



Environment Institute  
of Australia and  
New Zealand Inc.

# Australia's new Nature Positive laws

Submission by The Environment Institute of Australia  
and New Zealand (EIANZ)

## About EIANZ

EIANZ is a not-for-profit, multi-disciplinary association of environmental practitioners. Our membership spans a diverse range of technical professions including scientists, policy makers, engineers, lawyers and economists. We advocate for environmental knowledge and awareness, and ethical and competent environmental practice. Many of our members have direct experience of working with the current Environment Protection and Biodiversity Conservation Act (EPBC Act) as both administrators and proponents.

This submission has been developed after broad consultation across our organisation, led by our Special Interest Sections and Communities of Practice for Impact Assessment, Strategic Environmental Assessment, Biodiversity Offsets, Ecology, and Environmental Accounting.

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## Executive Summary

In providing comment on the two document packs released publicly by DCCEEW in January 2024, EIANZ has drawn on the information provided in the invitation-only consultations, and our experience and expertise as leaders in the environment profession. We have not yet been able to conduct broad consultation with our expert members on the additional consultation papers released in March, however, we have included feedback on elements that stood out in the in-person consultation attended by our delegates.

In preparing our submission, we have also referred to:

- The findings and recommendations of Professor Samuel's independent review of the EPBC Act
- The Australian Government's Nature Positive Plan response (2022)
- Version 7 of the Interim Biogeographic Representation for Australia
- The Kunming-Montreal Global Biodiversity Framework under the United Nations Convention on Biological Diversity.

The government's Nature Positive agenda provides a significant opportunity to fundamentally change and improve the way Australia protects both its biodiversity and its significant environmental assets.

Our starting point in reviewing these documents was therefore that achieving the aims outlined by Professor Samuel and the Australian Government requires a bold change in both mindset and the overarching approach to Australia's national environmental policy and regulatory framework.

EIANZ's high-level response to the documents (elaborated below in our submission) is that:

- The reforms propose notable improvements including the formation of Environment Protection Australia and Environment Information Australia, the development of National Environmental Standards and the emphasis on regional planning.
- In their current form the proposals fail to capture the bold and holistic approach required to achieve the government's stated aim to halt decline and repair nature. This can only be achieved via a national approach with well-defined objectives and principles, performance-based standards, and best-practice administration.

The following overview provides specific feedback and areas for improvement within the policy papers provided. We then provide more detailed comments in the attachments.

## Key Findings

There is a need to better define and address 'nature positive'.

'Nature positive' is the central objective of the proposed reforms, yet is it not well defined in the documents provided. We recommend this be addressed as a priority. Targets 2, 3 and 4 from the [Kunming-Montreal Global Biodiversity Framework](#) provide a suitable starting point to develop a definition. A clear definition, together with proper strategic and regional planning, will enable appropriate focus on threatened species and bioregion protections as well as a cohesiveness that is lacking in the current suite of reform proposals.

Confusion between 'nature positive' and 'net positive' should be clarified.

The environment profession considers 'nature positive' and 'net positive' to be two quite distinct terms in terms of geographic scale and environmental contribution. However, the policy documents use the terms interchangeably, which is confusing and counter-productive for environmental outcomes. There will be interplays between nature positive and net positive, but clear definitions and careful use are



critical. We offer proposed definitions of both terms in Attachment C of this submission.

Achieving nature positive requires more than individual net positive projects.

To achieve nature positive, the current state of the environment (include historic and emerging degradation and threats) should be considered broadly, rather than through the limited lens of Matters of National Environmental Significance (MNES). Offsets for individual projects alone will not reverse biodiversity loss.

Within the EPBC Act and its proposed successor, only 'significant residual impacts' are regulated and required to have net positive outcomes. This leaves impacts that are not significant unaddressed, but still contributing to cumulative declines in nature. Achieving nature positive requires a top-down bioregional planning approach that takes all impacts into account, no matter how significant on an individual project level. In other words, nature positive cannot be achieved solely via suggested net positive approaches across individual developments.

EPBC Act reform is a crucial opportunity to lead a truly national approach (jointly with the States and Territories) that should not be missed.

Reversing decline in environmental values requires concerted national effort. Importantly, it requires good leadership so that everyone is pulling in the same direction – this is an important role for the Australian Government. State, territory and local governments, NGOs, the private sector, and the public at large are all important contributors. The EPBC reform legislative portfolio should be designed so that each of these sectors and the groups within them can see a clear role for how they will need to contribute to what should be part of a larger whole, with leadership from the Australian Government.

The EPBC Act should work in concert with other parts of the government's environment agenda to achieve nature positive - this interaction is not yet adequately addressed.

In addition to EPBC Act reform, other parts of the government's environmental program and law reform agenda (including the Nature Repair Act, Threatened Species Strategy, the National Reserves System and Australia's Strategy for Nature) are important for achieving nature positive. It is therefore vital that each of these initiatives are well integrated with each other, both legislatively and via implementation. The current reform papers lack the context that demonstrates how the EPBC reforms fit into this bigger picture and contribute to the larger goal of achieving nature positive. EIANZ is keen to understand how the new Act will work in tandem with these other pieces and would welcome the opportunity to provide advice on how this might work, and/or the consequences of not viewing the government's agenda as a whole.

A focus on biodiversity currently appears to be at the expense of heritage.

We note that much of the reform material shared to date centres around nature positive with regards to biodiversity specifically. This is an important component of the Australian environment and in need of much attention. However, First Nations heritage and built heritage are also in need of much protection and we recommend that these receive continued and significant attention.

There is a need to acknowledge the interactions between natural and social systems.

The proposed reforms treat nature in isolation, with insufficient consideration given to feedback loops and the complex interrelationships between natural and social systems. This will ultimately create a barrier to achieve the government's Nature Positive objectives and is in direct contrast to First Nations perspectives. A stronger integration of these perspectives is required. A more holistic view of natural and cultural systems through time and space will both improve environment outcomes and be better aligned with First Nations approaches to caring for country.



The emphasis on regional planning is welcome, but there is a lack of principles and completeness to the proposal for development zoning in regional plans.

We commend the inclusion of regional planning as a prominent part of the reforms. This is a strength of the materials provided. EIANZ agrees this should be a useful tool in contributing to better resolving land use planning challenges, particularly in areas of development pressure.

However, the current proposal to use zoning in regional plans (defining conservation and development areas) is too simplistic and the principles to be followed across the whole of the regional plan area need to be defined.

The current list of Matters of National Environmental Significance needs review.

In the reform material provided, there is no evidence of a review of the appropriateness of the current MNES (considering for example, whether agriculture land clearance is adequately controlled). It is also not clear whether the Commonwealth has fully exercised its available powers to protect nature under the UN Convention on Biological Diversity. Defining and monitoring the status of current MNES absorbs significant resources and sometimes without effectively preventing further losses. Current MNES are a only subset of the biodiversity values that should be protected.

National Environmental Standards must be meaningful.

EIANZ strongly supports the development of National Environmental Standards. However, we find the current draft of the Community Engagement and Consultation Standard to be vague and incomplete. In addition, the scope of the Data and Information Standard misses the opportunity to establish a truly national whole-of-environment information system. National Environmental Standards should be specific, measurable, and outcomes-focused, i.e. they should provide clear and unambiguous controls. More work is needed to achieve this, and EIANZ would be pleased to continue providing guidance to this effect.

A more precise role is required for environmental offsets.

The current proposals for offsets are not yet adequately thought-out and deviate from best practice. We endorse a residual role for offsets to achieve net positive outcomes for specific projects but recommend a well-disciplined and well-defined (and limited) approach. We are concerned about an apparent expansion for offsets from assisting in achieving project-specific net positive to contributing to bioregion level nature positive.

Financial contributions in lieu of offsets may have a legitimate role, but lessons need to be learnt from past practices that have led to underfunding and loss of environmental values. Consideration also needs to be given as to how Commonwealth offsets will integrate with State and Territory offsets (which are all different).

The importance of quality assurance needs further recognition.

Maintaining high standards of facts-based and ethical practice, which are properly informed by community consultation and cultural knowledge, are of utmost importance. The public depends upon quality of the planning and assessment developed under the EPBC Act. As recommended by Professor Samuel, the government should provide for a Compliance Commissioner and ensure all those working with the Act are suitably qualified and certified to that effect.

Regulatory instruments and guidelines must be robust.

Regulatory instruments and guidelines will be used to provide the detail to achieve efficiency and



effectiveness. We acknowledge that we are at too early a stage for all these instruments and guidelines to be available, and that in some areas the EPBC legislation should only provide the scaffolding for the bold changes that are required. However, without this detail it is difficult to comment on likely outcomes. We recommend that the process of developing regulatory instruments and guidelines includes a high level of ambition with adequate consultation.

There is a need for continuing consultation and further detail.

A common theme across our review of the reform material was the “absence of finer detail”. In some cases, important details were not yet provided, and we urge the government to continue its consultation as it progresses its thinking in these areas. Continued periodic review of the Act and its effectiveness will also be needed.

In the following attachments, we discuss in more detail our feedback and recommendations on specific aspects of the policy papers provided.



## Attachment A: Assessments and approvals

### Environment Protection Australia

EIANZ supports:

- The establishment of the EPA as an independent statutory agency and notes it is crucial to its success that it is adequately resourced.
- The requirement for the CEO to have certain qualifications. However, those listed in section 3.4 should refer more explicitly to 'environmental law' and 'environmental law enforcement'.
- The requirement for regular operational reviews of the performance of the EPA.

#### Section 2.2

While noting the list of regulatory functions of the EPA is not exhaustive, EIANZ recommends the specific inclusion of regional planning, given its importance in meeting Nature Positive outcomes.

### Assessment and approval pathways policy paper

EIANZ supports the introduction of the standard pathway that bypasses the current referral process. There is no need for this referral step when an action will clearly have a significant impact on protected matters. EIANZ also supports the use of the low impact pathway when a proponent is unsure as to whether their action would have a significant impact.

Under the standard pathway, we note the 60-business day timeframe for an approval decision commences when a proponent has provided all required information. This would appear to correspond to the current step described as when a proponent submits the finalised assessment documentation. This timeframe contrasts with 40 business days as listed in the current Act. EIANZ recommends that the need for a 60-business day timeframe is reconsidered.

#### Effectively considering Ecologically Sustainable Development (ESD) principles

In deciding whether to approve an action, it is proposed that the Environment Protection Australia (EPA) CEO must have regard to ESD principles – defined in The National Strategy for Ecologically Sustainable Development as 'development that improves the total quality of life, both and now in the future, in a way that maintains the ecological processes on which life depends'. This requirement is similar to that in the current EPBC Act where the Minister must 'take into account' the principles of ESD.

The shortcomings of the current requirements are discussed at length by Peter Burnett in Chapter 7 of his PhD thesis 'Australia's National Approach to 'Ecologically Sustainable Development': Success in Principle, Failure in Policy, Still in Prospect' ([available here](#)). One concern is that this requirement is compromised in the current EPBC Act by the mandatory requirement for the Minister to consider social and economic impacts, with no requirement to consider environmental impacts outside MNES.

More fundamentally, a requirement to have regard to the principles of ESD gives little direction to the decision-maker as to the relative weight to give to each. As Burnett notes (p. 310): 'to promote the goal of ESD, the principles of ESD need either further development as 'directing principles' (to inform the decision rules model), or translation into plans (the spatial planning model)'.

