic: EPBC infringement notices
Hansard Page: 48
Question Date: 17 April 2024
Question Type: Spoken

Senator Hanson-Young asked:

CHAIR: How many breaches of offset obligations have there been?

Mr McNee: I'm not sure I have the exact number in my papers, but all of the breaches that have ended in compliance action are actually on our website now, so you can actually see the particular responses where we've found compliance breaches in relation to offsets and other breaches of conditions.

CHAIR: Can you explain to me what 'compliance action' means?

Mr McNee: There are two types of compliance action that the department have taken: we have issued infringement notices, which impose a monetary penalty, in the case of breaches; and in other cases we apply a mandatory requirement to amend conditions to bring people back into compliance. For example, if a particular action in relation to an offset hasn't occurred, either in the time that it's meant to or in the way that it's meant to, then that is conditioned to require them to do that within a particular time.

CHAIR: How many infringement notices have been issued?

Mr McNee: Again, I can get that information on notice for you. It's on our website.

CHAIR: I'm happy for you to make sure we have that full list, but have there been any infringement notices issued?

Mr McNee: Yes, there are several pages of infringements. What I can say is that recently—I think in the last month or so, and again I'd like to come back on notice to confirm this—we've applied three infringement notices related to offsets and four requirements to amend conditions.

Answer:

At 17 April 2024, seven (7) infringement notices had been issued to approval holders because of identified non-compliance with offset conditions. Of these, three (3) infringement notices are paid, with details published on the Department of Climate Change, Energy, the Environment and Water's website.

The department publishes compliance outcomes after a matter is finalised.

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Inquiry: Australia's extinction crisis
Question No: IQ24-000065
Hearing Date: 17 April 2024
Division/Agency: Environmental Permitting and Compliance Division
Topic: EPA and EIA legislation press release
Hansard Page: 50
Question Date: 17 April 2024
Question Type: Spoken

Senator Duniam asked:

Senator DUNIAM: Sorry I can't be there with you in person. On what date were you asked to prepare the press release for the announcement the minister made yesterday?

Ms Parry: We'll have to take that on notice. I don't have a specific date in mind. I'd have to go back and take that on notice.

CHAIR: Sorry, Ms Parry. Were you asked this week or last week?

Ms Parry: I think it was last week, but I genuinely do not know. I'd need to take that on notice to go back to see if a specific request came down and on what date that was. You've asked for a very specific date. I don't know it.

Senator DUNIAM: Okay. But the request for the department to frame up a separate announcement was initiated by the minister's office. You've conceded that, right? The minister did make a request, but you just don't know the date?

Ms Parry: I think we've been quite clear that this was under consideration by government for a long period of time. This was not a snap decision by the minister—

Senator DUNIAM: We'll come to that.

Ms Parry: This was in consideration for quite some time, as Mr Knudsen has outlined—back in December, through consultations, through the result of the offsets audit and through the allocation of resources in our area to look at speeding up approvals. All of these things were done over a period of time. The government made the decision to bring forward the EPA and EIA bill in response to that, because they could. It was an election commitment, and establishing the EPA was a really important institutional arrangement that could be done sooner. They acted on that.

Senator DUNIAM: I'm not disputing any of that. My point was that the minister did make a request that a separate announcement be prepared for. You'll come back on notice with the date the request for a press release was made. Could you also, on notice, tell me what date it was conveyed to the department that the minister decided this was the course of action that was going to be taken—if you can't tell me today? Can you tell me today exactly what they decided?

Ms Parry: I can't tell you that today, but I'll take that on notice.

Answer:

The media release in connection with the Minister's announcement referred to above was prepared and finalised by the Minister's office.

The Australian Government has been considering its options to deliver its Nature Positive reforms, with the Minister confirming in March 2024 to establish the EPA in legislation in 2024.

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Inquiry: Australia's extinction crisis
Question No: IQ24-000066
Hearing Date: 17 April 2024
Division/Agency: Legal Division
Topic: Amended legislation and drafting instructions
Hansard Page: 51
Question Date: 17 April 2024
Question Type: Spoken

Senator Duniam asked:

Senator DUNIAM: Thank you for something that has been abundantly clear throughout this entire process—that there has been a lot of engagement and discussion. I want to go through a couple of nuts and bolts and then I want to come back to something Ms Parry was talking about before. We will see legislation for this standalone EPA. How many bills will there be associated with that?

Mr Knudson: There's a bill on the EPA, there's a bill on Environment Information Australia, and there is a bill that is the transitional Consequential Amendments Bill to the EPBC Act that will enable the EPA and EIA to work in the context of the existing EPBC Act.

