



12 July 2024

Committee Secretary
Senate Standing Committees on Environment and Communications
By email: ec.sen@aph.gov.au

Dear Committee Members,

Nature Positive (Environment Protection Australia) Bill 2024 [Provisions] and related bills

Introduction

Places You Love (PYL) is an alliance of more than 70 environmental organisations from across the country which formed to fight for stronger national environment laws. It is one of the largest collaborations across Australia's environmental movement. Collectively, we represent 1.5 million Australians who love nature and want to save it.

This submission has been prepared by PYL Steering Group members which includes World Wide Fund for Nature-Australia, the Australian Conservation Foundation, The Wilderness Society, Humane Society International Australia, BirdLife Australia, Australian Marine Conservation Society and Environmental Justice Australia, and the Environmental Defenders Office as a legal advisor to PYL. Each of these organisations and other PYL members will prepare their own detailed submissions to this inquiry. This submission summarises our collective response to the Bills and our recommended amendments.

As our submissions to this Committee's hearing on Australia's Extinction Crisis on 17 April 2024 made clear, we are very concerned about the continuing delays in the delivery of the reforms recommended by the Samuel review and promised by the Albanese government in the Nature Positive Plan.

If strengthened by necessary amendments, the proposed Environment Protection Australia (EPA) and Environment Information Australia (EIA) can play an important role in delivering improved compliance and enforcement activities across a range of legislation, and better monitoring and understanding of environmental impacts. However, our environment needs additional decisive action to address threats without further delays. As outlined below, we believe further reforms to strengthen nature protections should be included in the current 'Stage 2' reform. Simple, targeted amendments to address some of the most glaring failings of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) are urgently required now to enable the EPA to deliver improvements on the ground for nature and our climate. The Government must also release a clear plan for the development and delivery of

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Australia's biggest ever alliance of environment groups, protecting the laws that protect the places you love
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‘Stage 3’ of the reforms and for sufficient funding to support the reforms and turn Australia’s extinction crisis around. Nature can’t wait any longer for stronger nature laws.

PYL member organisations have engaged extensively in consultation on the Nature Positive reforms and, prior to the current reform process, have worked to promote the development of best practice environmental regulation at a national level. Our comments on the current Bills are informed by this work and our longstanding advocacy for EPBC Act reform including the establishment of a national EPA. Our submission includes recommendations for additional reforms which we believe must be made to the EPBC Act now as part of ‘Stage 2’.

PYL has advocated for a national EPA for many years. In 2018 we released a report setting the agenda for an overhaul of Australia’s national environmental laws.¹ The report identified four priorities for reform one of which was:

Establish an independent National Environmental Protection Authority that operates at arm’s-length from government to conduct transparent environmental assessments and inquiries as well as undertake monitoring, compliance and enforcement actions.

While we support the establishment of a strong and truly independent EPA and EIA, the EPA and EIA alone, and as currently proposed, cannot deliver much-needed improvements for environmental protection. Key reforms to the EPBC Act that will deliver benefits for nature must also be progressed now. Current laws are poorly implemented and underenforced. A strong, independent national EPA in particular is critically important to ensuring that these implementation and enforcement problems are addressed, and, alongside EIA, are essential elements of the overhaul of national nature protection laws that are required.

In our view, the Inquiry should recommend:

1. Changes to the *Nature Positive (Environment Protection Australia) Bill 2024 (EPA Bill)* and the *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024 (Amendments and Transitional Bill)* to ensure the EPA is effective, independent and accountable;
2. Changes to the *Nature Positive (Environment Information Australia) Bill 2024 (EIA Bill)* to ensure it includes an appropriate definition of ‘nature positive’ and has stronger requirements for monitoring implementation of the threatened species and ecological community recovery;
3. Amendments to the Amendments and Transitional Bill that will deliver better environmental outcomes now and lay the foundations for the full delivery of the Government’s new national environmental laws in ‘Stage 3’. Priority matters include:
 - a. defining unacceptable impacts, including for example to protect critical habitat;
 - b. creating National Environmental Standards;
 - c. addressing deforestation;
 - d. removing inappropriate exemptions; and
 - e. addressing climate change.

¹ Places You Love Alliance, A new generation of national environmental laws, March 2018.

4. Call on the Government to release a clear plan for the development and delivery of the key, outstanding components of the new Nature Positive Laws.

PYL would welcome the opportunity for the Chief Executives of leading PYL members to collectively appear before the Committee at any public hearing.