The Assessment and approval pathways paper is silent on how social and economic matters will be considered in the new legislation and on the scope of environmental matters that can be considered by the EPA CEO. Consequently, the new legislation is likely to retain the same shortcomings of the current EPBC Act in relation to ineffective implementation of ESD. As discussed by Burnett, EIANZ recommends the new Act include directing principles for decision-making.



### Transparency in decision making

EIANZ supports the proposed requirement in section 3.12 of the Assessment and approvals pathways paper for a proponent to receive any documents that were not provided by the proponent but were relied on by the CEO of the EPA in making a decision. Given that condition-setting can adversely affect a proponent, this more fully meets natural justice requirements.

We note the requirement for the CEO to publish the reasons for the approval decision. EIANZ supports full transparency in decision-making and recommends that this requirement should also extend to refusals. The requirement to provide reasons should be comprehensive rather than cursory, i.e. equivalent to the current recommendation report.

### Transfer of part of an approval

There should be provision for transfer of part of an approval. This is a shortcoming in the current Act that has led to split referrals where, post-approval, different organisations may be responsible for different components of a large action.

Split referrals add complexity for all parties and should be avoided. EIANZ recommends the new legislation provides greater flexibility for transfer of approval conditions.

### Application of the mitigation hierarchy under the low impact pathway

EIANZ supports the proposed requirement for a proponent to demonstrate they have applied the mitigation hierarchy. However, it is unclear how this would be applied for the low impact pathway. For example, if a proponent had failed to take all reasonable steps to avoid or mitigate impacts, but the impacts of the proposed action were not significant, on what basis does the CEO of the EPA require the proponent to take those reasonable steps? This point requires clarification.

## **Assessment and approval pathways addendum: EPA's role in community consultation**

Scoping is an important part of the impact assessment process. Poor scoping results in key issues being missed or, more commonly, requires assessments to address issues that are peripheral to decision-making and reduces public accessibility by making assessment documents longer and less focused.

The provided paper provides a better understanding of the process to be followed before an application for a proposed action is accepted by the EPA. However, it is unclear how the scoping itself will occur apart from the single statement 'Following registration, EPA would provide proponents with guidance, such as outlining requirements for assessment and approval of actions, and the National Environmental Standards'.

More information on scoping should be made available and scoping requirements should be project specific. EIANZ does not support the use of generic requirements, as these generally lead to over-scoping.

EIANZ has developed guidance on good practice in scoping in impact assessments, [available here](#) and attached at the end of this submission.

### **Ministerial call-in power paper**

EIANZ accepts there may be occasions when a decision can be made by the Minister. However, this power should not be open-ended, and the Act should specify the circumstances under which the Minister can exercise this power. Generally, this should be restricted to decisions that have major policy implications.



## National interest exemption paper

EIANZ recognises the need for a national interest exemption and supports:

- That this is more clearly defined than in the current Act
- That it is restricted to actions that are time-critical
- That the exemption must include a time period
- Publishing of reasons for the exemption
- It not being applied retrospectively.

## Accreditation paper

Applicants seeking accreditation will be required to conduct a self-assessment of their regulatory framework. EIANZ recommends this self-assessment be published at the same time as the draft accreditation document and the EPA CEO's draft decision.

EIANZ also recommends that the accredited process include an assurance framework to demonstrate achievement of the required outcomes. The framework should be considered by the CEO in deciding whether to accredit an assessment process. EIANZ supports the provisions for varying or amending an accredited arrangement.

## Qualified and experienced persons

The proposed impact assessment requirements rely on proponents providing comprehensive and scientifically rigorous information to the EPA. In practice, the quality of information provided under the EPBC Act has varied from a high professional standard to markedly sub-standard. EIANZ notes the requirement in New South Wales for environmental impact statements for State Significant Developments to be signed off by a Registered Environmental Assessment Practitioner. To ensure credibility in the assessment process, EIANZ recommends that the new Act includes a requirement for applications to be signed off by a suitably qualified and experienced person.





## Attachment B: Strategic Assessments and Regional Planning

### Introduction: National regulation and holistic environmental protection

Although the constraints of the Australian Constitution need to be worked through in a regulatory sense, EIANZ is of the view that the new environmental laws should take a more complete approach to environmental protection than is currently suggested. The new laws should have mechanisms to account for broader environmental issues (e.g. air pollution, climate emissions), including clear requirements for regional planning and strategic assessments.

The current state of the environment, including historic and emerging degradation and threats, should be considered holistically rather than through the limited lens of Matters of National Environmental Significance (MNES). This approach would look beyond offsets for individual projects as a method to reverse biodiversity loss. Failing to account for broader impacts of human activities on the environment would be a missed opportunity.

A truly nature positive approach should account for:

- All potential impacts on environmental aspects such as water, soil, vegetation and biodiversity, and a series of factors that are becoming of increasing relevance to human wellbeing e.g. air pollution generated, greenhouse gas emissions, regional carbon footprints
- High-level consideration of cumulative impacts on the environment, which only strategic environmental assessment (SEA) applied at regional scale can provide.

A clear strategy is required to ensure the net outcome of all projects and initiatives reverses biodiversity decline. This strategy needs to incorporate incentives and processes that encourage projects, strategic assessments and regional plans to identify and commit to delivering the restoration opportunities most beneficial to biodiversity gain.

A review of strategic environmental assessment in other legislative contexts (e.g. the European Union) indicates how SEA should incorporate a holistic approach to sustainable development by assessing the impacts of policies, plans, or programs (PPPs) on ecological matters as well as human wellbeing.

Italy provides an example of how legislation on SEA can evolve over time. A study of its regional frameworks shows that some regions have achieved comprehensive legislation that integrates planning and assessment processes. These processes include meaningful and inclusive community engagement, beyond simply informing the public on SEA and PPPs decisions.

For example, best-practice SEA legislative guidelines in the Italian region of Lombardia require:

- Consultation with interested communities about the development and assessment of plans, policies and programs (PPPs) through alternative scenarios
- Analysis of PPP internal actions (matching the intended goals) and external goals (matching the planning and regulatory context set by other PPPs at different institutional levels)
- Setting monitoring of PPP impacts after PPP implementation
- Analysis of PPP impacts on various social, environmental and heritage matters.

### Strategic Assessments policy paper

The Strategic Assessments policy paper suggests that strategic assessments will only encompass a 'strategic plan', rather than the current scope under Part 10 of the EPBC Act to consider any Plan, Policy and Program (PPP).

EIANZ recommends the proposed scope of strategic assessments under the new Act include all PPPs



to align with international best practice<sup>1</sup> and with environmental protection legislation in other Australian jurisdictions<sup>2</sup>. It should be made possible for PPPs that are not compatible with a strategic assessment approach to be diverted away at the outset via appropriate gateways.

### Consultation on strategic assessment approval

Regarding 'strategic plans', Section 3.7 of the paper refers to 'Consultation on strategic assessment approval' (page 12 of 121 pages) – this is the only substantive comment on consultation in regards strategic assessment and decision-making criteria. EIANZ recommends that the current statement be broadened to wider community engagement. Currently it is focussed on end process steps. Without broadening the statement there will be missed opportunity for 'early and effective' engagement 'when all options are open'.

An example of early engagement when more options are open, and which might entail some level of assessment under the EPBC Act, includes the Victorian Transmission Investment Framework approach, and the associated Strategic Land Use Assessment and multi-criteria analysis processes (the latter including an element for 'community acceptance'). This includes a process for early engagement to build in stakeholder values and feedback and to inform and shape outcomes including at the early 'system scenarios' and 'candidate REZ pathways' stages of planning for renewable energy infrastructure<sup>3</sup>. Such early engagement fosters opportunities for enhanced partnership working between government, proponents and the community, including First Nations peoples<sup>4</sup>.

## Decision making at a landscape and/or seascape scale policy paper

This policy needs to better reflect the breadth of opportunities to advance nature positive through landscape scale approaches to environmental protection and management. The way to achieve this is through robust regional planning, underpinned by strategic impact assessment and inclusive community engagement.

In addition to mapping and planning, there needs to be an assessment pathway for understanding of potential development impacts with iterative feedback loops e.g. 'plan – assess – revise the plan'. See also our comments on the regional planning policy paper below.

The policy paper on decision-making at a landscape scale has inconsistencies with the policy papers on regional planning and strategic assessment. For example, the section on strategic assessment in the policy paper includes a map that is not explained and seems better aligned with the concept of regional planning than strategic assessment.

## Regional Planning policy paper

EIANZ supports regional planning as a useful tool for better resolving land use planning challenges, particularly where there is development pressure. However, how "restoration measures" are defined, achieved and measured in this policy needs to be better thought through.

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1 [https://www.iaia.org/uploads/pdf/Fastips\\_7SEAlternatives.pdf](https://www.iaia.org/uploads/pdf/Fastips_7SEAlternatives.pdf).

2 E.g. the Northern Territory Environment Protection Act 2019 allows for the assessment of a policy, program, plan or methodology via a strategic assessment pathway.

3 Dyer, A. Australian Energy Infrastructure Commissioner. (December 2023). Community Engagement Review Report on behalf of the Department of Climate Change, Energy, the Environment and Water. Canberra, Commonwealth of Australia.

2 February 2024 CC by 4.0; Department of Energy, Environment and Climate Action (July 2023) Victorian Transmission Investment Framework Final Design Paper DEECA Melbourne, State of Victoria.

4 Ibid.



### Clarifying objectives

Regional plans will be required to include 'restoration measures that more than compensate for the impacts on MNES of priority development actions in the development zone'. 'More than compensate for' needs to be specified and directly linked to the National Environmental Standard for MNES requirement around net positive.

The policy is unclear as to whether net positive outcomes are required for some or all MNES. A key consideration in regional scale assessments must be trade-offs, whereby the most 'important' values are protected, but this may come at the expense of other values which are more robust to disturbance. This should be clarified in the new Act.

### Establishing measurable objectives

Regional planning processes should detail the expectations as to how to include regional objectives. This is needed to guide decision making, requirements for robust impact assessment, and community engagement.

The Regional Planning policy paper places little focus on establishing objectives for the regional plan. This is in contrast with the draft Standard on Regional Planning (discussed below) where objectives are implied to be central to the process of preparing a plan (e.g. 1f in the paper). EIANZ strongly recommends this omission is addressed in the new Act (rather than through any subsequent regulations as is currently the case in the EPBC Act).

Without robust objectives for protected matters in regional plans, the approach of simply prohibiting classes of action in the conservation zones will be fraught in future decision making. It is impossible to foresee every type of development that may emerge in a region.

Internationally, regional plans are put in place where there are reasonably foreseeable conflicts, i.e. before they actually occur. For example, ten years ago we would not have fully appreciated the breadth of opportunities for renewable energy development and related infrastructure that we are being asked to consider today. Similarly, efficiently and effectively responding to natural disasters creates complex challenges for governance priorities, including fostering Nature Positive outcomes. Ensuring there are clearly stated objectives for a regional plan will assist in future decision making and acceptability regarding unforeseen uses.

### Impact assessment

In comparison to the Strategic Assessment policy paper, the Regional Planning paper does not emphasise the 'assessment' function. This exclusion suggests that regional plans may be an "easier", less rigorous pathway than strategic assessments through which development can be facilitated without need for further assessment and subsequent development approval.