CHAIR: I want to clarify something. So that third bill will be an amendment bill to the EPBC Act?

Mr Knudson: That's correct.

Senator DUNIAM: That's an important point, given they will be administering existing legislation for an unspecified period of time—so a helpful intervention. When were drafting instructions issued for this piece of legislation?

Mr Tregurtha: In terms of exact dates of drafting instructions, again we'd have to take those on notice. They're issued by the department's legal area. We'd have to take those exact dates on notice. I'll add to Mr Knudson's previous answer. That amendment bill is not just amending the EPBC Act. It's also amending six other pieces of legislation for which the EPA will have compliance and enforcement or permitting and licensing responsibilities, including the hazardous waste act, the sea dumping act and the recycling and waste recovery act. I'm going to struggle with the rest, but we can give you those on notice if you need them.

CHAIR: That would be helpful if you could.

Senator DUNIAM: So you will take on notice exact dates, but are we talking about in this calendar year or in last calendar year?

Mr Tregurtha: I'd have to clarify, but my recollection is it would be in this calendar year that we've issued those drafting instructions, following the discussions Mr Knudson was talking about.

Senator DUNIAM: From December.

Mr Knudson: The reason why Mr Tregurtha is looking at the ceiling there—and I was going to join him—is that we've been discussing with the Office of Parliamentary Counsel for quite some time the legislative design of the full package. Indeed, this has been clear since the Nature Positive Plan—that is, the response to Samuel. We've always had this in scope. It may predate, but we'll have to come back and confirm.

Mr Tregurtha: I think as well, Senator, it would be helpful for me to clarify that you're asking about when the drafting instructions were made to change the nature of the EPA bill to get it ready for introduction in its current form—

Senator DUNIAM: Correct.

Mr Tregurtha: as opposed to when the drafting instructions for the EPA were originally issued.

If it is the latter question, that's definitely 2023.

CHAIR: I think we're talking about the EPA as announced by the minister.

Mr Tregurtha: Well, as I explained, the bill to create the EPA is a bill around establishing an entity with governance arrangements that has been in train. We issued a policy paper on that bill back in October. We had already commenced drafting—well, we had already issued instructions around drafting in that time frame, if not earlier. What needs to happen to the EPA bill in order to make it ready for introduction in the form that the minister announced yesterday is actually not very different to what had already been prepared, which is why I was struggling with the answer to that question.

Senator DUNIAM: Well, you'll come back on notice as to exactly when—

Mr Tregurtha: Sure.

Answer:

1. When were drafting instructions issued for this piece of legislation?

Initial drafting instructions for the Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024 were issued to the Office of Parliamentary Counsel on 8 March 2024.

2. Mr Tregurtha took on notice to specify the six other pieces of legislation for which the EPA will have compliance and enforcement or permitting and licencing responsibilities.

These pieces of legislation are:

1. *Environment Protection (Sea Dumping) Act 1981*;
2. *Hazardous Waste (Regulation of Exports and Imports) Act 1989*;
3. *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*;
4. *Product Emissions Standards Act 2017*;
5. *Recycling and Waste Reduction Act 2020*; and
6. *Underwater Cultural Heritage Act 2018*.

3. When were drafting instructions issued to change the nature of the EPA bill to get it ready for introduction in its current form?

Initial drafting instructions to prepare the Nature Positive (Environment Protection Australia) Bill 2024 in its current form were issued to the Office of Parliamentary Counsel on 26 March 2024.

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Inquiry: Australia's extinction crisis
Question No: IQ24-000067
Hearing Date: 17 April 2024
Division/Agency: Finance Division
Topic: EDO funding
Hansard Page: 64
Question Date: 18 April 2024
Question Type: Spoken

Senator Duniam asked:

Senator DUNIAM: Alright. That is handy to know. Is there an update on the review of EDO funding, by the way, while you're here?

Ms Parry: Is there what, sorry?

Senator DUNIAM: An update on the review of the EDO funding following the Charlesworth ruling?

Ms Parry: I don't have that information.

Mr Knudson: No, we'll have to pick that up at Senate estimates because we don't have any of the right officials here for that.

Senator DUNIAM: Sure. I'll put that on notice.

Answer:

The Department of Climate Change, Energy, the Environment and Water has committed to a review of the funding agreement between the Australian Government and the EDO, which is currently being undertaken by an independent external legal provider. Once the review is complete, the department will consider next steps.

