



Consultation on National Environmental Laws 21-23 February 2024

The documents outlined below are included in this pack. These documents must not be copied, photographed, or removed from the room.

Papers

- Compliance and enforcement
- Restoration actions and contributions
- Objects/principles of the new Act
- Statutory Committees
- Wildlife Trade and Sustainable Fisheries
- Protected matters – Heritage
- Protected matters – Ramsar
- Protected matters – Biosphere reserves
- Threat abatement
- Conservation planning (minus recovery strategies)
- National Parks

Draft National Environmental Standards

- Matters of National Environmental Significance
- Restoration Actions and Contributions
- Regional Planning
- Data and Information
- Community Engagement and Consultation

Exposure Draft inserts for Nature Positive (Environment) Bill 2023 [NOT PUBLISHED]

- Protected matters, including updates to nuclear trigger & water trigger (as required)
- Minister's call in powers
- Regional planning
- Accreditation of assessment processes
- Definitions for December 2023 and February 2024 Exposure Drafts

To ask questions and send written feedback, please contact the Nature Positive Taskforce via environmentlawEPATaskforce@dceew.gov.au.



= Papers (policy)



= Draft national environmental standards (policy)



= Exposure Draft inserts

National Environment Law

Objects / principles P Matters of National Environmental Significance E

National Environmental Standards

- Matters of National Environmental Significance S
- Restoration actions and contributions S P
- First Nations Engagement and Participation in Decision-making
- Community Engagement and Consultation S
- Regional Planning S
- Data and Information S

Conservation Planning Documents

- Listing reforms P
- Recovery strategies
- Threat abatement P
- Protected matters – Heritage, Ramsar Wetlands and Biosphere Reserves P

Environmental assessments and approvals (EPA)

- Approval decisions for single actions
- Guidance and advice for business

Landscape-scale approaches

- Regional planning E
- Strategic assessments

Accreditation E

- States and Territories
- Commonwealth agencies

Approvals and exemptions (Minister) E

- Approval decisions for 'called-in' actions E
- National Interest Exemption

New independent entities

- Environment Protection Australia
- Environment Information Australia

Permits and compliance

- Wildlife trade and sustainable fisheries P
- Compliance and enforcement P

National Parks P

Transparency, accountability and publication of information

Governance (including statutory committees) P

COMPLIANCE AND ENFORCEMENT

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Environment Protection Australia (EPA) will be responsible for compliance and enforcement functions under the Nature Positive Act and any other Commonwealth environmental legislation that confers powers or functions upon it.

The EPA will be established as an independent regulator, responsible for compliance and enforcement activities under the new legislation. Consistent with the recommendations of the Independent Review, more regulatory tools and stronger powers will be introduced to ensure the EPA can appropriately identify, manage and remedy breaches, and hold proponents to account for their obligations under environmental law.

The new Nature Positive legislation will modernise and update the suite of regulatory tools available for compliance and enforcement activities, as well as increase penalties for breaches in line with community expectations.

A separate compliance and enforcement regime will be established under the Nature Positive (National Parks) Bill.

Power

Compliance and enforcement powers and functions are currently dealt with under Chapter 6, Part 17 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Key policy changes

The Nature Positive Act will have a similar effect to the existing legislation, with the following improvements.

1. *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (RPA)

Effect

Standard regulatory powers from the RPA will be triggered and replicated, with modifications as required to retain and strengthen existing EPBC Act powers and ensure the EPA can effectively enforce Commonwealth environmental laws.

1.1. *Monitoring and investigation powers*

- A modern suite of standard powers in Part 2 and Part 3 of the RPA will be replicated in the legislation, with modifications to retain current EPBC Act powers and ensure the legislation appropriately reflects the specific regulatory context for environmental laws.
- Part 2 of the RPA contains powers to monitor compliance with legislative requirements. It allows an inspector to enter premises for the purposes of monitoring (either with the consent of the occupier or under a monitoring warrant) and exercise monitoring powers. This includes the power to search premises, examine or observe any activity conducted on the premises, inspect and examine anything on the premises, record anything on the premises and inspect and copy any document on the premises.
- Part 3 of the RPA contains powers to gather evidential material relating to a contravention of the legislation. It allows an inspector to enter premises for the purposes of investigation (either with the consent of the occupier or under an investigation warrant) and exercise investigation powers. This includes the power to search premises for evidential material suspected to be on

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the premises, the power to seize evidential material found on the premises, the power to inspect and examine anything on the premises, and the power to record anything on the premises.

- Provisions equivalent to the RPA monitoring and investigation powers and some aspects of the *Crimes Act 1914*, will include, with modification:
 - Additional powers to take and test samples and to secure premises or things on premises;
 - Powers to seize a thing where there are reasonable grounds to suspect it is evidential material in relation to an offence, including with respect to wildlife trade;
 - When executing a warrant, allowing inspectors to use force against persons or things, or a person assisting the inspector to use force against things, as is reasonable and necessary in the circumstances;
 - Powers to allow inspectors to stop and detain an aircraft or vessel;
 - Allowing an inspector to take photographs or recordings of things at the premises incidental to the execution of an investigation warrant;
 - Allowing an inspector to examine and search goods (including baggage) taken on or off a ship or aircraft that travels between Australia and an external territory or other place outside of Australia for the purposes of investigation; and
 - When executing an investigation warrant, allowing inspectors to carry out an ordinary search or frisk search of a person if satisfied there are reasonable grounds to suspect the person has evidential material in their possession.
- Updates will also be made to ensure appropriate coverage of areas where powers are able to be exercised under the new legislation, including the following:
 - Amending the definition of ‘premises’ to allow powers to be exercised in a broader range of circumstances, such as places relevant to matters of national environmental significance or on Commonwealth land;
 - Amending the definition of ‘relevant authority’ to ensure that powers can be exercised in relation to all relevant premises, such as premises outside of Australia, or aircraft, vessels and vehicles.

1.2. Powers of arrest

- The current approach to arrest powers in the EPBC Act will be retained in the new legislation, giving inspectors the power to, without warrant, arrest any person they believe on reasonable grounds is or has committed an offence and where a proceedings by summons against the person would not be effective¹. Current limitations in the EPBC Act will also be retained, including the requirement to produce an identity card and bring the person before a proper authority without unreasonable delay.
- At the time of arrest or soon after, an inspector will have the power to carry out a frisk search of the arrested person if it is suspected on reasonable grounds it is prudent to do so to ascertain whether they have eligible seizable items². An inspector will also have the power to carry out an

¹ Section 430 of the EPBC Act.

² Section 431 of the EPBC Act.