Environmental Context

Australia is facing an extinction crisis. Australia is a world leader in mammal extinctions and ranks second in the world for biodiversity loss. It has over 2,000 listed threatened species and ecological communities with more being added every year. Australia is a deforestation hotspot and at least 19 Australian ecosystems are showing signs of collapse. We have seen annual average temperatures in Australia increase by more than 1.4°C since national records began in 1910 and marine heatwaves are causing regular coral bleaching.

As one of only 17 ‘mega-diverse’ nations, Australia has a particular responsibility to protect and recover our unique biodiversity. But the 2021 *State of the Environment Report* recognised that without substantial changes in the way we manage our environment, we can expect further species extinctions and ongoing deterioration in ecosystem conditions.

The second Independent Review of the EPBC Act, carried out by Professor Graeme Samuel in 2020, confirmed that the current laws are not fit-for-purpose when it comes to meeting this challenge. That’s why we need urgent and comprehensive reform of our nature laws.

Parliament must use the opportunity presented by the Government’s ‘Stage 2’ of nature law reforms to not only create strong institutions for the protection of nature but to address some of the key factors driving ongoing decline - and urgently prevent new extinctions.

Recommendations

Nature Positive (Environment Protection Australia) Bill 2024

We are calling for a strong and independent EPA as an important element of comprehensive reform of national environmental laws. A truly independent EPA, alongside the proposed increases in penalties and new enforcement and audit powers could, together with adequate resourcing, begin to address longstanding compliance problems with the current EPBC Act. But changes are needed to make the proposed EPA truly independent.

The main issues with EPA Bill as proposed are:

- The proposed governance model, of a sole CEO appointed on recommendation of the Minister with no accountability structure, raises serious concerns regarding integrity and leaves the EPA vulnerable to influence from government and proponents in relation to the exercise of its functions.

- Responsibilities will be delegated to the EPA by the Minister using a mechanism similar to the Ministerial delegation functions to the Department. The manner of the delegations could undermine the EPA's independence.

We recommend the following changes to the EPA Bill and to EPA related amendments in the Amendments and Transitional Bill:

- Implement clear objectives, duties and purpose that give the EPA stand-alone guidance on its role in protecting Australia's environment, including in relation to delivering greenhouse gas emissions targets; halting and reversing threatened species and ecological community decline; efficient, outcome-focused and transparent decision-making with strong community engagement; and robust compliance and enforcement responses.
- The EPA should be governed by an independent Board of suitably qualified members, reporting to a joint parliamentary committee. The Board would be responsible for appointing a skills-based CEO and ensuring the CEO carries out its functions consistently with the objectives, duties and purposes of the EPA.
- Delegation of powers and functions under the EPBC Act to the EPA by the Minister should be transparent (e.g. publication of instrument of delegation), and circumstances in which the Minister can "call in" or take over decision making functions should be defined and limited in the legislation.
- Criteria for the Advisory Group must be better defined and information relating to appointment of, and advice given by, the group must be published as a matter of course.
- The ability of the Minister to issue a Statement of Expectations to the EPA should be constrained to be consistent with the legislative purpose of the Acts for which EPA will have responsibility.
- The EPA should be given assurance and compliance audit functions for accredited arrangements, including in relation to NOPSEMA.
- Rebuild public confidence and trust in environmental decision-making by improving transparency and ensuring decisions and comprehensible information are published in reasonable timeframes.
- While welcome, the proposed civil penalties increases are only available to the EPA. This should be expanded so that any person with the right to enforce the Act has the right to seek civil penalties against entities that have breached the Act.
- The EPA should be required to develop and implement a community consultation charter with appropriate consultation timeframes.
- The EPA should be required to respond to requests from the community to require the referral of an action for assessment and approval, and requests to exercise its powers to issue Environment Protection Orders.

Nature Positive (Environment Information Australia) Bill 2024

We welcome the establishment of EIA to improve environmental data, monitoring and reporting.

The EIA Bill includes the definition of 'nature positive', a concept that will inform how the full Nature Positive package will be delivered. However, the proposed definition does not ensure

rigour and integrity and does not deliver the key elements of 'nature positive' as described by the Nature Positive Initiative and incorporated in the Kunming-Montreal Global Biodiversity Framework.