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Inquiry: Australia's extinction crisis
Question No: IQ24-000068
Hearing Date: 17 April 2024
Division/Agency: Nature Positive Taskforce
Topic: Officials involved in drafting the Nature Positive Plan
Hansard Page: 54
Question Date: 17 April 2024
Question Type: Spoken

Senator David Pocock asked:

Senator DAVID POCOCK: Thank you all for your time this afternoon. Mr Knudson, I'm interested in which officials were involved in the drafting of the Nature Positive Plan.
Mr Knudson: There was a series. We can take that on notice, but two of them are sitting here: Mr Tregurtha and me, definitely.

Answer:

The Department of Climate Change, Energy the Environment and Water senior officials who had responsibility for drafting of the *Nature Positive Plan: better for the environment, better for business* (Nature Positive Plan) are listed in the table below.

These senior officials were supported by a taskforce of public service officers established to support the Minister to deliver and implement the Australian Government's response to the *EPBC Act Review* as outlined in the Nature Positive Plan, released on 8 December 2022.

Further, officials across the environment functions of the department contributed to this drafting where their area(s) of responsibility were relevant to the Nature Positive Plan contents. The current occupants of senior positions in the environment functions of the department is available on the department's website.

Nature Positive Plan – drafting responsibility	
Dean Knudson	Deputy Secretary
James Tregurtha	Division Head
Maryann Quagliata	Branch Head

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Answers to questions on notice
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Inquiry: Australia's extinction crisis
Question No: IQ24-000070
Hearing Date: 17 April 2024
Division/Agency: Nature Positive Regulation Division (NPRD)
Topic: Average approval time for assessments under the EPBC Act
Hansard Page: 63
Question Date: 18 April 2024
Question Type: Spoken

Senator Duniam asked:

Senator DUNIAM: In that vein, what is the current average approval time for all assessments under the EPBC Act? It's probably something that, again, you'll have to take on notice, I expect.

Mr Edwards: I don't have an aggregate, but it varies between sector and complexity. For example, I can tell you that, for renewables projects, we're at around 80 weeks for an approval time. My understanding is that, in the resources sector, currently we're at about 130 weeks, because they tend to be bigger, larger, more complex projects. But I'll see what information I can provide you at an aggregate.

Ms Parry: Again, we publish all of that information about percentage of on-time approvals, and it generally ranges. Part of our corporate reporting is—obviously we aim for 100 per cent of the time, but over 85 is considered within tolerance, and we are often meeting those time frames.

Senator DUNIAM: Does what is publicly available answer my question—the average of all EPBC applications, the aggregate that Mr Edwards said he'd take on notice?

Ms Parry: You'd have to go back a very long time to aggregate that. I think we do it by year.

Senator DUNIAM: That's what I mean. I'm not asking an average over a period of time. That would be ridiculous.

Mr Edwards: There are two things at play here. I misunderstood, perhaps, the question about the time it takes to assess a project. But, to Ms Parry's point, we do publish all our decision-making time frames, and they're published by quarter. So we can absolutely come back on notice with the information about where to locate those. It's broken down by quarter but also by sector.

Senator DUNIAM: What is the most recent update for that available publicly?

Mr Edwards: It would be for the first quarter of this calendar year. That's the most recent one.

Senator DUNIAM: Expiring in March?

Mr Edwards: Yes. I'll just double-check to see if that has been published, but, if it has not, it will be very imminent, so I think it will be published by the time I double-check that. It's normally a couple of weeks to get it up online.

Senator DUNIAM: If that isn't what I'm after—and I'll have a look online—then I'll come back on notice.

Answer:

The January - March 2024 quarterly report was published on our [website](#) on 24 April 2024.

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Answers to questions on notice
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Inquiry: Australia's extinction crisis
Question No: IQ24-000072
Hearing Date: 17 April 2024
Division/Agency: Nature Positive Regulation Division (NPRD)
Topic: EPBC approval reporting timeframes
Hansard Page: 62
Question Date: 17 April 2024
Question Type: Spoken

Senator Hanson-Young asked:

CHAIR: How many approvals fall foul of these rules?

Ms Parry: We're going to have to take this question on notice. We simply are not prepared to talk about the EPBC Act today.

CHAIR: I'd like you to take it on notice.

Ms Parry: We will absolutely take it on notice. I'm not trying to be difficult; we just didn't come prepared with that information today.

Answer:

Late publication of notices relating to approval decisions are reported in the Department of Climate Change, Energy, the Environment and Water's Annual Report in the table titled "Decisions under EPBC Act that did not meet statutory time frames", listed as Section 170A(j).