EIANZ recommends that the Regional Planning policy include the need for an assessment of impacts. Impact assessment is necessary, both to develop a robust regional plan via iterative planning and assessment (as noted above) and to ultimately set the conditions for the regional plan (including restoration measures, in line with clearly stated objectives).

### Cumulative impacts

EIANZ recommends there be a stronger emphasis on understanding cumulative impacts throughout the strategic assessment and regional planning policies. To deliver Nature Positive outcomes, assessments need to consider the direct, indirect and consequential impacts, and the incremental and compounding effects of these over time. This includes past, present and reasonably foreseeable future pressures. To deliver ecosystem resilience and Nature Positive outcomes, strategic impact assessments must identify,



protect and restore tipping points for the ecological processes.

Australia's terrestrial and marine environments are complex, socio-ecological, interconnected systems delivering a diverse range of ecosystem services. The biophysical values and processes that support them (i.e. predation, recruitment etc.) are subject to multiple and compounding pressures. As a result, robust and successful environmental impact assessment needs to consider drivers of change, pressures and impacts at multiple spatial and temporal scales, inclusive of the accumulation of pressures (sequential acute, subsequent acute, simultaneous pulses and chronic). Additionally, the cause-and-effect relationships between drivers, pressures, impacts and risk on values must also be assessed.

#### Requirements for development outside of both Conservation and Development Zones.

The scope of the regional plan includes conservation zones and development zones, but there may be areas outside of these zones within the regional plan area. Further careful thought is required as to what, if any, actions are allowable within these 'undefined' areas and how they may be authorised.

For example, would new action be somehow subject to the conditions of the regional plan or would they need a stand-alone project approval?

The current simplistic duality of development zones and conservation zones based on the location of protected matters also limits proper incorporation of broader landscape systems approaches and responses to cumulative impacts in structuring environmental protection measures.

For example, how would existing uses such as farming be incorporated, as the cumulative impacts associated with these historic 'deaths by a thousand cuts' have collectively had significant impacts on MNES? For further rationale on this point, see the paper '[Preventing Death by a Thousand Cuts](#)' by the Wentworth Group of Concerned Scientists.



## Attachment C: Draft National Environmental Standards

### National Environmental Standard for Data and Information & Environment Information Australia

The creation of Environment Information Australia (EIA) and the National Environmental Standard for Data and Information (the Standard) provide a unique opportunity to create a transparent, reliable, comprehensive and accessible source of data relating to environmental impacts and pressures across a range of indicators.

A very high number of stakeholders in the public and private sphere would find this valuable to inform decision making in a range of contexts.

However, as we outline below, there is work to be done on the scope and mechanics of the Standard and the EIA.

#### Aligning the Scope of the National Environmental Standard for Data and Information with the work of Environment Information Australia (EIA)

Current documentation suggests there is misalignment between the scope of the Standard and the work of the proposed EIA. The fact sheet produced by the Department states that the Standard “will apply for all environment data and information used by decision-makers when making relevant decisions” for planning and approval purposes. The Standard also specifies that it includes data and information related to understanding patterns and dynamics of nature and the environment, as required to meet decision making needs under the Act and cites several examples. Almost all the included datasets are derived from ecological studies or surveys. While very important, these datasets do not paint a complete picture of the systemic interconnections that are an inherent part of natural systems.

Given that the Department’s website and consultation documents describe the role of the head of the EIA (HEIA) as being quite broad and including initiatives such as State of the Environment reporting, environmental-economic accounting, tracking environmental outcomes, and establishing a baseline and report on nature positive progress and outcomes, it is difficult to see how information limited to these data sources cited above will adequately satisfy these deliverables.

To be able to fulfill their proposed role, the HEIA will require access to a broader spread of information sources than are currently provided for in the draft Standard, with its current narrower focus on the EPBC Act. As currently outlined, the information and data to be overseen by the EIA appear limited to the condition of Matters of National Environmental Significance (MNES) without consideration of external dependencies, impacts or pressures that should be recorded or referenced in order to enable positive outcomes. Useful additional information includes emissions of pollutants such as greenhouse gases, noxious gases and particulate matters, excessive nutrient and effluent flows or meteorological changes over extended periods.

There are many potential sources for this type of information, including:

- National Greenhouse and Energy Reporting scheme data
- National Pollutant Inventory
- The Atlas of Living Australia
- National Performance Report for water utilities.

EIANZ recommends increasing the scope of information for which the EIA is responsible to allow for a more holistic overview. This would also allow stakeholders outside the public sphere to make environmentally important decisions more consistently and transparently.



### Incorporating environmental accounting practice principles into the Standard

As recommended above, once the scope of the Standard is aligned with the full work of the EIA, there should be a review of the currently stated principles. This is needed to promote consistency across reporting frameworks and jurisdictions.

Currently, the draft Standard has four principles: that data and information provided to decision-makers should be F.A.I.R, ethical, fit for purpose, and reliable. While it is recognised that these will be expanded upon in the technical guidelines, other principles that are part of environmental accounting practice should be considered. For example:

- Spatial Assumptions – The defined physical boundary for all activities should be accounted for.
- Temporal Integrity – Methods may change over time and estimations should consistently reflect best practice to allow for direct comparison.
- Indefeasibility of data – A characteristic of a data item or dataset that means it cannot be questioned, made void, or cancelled.
- Valid Dataset – A copy of the raw dataset made to remove anomalies and correct faults.
- Uncertainty Principle – Every quantity should be assessed for uncertainty and particularly where any modelling or estimation has occurred.
- Objectivity Principle – Data are produced and validated in an unbiased way observing the scientific method.
- Predictive Value Characteristic – Historical data should be able to provide a reasonable indication of future performance trends.
- Timeliness Characteristic – Data should be timely and current wherever possible.

### Developing and socialising data reliability tiers in both the Standard and Technical Guidance

EIANZ recognises the need for quality scientifically-valid data collected using standardised protocols. We support the suggested introduction of the three reliability tiers and the associated six core principles within the Data and Information Standard. These tiers will assist in defining the different levels of appropriate and suitable environmental data being used.

The Technical Guidance being developed will help clarify requirements. EIANZ recommends broad consultation and engagement across the environmental practitioner community to develop and understand the Technical Standards – a primary concern of stakeholders will be what their requirements will be under the reformed legislation and the Standard. The technical guidance should also include case studies and provision of example datasets (of each reliability tier in a range of circumstances).

## **National Environmental Standard for Matters of National Environmental Significance**

National Environmental Standards should concisely establish unambiguous requirements for developers, regulators and assurers

National Environmental Standards should be based on scientific and planning principles. They should provide key technical diagnostic information to avoid confusion and uncertainty, while not being overly prescriptive to the extent that alternative solutions conducive to good environmental outcomes are disregarded. Otherwise, the standards risk becoming a guideline and thus nullifying their intent.

Currently, the draft National Environmental Standard for Matters of National Environmental Significance (the Standard) is not sufficiently detailed. While it provides objectives and requirements, some of which



guide decision-making, they do not set clear required outcomes for regulated activities under the new Act.

The objectives and requirements in the Standard should align with other policies and the 23 targets for 2030 in the Kunming-Montreal framework. For example, KMF Targets #2, #3 & #4 are quantitative:

- TARGET 2: “Ensure that by 2030 at least 30 per cent of areas of degraded terrestrial, inland water, and marine and coastal ecosystems are under effective restoration, in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity.”
- TARGET 3: “Ensure and enable that by 2030 at least 30 per cent of terrestrial and inland water areas, and of marine and coastal areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures, recognizing indigenous and traditional territories, where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, recognizing and respecting the rights of indigenous peoples and local communities, including over their traditional territories.”
- TARGET 4: “Ensure urgent management actions to halt human induced extinction of known threatened species and for the recovery and conservation of species, in particular threatened species, to significantly reduce extinction risk, as well as to maintain and restore the genetic diversity within and between populations of native, wild and domesticated species to maintain their adaptive potential, including through in situ and ex situ conservation and sustainable management practices, and effectively manage human-wildlife interactions to minimize human-wildlife conflict for coexistence.”

#### Precise and auditable terminology

The Standard should provide precise criteria or benchmarks, so that expectations are well defined. If this is achieved, stakeholders can understand what is expected; this clarity facilitates effective decision-making and reduces miscommunication or misinterpretation of requirements.

Ambiguous terms like “reasonably” or “practicable” should be avoided. Such terms can lead to different interpretations and misunderstandings, which may result in confusion or disputes.

#### Requirements for Threatened Species and Ecological Communities

EIANZ recommends these requirements be changed to the below (or similar):

- “Protect, conserve and enhance through restoration and recovery of habitat, including critical protection areas, for threatened species and ecological communities”.
- “Provide long-term support for the viability of threatened species and ecological communities in the wild”.
- “Avoid impacting threatened species and their habitat”.

#### Requirements for migratory species

EIANZ recommends these requirements be changed as below (or similar):

- Include “Avoid impact to migratory species and their habitat”.
- Amend to include the function of enhancement of habitat: “Protect, conserve and enhance habitat of migratory species, including critical protection areas, through restoration”.



## Requirements for protection of water resources from [unconventional gas] and coal mining development

EIANZ suggests the following change to these requirements:

Protect and enhance the values of the waterway resources.

## Requirements for the Protection of the Environment from Nuclear Action

Given the protected matter for nuclear actions is the environment, decisions on nuclear actions should deliver a net positive outcome for the environment.

### Properly defining 'net positive'

The current wording in the Standard is around 'net positive' outcomes rather than 'nature positive' and requires review.

The focus of net positive outcomes is on ensuring that the end result of an activity is beneficial, meaning that the positive outcomes outweigh any negative impacts. This approach may involve strategies such as reducing carbon emissions, minimising waste generation, supporting local communities, and promoting biodiversity conservation.

Nature positive outcomes specifically highlight actions that aim to benefit nature and biodiversity. It emphasises the importance of preserving and restoring ecosystems for their intrinsic value and for the services they provide to humans. The concept of nature positive involves strategies such as reforestation, habitat restoration, sustainable land management, and protection of endangered species.

While nature positive initiatives contribute to broader sustainability goals, they have a narrower focus on biodiversity conservation and ecosystem health. The term 'nature positive' underscores the idea that human activities should not only minimise harm to nature, but actively contribute to its regeneration and resilience.

While both net positive outcomes and nature positive approaches strive for positive environmental impacts, the former encompasses a broader range of considerations including social and economic factors, whereas the latter specifically emphasises actions aimed at benefiting nature and biodiversity.

The proposed definition implies that the anticipated benefits derived from actions aimed at mitigating and compensating for impacts must surpass a baseline reflecting what would occur in the absence of the pertinent measures. It is crucial that the net gain not only exceeds, but significantly exceeds, this baseline, adequately compensating not only for the direct loss of values but also for any indirect or inherent losses resulting from their removal. For instance, we would suggest that an offset should be calculated at a minimum of seven times the impact to ensure net gain relative to direct and indirect value loss as part of the development process. This number may increase depending on the MNES impacted.

### Concept of 'like for like'

EIANZ suggests that the definition of 'like for like' offsets should be refined to align with the precautionary principle by acknowledging the challenges in establishing and quantifying suitable 'like-for-like' offsets. In making this suggestion, we do not consider this acknowledgement, by itself, as justification for not meeting like-for-like without sufficient evidence.