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ordinary search of the arrested person if it is suspected on reasonable grounds they are carrying evidential material³.

1.3. *Civil penalties*

- Part 4 of the RPA will be triggered to apply standard processes for obtaining a civil penalty order. This includes making an application, determination of penalty amount, enforcement of the penalty as a debt to the Commonwealth, managing multiple contraventions and interaction with criminal proceedings. Some modifications will be made to maintain EPBC Act powers, such as extending the liability of landholders who fail to take reasonable steps to prevent a contravention⁴.

1.4. *Infringement notices*

- Part 5 of the RPA will be triggered and apply infringement notice provisions to all civil penalty and strict liability offences in the legislation.
- An infringement officer will have the power to issue an infringement notice setting out the particulars of an alleged contravention. A person who is given an infringement notice can then choose to pay the amount specified in the notice as an alternative to court proceedings. If the person does not pay the amount, court proceedings can be brought against them in relation to the alleged contravention. The RPA will be triggered with some modification, including the introduction of a new tiered infringement notice scheme⁵.

1.5. *Enforceable undertakings*

- Part 6 of the RPA will be triggered to introduce a standard framework for enforceable undertakings, strengthening the approach to the current enforceable undertaking provisions in sections 486DA and 486DB of the EPBC Act.⁶

1.6. *Injunctions*

- Part 7 of the RPA will be triggered and modifications made to apply the approach in current sections 475 and 476 of the EPBC Act to the new legislation.
- The following persons will be allowed to apply for an injunction in relation to a contravention of the legislation:
 - The CEO of the EPA;
 - An 'interested person' (other than an unincorporated organisation); and
 - A person acting on behalf of an unincorporated organisation that is an 'interested person'.
 - An 'interested person' refers to both individuals and organisations:
 - They must be an Australian citizen (or ordinarily resident in Australia or an external Territory) or an organisation incorporated or otherwise established in Australia (or an external Territory); and
 - Their interests must have been affected or would be affected by the conduct; or

³ Section 432 of the EPBC Act.

⁴ Section 496B of the EPBC Act – further information below under 'Particulars'.

⁵ Further information below under 'Compliance Mechanisms'.

⁶ Further information below under 'Compliance Mechanisms'.

- They have been engaged in a series of activities for the protection, conservation of or research into the environment two years before the conduct or the application. For an organisation its objects/purposes must also include the protection, conservation of or research into the environment.

2. Compliance mechanisms

Effect

The approach to existing powers in the EPBC Act that are not covered by the RPA will be retained in the new legislation, with some modification to strengthen and modernise these powers. New powers will also be introduced, similar to powers in other Commonwealth, state and territory environmental legislation.

2.1. Remediation orders and determinations

- The approach to remediation orders in current section 480A of the EPBC Act will be retained in the new legislation, allowing the Court to make an order requiring a person who contravenes the legislation to take an action that repairs or mitigates damage caused to the environment by the contravention. Applications to the Court will be made by the CEO of the EPA, instead of the Minister (consistent with their compliance and enforcement role).
- Remediation determinations in section 480D of the EPBC Act will also be retained, allowing a person who is alleged to have contravened the legislation to be required to take action that repairs or mitigates damage caused by that contravention. Application is currently limited to civil penalties for environmental approvals. In the legislation, this power will be exercised by the CEO of the EPA and strengthened by expanding its application to contraventions of any civil or criminal offence provisions.

2.2. Environment protection orders (EPO)

- A new EPO will be introduced, allowing the CEO of the EPA to issue a person or body corporate with an order in order to secure compliance with the legislation, or to take necessary measures to investigate, prevent and control actions. For example, to secure compliance with a condition of a licence, permit, approval or other permission.
- EPOs are intended for use in response to urgent circumstances where there is an imminent threat of damage to the environment and no time to seek an injunction. The CEO of the EPA must be satisfied that:
 - issuing an order is for the purposes of securing compliance with the legislation (including if there has not yet been a contravention of the legislation);
 - it is being issued for the purpose of preventing or lessening a threat to the environment or human health; and
 - the requirements in the order are reasonable to secure compliance or lessen the threat of harm.

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- An EPO will remain in place until it is no longer required, at which time it must be revoked by the CEO of the EPA⁷.

2.3. Tiered infringement notice scheme

- A tiered infringement notice scheme will be introduced that allows different penalty amounts to be applied to the same alleged contraventions under different circumstances. This ensures that the final penalty applied is a proportionate and effective deterrent.
- Four tiers of penalty will be introduced, with the penalty tier applied determined by whether the offence was committed by a person or corporate entity and whether there have been repeat allegations of non-compliance.
 - Tier 1: 1/5 of the maximum penalty amount
 - Applies to individuals and small business entities who haven't already received an infringement notice for allegedly contravening the same provision within the past 12 months.
 - Tier 2: 1/4 of the maximum penalty amount
 - Applies to individuals and small business entities who have received one or more infringement notices for allegedly contravening the same provision within the past 12 months.
 - Tier 3: 1/3 of the maximum penalty amount
 - Applies to a body corporate who hasn't already received an infringement notice for allegedly contravening the same provision within the past 12 months.
 - Tier 4: 2/5 of the maximum penalty amount
 - Applies to a body corporate who has received one or more infringement notices for allegedly contravening the same provision within the past 12 months.
- For more than one contravention in relation to the same conduct, the penalty will be the amount above, multiplied by the number of contraventions⁸ up to the maximum penalty amount.

2.4. Expanded remit for enforceable undertakings

- Part 6 of the RPA will be triggered to introduce a standard framework for enforceable undertakings. This will allow the CEO of the EPA and an individual or body corporate who has allegedly breached the legislation to enter into an agreement that is enforceable by a court.
- Using standard RPA provisions will strengthen and expand upon the enforceable undertaking provisions in section 486DA of the EPBC Act. These allow for a written undertaking requiring payment to the Commonwealth of a specified amount within a specified period. Application is restricted to civil penalties for environmental approvals.

⁷ Comparable orders are available in other state and territory jurisdictions, such in the *Environment Protection Act 1993* (SA).

⁸ This approach is similar to other Commonwealth legislation, such as the *Foreign Acquisitions and Takeovers Act 1975*.

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- The RPA provisions will allow a written undertaking to require a person take an action or refrain from taking an action, resulting in a broad range of potential agreements being covered. Application of these provisions will then be expanded across the legislation.

