



AUSTRALIA

**SUBMISSION**

JULY 2024

# SUBMISSION TO THE INQUIRY INTO THE NATURE POSITIVE PACKAGE OF BILLS

The World Wide Fund for Nature-Australia (WWF-Australia) welcomes the opportunity to provide a submission to the Senate Environment and Communications Legislation Committee Inquiry into the *Nature Positive (Environment Information Australia) Bill 2024*, the *Nature Positive (Environment Protection Australia) Bill 2024*, and the *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024*.

WWF-Australia is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to 'stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature'. WWF-Australia has approximately two million financial and non-financial supporters.

In October this year, it will be four years since the second independent review of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) was delivered to the then Minister. In his Interim Report, Professor Samuel noted that:

*The current collaborative approach to monitoring, compliance, enforcement and assurance is too weak. Serious enforcement actions are rarely used, indicating a limited regard for the benefits of using the full force of the law where it is warranted. When they are issued, penalties are not commensurate with the harm of damaging a public good of national interest. They do not provide an adequate deterrent.*

*A strong, independent cop on the beat is required. An independent compliance and enforcement regulator, that is not subject to actual or implied political direction from the Commonwealth Minister, should be established. The regulator should be responsible for monitoring compliance, enforcement and assurance. It should be properly resourced and have available to it a full toolkit of powers.*

The problem to be remedied is the failure of governments from both sides of politics to ensure that the Federal Environment Department (in its many iterations over the years since the EPBC Act came into force) properly administers the *EPBC Act*. This problem has been identified in numerous Parliamentary,<sup>1</sup> Australian National Audit Office,<sup>2</sup> and Productivity Commission<sup>3</sup> reports, and by the Australian Panel of Experts on Environmental

<sup>1</sup> Commonwealth of Australia (2009), Senate Standing Committee on Environment, Communications and the Arts, The operation of the Environment Protection and Biodiversity Conservation Act 1999, First Report (see for example, Recommendation 4 The committee recommends that the government give urgent consideration to increasing the resources available to the department in the areas of assessment, monitoring, complaint investigation, compliance, auditing of projects approved under Part 3, and enforcement action).

<sup>2</sup> Auditor-General Report No 38 2002-03, Referrals, Assessment and Approvals under the Environment Protection and Biodiversity Conservation Act 1999; Auditor General Report No 31 2006-07, The Conservation and Protection of National Threatened Species and Ecological Communities; Auditor-General Report No. 43 2013-14, Managing Compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval; Auditor-General Report No. 7 2015-16, Managing Compliance with the Wildlife Trade Provisions of the Environment Protection and Biodiversity Conservation Act 1999; Auditor-General Report No. 36 2016-17, Monitoring compliance with Environment Protection and Biodiversity Conservation Act 1999 Conditions of Approval: Follow-on audit; Auditor-General Report No. 47 2019-20 Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999

<sup>3</sup> Productivity Commission 2013, Major Project Development Assessment Processes, Research Report, Canberra.

Law<sup>4</sup> and by the 2020 Independent Review of the EPBC Act.<sup>5</sup>

WWF-Australia fully supports the establishment of a strong Environment Protection Australia (EPA) and Environment Information Australia (EIA). However, with the indefinite delay to what is now referred to as Stage 3 of the Nature Positive reforms, the EPA once established will be left administering an ineffective and outdated Act. The EPA and EIA alone cannot deliver the much-needed improvements needed for environmental protection. Simple, targeted amendments to address some of the most glaring failings of the EPBC Act are urgently required now to enable these bills to deliver improvements on the ground for nature and our climate.

#### **WWF-Australia recommendations to the Senate Committee;**

1. Ensure Environment Protection Australia (EPA) is effective, independent and accountable.
2. Ensure Environment Information Australia (EIA) establishes a strong basis for implementing 'nature positive' laws and tracks progress against nature positive goals.
3. Pursue amendments that deliver better environmental outcomes now and lay the foundations for the full delivery of the government's new national environmental laws. Priority matters include:
  - a. defining unacceptable impacts;
  - b. addressing climate change and deforestation;
  - c. removing inappropriate exemptions; and
  - d. creating National Environmental Standards.
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 (Stage 3).

### **Nature Positive (Environment Protection Australia) Bill 2024 - ensure the EPA is effective, independent and accountable**

WWF-Australia welcomes the Government's commitment to establish a federal EPA. One of the key weaknesses in the administration of the EPBC Act has been the absence of a robust institutional framework to ensure genuine compliance and enforcement. The establishment of an independent regulator, together with adequate resourcing, would address longstanding compliance problems with the current EPBC Act.

#### **1. The EPA should be governed by an independent Board**

To ensure the independence and integrity of the EPA, WWF-Australia's position is that the EPA CEO must be appointed by, and reports to, an independent statutory skills-based governance Board. A Board is best practice for any new regulator to preserve independence and provide strong oversight of regulatory powers and operation.

Direct appointment of the CEO by the Minister risks politicisation and undermines public trust. In the absence of a Board, the Minister is directly responsible and accountable for everything that the regulator does and for overseeing all regulatory operations. Where a Board exists, seldom would a Minister need to defend or

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<sup>4</sup> Australian Panel of Experts on Environmental Law (2017), *Blueprint for the Next Generation of Australian Environmental Law*. See also Australian Panel of Experts on Environmental Law (2017), *Environmental Governance (Technical Paper 2)*.