The challenges we identify in establishing 'like for like' include:

- Accuracy of impact assessment: Determining the exact extent and nature of impacts on specific protected matters can be challenging. Variability in environmental conditions and complex





ecological interactions may make it difficult to precisely quantify impacts.

- Matching restoration actions: Identifying and implementing restoration actions that precisely match the impacted attributes or needs of protected matters can be complex. Restoration efforts must address the specific requirements of the affected species or ecosystems to ensure successful mitigation.
- Knowledge gaps: In some cases, the greatest need for a protected matter may not be well-understood or documented, particularly for less-studied species or ecosystems. This can make it challenging to prioritise restoration actions effectively.
- Temporal and spatial misalignment: Offsetting impacts "like for like" may encounter challenges related to the temporal and spatial dynamics of ecosystems. Restoration actions may take time to yield results, and their effectiveness may vary depending on the location and context.
- Resource limitations: Implementing restoration actions that deliver projected gains for protected matters requires significant resources, including financial, technical, and human resources. Limited resources may constrain the ability to undertake comprehensive offset measures.
- Monitoring and evaluation: Ensuring the success of offset measures requires robust monitoring and evaluation frameworks. However, monitoring the effectiveness of restoration actions and assessing their long-term impacts on protected matters can be resource-intensive and technically challenging.
- Stakeholder engagement: Effective offsetting requires collaboration and engagement with stakeholders, including local communities, government agencies, and conservation organisations. Building consensus on offset strategies and ensuring transparency in decision-making processes can be challenging.

Our suggested refinement of the definition, which aims to address these challenges, emphasises the importance of flexibility, scientific rigour, and stakeholder engagement and is:

'Like for like offsetting entails compensating for the residual impacts to a specific protected matter by implementing restoration and enhancement actions that closely align with the attributes or needs of that matter, while considering the ecological context and available scientific knowledge. Restoration actions must address the most critical needs of the impacted protected matter, as identified through comprehensive conservation planning documents or regional plans. In cases where the greatest need is unclear, restoration efforts shall focus on enhancing the affected attributes of the protected matter, ensuring that the integrity and resilience of the ecosystem are maintained or restored.'

Monitoring and adaptive management practices shall be integral to the offsetting process, allowing for ongoing assessment of the effectiveness of restoration actions and adjustment of strategies as necessary. Additionally, stakeholder engagement and transparent decision-making processes are essential to ensure the legitimacy and effectiveness of like-for-like offsetting initiatives.'

Importantly, many aspects are not offsetable, and this must be considered in the assessment.

#### Properly defining 'baseline'

EIANZ recommends the definition of 'baseline' be revised to reflect robust scientific evidence.



## National Environmental Standard for Restoration Actions and Restoration Contributions

EIANZ recommends that the National Environmental Standard for Restoration (the Standard) be revised to better reflect the mitigation hierarchy. This includes detailing expectations around each step and presenting restoration as a management step (addressing impact) vs an offset (mitigating for impact).

A mature approach to restoration requires greater focus on the process for restoration management, typically detailed in a mitigation hierarchy. This more conventionally reflects the existing and international concept of offsetting. It is disingenuous and potentially confusing to relabel offsets required of proponents as 'restoration activities' especially as the Regional Planning policy refers to 'regional restoration measures' which seems to be a broader term. There are good international guides to draw on for this, such as the Biodiversity Consultancy's [Cross Sector Guide for Implementing the Mitigation Hierarchy](#), which are referenced in [TNFD Guidance](#).

### Location of restoration works

EIANZ supports restoration being within the same bioregion, and preferably within the same land zone (or equivalent depending on jurisdiction).

### Timing of restoration works

We strongly support that restoration shall be identified and have commenced prior to the impact from the approved action.

### Definition of an 'expert'

EIANZ recommends including a definition of 'expert' in the Standard.

EIANZ considers an environmental expert to be 'an individual who possesses extensive knowledge and expertise in the field of environmental assessment, offsetting, or environmental management. Specifically, an environmental expert must have a minimum of ten years of practical experience in conducting environmental assessments, undertaking impact assessments, implementing offset measures, or managing environmental projects'.

Demonstration of the required experience, proficiency and competence in addressing environmental impacts challenges and mitigating impacts is often through certification (such as through the EIANZ Certified Environmental Practitioner Scheme).

This expertise enables environmental experts to provide informed guidance, conduct thorough assessments and develop effective strategies for environmental conservation and sustainable development.

### Prioritisation of direct restoration actions.

EIANZ considers direct restoration actions should be the primary focus to achieve effective and comprehensive offsetting. Indirect actions, if utilised, should be limited to no more than 5-10 per cent of the required offset and viewed as supplementary support rather than the primary means of offsetting impacts. Indirect offsetting alone may not fully mitigate the environmental impact of an action.

### Strict use and oversight of financial contributions in lieu of offsets.

Financial contributions in lieu of offsetting actions may have a legitimate role (especially if used innovatively and applied comprehensively), but similar approaches undertaken in Queensland have led to underfunding, misrepresentation, and funding clearing without being able to offset the matters, and ultimately resulted in the loss of environmental values. If restoration contributions are allowed, they must be completed, and demonstrated as effective, prior to the action that impacts on the MNES.



We are cautious and sceptical of financial contributions used to offset an action's impact for the following reasons:

- Limited resourcing - Restoration projects often require significant financial, technical, and human resources. Ecosystems are inherently complex, with intricate ecological interactions and dynamics. Understanding and restoring ecosystem functions and services require in-depth knowledge and expertise, which may not always be available.
- Transferred accountability - A once-off payment into a fund effectively absolves the entity that creates the impact from any future actions to ensure that the impact is sufficiently and adequately mitigated.

#### Maximise benefits from restoration contributions

EIANZ believes restoration contributions, if used innovatively and applied comprehensively, can mitigate these challenges and have a positive impact on ecosystems, biodiversity and local communities, fostering resilience, sustainability and long-term restoration success. EIANZ would welcome the opportunity to consult with DCCEEW to assist with this. Opportunities for improvement include:

- Mobilising adequate resources through partnerships and innovative financing mechanisms, to ensure restoration projects can address funding limitations and secure the necessary expertise
- Through thorough planning and site assessments, develop restoration plans that consider ecological, social, and economic factors, as well as potential impacts of climate change
- Capacity building initiatives that empower local communities and stakeholders to actively participate in restoration activities and decision-making processes
- Implementation of invasive species management measures and climate-resilient restoration techniques that further enhance the effectiveness and resilience of restoration efforts
- Robust monitoring and evaluation frameworks that enable adaptive management, allowing restoration strategies to be adjusted based on monitoring results and changing environmental conditions
- Community engagement and policy advocacy efforts to ensure that restoration initiatives align with local priorities, cultural values, and regulatory frameworks.

#### Clarifications on the Standard.

EIANZ seeks further clarification on the Standard and its application.

- How the offset will be integrated across multiple (State and Territory) jurisdictions?
- How the Standard will be supported by guidelines to clarify how biodiversity offsets will work on the ground?
- How will the restoration be managed during the transitional period (between the old and new Act)?

#### Marine offsets

The available documents do not include provisions for marine offsets. Marine offsetting presents unique challenges compared to terrestrial offsetting, primarily due to the distinct characteristics and dynamics of marine ecosystems, which are often more spatially and temporally complex and dynamic. This makes it challenging to identify suitable offset sites and predict the outcomes of restoration or conservation efforts.

Marine offset requirements need to be specified and comprehensive guidelines developed. These need



to be supported by an effective compliance regime and capacity building. The guidelines should set clear criteria for eligibility, site selection, and monitoring protocols and include:

- Stakeholder engagement involving government agencies, conservation groups, industry representatives and local communities to ensure alignment with conservation priorities and address potential conflicts.
- Robust monitoring and evaluation mechanisms that track progress and adapt strategies as needed
- Prioritisation of habitat restoration, marine protected areas and conservation initiatives targeting threatened species, with a focus on enhancing ecological connectivity and ecosystem function.

Overall, successful marine offsets require a collaborative, adaptive approach that prioritizes conservation outcomes and integrates stakeholder input throughout the process.

#### Use of (Nature Repair) biodiversity certificates for offsetting purposes

Previously, DCCEEW communicated that 'offsets' would not be permissible within the Nature Repair market's Biodiversity Certificates. However, there is a recent suggestion that these certificates could be used for offsetting purposes. Such a change raises questions regarding the intended scope and application of Nature Repair market instruments, particularly in terms of offsetting biodiversity impacts.

EIANZ does not support the use of biodiversity certificates from the Nature Repair market for offsetting purposes. We seek clear confirmation that this is not being implemented but if so, how this aligns with the original objectives and principles of the Nature Repair market to ensure alignment with broader conservation goals ecosystem restoration and stakeholder expectations.

By splitting out individual biodiversity values, stakeholders can better match offset measures with impacted biodiversity components, ensure appropriate compensation and enhancement. This will achieve a more targeted and effective approach to offsetting impacts, conservation and restoration of biodiversity values. This disaggregation is currently not possible under the Nature Repair market and where there are 'single tradable certificates'.

#### Conservation payments

In line with the Standard for MNES, ensuring the accuracy of conservation payment pricing is paramount, relying on scientific data and timely delivery of conservation outcomes. In New South Wales, the initial pricing of the Biodiversity Conservation Fund was notably flawed. Despite recognition of this issue, adjustments to pricing have been lacking, although improvements have been made. Nevertheless, progress in achieving the intended conservation outcomes funded by the scheme has been notably sluggish.

## **National Environmental Standard on Community Engagement and Consultation**

The current draft Standard falls well short of best practice. It relies primarily on a proponent publishing information about a proposed action and received public submissions. This is rarely effective in engaging the community as it is not proactive.

#### Strengthening of good practice essential elements

Access to information, adequate notice, opportunity to comment and access to public hearings and alternative dispute resolution<sup>1</sup> are four elements of best practice impact assessment. The first three

<sup>1</sup> Burdett, T. and Sinclair, A.J. (eds) (2024 – forthcoming) 'Handbook of Public Participation in Impact Assessment' Research Handbook on Impact Assessment Series, Edward Elgar Publishing Limited, Cheltenham, UK;

Sinclair, A. J., Diduck, A. P., and Vespa, M. (2015). Public participation in sustainability assessment: essential elements, practical challenges and emerging directions. In Handbook of Sustainability Assessment eds. A. s. Morrison-Saunders, J. Pope and A. Bond, 349-75. Camberley, UK: Edward Elgar, 349-75;



of these are effectively in the headings on pages 1 and 2 of the National Environmental Standard on Community Engagement and Consultation (the Standard): 'requirement to publish relevant information for public comment'; 'requirements for an invitation to comment'; 'requirement to engage'. However, EIANZ seeks a strengthening of these three good practice elements in the Standard.

### Inclusion of public participation

Public participation is another essential element for meaningful engagement that requires strengthening in the Standard. Public participation should be open and transparent, early and ongoing, learning-oriented, provide participant assistance, provide for deliberative forums, and demonstrate respect for Indigenous knowledge, rights and authority, and facilitate reconciliation. This recommendation is made with reference to the aforementioned international good practice guidance, compiled from multiple sources. While some of these components can be seen in the current draft Standard, they need improvement throughout, with broader reference to strategic policies, plans and programs and 'project' references. Below are suggestions on how to strengthen these essential elements for meaningful public participation.