2.5. Expanded remit for audits

- Audit powers in the legislation will be strengthened by replicating section 458 of the EPBC Act in relation to directed environmental audits (with some modification) and introducing a new category of compliance audit.
- The CEO of the EPA will have the power to direct a person to carry out an environmental audit if they believe or suspect on reasonable grounds the person has contravened the legislation. Directed environmental audits are currently limited in the EPBC Act to the holder of an environmental authority (the approval of an action under Part 9 or a permit under Chapter 5 of the EPBC Act). The legislation will expand this to any activities covered by the legislation, including a licence, permit, order, approval or any other kind of permission that can be granted.
- Audit powers will then be strengthened by introducing a new category of compliance audit. The CEO of the EPA can require a compliance audit be completed for any action purported to be done under the new legislation, without being required to give notice reasons for their decision. This is intended to be a flexible tool that allows the EPA to effectively monitor compliance with the legislation.
- The CEO of the EPA will create a register of independent auditors, who will be appointed to carry out any audits under the legislation. This will replace section 459 of the EPBC Act, which allows the holder of the environmental authority to appoint an auditor and arrange for it to be carried out. This will provide a greater level of assurance through the use of independent auditors and create a pool of qualified auditors who can assist with both compliance and environmental audits under the legislation.

3. Penalties and offences

Effect

A new penalty regime will be introduced that significantly increases the maximum civil and criminal penalties for individuals and body corporates. The new penalties regime will amend both civil and criminal penalties across the legislation.

Ultimately the amount of penalty imposed will be determined and imposed by a relevant court, up to the maximum penalty amount in the legislation for that offence.

Maximum civil penalties will increase to align with maximum penalty amounts provided in other Commonwealth statutory schemes. This includes using a calculation of the benefit derived or detriment avoided by a person or body corporate as a result of their non-compliance, or an amount representing a percentage of a body corporate's annual turnover at the time of the breach. In cases of extreme contravention, these calculations could result in a Court awarding a penalty to a body corporate up to a maximum of \$782,500,000.⁹ Additional tiered aggravated criminal offences will be introduced.

⁹ This penalty range aligns with high impact penalty regimes in other Commonwealth legislation, such as the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

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3.1. Current penalty settings

- The current maximum penalties in the EPBC Act are 1,000 penalty units¹⁰ for criminal offences (\$313,000) and 5,000 penalty units for civil contraventions (\$1,565,000), with a multiplier applied for bodies corporate.

3.2. Civil penalty formula

- A new standardised civil penalty formula will be introduced for more serious civil penalty contraventions in the legislation (for example, taking an action without an appropriate approval that has a significant impact on a declared matter of national environmental significance)¹¹. When an individual or body corporate commits a civil penalty contravention that the formula applies to, they may be required by the Court to pay:
 - For an individual, the greater of the following amounts:
 - 5,000 penalty units (\$1,565,000); or
 - the value of the benefit derived/detriment avoided multiplied by 3.
 - For a body corporate, the greater of the following amounts:
 - 50,000 penalty units (\$15,650,000);
 - the value of the benefit derived/detriment avoided multiplied by 3; or
 - 10% of the body corporate's annual turnover 12 months before the breach.
- The latter penalty can be applied up to a maximum of 2.5 million penalty units (\$782,500,000). It can be applied as an alternative to or in addition to other penalties (except a monetary benefit order).
- This approach is modelled on other Commonwealth legislation, including offences targeting financial crime. Environmental crime is comparable due to its effect on the Australia's economy and international reputation, and rectification is often long-term, complex and in many cases impossible.
- Increased penalties will strengthen the EPA's ability to enforce environmental laws, with more effective deterrents in place to prevent any instances of non-compliance being seen as a 'cost of doing business' by high net-worth individuals and body corporates (recommended by the Independent Review).
- Increasing penalties ensures the legislation contains better options for the EPA to pursue criminal prosecution when it is appropriate for high impact non-compliance (also recommended by the Independent Review). Maximum terms of imprisonment will remain the same.

3.3. Aggravated offences

- The legislation will introduce two tiers of aggravated criminal offence:

¹⁰ The value of penalty units is prescribed by the *Crimes Act 1914*, and is adjusted from time to time. At the time of writing, one penalty unit is currently valued at \$313.

¹¹ This approach is modelled on comparable penalty schemes, including under the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

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- Tier 1: where the non-compliance of a person or body corporate results in an unacceptable impact; and
- Tier 2: where a person or body corporate was reckless as to the damage caused and the non-compliance results in an unacceptable impact.
- Aggravated criminal offences provide the EPA with more tools to ensure that criminal penalties are applied in a way that is proportionate to the non-compliant conduct and provide an effective deterrent. It also ensures that the legislation contains better options for the EPA to pursue criminal prosecution when it is appropriate for high impact non-compliance.
- Maximum penalties for aggravated offences will increase to 8,000 penalty units (\$2,504,000).

3.4. Monetary benefit orders

- A new monetary benefit order will be introduced for civil penalties, requiring an individual or body corporate to pay an amount a Court determines is equal to the benefit derived or detriment avoided by their non-compliance. These orders will apply broadly across the legislation, applying to any civil offences that the civil penalty formula does not apply to (see civil penalty formula below for more information).
- The intention of a monetary benefit order is to strip an offender of any financial advantage they gained from breaking an environmental law. An order can be applied as an alternative to or in addition to other civil penalties in the legislation (except for the civil penalty formula). There is no minimum or maximum amount of penalty that can be applied by the Court through such an order.¹²
- The key difference between the civil penalty formula and a monetary benefit order is that the civil penalty formula is intended to apply to more serious civil penalty contraventions and applies a minimum penalty amount – reflecting the serious nature of that offence (in comparison a monetary benefit order requires payment of a figure that reflects the benefit derived/detriment avoided, regardless of how low that figure is).

Particulars

4. General

- The EPA will exercise the powers and perform the functions conferred on it by the Nature Positive legislation and other Commonwealth legislation – including the *Great Barrier Marine Park Act 1975* (Cth) (GBRMP Act)¹³.
- Compliance and enforcement powers will be exercised by the EPA within Australia and its external territories. They can also be exercised in relation to Australian entities outside of Australian territory, with consent of the foreign country the power would be exercised in and consistent with international law requirements. This is consistent with the jurisdiction of the current EPBC Act. Similarly, the application of the *Criminal Code* and the *Crimes Act 1914* to the EPBC Act will also apply to the Nature Positive legislation.

¹² This approach is similar to legislation in other jurisdictions, such as the *Protection of Environment Operations Act 1997* (NSW).

¹³ Refer to the EPA policy paper for further information.