We recommend the following changes to the EIA Bill:

- The definition of 'nature positive' must recognise the need to increase the natural diversity, abundance, resilience and integrity (meaning the completeness, functionality and health) of species, populations and ecosystems with a goal of halting and reversing nature loss by 2030 and achieving full recovery by 2050, measured against a 2020 baseline. In practice, such a baseline could be implemented using the 2021 *State of the Environment Report*.
- EIA should be given a function to monitor and evaluate the development and implementation of conservation plans under the EPBC Act and provide an annual report to Parliament on progress. The current conservation planning system has created an enormous backlog of unfinalised recovery plans and completed recovery plans that are languishing on a shelf. The proper tracking of the development and implementation of conservation plans would significantly improve transparency and accountability for the management of threatened species and their habitats.
- EIA should have the power to compel the provision of data, where required.

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

We welcome the increased penalties, new environment protection order provisions, and strengthened audit powers proposed for the EPBC Act.

The key concern with the Amendments and Transitional Bill as proposed is the very limited scope of amendments proposed to the EPBC Act. The indefinite delay of the bulk of the Government's Nature Positive reforms leaves the EPA administering an Act that is widely recognised as incapable of addressing current or emerging environmental challenges and not working for the environment, business or communities.

Additional amendments to improve environmental outcomes now are necessary to start addressing the urgent problems facing our threatened plants, animals and ecosystems. As with the 'Stage 1' water trigger reforms made to the EPBC Act last year, these reforms help to build the framework for 'Stage 3' reforms while acting to increase protections for nature now. They can then be carried forward into the comprehensive new legislation promised for 'Stage 3'.

Additional EPBC Act reforms that should be prioritised for 'Stage 2' are summarised below.

Defining 'unacceptable impacts'

The ability for the Minister for the Environment to declare a project that is clearly unacceptable already exists under the EPBC Act. Defining the kinds of impacts that are clearly unacceptable and requiring those impacts to be refused up-front would improve on-ground environmental

outcomes, for example by ensuring the protection of critical habitat, and provide certainty to industry.

Amendments would be required to insert a definition of *clearly unacceptable impacts* for each Matter of National Environmental Significance (**MNES**) into the EPBC Act and ensure that clearly unacceptable impacts must be refused whenever they are identified.

Establishing National Environmental Standards

The development of a set of National Environmental Standards was the key recommendation from the Samuel review. Appropriate National Environmental Standards are vital to support the new EPA in making better, outcomes-focussed decisions.

Amendments would be required to create the legislative framework to enable the development and implementation of Standards and to require the development of key Standards that would support the EPA and EIA in implementing their roles. Introducing the framework now will allow the new standards to be developed and implemented concurrently with the legislative reforms in 'Stage 3'.

The legislative framework should include provisions to allow for the application of Standards to decisions and functions under the EPBC Act while 'Stage 3' reforms are developed. In line with the government's non-regression commitment in the Nature Positive Plan, the Standards framework should include a provision that future Standards cannot weaken existing Standards.

Addressing deforestation and other exemptions

Habitat loss is a key driver of extinction in Australia, which is a global deforestation hotspot. Yet implementation of the current EPBC Act fails to address deforestation, despite it occurring within mapped threatened species habitat and despite the Government's commitment to end deforestation by 2030.

While an increased EPA focus on deforestation and land clearing compliance action is welcome, it will be undermined by the current Act's carve outs for logging under Regional Forest Agreements and the Act's failure to assess land clearing, including because of 'continuations of use' provisions. These carve outs should be removed.

A new provision should be added to the EPBC Act to compel referral and assessment of planned deforestation greater than 20ha in threatened or migratory species habitat, a threatened ecological community, or in Great Barrier Reef catchments, and require the assessment and approval decisions to consider the cumulative impacts of a native vegetation clearing on each threatened species or listed MNES impacted.

Amendments are also required to remove the exemption provided for native forest logging in the Regional Forest Agreements, and continuations of use exemptions which facilitate some land

clearing. The removal of the 'continuations of use' exemption will also benefit other protected species such as those impacted by shark net programs in NSW and Queensland.

Integrating climate considerations

As one of the biggest threats to biodiversity in Australia, our national environmental laws must include an explicit requirement to consider climate change impacts in decision-making and the ability for decision-makers to reject actions based on their climate impacts.

There are a range of measures available to support better integration of climate change impacts into decision-making under the existing EPBC Act, including:

- Amend objects and functions to include a requirement to contribute to meeting Australia's climate commitments.
- Introduce a stand-alone climate MNES.
- Introduce disclosure requirements for all downstream greenhouse gas emissions.
- Add climate to the definitions of 'environment' and 'impact' to require an explicit consideration of this issue.
- Properly link the Safeguard Mechanism and *Climate Change Act 2022* to the EPBC Act so that actions cannot not be approved if they are likely to breach emissions targets and thresholds.

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