### Stakeholder participation in regional plan development

EIANZ recommends the process for stakeholder participation in regional plan development be strengthened. In parts of the December 2023 draft, the regional plan-making process does not provide an avenue for meaningful community consultation (please see our wider suggestions on this issue in EIANZ's previous letter in October 2023, attached at the end of this submission).

Stakeholder participation during plan development is particularly necessary given the role of regional planning in addressing land use conflict where stakeholders have competing priorities. We note the Queensland Government has a heavy focus on stakeholder engagement to underpin their Renewable Energy Zone Readiness Assessments, and this offers a concrete example of how such a process may work.

### Broadening the objective of the Standard

EIANZ recommends that the objective of the Standard be broadened to explicitly include strategic and regional plans. Currently the Standard's Objective (pg.1 of the Standard pages) describes 'an opportunity to provide feedback early in the project development process' and omits both 'strategic plan' and 'regional plan'. This is inconsistent with the reference to projects, strategic assessments and regional plans in clause 7, page 3.

The opening line for the Standard's Objective also states 'To allow for greater community and business contribution...' This requires clarification as to what benchmarks such contributions are being measured against (i.e. 'greater than' what?).

### Requirements for an invitation to comment (item 3), requirement to engage (items 4 and 5) and relevant information about the proposal and its impacts (item 6)

Key benefits of SEA (or Strategic Assessment in the Australian context) derive from exploration of genuine alternatives, incorporating transparent and early front-loaded engagement, and a clear and consistent application of impact assessment good practice throughout the planning process. Improvements to the Standard are needed to capture these key benefits.

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Sinclair, A.J., Doelle, M., and Gibson, R.B., (2021). Next generation impact assessment: Exploring key components. Impact Assessment and Project Appraisal, DOI: 10.1080/14615517.2021.194589;

André, P., Enserink, B., Connor, D., & Croal, P. (2006). Public Participation International Best Practice Principles. Special Publication Series No.4. Fargo, USA <https://www.iaia.org/uploads/pdf/SP4.pdf>.



Although Australia is not a signatory to the Aarhus Convention<sup>2</sup> or Escazu Agreement<sup>3</sup>, principles from both documents apply and should be included in the Standard. Relevant principles include early engagement, when ‘all options are open’, and meaningful consideration of alternatives throughout the ‘strategic plan’ process (be it a policy, plan or program – these terms ideally being defined including how they relate to regional plans).

EIANZ suggests broadening of the reference to ‘relevant information about the proposal and its impact’ for the purposes of ‘community engagement and consultation’. The current wording merely suggests alternatives insofar as mitigation measures are considered for MNES aspects (6.f., pg.2).

#### Reporting on community engagement and consultation – items 9 and 10

Another key international good practice is the providing a summary as to how:

- Environmental considerations have been integrated into the PPP
- Comments received have been taken into account
- Adoption of the proposal or PPP was decided upon in light of the reasonable alternatives considered.

This makes for meaningful engagement and enhances approaches for next steps and rounds of engagement with communities on same or other matters. Within the Standard the need for this work is implied with the requirement to report on community engagement and consultation with a ‘Summary’. More explicit detail of requirements is needed. Additional detail would include clear insights into how the engagement has informed and helped clarify outcomes, and how it has informed exploration of options and the preferred approach (not just limited to options for measures to avoid and mitigate impacts as per current draft text at 6f., pg.2).

#### Best practice reporting of key themes and issues raised

Requiring ‘the key themes and issues raised’ (point 10.b, pg.3 of the Standard) will likely illicit a high-level summary rather than the detail needed to improve transparency, accountability and relationship building with communities. EIANZ recommends this requirement be either more tightly specified, or supplementary guidance provided on best practice for such reporting. EIANZ is available to assist in developing this, given our extensive membership resources and expertise in this area.

With regards to ‘accessibility’, noting there is a definition on this point (pg.4 of the Standard), accessible information including how comments were taken into account, is necessary for effective consultation report back. This should include comments that were made but not taken into account, and reasons for this, which would also address the points raised in the Independent Review of the EBPC Act dealing with transparency and feedback on how inputs have influenced decisions<sup>4</sup>.

Overall, the Standard is thorough in describing the procedure for engaging with communities and stakeholders, but not as clear on how their inputs will need to be considered. This might be acceptable for development proposals but is not quite appropriate for the development of regional plans.

<sup>2</sup> UNECE (1998) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. United Nations Economic Commission for Europe. <https://unece.org/DAM/env/pp/documents/cep43e.pdf>. UNECE - United Nations Economic Commission for Europe (2014). The Aarhus Convention: An Implementation Guide. Securing the public’s right through access to information, public participation and access to justice for a healthy environment. (2<sup>nd</sup> edition) United Nations Publication [https://unece.org/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf).

<sup>3</sup> United Nations (2018) Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) <https://treaties.un.org/doc/Treaties/2018/03/20180312%2003-04%20PM/CTC-XXVII-18.pdf>.

<sup>4</sup> Section 4.2.1, page 82 - Samuel, G. (2020). Independent Review of the EPBC Act – Final Report October 2020. Department of Agriculture, Water and the Environment, Canberra, CC by 4.0.



## Definitions

There are different references as to who comprises the 'community' comprise. The Standard Objective refers to 'greater community, business, organisation, and individual(s)'; point 4 refers to the 'impacted community'; and the Definitions (pg.4) refers to those who might also 'have an interest in'. EIANZ supports the use of a broad definitions (i.e. those who 'have an interest in') which is also good practice in the engagement industry both throughout Australia and internationally. EIANZ also recommends consistency in use of such references throughout.

## Transboundary consultations

Provisions in international Strategic Environmental Assessment Directives/Regulations around transboundary consultations are increasingly relevant, particularly where actions are proposed in strategic plans and strategic assessment processes that impact on other jurisdictions, be they LGA/State/Territory based or international. With more reforms being proposed, requirements for transboundary consultations should be included.

## Non-technical summaries

Non-technical summaries are often utilised to convey complex messages typical in all forms of impact assessment<sup>5</sup>. EIANZ recommends non-technical summaries be required under the community engagement and consultation NES and referenced throughout other parts of the documentation.

## Definitions for 'Engagement' and 'Consultation'

Further clarification of the meaning of the terms Engagement and Consultation is appropriate. There is a definition of engagement on page 4 of the Standard with examples including, but not limited to, 'public online forums and public hearings'. Highlighting just these two examples will be self-limiting and it is better to omit any examples, given there are literally dozens of appropriate techniques, and the form of consultation or engagement should be tailored to the circumstances. A public online meeting or public hearing should not be mandatory as it can be counterproductive. It often simply provides an avenue for the loudest voices to be heard and others to be silenced.

It is not the technique so much as the level of influence the community may have on decisions to be taken, and objectives of engagement, that matter. The ethos of engagement may be better captured by reference to language around 'dialogue', 'deliberation', use of 'deliberative forums', 'collaboration' or similar.

## **National Environmental Standard on Regional Planning**

To ensure the regional planning standard delivers (at the minimum) net positive, and preferably nature positive, outcomes for MNES at the landscape / seascape scale, the regional plan must be subject to rigorous impact assessment, applying the mitigation hierarchy, and include robust community engagement in plan development.

Currently these two fundamental elements of robust regional plans (rigorous assessment and robust engagement) are missing from the draft Standard. EIANZ believes that clear objectives for each Regional Plan should be established to inform zoning designation and future decision making. In this regard, the Department is referred to international Best Management Practice Principles such as those from IAIA on [Biodiversity and Ecosystem Services in Impact Assessment](#) for assistance.

Being clear about the scope of regional plans is fundamental to guide land use decision making. Currently the Standard states regional plans are a tool to support net positive outcomes for MNES where there is conflict between development priorities and environmental and heritage values. EIANZ considers it

<sup>5</sup> Eijssen, P. and J. de Jesus (2015). Fastips Non-Technical Summary. Fastips. IAIA, IAIA.



is necessary to incorporate into the Standard the opportunity to use the regional planning process to resolve concerns that regional communities have with other contentious matters.

#### Involving community stakeholders in regional plan development

Community engagement in regional plans is also important to address current land uses and priorities within a region. Currently the Standard does not recognise the breadth of existing activities and processes within regions, implying the landscape is a blank slate for designation as conservation or development zones. Planning literature is filled with legal battles where land 'zoned' for conservation has been considered as 'taken', requiring hefty compensation for landowners. If communities are actively involved through meaningful engagement and collaborative dialogue; more effective approaches to Nature Positive outcomes can be co-designed.

The Standard states that 'regional plans will be developed through engagement with [various stakeholder groups] ...and will be guided by relevant National Environmental Standards', which are currently silent on this issue. EIANZ notes that plan development only refers to engagement (not prepared jointly with) and that the national environmental standards are silent on the referred to engagement. EIANZ recommends these matters be amended.

#### Coordination between Commonwealth and States and Territories in regional planning

An objective of the Standard is "to enhance coordination between Commonwealth and State/Territory governments to reduce duplication...". It is unclear how this will work or what the role of the States and Territories in the regional planning process will look like in practice.

In the Regional Planning policy paper (discussed in more detail in Attachment B), it is proposed that States must agree to the regional plan (s2.4), endorse the regional plan (box in s2), and they must be notified of any proposed amendments t (s4.4). However, there is no requirement that they be involved in their development and so it seems as though the Commonwealth could impose regional plans on the states and territories. EIANZ recommends that the Standard require regional plans be developed collaboratively and reflect and protect state conservation priorities.

States routinely effectively manage conflicts between potential land uses, taking into account the full breadth of socio-ecological considerations. Working collaboratively in developing the regional plan to ensure protection of MNES and dovetailing-in with State processes will also help the streamlining objective of the reforms.

The Standard should also overtly acknowledge that developments in the development zone still need State assessment and approval (briefly mentioned in Box in s3 of the Regional Planning policy paper). It is unclear, when a regional plan is revoked (s7), what happens to the regional restoration measures that area already be underway.

Effective engagement should identify the relevant stakeholders and develop strategies that are appropriate for each. Proponents should be required to provide a consultation plan and outcomes that show how stakeholders were identified and engaged, and the outcomes relevant to each from that process. The Victorian Government provides an [example of requirements for a consultation plan](#).





## Attachment D: General Comments

### Jurisdictional inconsistencies in species listings

EIANZ seeks alignment in species listings between the Commonwealth and State and Territory levels. Inconsistencies between Commonwealth and State species listings proves frustrating for certain projects. This is particularly evident with threatened ecological communities, where there are differences in definitions regarding the inclusion of vegetation types or condition states. A most challenging situation is where a species is listed by the Commonwealth jurisdiction but not by the State. For instance, the Greater Glider was listed by the Commonwealth but initially not by NSW (though it is now). Consequently, this mismatch prevented the creation of credits under NSW legislation and this was a significant obstacle to achieving positive outcomes for this species.

### Introduce an Environment Assurance Commissioner

EIANZ supports the establishment of this independent statutory position to oversee the National Environmental Standards' implementation with a mandate to ensure that decisions align with the law and balance environmental, social and economic considerations.