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- The relevant court will be the Federal Court of Australia, the Federal Circuit and Family Court of Australia (Division 2), or a court of a State or Territory that has jurisdiction in relation to matters arising under the Act (or the regulations/rules), in line with Commonwealth policy.
- Australian entities include Australian citizens or permanent residents, a body corporate established under an Australian law, the Commonwealth and its agencies and Australian aircraft and vessels and their crew members.

4.1. *Appointment of inspectors*

- The CEO of the EPA will appoint inspectors who can exercise compliance and enforcement powers. This includes the appointment of ex-officio inspectors, in continuation of the approach provided for under current section 397 of the EPBC Act. On commencement of the Nature Positive legislation, the following will be appointed automatically as inspectors:
 - Each member or special member of the Australian Federal Police;
 - Inspectors appointed under the GBRMP Act;
 - Customs officers; and
 - Members of external territory police forces and biosecurity officers under the *Biosecurity Act 2015* (Cth) in relation to some parts of the legislation.

4.2. *Notices to produce and attend*

- The legislation will replicate Part 17, Division 15A of the EPBC Act in relation to notices to produce or attend. Instead of the Minister, the power will be vested in the CEO of the EPA or the CEO of the Great Barrier Reef Marine Park Authority as appropriate. A notice can be issued if the relevant CEO reasonably believes a person is able to provide specified information or documents for the purposes of investigating or preventing a contravention of the legislation.

4.3. *Extended liability related to directors, employees and agents*

- The legislation will replicate section 498B of the EPBC Act, which ensures executive officers of a body corporate can be held liable for civil and criminal penalties when the entity breaches the EPBC Act. Part 2.5 of the *Criminal Code* will be relied on in relation to extended liability for corporate criminal responsibility. The legislation will retain the effect of subsection 498(3)(b) of the EPBC Act, which attributes responsibility for conduct engaged in on behalf of a person other than a body corporate back to that person in circumstances where they were acting within the scope of their actual or apparent authority.

4.4. *Extended standing for judicial review*

- The legislation will retain the existing policy approach set out in section 487 of the EPBC Act, which extends the definition of an ‘aggrieved person’ who is able to apply for judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR Act) in relation to a decision under the legislation.
- The ‘aggrieved person’ definition will be extended to cover:
 - an Australian citizen (or ordinarily resident in Australia or an external Territory) or an organisation or association that is incorporated or otherwise established in Australia (or external Territory);

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- who at any time in the two years prior has engaged in a series of activities in Australia (or an external territory) for protection, conservation of or research into the environment. For an organisation its objects/purposes must also include the protection, conservation of or research into the environment.
- Under the ADJR Act an ‘aggrieved person’ can seek judicial review and request the Court consider whether a decision under the Act or regulations was properly made according to law. If satisfied the grounds for review have been met, the Court can make an order that:
 - a decision be set aside (in whole or in part);
 - a matter be referred back to the decision maker (subject to directions as the Court sees fit);
 - declaring the rights of the parties; or
 - directing any of the parties to do or refrain from doing an action.

4.5. Landholder liability

- The legislation will retain the existing policy approach set out in section 496B of the EPBC Act, which extends the liability of landholders for contraventions of civil penalties. A contravention occurs where:
 - A person takes an action on an area of land in contravention of a civil penalty provision in the Act;
 - The landholder in relation to that land knew or was reckless or negligent as to whether the contravention would occur;
 - The landholder was in a position to influence the behaviour of the person; and
 - The landholder failed to take reasonable steps to prevent the contravention.

RESTORATION ACTIONS & CONTRIBUTIONS

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POWER

The legislation will:

- provide for when the Restoration Actions and Restoration Contributions Standard must be considered, and how it should be considered.
- allow proponents to choose whether they manage their **residual significant impacts** through **restoration actions**, **restoration contributions**, or a mix of both.
- allow payments to be made as part of **regional restoration measures** under a regional plan.
- establish a new statutory position, the **Restoration Contributions Holder** and provide statutory functions, powers and obligations for this position.
- establish a new statutory advisory committee, the **Restoration Contributions Advisory Committee** and provide functions and requirements for this committee (See the February 2024 *Statutory Committee Reform* Consultation Paper).
- establish a new **Restoration Contributions Fund** as a special account to receive restoration contributions and regional restoration payments.

KEY POLICY CHANGES

The proposed provisions in the Nature Positive (Environment) Act (the [NPE] Act) for managing **restoration actions** (formerly known as offsets) will have similar effect to the provisions in the current *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act 1999), with the following improvements:

- The mitigation hierarchy requirements will be included in legislation.
- Compensation requirements (**restoration actions** and **restoration contributions**) for **residual significant impacts** will form part of the legislative framework.
- For listed threatened species and ecological communities, migratory species and the Commonwealth marine area, **restoration contributions** may be used.
- Proponents can choose to undertake **restoration actions**, make a **restoration contribution** payment for government to manage their offsets, or do a mix of both.
- **Regional restoration payments** can be used to contribute to achieve outcomes set out in a regional plan.

PROVISIONS

Effect

The Restoration Actions and Restoration Contributions Standard (the Standard) applies to all **residual significant impacts** on protected matters that are assessed as not unacceptable and significant. The Standard will only apply after the proponent has demonstrated that all reasonable measures to avoid and mitigate have or will be undertaken.

The Standard will also be used to inform the design of **regional restoration measures** in regional plans. Further details at Part 2.

Part 1 – Application of the Restoration Actions and Restoration Contributions Standard

1.1 Mitigation hierarchy

- The legislation will provide for the mitigation hierarchy, such that all reasonable measures to avoid and mitigate impacts to listed protected matters have or will be undertaken, prior to the use of **restoration actions** and/or **restoration contributions**.
- The draft Matters of National Environmental Significance (MNES) Standard also requires that harm is minimised to MNES by employing all reasonably practicable measures¹ to avoid and then mitigate impacts through project design before addressing impacts through repair and appropriate use of **restoration actions** and/or **restoration contributions**.

1.1.1 Proposed decision and proposed conditions (see A1 Assessment and approval pathway – October 2023 Consultations)

- The decision-maker must consult on their decision with the proponent and any Minister the decision-maker considers has administrative responsibilities relating to the action.
- The proponent can provide written comments to the decision-maker regarding the decision, including matters relating to avoidance and mitigation requirements, within 10 business days.

1.2 Unacceptable impacts (see A1 Assessment and approval pathway – October 2023 Consultations)

- The Standard only applies if the **residual significant impacts** to listed protected matters are not unacceptable.
 - A **restoration action** or **restoration contribution** cannot make an unacceptable impact acceptable.
- The CEO of Environment Protection Australia (EPA) in approving the taking of the action must be satisfied that impacts on a protected matter are not unacceptable.

