



Australian Government

**Department of Climate Change, Energy,
the Environment and Water**

Reforming Australia's National Environmental Laws, Stage 2: Nature Positive (Environment Protection Australia) Bill 2024 [provisions] and related bills.

Submission to the Senate Environment and
Communications References Committee inquiry into
Nature Positive (Environment Protection Australia) Bill
2024 [Provisions] and related bills

July 2024

Overview of Nature Positive (Environment Protection Australia) Bill 2024 [provisions] and related bills.

The Australian Government announced its *Nature Positive Plan: better for the environment, better for business* in December 2022. This was in response to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) undertaken by Professor Graeme Samuel AC. The Nature Positive Plan sets out the government's commitment to strengthen and streamline Australia's environmental laws.

The Nature Positive law reforms will be progressed in 3 stages. Stage 1 included the establishment of a national framework for a voluntary national biodiversity market (the *Nature Repair Act 2023*) and expanding the water trigger so that unconventional gas projects with a significant impact on water resources must be assessed under the EPBC Act.

This submission provides details of the provisions of Stage 2. Stage 2 includes bills to establish a new statutory agency, known as Environment Protection Australia, as well as the statutory Head of a new body called Environment Information Australia (EIA). A third bill supports these proposed reforms and makes consequential amendments to the EPBC Act and a range of Commonwealth environmental laws. This includes amending provisions related to certain decision-making timeframes ('stop clock' provisions) and compliance, enforcement and penalties under the EPBC Act. This package of bills provides the institutional and regulatory foundations of the government's Nature Positive reforms. All other settings, including to assessment and approval processes and requirements under the EPBC Act, remain unchanged by these bills.

Stage 3 will include reforms to facilitate the making and application of National Environmental Standards, improved regional planning, and updated arrangements for conservation planning, as well as aspects associated with project environmental assessments and approvals.

Nature Positive (Environment Protection Australia) Bill 2024

The Nature Positive (Environment Protection Australia) Bill 2024 proposes to establish a statutory agency to be known as Environment Protection Australia (EPA), which would begin operating as an independent agency on 1 July 2025. The EPA Bill would establish the role of the Chief Executive Officer (the CEO) of EPA, who would be assisted by EPA staff in the performance of their functions.

The CEO will have functions conferred on them under a range of Commonwealth environmental laws (see below Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024). These will include compliance and enforcement powers and species permitting functions. Other functions conferred on the CEO include functions relating to laws regulating sea dumping, ozone protection and synthetic greenhouse gas management, hazardous waste, product emissions standards, recycling and waste reduction and underwater cultural heritage.

By bringing together the regulation of Australia's key national environmental laws under one organisation, EPA would have the capability and capacity to be a modern national environmental regulator.

In contrast to the current system, the EPA Bill would provide the CEO and EPA with the appropriate legislative settings to ensure it operates independently, transparently and effectively. To assure their independence, the CEO would have discretion in their performance

or exercise of their functions or powers and would not be subject to direction by any person in relation to those functions or powers. The Minister would have the ability to issue the CEO with a Statement of Expectations but must not direct the CEO or EPA.

The EPA Bill provides the institutional foundations to allow for a smooth transition of responsibilities from the current Department of Climate Change, Energy, the Environment and Water to the new agency, with existing departmental staff and functions migrating to EPA.

Nature Positive (Environment Information Australia) Bill 2024

The Nature Positive (Environment Information Australia) Bill 2024 proposes to establish the Head of Environment Information Australia (EIA), a dedicated role to provide leadership and help to build coordination, cooperation and collaboration across the government and non-government sectors to improve and grow the supply of environmental data. This will improve and make available environmental data and information to support environmental decisions. This would address the fragmented and variable quality of information and data currently available and mitigate the need for the same or similar data and information being collected multiple times. The usefulness of data will grow as relationships with, and between, data custodians help to improve the supply of data.

The EIA Bill contains provisions that would enable the sharing of information for the performance of the functions and powers of the Head of EIA. The facilitative approach is balanced with the need to protect sensitive information, including through placing conditions on use and disclosure.

The Head of EIA would be responsible for publishing a State of the Environment Report (SoE). This responsibility currently sits with the Minister for the Environment. The EIA Bill would also update the requirements around the SoE including the frequency, tabling requirements, public availability of underpinning high-quality data, and standardises report preparation. This would help sustain conversations about the environment, improve transparency of trends, and inform actions to halt and reverse environmental decline.

The EIA Bill would introduce a requirement to monitor and report on nature positive. The initial work for the Head of EIA would be to develop and implement a framework for monitoring, evaluation and reporting on nature positive in Australia. This work would be guided by the definition of nature positive, an 'improvement in the diversity, abundance, resilience and integrity of ecosystems from a baseline', in the EIA Bill. The EIA Bill provides an enduring legal and measurable definition of nature positive.

The monitoring, evaluation and reporting framework would be established against a baseline that would be set appropriate to the Australian context. The legislation provides for the Head of EIA to make an informed decision on an appropriate baseline based on evidence and with input from scientists so that we have credible data and reporting. The selection of a baseline (including a date) will involve technical and scientific considerations including data availability, ecological cycles and the impact of recent natural disasters on ecological functions. This approach is consistent with guidance under the Convention on Biological Diversity (CBD) guidance.

Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

New vesting of powers in CEO of EPA and updated delegation powers

The proposed establishment of EPA and the statutory position of Head of EIA requires consequential amendments to the EPBC Act and a range of Commonwealth environmental laws.

The Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024 proposes to confer relevant regulatory and compliance and enforcement responsibilities, powers and functions, and species permitting functions, on the CEO of EPA by amending 9 pieces of legislation.

Some regulatory functions, such as environmental assessments and approvals, will remain with the Minister under the EPBC Act, who will have a new power to be able to delegate these to the CEO of EPA.

Stop the Clock

The Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024 proposes to amend provisions of the EPBC Act which provide for 'stop clock' arrangements. The existing 'stop clock' provisions allow for certain decision-making timeframes to be paused whilst further information is sought by the regulator to inform their decision.

The amendments will give people proposing to undertake actions, or project proponents, the opportunity to say they do not want the decision-making timeframes to be paused while additional information is sought.

Where the regulator decides that more information is needed, proponents will now be given notice about why additional information is needed and have up to five business days to decide whether statutory decision-making timeframes should be paused while that information is sought.

Compliance and Enforcement

The Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024 proposes to amend the EPBC Act provisions related to compliance, enforcement and penalties by:

1. Including a new compliance tool – an Environment Protection Order – that can be used in urgent circumstances to manage a contravention, or likely contravention, of the EPBC Act that creates an imminent risk of serious harm to the environment, or where damage has already occurred.
2. Expanding what approvals and orders 'directed audits' can be applied to that are currently limited to approvals granted under Part 9 and permits granted under Chapter 5
 - including a new 'compliance audit' that can be conducted without a requirement to provide notice first to undertake more routine monitoring activities to ensure that the legislation is being complied with.
3. Introducing a civil penalty formula for the most serious offences under Parts 3 and 9 of the EPBC Act to allow the court to consider other ways of determining a penalty, by imposing

a penalty amount; calculating the benefit derived or harm caused by the offence; or additionally, in the case of a body corporate, a percentage of its annual turnover.

4. Increasing maximum financial penalties for criminal offences from 400 penalty units (\$125,200) to 1,000 penalty units (\$313,000). A body corporate would be liable for five times this amount – 5,000 penalty units (\$1,565,000).