### Delegate responsibilities to states

To streamline processes and reduce duplication, states and other entities should be delegated responsibilities under the EPBC Act, contingent upon formal accreditation and monitoring.

### Increase transparency and technical certainty

EIANZ considers that further technical guidance is required for those MNES responsible for the greatest number of EPBC Act referrals. This requested guidance, and resultant increased transparency, will provide environmental practitioners, project proponents and the Departmental greater confidence around proposed interactions with MNES.

A similar approach is also needed with respect to environmental offsets. For example, in a case in South-East Queensland, uncertainty around EPBC Act environmental offset requirements has caused significant major project delays and additional costs. Also, incremental 'ratcheting up' of DCCEEW offsets expectations has reduced the pool of available offsets, and offset providers, causing bottlenecks in regional development outcomes. Greater collaboration is required between DCCEEW and offset providers to allow for a shared vision to be created around offset program design to meet the overarching intent of 'Nature Positive'.

### Regularly review EPBC Act reforms

EIANZ seeks that the reforms under the Nature Positive plan and the EPBC Act are periodically reviewed in consultation with industry and community stakeholders, allowing for necessary adjustments to meet environmental, social, and economic objectives, and that the frequency of those reviews be stated.

## Addendum: EIANZ Feedback on March 26-28 consultation



Environment Institute  
of Australia and  
New Zealand Inc.

3 April 2024

Nature Positive Taskforce  
Department of Climate Change, Energy, the Environment and Water  
Ngunnawal Country  
John Gorton Building  
King Edward Terrace  
Parkes ACT 2600

### RE: Fourth round consultation on Australia's new national environment laws – EIANZ feedback

Dear Taskforce,

Thank you for the opportunity for The Environment Institute of Australia and New Zealand (EIANZ) to participate in the fourth invitation-only consultation on Australia's new national environment laws.

EIANZ welcomes the inclusion of a definition of 'nature positive' in the papers shared for consultation on the 26-28 of March. The proposed definition recognises that an increase in the resilience and integrity of *species and ecosystems* is required to advance an overall nature positive outcome. However, we recommend this be strengthened by including a stand-alone definition of ecosystems as including people and communities, i.e. 'socio-ecological ecosystems', rather than relying on the definition of ecosystems as a sub-set of the definition of *environment*.

Alternatively, and preferably, the definition of 'nature positive' could be broadened to improvement of the *environment*, thus including species, ecosystems, people, and social systems. Ultimately, nature positive will not be achieved without careful consideration of sociological impacts, and we recommend the Department make this connection clearer in the next draft.

We also suggest that there is room to communicate a bolder vision in the definition of nature positive – one more in line with the Kunming-Montreal Global Biodiversity Framework. We discuss this further in our original submission, included above.

Best regards,

Jonathon Miller  
Executive Officer  
Environment Institute of Australia and New Zealand

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ABN 39 364 288 752 | NZBN: 9429041314777

## Appendix 1 : EIANZ Feedback on November consultation

14 November 2023

Nature Positive Taskforce  
Ngunnawal Country, John Gorton Building  
King Edward Terrace, Parkes ACT 2600 Australia  
Department of Climate Change, Energy, the Environment and Water



Environment Institute  
of Australia and  
New Zealand Inc.

Dear Taskforce,

### **RE: Initial consultation on Australia's new national environment laws – EIANZ feedback**

Thank you for the opportunity for the Environment Institute of Australia and New Zealand (EIANZ) to participate in the consultation on Australia's new national environment laws. This submission has been developed collaboratively by our representatives, Carolyn Cameron and Dr Ailsa Kerswell, with endorsement from the EIANZ Board.

The EIANZ is a non-profit, multi-disciplinary association of environmental practitioners. Its membership is represented by a diverse range of technical disciplines including scientists, policy makers, engineers, lawyers, and economists. We advocate for environmental knowledge and awareness and advancing ethical and competent environmental practice.

Overall, we recognize the considerable thought and effort that has gone into reforming the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and are pleased to see the reform agenda progressing. The material provided during the consultation demonstrates some of the ways in which the Australian Government is planning to strengthen and streamline Australia's environmental laws in response to the Independent Review of the EPBC Act, undertaken by Professor Graeme Samuel AC (the Samuel Review) and as outlined in the Government's Nature Positive Plan. We recognise that more information is still to come.

However, we are concerned the proposed inclusions are not sufficient to deliver demonstrable change either for improving outcomes for the environment nor for streamlining how business and industry interact with these laws. We discuss these issues further below and provide recommendations for improvement. This is not to say there are not positive inclusions in the proposed new law and we also highlight these below.

We provide a thorough analysis and suggestions below and our representatives would be pleased to discuss any matters raised in this feedback with the Taskforce. We also look forward to continuing to be part of the consultation process, with the view to providing constructive feedback aimed towards achieving better outcomes for both the environment and those that interact with our national environmental laws.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vicki Brady'.

Vicki Brady  
President  
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## Detailed feedback on initial tranche of consultation material

This feedback is structured per the key themes of the material presented. We have provided feedback generally under the headings of:

- *What's good* – areas of the new laws that we support and think should be retained
- *What needs improvement* – areas of the new laws that should be reconsidered, particularly to facilitate better outcomes for the environment and streamlining for those who interact with these laws
- *Considerations for implementation* – suggestions based on our unique perspective as environmental practitioners i.e. we are the people that implement these laws on a day-to-day basis. The success of any new laws will be founded on effective implementation.

### Environmental impact assessment and approvals

#### *What's good:*

Explicit requirements for proponents to demonstrate how they have avoided and mitigated impacts to Matters of National Environmental Significance (MNES) during project design – this brings the new Act into line with international best practice for impact assessment.

Clear prohibitions on approving actions and robust definitions for unacceptable impacts, Critical Protection Areas and viability – this is an important inclusion that provides clear 'rules' around when decision makers must say no to a project, which are not currently in the EPBC Act.

One step process for a decision on a project – this should provide streamlining given the statutory timeframes for decision making are now shorter for a 'standard impact pathway' compared to the current controlled action pathway. However, see implementation considerations below.

#### *What needs improvement:*

The 'test' for requiring approval under the new laws is the same as the EPBC Act, i.e. significant impacts. The definition of a significant impact appears to continue to be defined per the current EPBC Act Significant Impact Guidelines 1.1. These guidelines are now 10 years old and what is a significant impact continues to be debated during project assessments, with many impacts to MNES being considered not significant whilst contributing to the overall loss and decline of threatened species habitat (in particular and other MNES more generally). These guidelines also do not address new concepts such as irreplaceability or viability (which are important inclusion in the new Act). It is recommended that either (or both) the definition of a significant impact is clarified and strengthened or the Significant Impact Guidelines 1.1 are reviewed and updated to align with the new Act, contemporary best practice and considering the recommendations of the Samuel Review.

It appears the test for what is for a low versus a standard impact pathway is the significance of impacts. Given the potential for interpretation of whether impacts are significant or not (per above comment), this risks proponents planning on a low impact pathway when decision makers may consider the project is on a standard impact pathway. In order to still deliver a streamlined process, there must be good clarity about what is a low impact pathway and a process for a project to get 'transferred' from low to standard impact pathway, if necessary.

### *Implementation considerations:*

Streamlining and better environmental outcomes will be best achieved via clear, robust and evidence-based policy guidance and tools to support impact assessment (both for proponents and regulators). In addition to strengthening the Significant Impact Guidelines 1.1, the raft of other related policy guidance should also be reviewed and updated, to support the new environmental laws.

The capacity of the Environment Protection Agency (EPA) as the new regulatory arm of government must be considered and considerably strengthened, particularly if shorter statutory timeframes and robust decision making are to be achieved. Considerable effort needs to be invested in the employees of this new organisation to ensure that they have adequate skills in undertaking these assessments.

Clear guidance on the expectations of what information proponents will need to provide to support a standard impact pathway approval will be critical to achieving streamlining and preventing lengthy 'stop the clock' timeframes.

### Recovery Strategies

#### *What's good:*

Concept of Protection Statements – these will be useful tools for guiding both upfront design of projects, impact assessment and decision making and design of recovery actions/contributions. They should also be used to underpin areas such as bioregional planning.

Critical Protection Areas (CPAs) definition (including definitions for irreplaceability and persistence) is also strong and aligned with current scientific thinking. We are also very supportive of impacts to these areas being prohibited – acknowledgement that some areas are irreplaceable and, therefore, cannot be impacted is a considerable improvement on the current EPBC Act. See also comments regarding implementation.

#### *What needs improvement:*

Lack of recognition of likely/ projected impact of foreseeable climate change on habitats when describing CPAs – the only time the current draft refers to climate change appeared to be in the draft National Standard for Restoration Actions and Restoration Contributions when referring to a 'high certainty of projected gain', the proposed definition of which includes '... restoration actions will restore habitat with a high confidence of success, taking into consideration the future adverse effects of climate change'. Given that climate change is already recognised in many conservation planning documents, we recommend it must be explicitly included in future recovery strategies.

Recovery of threatened species and communities has been consistently under-funded for decades. We recommend the new Act includes provisions for adequate funding of all recovery strategies.

#### *Considerations for implementation:*

Similar to our comments on environmental assessment and approvals under the new Act, there is a large body of work that will be required to support the proposed recovery strategy reforms. This must be well funded, resourced and undertaken by suitably qualified professionals. In particular, given how consequential CPAs will be, we strongly recommend these areas are spatially mapped,

where possible, and where not, explicated species-specific definitions are developed to allow proponent and decision makers to be very clear about what is a CPA and what is not.

Building on the above, we note that many of the current conservation planning documents are outdated and will require review and an update; both to make them align with the currently best available information on species/communities and also as a key implementation tool for restoration. Many include recovery actions that are primarily related to more research, survey and monitoring, or focus on landholder engagement. In many cases the direct, on-ground actions to support recovery are lacking. This will present a challenge for implementing restoration actions and contributions under that National Environmental Standard (addressed below).

Further to this, we would recommend the Taskforce undertake some 'stress testing' of the concept of CPAs, if this has not already been done. What areas would be considered CPAs, where are these located and how likely is it that they can be avoided – if future decision makers must say no to projects that would impact CPAs (which we fully support), then the wider implications should be explored, particularly with reference to the need to rapidly expand the renewable energy sector and the current housing crisis.

### MNES National Environmental Standard

*What's good, and recommendations for improvement:*

The MNES standard generally seems robust and is aligned with international best practice of employing the mitigation hierarchy and ensuring meaningful involvement of First Nations peoples in decision making. Whilst the standard speaks to 'relevant decisions' it currently appears to be highly geared towards project-level decisions. Per the Samuel Review, we recommend the standards clearly apply to all decision making undertaken under the new Act.

Explicitly acknowledging a requirement to address detrimental cumulative impacts and threatening processes is a clear improvement on the current EPBC Act and should be retained. There may be more information to come (if so, please provide in the next tranche of consultation); however, the current statement seems 'a bit light on' compared to the explicit suggestions of the Samuel Review and the acknowledged role that cumulative non-significant impacts play in the decline of threatened species and communities. We recommend the approach to addressing cumulative impacts to MNES is strengthened to truly deliver net positive outcomes for MNES (see next point).