¹ Guidance will be developed to outline expectations for how proponents must take all reasonably practical steps to avoid and mitigate residual impacts to the protected matter(s). This includes guidance on the type of information that would need to be included in the assessment documentation and how reasonableness will be assessed.

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1.3 Residual significant impacts (see A1 Assessment and approval pathway – October 2023 Consultations)

- EPA will use the assessment documentation and other relevant documentation to determine the **residual significant impact** that must be compensated using **restoration actions** and/or **restoration contributions**.
- The Standard applies where the proposed action has, will have or is likely to have a **residual significant impact** on a protected matter(s) which are not unacceptable.

1.4 Decisions to which the Standard applies

- Provided the proposed action has **residual significant impacts** to protected matters that are not unacceptable, and all reasonable measures to avoid or mitigate impacts have or will be undertaken, then the Standard applies to the following decisions.
- The CEO of EPA must:
 - only approve the taking of an action that has a **residual significant impact** if they are satisfied that the approval of the action is not inconsistent with the Standard;
 - only grant a strategic assessment approval of an action or class of actions and impose conditions (if any) on such an approval if satisfied that the decision would not be inconsistent with the Standard; and
 - be satisfied that the outcomes and processes under an accredited assessment process² provides the CEO of EPA with the necessary information to determine whether the proposed action is not inconsistent with the Standard.
- The CEO of EPA may:
 - only endorse a strategic plan³ if they are satisfied that the decision to endorse the strategic plan is not inconsistent with the Standard.
- The Minister for the Environment, in deciding whether to accredit an authorisation process, must be satisfied that the environmental protections provided by the authorisation process are not inconsistent with the Standard.
- The Minister for the Environment, must have regard to the Standard when:
 - deciding whether or not to make a regional plan,
 - deciding whether or not to approve the taking of an action that has been called in, and/or
 - deciding, where a strategic assessment has been called in, whether to endorse a strategic plan or approval of an action or class of actions and impose conditions (if any) on such an approval.

² Actions that may have significant impacts on nationally protected matters can be assessed wholly or in part by a state, territory or Commonwealth regulator under an accreditation arrangement that has been approved by the CEO of EPA.

³ Policies, plans and programs, as currently described in Part 10 of the EPBC Act, will be renamed strategic plans.

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- Above decisions further described in; A1 Assessment and approval pathway - October 2023 Consultations, A1 Regional planning – February Consultation 2024, A2 Strategic Assessments - February Consultation 2024 and A3 Accreditation - February Consultation 2024.

Part 2 – Regional Restoration Measures

Effect

Regional plans will compensate for **residual significant impacts** in [Development Zones] through **regional restoration measures**.

This section sets out:

- how **regional restoration measures** can be delivered through payments into the Restoration Contribution Fund (**regional restoration contributions**) and through direct delivery of **restoration actions** in a regional plan; and
- that a proponent may be required to pay a **regional restoration payment** to enable the Commonwealth to recoup the costs of delivering a regional plan.

Part 3 – Restoration Contribution and Regional Restoration Payments Charging Arrangements

Effect

The effect of these provisions, set out in an associated charging bill, will enable the charging of **restoration contributions** and **regional restoration payments**.

3.1 Overview of Charging legislation

- The Nature Positive legislative package will include a charging bill to provide for the imposition of both **restoration contributions** and **regional restoration payments**.
- The CEO of EPA may, in agreement with the proponent, include the payment by the proponent of a **restoration contribution** as a condition of an approval to take an action that has been identified to have **residual significant impacts**.
- Similarly, a regional plan may require a person taking a **priority development action** in a [Development Zone] to pay a **regional restoration payment**.
- Payments will be made into the **Restoration Contributions Fund** which will be managed by the **Restoration Contribution Holder**.

3.2 Calculation of charges set in regulations

- Proponents electing to use a **restoration contribution** to manage some, or all their **residual significant impacts** must pay an amount determined consistent with subordinate legislation accompanying the legislation.
- The value of the payment will reflect the specific circumstances of the project.
- The value will be determined at the time of assessment, be non-negotiable and form part of the conditions for approval.

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- **Restoration contributions** will be set to achieve cost recovery.
- The components of the charges are set out in the primary legislation, and are:
 - the cost to deliver the restoration action(s);
 - the monitoring, management and maintenance costs associated with ensuring the intended outcome is delivered and maintained;
 - the administration costs to cover the operation of the Restoration Contributions Fund; and
 - the contingency costs associated with managing the potential of failure to deliver and maintain the intended outcome.
- The calculation of these components will be set in subordinate legislation.
 - these will be subject to legislated review at least every 5 years to ensure they adequately recover costs; with administration costs to be reviewed annually; and
 - the calculation will include indexation.

Part 4 – Restoration Contributions Fund

Effect

This section sets out how the Restoration Contributions Fund will be established under legislation and how it will operate.

4.1 Provisions establishing special account

- A Restoration Contributions Fund will be established as a special account specifically to manage and acquit **restoration contributions** and **regional restoration payments**.

4.2 Circumstances in which funds attributed to account

- The Restoration Contributions Fund will be able to receive funds from:
 - persons for the purpose of complying with a **restoration contribution** condition attached to an approval under the [NPE] Act. This will include approval under a process accredited under the [NPE] Act, and conditions attached to a strategic assessment;
 - any person, or Commonwealth, state or territory government entity for the purpose of complying with a condition attached to a regional plan;
 - all monies appropriated by Parliament for the purposes of the Restoration Contributions Fund;
 - any other amounts received by the Commonwealth in connection with the performance of the Restoration Contributions Holder's functions;
 - amounts equal to any gifts or bequests made for the purposes of the Restoration Contributions Fund, provided such gifts or bequests are not tied to any specific approval under the [NPE] Act or subject to any directions for expenditure; and
 - other amounts prescribed by the rules.

4.3 Circumstances in which funds can be spent

- The purposes for which monies in the Restoration Contributions Fund will be able to be debited are:
 - in payment, discharge or reimbursement of the costs, expenses and other obligations incurred by the Restoration Contributions Holder in the performance of their functions;
 - meeting the expenses of administering the Restoration Contributions Fund];
 - meeting the cost of salaries for the Restoration Contributions Holder and the staff necessary to assist the Restoration Contributions Holder;
 - the costs associated with the Restoration Contributions Advisory Committee in carrying out functions in relation to restoration contributions; and
 - any other purposes prescribed by the rules.