<sup>5</sup> Samuel, G 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October CC BY 4.0. See also Samuel, G 2020, *Independent Review of the EPBC Act—Interim Report*, Department of Agriculture, Water and the Environment, Canberra, June. CC BY 4.0

account for the actions of single CEO, a Board would be more able to contextualise and where necessary respond to organisational actions. A risk exists that agency staff then become part of quasi-oversight structure through their advice to Minister, indirectly influencing regulatory culture in favour of the agency rather than allowing a culture to develop which would enable the regulator to deliver the desired regulatory outcomes or minimise harms. The absence of a Board is contrary to every other major EPA in the country and considered a backward step.

## **2. A Joint Statutory Parliamentary Committee should be established to provide additional oversight**

In addition to the safeguards and futureproofing that a Board brings, WWF-Australia strongly supports the additional oversight and accountability mechanism of establishing a Joint Statutory Parliamentary Committee with oversight of the CEO's performance, responsibility for providing concurrence for the CEO's appointment, and inquiry functions relating to the environment more generally.

The Bill should establish a Joint Committee on the Environment of both Houses of Parliament to oversee the EPA. The Bill should provide the Joint Committee with the power to:

- Recommend to the Governor-General and Minister individuals who the Committee believes are suitable for appointment as Chief or Deputy CEO of the Authority;
- Request the Authority to submit draft estimates for the Authority for the financial year, before the annual Commonwealth budget for that financial year is announced, and require the CEO to comply with the request in time to allow the Committee to consider the draft estimates and make recommendations on them before the budget;
- Provide advice to the Minister and the Authority as to the proportions of the Authority's budget which should be spent on monitoring, compliance, enforcement, and assurance.

## **3. EPA's functions should align with its role as the prime regulator of Australia's environment laws**

The EPA's functions should clearly align with its role as the primary regulator of our national environmental laws, allowing it to play a key role in nature protection. In particular:

- Forestry oversight: The Bill should include an explicit function for the new EPA to have an audit and assurance role in relation to Regional Forest Agreements (RFAs) - see more below.
- Climate objectives: The EPA will be responsible for the assessment and approval of potentially climate-harming projects under the EPBC Act. It should have a mandate to facilitate the achievement of Australia's greenhouse gas emissions reduction targets, in line with the Climate Change Act 2022, mirroring the objectives of other relevant federal statutory bodies.
- Third party enforcement: The Bill should include, as a crucially important accountability mechanism for the new EPA, broad third-party enforcement provisions in relation to the EPA enabling legislation and the legislation the EPA will administer.

## **Nature Positive (Environment Information Australia) Bill 2024 - ensure EIA establishes a strong basis for implementing 'nature positive' laws**

WWF-Australia welcomes 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' from the Nature Positive Initiative and the Kunming-Montreal Global Biodiversity Framework. WWF-Australia supports the following changes to the EIA Bill:

- The definition of ‘nature positive’ must recognise the need to increase in 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 as 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 - pursue amendments that deliver better environmental outcomes for forests**

Every year an estimated 400,000-500,000 hectares of native forests and woodlands are bulldozed or logged across Australia, destroying the homes of Koalas, Greater Gliders, Swift Parrots and other endangered species that federal environmental law should protect.<sup>6</sup> Yet deforestation (land clearing) is very rarely referred by landholders for assessment, and very rarely called in by the Minister or their delegate, even when it involves destroying hundreds or even thousands of hectares of bushland. Thus, the EPBC Act is almost completely unenforced, and breaches subject to very little compliance, in relation to one of the most widespread threats to biodiversity and land carbon stocks.

Native forest logging is permitted without assessment under Part 3 of the EPBC Act if conducted in accordance with a Regional Forest Agreement (RFA) established pursuant to the *Regional Forest Agreement Act 2002* (Cth). These agreements create a loophole in the EPBC Act that exempt destructive industrial logging of high conservation value forests from assessment and compliance enforcement. The egregious nature of this two-decade-old exemption is illustrated by s42 of the EPBC Act which provides that the RFA exemption does not apply to Wetlands of International Importance – which are largely unsuitable for industrial logging – but do apply to forests that are the essential homes to endangered forest wildlife. In light of the series of court cases in Victoria that highlighted the failure of that state’s timber regulations to adequately protect endangered wildlife, which was a major contributing factor to the Victorian Government’s decision to cease public logging on 31 December 2023, there can be no justification for retaining the RFA exemption. WWF-Australia strongly recommends removing the exemption for native forest logging operations from Part 3 of the EPBC Act and from the Regional Forest Agreements Act 2002.

WWF would be pleased to appear on behalf of WWF-Australia, alongside colleagues from the Places You Love Alliance, to give evidence to the Committee in relation to these Bills. If you need further information about this submission, please contact Quinton Clements, Head of Policy and Horizon Scanning, WWF-Australia at

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<sup>6</sup> Based on FullCAM modelling, 186,100 hectares of forest was bulldozed nationally in 2021/22. Total forest conversion in 2021/22 is estimated using FullCAM modelling as comprising 21,600 hectares of primary forest conversion plus 164,500 hectares of secondary forest (regrowth re-clearing). See National Inventory Report 2022, Volume 2, Australian Government (2024), Department of Climate Change, Energy, the Environment and Water, see ‘Table A5.6.12.6 UNFCCC Forest conversions – National annual areas and related GHG emissions’, see pages 340-341. By comparison, the Queensland SLATS program reported 349,399 ha of woody vegetation loss in that state alone in 2020-21 (the most recent reporting period), or approximately double the figure reported in NIR 2022. In addition, in NSW woody vegetation loss in 2020 due to agriculture and infrastructure totalled 21,450 hectares, see DPE, 2022, Woody vegetation change Statewide Landcover and Tree Study Summary report 2020, NSW Government. Hence, WWF considers the area of deforestation in Australia to be substantially higher than those reported in the NIR 2022.



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