We are supportive of the standard requiring net positive outcomes for MNES. However, the current proposed Act is unlikely to deliver such an outcome, given that 1) only significant residual impacts must be offset and 2) cumulative impacts do not appear to be addressed meaningfully. We recommend the approach to delivering net positive outcomes is strengthened via revisiting these two key areas.

The MNES standard requires relevant decisions to 'Enable and where relevant provide for monitoring, evaluation and reporting of outcomes from MNES'. We are very supportive of monitoring, evaluating and reporting (MER) being included in the standard. However, we suggest the requirement could again be strengthened to provide for mandatory and robust MER, given this is the key mechanisms via which achievement of the outcomes of the standard will be demonstrated.

We are pleased to see terms like baseline, like-for-like and habitat being explicitly defined.

## Restoration Actions and Contributions National Environmental Standard

We note that the new Act does not appear to use the word 'offsets' but rather refers to restoration actions and restoration contributions. We are interpreting this as being an acknowledgement of the challenges with offsets and a refocusing on offsets that are geared towards restoration rather than simply locking up areas of habitat that have little scope for achieving an environmental gain. However, we remind the Taskforce that internationally accepted definitions of the mitigation hierarchy<sup>1</sup> are to avoid – minimise – rehabilitate or restore – offset. Therefore, there is a serious risk that the currently proposed approach is inconsistent with international best practice in eliminating offsets from the scope of the Act, i.e. the new Act only includes the first three steps of the hierarchy, ending with restoration. We suggest this is not what is intended, but recommend this risk is considered.

### *What is good:*

It is important that climate change risks are included in this standard – this is the only place we could see mention of this, so far.

As above, we are pleased to see that restoration will only be allowed after all measures to avoid and reduce impacts have been demonstrated – it is important that this is embedded in the new Act. However, also note that restoration will only be required for significant residual impacts to MNES – refer to comment above regarding this and our suggestion for strengthening.

We are supportive of the clear link between the proposed restoration statements and recovery actions/contributions (noting the implementation challenges discussed above). The definition of direct restoration actions is also inclusive of all reasonable approaches currently considered to be effective.

The list of what must be delivered by restoration actions (e.g. feasible, like-for-like, additional) is consistent with international requirements for best practice offsets.

The ability to deliver endorsed advanced restoration actions prior to the commencement of an action is an improvement on the current EPBC Act offsets policy, which allows for advanced offsets but without a mechanism for these to be implemented. We recommend these are incentivised, particularly if restoration contributions are taken forward. Having projects in place ahead of impacts occurring is a key element of delivering net positive outcomes for MNES.

### *What needs improvement:*

As noted above, restricting the scope of restoration to only account for significant residual impacts is the status quo per the current EPBC Act and should be strengthened.

We understand the mechanism for determining the projected gain of xx% above baseline will be determined using the current EPBC Act offsets calculator, with an expected output of 100+xx% output. This should be clarified, with a review of the functionality and appropriateness of the offsets calculator, as well as a clear justification for what the xx% metric will be. We note that in jurisdictions such as the United Kingdom, a blanket percentage has been adopted (in the UK 10%); however, we recommend the Australian Government consider whether a blanket uplift is

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<sup>1</sup> For example the IUCN Policy on Biodiversity Offsets, available here:  
[https://www.iucn.org/sites/default/files/2022-06/iucn\\_biodiversity\\_offsets\\_policy\\_jan\\_29\\_2016\\_0.pdf](https://www.iucn.org/sites/default/files/2022-06/iucn_biodiversity_offsets_policy_jan_29_2016_0.pdf)

appropriate or whether a more nuanced approach could be taken, for example a larger required uplift for endangered versus vulnerable species, bioregionally-based metrics.

We see more risks than benefits from the proposed restoration contributions (basically an offsets fund). It is likely to be a very attractive option for proponents to 'pay and walk away' thereby shifting the obligation and risks of restoration onto the Australian Government and/or a Government endorsed Trust. In order for this pathway to be supported by EIANZ, we suggest:

- The restoration contribution framework must be carefully designed, accounting for all the learnings from other, similar frameworks in Australia (e.g. Qld financial payment scheme, NSW biodiversity offsets framework, Pilbara environmental offsets fund).
- Payments cannot be an acceptable option, if like-for-like restoration cannot be delivered. This approach will be inconsistent with the MNES standard (net positive outcome for impacted protected matters). Similarly, if restoration actions for a particular matter cannot be delivered, then we suggest the impacts themselves should be considered unacceptable and not go ahead.
- Pricing must be sufficient to deliver both the required biodiversity outcomes and respond to unforeseen events. Most previous similar schemes in Australia and internationally have been underpriced and these lessons must be learned in any restoration contributions pricing structure.
- The 3-year lag between payment and the commencement of actions must be avoided. This is inconsistent with achieving net positive outcomes for MNES and is not aligned with the requirement for restoration actions nor the current EPBC Act offsets policy (whereby offsets must be in place before an action commences). Endorsed advanced restoration actions are a mechanism to remove the lag.

#### *Implementation considerations:*

The proposed restoration actions and contributions will make the EPBC Act Offsets Policy obsolete. Given the importance of offsets/restoration both for achieving environmental outcomes and project approvals for proponents, new policy guidance must be developed as a priority.

We strongly recommend that all restoration action / contribution proposals be designed by suitably qualified professionals, with an appropriate track record of delivering high quality, scientifically robust and ethical offsets proposals.

#### National Environmental Standard for Data and Information

This standard appears evidence based and sound. We support the current proposed standard.

#### Community Engagement and Consultation National Environmental Standard

This current draft Standard is totally inadequate. It is recommended that drafters go back to the accepted first principles of public participation in environmental decision-making. Similar to the robust approach to the foundations for the draft Data and Information Standard, there are conventions, standards and established good practice guidelines which should be the basis for Australia's National Environmental Standard for Community Engagement and Consultation. A list of international best practice standards is provided to inform the redrafting of the Standard.



The role of community engagement and public participation has long been an area of contention in environmental decision making. The Samuel Review found in Section 5 that the community participation is limited to process – they do not feel heard.

Drafting a new Act provides a fundamental opportunity to rethink and establish a strong foundation for community input into plan making as well as project-based decision making. Currently the draft Standard is primarily focused on directing procedures for project proponents, without thinking more broadly how or why those logistical directions reflect contemporary internationally accepted approaches to effective public participation in environmental decision making.

There is no mention in the draft Standard of community involvement in listing decisions or in developing protection statements, and only a passing reference to strategic assessments and regional planning with regards to climate change and ecosystem services. Here, obviously, the role of affected communities in plan initiation, review of alternatives, assessment and review is fundamental. For example, the Aarhus Convention suggests for plan making to 'provide for early public participation, when all options are open and effective public participation can take place.'

Please find links to relevant best practice principles from the International Association of Impact Assessment:

<https://www.iaia.org/uploads/pdf/SP4.pdf>

[https://www.iaia.org/uploads/pdf/SP12\\_Public%20participation%20in%20IA%20Follow%20up.pdf](https://www.iaia.org/uploads/pdf/SP12_Public%20participation%20in%20IA%20Follow%20up.pdf)

[https://www.iaia.org/uploads/pdf/SP9\\_Indigenous\\_Peoples\\_Traditional\\_Knowledge.pdf](https://www.iaia.org/uploads/pdf/SP9_Indigenous_Peoples_Traditional_Knowledge.pdf)

Also please see the link to an international Standard on Stakeholder Engagement:

<https://www.accountability.org/standards/aa1000-stakeholder-engagement-standard/>

EIANZ has members who are internationally acknowledged experts in this complex area of public policy who could provide targeted assistance to help the Department craft a world class Standard on this vital component of robust environmental decision making. We would welcome the opportunity to support the Department with this Standard.



## Appendix 2: EIANZ Feedback on December consultation



Environment Institute  
of Australia and  
New Zealand Inc.

18 December 2023

Nature Positive Taskforce  
Department of Climate Change, Energy, the Environment and Water  
Ngunnawal Country  
John Gorton Building  
King Edward Terrace  
Parkes ACT 2600

Via email: [environmentlawEPATaskforce@dcceew.gov.au](mailto:environmentlawEPATaskforce@dcceew.gov.au)

Dear Taskforce,

### **RE: Second round consultation on Australia's new national environment laws – EIANZ feedback**

Thank you for the opportunity for the Environment Institute of Australia and New Zealand (EIANZ) to participate in the consultation on Australia's new national environment laws. This submission has been developed collaboratively by our representatives, Carolyn Cameron and Dr Ailsa Kerswell, with endorsement from the EIANZ Board.

The EIANZ is a non-profit, multi-disciplinary association of environmental practitioners. Its membership is represented by a diverse range of technical disciplines including scientists, policy makers, engineers, lawyers and economists. We advocate for environmental knowledge and awareness, advancing ethical and competent environmental practice.

The material reviewed in this second round of consultation included both new material, updated policy proposals presented during the tranche one consultation and draft legislation. We have therefore provided feedback which is further to our previous submission (letter dated 14 November), much of which is still relevant. We also highlight key considerations in the new material.

We note that the policy documents provided as part of this second round of consultation will be made publicly available in January 2024. Therefore, we will consider this material more fully in consultation with our EIANZ colleagues and will provide more detailed feedback in the new year. This will build on our initial key points below.

### **Feedback further to our previous submission**

Much of the feedback in our previous letter still holds, and we note the following:

- We are pleased to see that climate change is more fully addressed and better represented with the new policy statements, particularly regarding regional planning.
- We continue to have concerns about the consultation national environmental standard. The revised standard still does not provide for consultation and community participation outside of project-related decision making e.g. in recovery strategy processes. We elaborate on this below with regard to regional plans.
- We continue to stress the need for internal coherence across all the national environmental standards and the new Act. Each of these instruments must talk to each other and be able to be delivered concurrently.

- Additionally, the national environmental standards should apply to *all* decision making under the Act, i.e. be more strongly embedded in the Act than the current proposal to ensure project-level decisions are 'not inconsistent with' the standards or only adopted at the discretion of the decision maker. The standards should apply holistically and stringently, as recommended by Dr Samuel in the independent review.
- While we recognise the tight frame the Taskforce is operating within, we recommend policy drafters take a step back and review their recommendations against those of the Samuel Review. We consider the outcomes of the independent review robust and evidence-based and if implemented in full, should lead to better environmental and operational outcomes.

### **Feedback on new issues**

Our feedback on new issues is focused primarily on strategic assessments, regional planning and landscape scale decision making. We will elaborate on the points below and the other policies presented (accreditation, EPA, etc) in the new year and after consultation with the wider EIANZ membership.

#### Strategic assessment policy paper

We are supportive of the following concepts / elements included in the strategic assessment policy paper:

- Gateway process to commence a strategic assessment
- The existence of and role for an 'approval holder' being included
- A process for enabling minor and major variations to an endorsed plan being included
- The role of and risks from climate change being explicitly addressed.

We note the policy paper suggests that strategic assessments will only encompass a 'strategic plan' rather than the current scope under Part 10 of the EPBC Act to consider a policy, program or plan (PPP). We strongly recommend the proposed scope of strategic assessments under the new Act includes PPPs, as this is aligned with international best practice<sup>1</sup> and indeed consistent with environmental protection legislation in other Australian jurisdictions<sup>2</sup>. The existence of a gateway for strategic assessments should allow for any PPPs that are not compatible with a strategic assessment approach to be diverted at the outset.