Part 5 – Restoration Contributions Holder

Effect

This section sets out the provisions to establish an independent statutory office holder position – the Restoration Contributions Holder – together with the position’s functions, powers and obligations.

The office holder will be responsible for making investment decisions for **restoration contributions** and **regional restoration contributions** and managing the Restoration Contributions Fund. The office holder will operate in a comparable manner to the Commonwealth Environmental Water Holder.

The office holder will be supported in completing their functions by a Restoration Contributions Advisory Committee, relevant environmental standards, and departmental staff.

5.1 Provisions establishing Statutory Office Holder

- The legislation will establish an independent statutory position, the Restoration Contributions Holder, who will be responsible for managing the Restoration Contributions Fund.
- Legislation will provide the Restoration Contributions Holder with statutory functions, powers and obligations for this position.

5.2 Roles and responsibilities

The functions of the Restoration Contributions Holder are to:

- collect and expend funds from the Restoration Contributions Fund;
 - spend or invest **restoration contribution** payments received from an approval holder on **restoration actions** that compensate for the **residual significant impacts** associated with the approved action.
 - spend or invest payments received into the Restoration Contributions Fund through a regional plan (**regional restoration contributions**) on **restoration actions** that compensate for impacts on protected matters in the [Development Zone];

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- **monitor and evaluate** progress and outcomes of **restoration actions** funded from the Restoration Contributions Fund;
- maintain a **public register** of all approved actions for which a **restoration contribution** has been received by the Commonwealth, and all **restoration actions** undertaken utilising received funds;
- provide advice to the Minister and EPA relating to **restoration contributions**; and
- any other functions prescribed by the rules.

5.3 Spending Restoration Contributions

- The **Restoration Contributions Holder** must expend **restoration contributions** on **restoration actions**.
 - **Restoration actions** must commence [within three years] of the **restoration contribution** payment having been received.
 - Where feasible, funded **restoration actions** must meet relevant requirements for restoration actions in the Restoration Actions and Restoration Contributions Standard (the Standard), as set out in Item 2 of the Standard.
 - in circumstances where, having sought advice from the **Restoration Contributions Advisory Committee** (the Committee), the office holder determines that the relevant requirements of the Standard cannot be met to deliver a 'like-for-like' **restoration action** the **restoration contributions** must be invested in other direct **restoration actions** that the Committee advises will deliver the best overall environmental outcome for impacted protected matters within the same **bioregion**. The following parameters will guide investment in these circumstances:
 - **restoration actions** must benefit the same protected matter that was impacted (for example a **restoration contribution** relating to a threatened species or ecological community must be spent on threatened species and ecological communities);
 - preference is given to **restoration actions** that include a benefit for the specific threatened species, ecological community or migratory species that was impacted;
 - all other relevant requirements as set out in Item 2 of the Standard must be met.
 - Multiple **restoration contributions** can be pooled together to deliver one **restoration action** where it can be shown that this will result in a better environmental outcome for the impacted protected matter(s) than if each were invested individually.
- When making investment decisions, the Restoration Contributions Holder must:
 - ensure decisions are consistent with relevant environmental standards and priorities set out in **conservation planning documents**, regional plans, recovery strategies (where applicable), Australia's domestic and international obligations, and any other requirements that may be included in the Act or Rules; and
 - have regard to any advice received from the Restoration Contribution Advisory Committee
 - have regard to any relevant investment strategy, if one exists.

5.4 Reporting requirements

- The Restoration Contributions Holder must:
 - report in a public **[Restoration Contributions Fund] Register** details including:
 - funds received, including the quantum of each payment and residual significant impact being compensated;
 - funds expended, including the quantum of funds expended, restoration actions to be undertaken and underway and projected outcomes of each action;
 - any other matters set out in the Rules.
 - develop and publish publicly a **management plan** for each **restoration action** project funded from the Restoration Contribution Fund that describes:
 - the residual significant impact(s) being compensated for;
 - the quantum and sources of restoration contributions being used;
 - the intended outcome(s) resulting from the **restoration action(s)**;
 - the timeframe over which **restoration action** is to be delivered; and
 - **monitoring and maintenance** requirements for the duration of the compensated impact.
 - provide an **annual report** to the Minister and CEO of Environment Protection Australia that details:
 - impacted protected matters for which **restoration contributions** have been received;
 - progress towards and achievement of projected net gain for impacted protected matters; and
 - any impacted protected matters for which a feasible like-for-like **restoration action** was unable to be achieved in the required time frame.⁴
 - provide details on **the operation of the Restoration Contributions Fund** to the Secretary to be included in the annual report to the Minister on the operation of the Act.
 - the Minister must cause a copy of this report to be laid before each House of the Parliament within 15 sitting days.

DEFINITIONS

Conservation planning documents: a statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of a MNES, that is made under [legislation], or endorsed or accredited by the [EPA/Minister].

⁴ The Minister/ CEO of EPA will be required to have regard to relevant advice from the office holder on feasibility of like-for-like restoration contributions
The relevant specific protected matter will be automatically nominated for potential review of the associated recovery strategy.

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[Development Zones]: Areas of a Regional Plan in which persons proposing to undertake **priority development actions** must register with Environment Protection Australia and comply with conditions specified in the regional plan.

Direct restoration action: Provides quantifiable and tangible conservation benefits to the impacted protected matter by undertaking actions specifically designed to improve environmental or heritage outcomes in the immediate future. Actions may include planting, land restoration, removal of pressures, active threat management, ongoing management to sustain improved environmental or heritage outcomes and captive breeding or propagation programs.

Projected gain: A projected gain for a **restoration action** is achieved when the projected gain delivered by the **restoration action** is estimated to be greater [(at least X%)] than the projected loss as a result of the proposed action. [The calculation of projected gain will include consideration of other factors, such as the certainty of **restoration action** effectiveness and the expected time required to deliver a restoration benefit. The underpinning considerations and architecture used to calculate the projected gain will form part of the legislative framework.]

A **projected gain** for **regional restoration measures** is achieved when the **projected gain** delivered by **regional restoration measures** is estimated to be greater [(at least X%)] than the projected loss as a result of the **priority development actions**.

Priority development actions: Classes of action specified in a Regional Plan to which conditions attach when undertaken in a **[Development Zone]**.

Regional restoration contributions: Payments made into the **[Restoration Contributions] Fund** by the Commonwealth, States and/or Territories or another party under a regional plan, to compensate for the impacts on MNES of **priority development actions** in **[Development Zones]**.

