

A photograph of several wind turbines in a field at sunset. The sky is a mix of orange, purple, and blue. The turbines are silhouetted against the bright horizon.

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

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



Environment Institute
of Australia and
New Zealand Inc.

About EIANZ

The Environment Institute of Australia and New Zealand (EIANZ) is Australasia's peak body for environmental professionals. We represent members from a diverse range of technical professions including scientists, policy makers, engineers, lawyers and economists. Our members are at the forefront of issues such as biodiversity and climate change, and many 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 by a cross-section of EIANZ members with expertise in impact assessment, strategic environmental assessment and regional planning, ecology and environmental accounting.

Introduction

EIANZ welcomes the establishment of Environment Protection Australia and Environment Information Australia. Both agencies will have an important role to play in the transition to nature positive.

However, these new entities can only be effective if they are adequately resourced and supported by reforms to the EPBC Act. In order for their work to be meaningful, it is therefore crucial that the Government proceed with the third stage of the nature positive reforms, which involves reforms to the Act and development of National Environmental Standards as recommended by the Samuel Review.

As we noted in [our submission](#) made in April 2024 to the consultation on the Australian Government's Nature Positive reforms, the Government's stated aim to halt decline and repair nature requires a bold and holistic approach to nature positive that has not yet been captured by reform proposals.

By definition, 'nature positive' refers to an approach or state where human activities contribute positively to the conservation and enhancement of biodiversity and ecosystems. It signifies a shift from merely minimising harm or impact on nature, towards actively restoring and promoting ecological health and resilience. We recommend the Government be guided by this principle in drafting its current and future legislation.

It is also vital that the nature positive reforms are in line with Australia's international obligations under the UN Convention on Biodiversity, including the Kunming-Montreal Framework and the agreement in June 2024 by Australia's Environment Ministers to endorse measures to meet Framework Targets.

In the submission below, we outline our specific feedback on, and recommendations for, both pieces of proposed legislation being examined by this Inquiry.



Nature Positive (Environment Protection Australia) Bill 2024

The Nature Positive (Environment Protection Australia) Bill proposes to establish a statutory agency to be known as Environment Protection Australia (EPA), to be led by a Chief Executive Officer (CEO).

Establishing Australia's first national independent EPA is critical to ensuring new environment laws can be effectively administered. It is vital that this body be adequately resourced, including with the development of meaningful National Environmental Standards.

We welcome the requirement in clause 60 of the proposed Bill for regular operational reviews of the performance of the EPA.

EIANZ Recommendations:

1. The qualification requirements for the EPA CEO should refer to 'environmental law', rather than 'law' and 'law enforcement'.

EIANZ supports the requirement for the EPA CEO to have certain qualifications, as listed in clause 44 (b). It should be made explicit that these need to be specialist qualifications, including in environmental law.

2. The government should consider embedding a Board into the EPA structure, to allow for diverse perspectives and avoid undue reliance on one individual.

EIANZ is concerned by the reliance on a single individual (the EPA CEO) for project approval and compliance that would be established by the current Bill. The Bill does attempt to address this by empowering the EPA CEO to appoint advisory committees. However, a board structure would better mitigate the vulnerability of the EPA Chair, who otherwise bears sole accountability for decisions. A board-based approach also offers the advantage of incorporating a diverse range of independent perspectives into decision-making.

3. Regional planning should be explicitly included in the EPA's regulatory functions.

While noting the list of regulatory functions of the EPA in clause 13 is not exhaustive, EIANZ recommends the explicit inclusion of regional planning, given its importance in meeting Nature Positive outcomes. Robust regional plans underpinned by impact assessment and strong community consultation are essential to navigating the social conflicts and unintended environmental impacts that may arise from a given project. Without careful regional planning, progress towards nature positive may be delayed or jeopardised by these flow-on effects.

4. The new EPA must integrate climate considerations into its work, in line with Australia's commitment to achieving net zero emissions.

Unless climate considerations are embedded in the EPA's work, the new agency's work will have the potential to compromise efforts to reduce emissions through the Safeguard Mechanism. This is just one example of a need for an integration framework that ensures all Government policies work in harmony to achieve Australia's stated environmental goals.

5. To ensure the EPA is effective, the reformed EPBC Act should include requirement for applications to be signed off by a suitably qualified and experienced person.

The effective functioning of the new EPA relies on project 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 EPBC Act include a requirement for applications to be signed off by a suitably qualified and experienced person. Evidence of suitable qualifications and experience may include certification by EIANZ's Certified Environmental Practitioner (CEnvP) Scheme; Associate, Full or Fellow membership of EIANZ; or recognition by another relevant industry body or certification scheme.

6. The exact functions of the new EPA with respect to compliance and enforcement should be made clearer in the Bill.

The EPA Bill Overview states that the EPA would undertake regulatory and implementation functions under a range of environmental Commonwealth laws including, but not limited to:

- issuing permits and licences;
- undertaking compliance and enforcement activities; and
- undertaking delegated activities which may include assessments and decision-making about development proposals and approval conditions.

However, the Bill appears mostly focused on the EPA's role in assessments, rather than compliance and enforcement. The Bill seems to outline that the CEO would have more of a compliance role and not so much a role in the assessment. This is confusing and requires further clarification. We suggest the roles and functions of the CEO and EPA in the assessment, compliance and enforcement should be made clearer in the Bill.

The explanatory memorandum for the Bill outlines that the functions of the CEO include regulatory activities including undertaking 'education, compliance and enforcement activities'. EIANZ does not see the need for the CEO to educate on environmental law or compliance and suggests removing the word 'education' in the final bill.

7. 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.



The Nature Positive (Environment Information Australia) Bill 2024

EIANZ welcomes the creation of Environment Information Australia (EIA). This new statutory body provides a unique opportunity to create a comprehensive and accessible source of environmental data.

EIANZ Recommendations:

1. The supplied definition of 'nature positive' should be broadened to include social systems.

The EIA Bill would introduce an independent function for the Head of the EIA to report on Australia's progress towards nature positive. We welcome the inclusion of a definition of nature positive in sub-clause 6(1), which would provide that nature positive is: 'an improvement in the diversity, abundance, resilience and integrity of ecosystems from a baseline'. Diversity, abundance, resilience and integrity are attributes that, when improved, enhance the environmental value of an ecosystem.

The proposed definition recognises that an increase in the resilience and integrity of 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'.

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 this be made clearer in the Bill and in future Nature Positive reform materials.

2. The 'baseline' against which nature positive is to be measured should be defined in this Bill.

The Institute understands that the Government intends to develop the baseline against which nature positive will be measured in future consultation. However, we recommend this baseline be developed now and included in the legislation. We also suggest that there may need to be different baselines for different protected matters and ecosystems, and that these baselines should be high.

To measure nature positive, the EIA will need to be able to demonstrate whether there has been an improvement, and without established baselines this is not possible. Establishing the baselines early and including them in the Bill will also ensure their integrity.

We recognise that this will require significant work to develop and suggest a stakeholder workshop is convened to define these baselines as a priority.

Looking ahead

EIANZ welcomes further consultation on the third stage of the Nature Positive Plan. We also reiterate our support for the findings of the Samuel review, which proposed a comprehensive suite of improvements and highlighted the inadequacy of the current EPBC Act. Recognising the urgency of the need to reverse environmental decline, we call on the government to set a firm timeline for the crucial third stage of its reforms.