#### Decision making at a landscape scale policy paper

The explicit inclusion of processes to make decisions at a landscape scale is a beneficial inclusion in the new Act and has our support.

The process setting out mapping and planning is a good foundation to landscape scale decisions. However, we also note:

- During implementation, a lack of data to inform mapping should not prevent the implementation of future steps and decisions, noting that uncertainty due to data deficiencies should be accounted for in robust systems and processes.
- In addition to mapping and planning, there also needs to be an assessment pathway that allows for an understanding of potential impacts of development and has iterative

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<sup>1</sup> [https://www.iaia.org/uploads/pdf/Fastips\\_7SEAlternatives.pdf](https://www.iaia.org/uploads/pdf/Fastips_7SEAlternatives.pdf).

<sup>2</sup> E.g. the Northern Territory *Environment Protection Act 2019* allows for the assessment of a policy, program, plan or methodology via a strategic assessment pathway.

feedback loops e.g. plan – assess – revise the plan. See also our comments on regional planning below.

#### Regional planning policy paper and draft national standard

We are supportive of the concept of regional planning and agree this has the potential to be a useful tool in contributing to better resolving land use planning challenges, particularly in areas of development pressure.

This policy paper focused on the process to make a regional plan. However, it does not include the need for an assessment of impacts and we strongly recommend this omission is addressed in the new Act. Impact assessment is necessary, both to develop a robust regional plan via iterative planning and assessment (as noted above) and to ultimately set the conditions for the regional plan (include restoration measures).

The plan making process does not appear to provide an avenue for community consultation in a meaningful way during developing the regional plan. We recommend the process for stakeholder participation in regional plan development is strengthened – please see our wider suggestions on this issue in our previous letter. Stakeholder participation during plan development is particularly necessary given the role of regional planning in addressing land use conflict where stakeholders have competing priorities. We note the Queensland government has a heavy focus on stakeholder engagement to underpin their Renewable Energy Zone Readiness Assessments, and this may offer a concrete example of how such a process may work.

We note the scope of the regional plan will include conservation zones and development zones, but there may also be areas outside of these zones within the regional plan area. This will require careful thought as to what/if any actions may be allowable within these 'undefined' areas and how they may be authorised. For example, would new action be somehow subject to the conditions of the regional plan or would they need a standalone project approval? Also, how would existing uses be incorporated e.g. farming, particularly as we know the cumulative impacts associated with these historic 'deaths by a thousand cuts' have collectively had significant impacts on Matters of National Environmental Significance (MNES)? For further rationale, please see this paper by the Wentworth Group of Concerned Scientists: [Preventing Death by a Thousand Cuts](#).

Further on the scope of regional plans, we note the policy is not clear about whether net positive outcomes are required for some or all MNES. A key consideration in regional scale assessments must be trade-offs, whereby the most 'important' values are protected, but this may come at the expense of other values which may be more robust to disturbance. We recommend this is clarified in the new Act.

We note the requirement for regional plans to include 'restoration measures that *more than* compensate for the impacts on MNES of priority development actions in the development zone'. We recommend that careful thought is given to how this is defined, achieved and measured. For example, what is 'more than' and how does this relate to the MNES national environmental standard requirement around net positive. Additionally, and as noted above, impact assessment will be required during plan making in order to quantify impacts and then determine appropriate compensation and its magnitude.

We look forward to continuing to be part of the consultation process, with the view to providing constructive feedback aimed towards achieving better outcomes for both the environment and those that interact with our national environmental laws.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Vicki Brady".

Vicki Brady  
President  
Environment Institute of Australia and New Zealand Inc.



## Appendix 3: Feedback on February consultation

6 March 2024

Nature Positive Taskforce  
Department of Climate Change, Energy, the Environment and  
Water Ngunnawal Country  
John Gorton Building  
King Edward Terrace  
Parkes ACT 2600



Environment Institute  
of Australia and  
New Zealand Inc.

### RE: Third round consultation on Australia's new national environment laws – EIANZ feedback

Dear Taskforce,

Thank you for the opportunity for the Environment Institute of Australia and New Zealand (EIANZ) to participate in the consultation on Australia's new national environment laws. This submission has been developed collaboratively by our representatives, Carolyn Cameron and Naomi Maxwell, with endorsement from the EIANZ Board.

EIANZ is a not-for-profit, multi-disciplinary association of environmental practitioners. Its membership spans a diverse range of technical disciplines including scientists, policy makers, engineers, lawyers and economists. We advocate for environmental knowledge and awareness, and ethical and competent environmental practice.

The material reviewed in this third round of consultation included new material, translation of previous policy papers into draft legislation, and draft National Environmental Standards. We note the draft Standards on Regional Planning and Community Engagement and Consultation have not changed since the December papers, despite considerable commentary on opportunities for improvement and alignment.

We also note that the policy documents provided as part of this third round of consultation will be made publicly available on 22 March 2024. EIANZ is preparing a more comprehensive review of all publicly released papers for submission by the end of March.

Please find below our initial feedback on the third round of consultation for your consideration.

#### 1. Nature Positive and Net Positive

EIANZ supports the Australian Government's ambitious Nature Positive agenda. Achieving Nature Positive will require complementary measures to improve the state of our environment, which is currently in decline.

EIANZ acknowledges that Nature Positive cannot be achieved solely through the proposed new environmental laws. However, the new laws will play a pivotal role in signaling the Australian Government's role in environmental standard setting and coordination of environmental investment across jurisdictions.

Unfortunately, there is currently a disconnect between the Australian Government's Nature Positive aspiration and the requirement for Net Positive outcomes outlined in the draft legislation. Achieving Nature Positive requires an overall improvement in the state of our environment, whereas Net Positive outcomes only require an improvement from a baseline of expected future

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decline. Given the current trend of decline in Australia's environment, a test of Net Positive is unlikely to result in Nature Positive outcomes.

## **2. Complementarity between National Environmental Standards**

Complementarity between the Standards will be fundamental to effective administration of the new Act. Currently this is assumed by Taskforce officers but is missing in practice. An example is the contradiction between the limited focus of the Community Engagement and Consultation Standard on consultation procedures for specific project proposals, and the stated aspiration of the regional planning team to use the Community Engagement and Consultation Standard to guide consultation on plan making.

## **3. Complementarity between sections of the new draft laws**

EIANZ notes the significant undertaking of drafting new environmental laws and that this process takes time. However, as currently drafted, it is difficult to provide informed comment as some sections appear to require further work to clearly relate to other sections of the Act (e.g., the current exemption clauses).

## **4. Capacity and Capability of Environment Protection Australia**

The successful implementation of new environment laws will require capacity and capability uplift of officers within Environment Protection Australia. This is particularly important as a significant amount of policy work will be required to inform the administration of the new laws.

The Department should be supported through additional funding to identify, train and sustain an adequate workforce able to give practical effect to the outcomes proposed by the new laws.

### ***Thematic regional planning issues***

#### **1. Simplicity of regional planning 'footprints'**

Currently the fundamental building block of the proposed regional plans will be 'Development' and 'Conservation' zones based on the location of protected matters. This simplistic map-based duality will be inadequate to ensure Net Positive outcomes for protected matters.

Better practice for regional planning is to inform any zoning designation using the values to be protected. This allows expression 'zoning' to be used in a nuanced way with objectives for each value and relevant systemic considerations. This then enables further examination of threats and proposed responses for each value. The regional plan is therefore able to specify outcomes for the overall plan and synthesise the value-based information into a map and robust decision-making framework. This approach has been used effectively by NRM groups around the country for decades.

#### **2. Limited Consultation requirements**

Meaningful community engagement will be required throughout the regional planning process to identify and prioritise regional values and to consider future development scenarios that adequately consider social, economic and environmental objectives in decision-making. This is currently missing from the Standards. For example, the Regional Planning Standard has one sentence on consultation and engagement:

*Regional Plans will be developed through engagement with First Nations groups, local communities, local government and other relevant stakeholders. This engagement will be **guided by relevant National Environmental Standards.***

Simultaneously, the Standard on Community Engagement and Consultation is silent about public involvement in plan making; only providing direction for consulting on individual projects.

Currently, consultation on regional plans is only required for completed draft plans. For this process to be successful, consultation will require more than 30 business days. The process of finalising a regional plan, which includes areas designated for conservation, is closer to consultation on the declaration of a Commonwealth Reserve. Acknowledging the significance of this process, declarations of reserves currently require 60 days consultation with the community prior to a declaration being made (EPBC Act s352(5)).

In addition, the consideration of values in a regional plan means the Minister should be required to take advice from advisory bodies relating to the values to be impacted. If the values to be impacted relate to groundwater resources as a result of coal seam gas development, consultation with Independent Expert Scientific Committee on Unconventional Gas Development and Large Coal Mining Development (IESC) would be appropriate. If the values impacted are heritage values, consultation with the Australian Heritage Council (AHC) would be appropriate. While we note the Minister has the discretion to seek advice from the AHC in the current draft, we think it is appropriate that this is a requirement for making plans that consider heritage values; similar to the current specification to seek the advice of the IESC.

### **3. Assessing the impacts of implementing a regional plan**

The new laws should require the direct, indirect and cumulative impacts of implementing regional plans to be assessed. This requirement belongs in the Act (rather than in the Regulations where it currently sits). The scope of the assessment can be guided by policy documents.

Two types of assessments are relevant for regional planning. Firstly, the social, economic and environmental impacts of proposed development and conservation scenarios should be considered to ensure decision-makers are informed of the implications of making the regional plan. This should include consideration of future land use and competing values, such as biodiversity hotspots and prime agricultural land. In the absence of this assessment, regional planning will not be able to resolve future competing land use and support for delivery of positive environmental outcomes will be reduced. This issue has been demonstrated through numerous current strategic assessments.

Secondly, the current proposed regional planning laws will result in a pseudo-accreditation of state and territory processes. As a result, the impact assessment should also consider the adequacy of the proposed implementation architecture. Like the requirements of accreditation processes under the proposed new laws, this should include an assessment of the proposed implementation mechanism (e.g., a state planning law) and the capacity of the responsible jurisdiction to implement that law.

### **4. Five-yearly review**

Five-yearly reviews are an important mechanism to track whether regional plans are delivering the proposed outcomes. These reviews should consider both performance assurance (i.e., was



the regional plan implemented as expected) and outcomes assurance (i.e., did implementation of the regional plan deliver the outcomes as expected).

EIANZ recommends that the five-yearly review be the responsibility of the regional planning partner to instigate and that it be linked to the ongoing approval of activities under the regional plan. That is, should the review be completed, and the regional plan is found to be effective, implementation of the regional plan continues. Should the review be completed, and the regional plan found to be failing to deliver the required outcomes, the review should automatically trigger the revision function. Should the review not be completed within the five-year period, the regional plan (including development under the plan) should be automatically paused until the review is completed.

This approach puts the onus of reviewing the plan on the regional planning partner and incentivises the completion of regular reviews. This also reduces the pressure on the Australian Minister for the Environment and Water to revoke an approval due to systematic non-compliance with the plan.

We look forward to continuing to be part of the consultation process, with the view to providing constructive feedback aimed towards achieving better outcomes for both the environment and those that interact with our national environmental laws.

Best regards,



Vicki Brady  
President  
Environment Institute of Australia and New Zealand