Regional restoration measures: measures designed to more than compensate for the impacts on MNES of **priority development actions** in **[Development Zones]**. They can include **restoration actions, regional restoration contributions** and other actions agreed in the Regional Plan designed to benefit MNES. The design of regional restoration measures will be informed by the National Environmental Standard for Restoration Actions and Restoration Contributions.

Regional restoration payments: payments made by developers to enable the Commonwealth to recover the amount of the **restoration contribution**.

Residual significant impacts: a **significant impact** on a protected matter that remains after measures are taken to avoid and/or mitigate the impacts of an action. An impact which is unacceptable cannot be made acceptable through the delivery of a **restoration action** and/or making of a **restoration contribution**.

Restoration actions are actions taken to compensate for the **residual significant impacts** of an action to a protected matter. These actions can be undertaken by the proponent or third party on behalf of the proponent, and by the government in response to a **restoration contribution** payment.

Restoration contributions are payments made to an **independent [Conservation Trust]**, that compensates for a **residual significant impact**, in accordance with [reference to legislation]. This payment acquits a proponent's liability for those impacts. **Restoration contributions** are used to support **restoration actions**.

Restoration Contributions Advisory Committee: See the *Statutory Committee Reform* February 2024 Consultation Paper.

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Reversal event: Is a natural or human induced disturbance event that reverses the delivery and /or maintenance of outcomes from **restoration actions**.

Significant impact: as defined by the [legislation].

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PRELIMINARY MATTERS – OBJECTS, ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND THE PRECAUTIONARY PRINCIPLE

Objects of the new Nature Positive legislation

The Objects of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be updated to reflect the intent of the Nature Positive Plan that the new environmental laws will:

- contribute to a Nature Positive Australia
- strengthen and clarify the role of First Nations people in decision-making and the importance of genuine engagement
- ensure First Nations environmental knowledge is treated appropriately
- contribute to global goals for protecting nature and responding to climate change
- ensure accountability, transparency and integrity in decision making, underpinned by quality environmental data and information.

Proposed Objects

To:

- protect, repair and regenerate the environment, especially those aspects of the environment that are matters of national environmental significance
- contribute to a Nature Positive Australia¹
- promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources
- promote the conservation of biodiversity
- provide for the protection and conservation of heritage
- engage co-operatively with the Australian community, including First Nations people; to protect, repair, regenerate and manage the environment
- assist in the co-operative implementation of Australia's international environmental and climate responsibilities that contribute to global goals for protecting nature and responding to climate change
- strengthen intergovernmental cooperation and minimise duplication between jurisdictions
- recognise and promote the role of First Nations people in the conservation and ecologically sustainable use of Australia's biodiversity
- acknowledge, promote and use First Nations peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge
- improve the availability and accessibility of quality, authoritative national environmental data and information.

¹ This will be defined in the provisions to establish the statutory head of Environment Information Australia.

Ecologically Sustainable Development

Ecologically Sustainable Development (ESD) is a long-standing and globally recognised concept that will remain key to the operation of Australia's environmental laws.

The principles of ESD will be defined and further clarified in the new Nature Positive Legislation to support nature positive outcomes and integrate 'culture' and 'cumulative impacts' into the decision-making process.

The legislation will more clearly reflect the balancing of ESD principles by defining environmental impacts that are unacceptable and the requirements that must be met for development to proceed.

The revised principles of ESD will underpin decision making by Environment Protection Australia and be applied by the Minister, except where a decision involves factual or scientific matters, where only the precautionary principle will apply.

The following principles are principles of ecologically sustainable development, which support nature positive outcomes:

- decision making processes should effectively integrate both long- term and short -term cumulative, cultural, economic, environmental, social and equitable considerations
- the precautionary principle²
- the principle of inter-generational equity³
- the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making
- improved valuation, pricing and incentive mechanisms should be promoted.

Precautionary Principle

As an essential principle of ESD, the precautionary principle is a critical test for decision-making in the EPBC Act and will remain so in the new Nature Positive Legislation. The new legislation will incorporate the precautionary principle in a way consistent with current section 391 of the EPBC Act, which sets out the precautionary principle and its consideration in making decisions:

- The precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

The new legislation will make reference to the precautionary principle where it is relevant, in line with the current legislation. Where necessary, the new legislation will clarify how the precautionary principle will contribute to decision-making.

² As defined in current section 391 of the EPBC Act:

"If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation".

³ "That the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for future generations".

APPENDIX

Comparison of proposed preliminary matters with existing preliminary matters

Objects

Existing text that has been retained is unformatted. Proposed new text is highlighted in *italics*, replaced text in [square brackets]:

To:

- *protect, repair and regenerate* [provide for the protection of] the environment, especially those aspects of the environment that are matters of national environmental significance
- *contribute to a Nature Positive Australia*⁴
- promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources
- promote the conservation of biodiversity
- provide for the protection and conservation of heritage
- *engage co-operatively with the Australian community, including First Nations people; to protect, repair, regenerate and manage the environment* [promote a cooperative approach to the protection and management of the environment involving governments, the community, landholders and indigenous peoples]
- assist in the co-operative implementation of Australia's international environmental *and climate responsibilities that contribute to global goals for protecting nature and responding to climate change*
- *strengthen intergovernmental cooperation and minimise duplication between jurisdictions*
- recognise *and promote* the role of *First Nations* [indigenous] people in the conservation and ecologically sustainable use of Australia's biodiversity
- *acknowledge, promote and use First Nations peoples'* [promote the use of indigenous peoples'] knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge
- *improve the availability and accessibility of quality, authoritative national environmental data and information.*

Principles of ecologically sustainable development

Existing text that has been retained is unformatted. Proposed new text is highlighted in *italics*, replaced text in [square brackets].

The following principles are principles of ecologically sustainable development, *which support nature positive outcomes*

- decision making processes should effectively integrate both long- term and short -term *cumulative, cultural, economic, environmental, social and equitable considerations*

⁴ This will be defined in the provisions to establish the statutory head of Environment Information Australia.

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- *the precautionary principle*⁵
- the principle of inter-generational equity⁶
- the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making
- improved valuation, pricing and incentive mechanisms should be promoted.

Precautionary Principle

No changes to the wording of the precautionary principle are proposed.

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⁵ To be defined in the Act and will be consistent with the current definition that: "If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation".

⁶To be defined in the Act and will be consistent with the current definition: "That the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for future generations".

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STATUTORY COMMITTEE REFORM

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Overview

The powers of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be retained but drafting will be modernised,¹ duplication removed, and processes streamlined and clarified. This will result in changes to structure and terminology when compared to the existing EPBC Act.

Key changes for this element of the new laws are:

- establishment of a new Restoration Contributions Advisory Committee²
- changes to the functions of existing committees, to reflect reforms to the [NPE] Act.
- improvements to transparency requirements, including:
 - public Ministerial Statement of Expectations to statutory committees.
 - publication of terms of reference for statutory committees.
 - standardised approach to disclosure of interests of members.
- standardised approach to membership and powers of committees, including provision for acting and deputy members to ensure continuity of function.

Power

The [Nature Positive (Environment)] Act (the [NPE] Act) will establish the following committees to provide advice to decision makers under the Act:

- Independent Expert Scientific Committee on Unconventional Gas and Coal Mining Development (IESC);
- Indigenous Advisory Committee (IAC);
- Restoration Contributions Advisory Committee [RCAC]; and
- Threatened Species Scientific Committee (TSSC).

The membership of each committee established under Part 19 of the EPBC Act will transition to operate and provide advice under the provisions of the [NPE] Act. The Australian Heritage Council (AHC) will remain established under the *Australian Heritage Council Act 2003* and will, through consequential amendments, provide advice to decision makers under the provisions of the [NPE] Act.

Under the [NPE] Act, the Minister will maintain the powers and associated obligations and duties currently provided by Part 19 of the EPBC Act, including to:

- appoint the membership of statutory committees and terminate those appointments;
- specify terms of appointment of each committee member by written instrument; and

¹ including to align powers, obligations, and duties with the principles in the Commonwealth of Australia Senate Standing Committee for the Scrutiny of Bills Guidelines, July 2022, which can be found online at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Committee_guidelines.

² Name to be confirmed once Nature Positive (Environment) Bill 2024 is drafted.

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- establish and appoint members to additional advisory committees.

The Minister will have the additional powers described in the provisions of this paper.

Statutory committees will have the additional functions described in the provisions of this paper.

Note: the EPA CEO's advisory group is not a statutory or advisory committee under the [NPE] Act.

Key Policy changes

The statutory committee provisions of the [NPE] Act will have similar effect to the existing Part 19 of the EPBC Act, with the improvements listed below, to enable the statutory committees to best contribute to the objectives of the new Act.

1. Statutory committee functions

1.1. Australian Heritage Council (AHC)

- AHC advice may be requested under the [NPE] Act in the circumstances set out in **Appendix 1**.
- In carrying out its statutory functions, the AHC may obtain advice from persons or bodies with relevant experience or knowledge if the advice is relevant to the performance of the functions of the committee.
- Otherwise, the AHC will retain the functions set out in the *Australian Heritage Council Act 2003*.

1.2. Independent Expert Scientific Committee on Unconventional Gas and Coal Mining Development (IESC)

- Statutory decision makers under the [NPE] Act will be able to request advice of the IESC in specified circumstances set out in **Appendix 1**.
- Redundant functions will not be replicated, for example functions relating to the old bioregional assessments program.
- The IESC will be able to provide advice at the request of the appropriate Minister of any State or Territory (not just a declared State or Territory), about a matter that is protected under the [NPE] Act and where that matter is a water resource or is dependent on, or likely to be dependent on a water resource(s). Section 505E of the EPBC Act (declared States and Territories) is redundant and will not be carried over to the [NPE] Act.
- In carrying out its statutory functions, the IESC may obtain advice from persons or bodies with relevant experience or knowledge if the advice is relevant to the performance of the functions of the committee.
- The other functions of the IESC will be retained and updated to align with the nomenclature and provisions of the new Act.

1.3. Indigenous Advisory Committee (IAC)

- Statutory decision makers under the [NPE] Act will be able to request advice of the IAC in specified circumstances set out in **Appendix 1**.
- In carrying out its statutory functions, the IAC may obtain advice from persons or bodies with relevant experience or knowledge if the advice is relevant to the performance of the functions of the committee.

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- Other functions of the IAC will be retained, including advising the Minister, upon request, on matters relating to the administration of the Act, where the request aligns with the committees' expertise.

1.4. Restoration Contributions Advisory Committee [RCAC]³

- Statutory decision makers under the [NPE] Act will be able to request advice of the RCAC in specified circumstances set out in **Appendix 1**.
- In carrying out its statutory functions, the RCAC may obtain advice from persons or bodies with relevant experience or knowledge if the advice is relevant to the performance of the functions of the committee.

1.5. Threatened Species Scientific Committee (TSSC)

- Statutory decision makers under the [NPE] Act will be able to request advice of the TSSC in specified circumstances set out in **Appendix 1**.
- In carrying out its statutory functions, the TSSC may obtain advice from persons or bodies with relevant experience or knowledge if the advice is relevant to the performance of the functions of the committee.
- The other functions of the TSSC will be retained and updated to align with the nomenclature and provisions of the new Act.

1.6. Ministerial rule making power

- The Minister may make rules relating to the functions of a committee that may include, but are not limited to:
 - obligations in relation to the advice request (i.e., a request must be in writing, published, or must be made in a specified format or in accordance with a specific guideline);
 - obligations in relation to the advice (i.e., advice must be published, be provided to the Minister or Parliament when the Committee provides that advice to the requesting decision maker or must be made in a specified format or within a specified timeframe);
 - imposing new functions on a statutory committee.
- Rules are made under the [NPE] Act and are disallowable by the Parliament.

2. Transparency

2.1. Committee terms of reference

- New terms of reference for each committee will be updated for following royal assent of the [NPE] Act and will be published on the Department's website.

2.2. Advice publication requirements

- Where a statutory committee provides advice to a decision maker for a statutory decision, the publication or reporting obligations set out in the [NPE] Act apply to the decision-maker and not the statutory committee.

³ Name to be confirmed once Nature Positive (Environment) Bill 2024 is drafted.

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- **Appendix 1** sets out requirements on decision-makers to seek, consider and publish advice from statutory committees.
- Where a statutory committee provides advice relating to a non-statutory decision (e.g., departmental policies, plans and projects), no legislated publication or reporting requirement is proposed for the committee. The following detail is proposed for inclusion in the rules:
 - IESC must publish certain advice consistent with the requirements currently prescribed in the EPBC Regulation 15.1A;
 - [NPIC] will have publication requirements.

2.3. Ministerial statement of expectations

The Minister will have the power to issue a Statement of Expectations (a statement) for each statutory committee.

Effect

This statement will provide for transparent expectation setting between the Minister and statutory and advisory committees. Whilst maintaining the independence of the committees, this process will allow for appropriate alignment of a committee's workplan with the relevant national environmental goals and pressures.

- Once a Minister has issued a statement to a committee, that committee must provide a response to that statement.
- The final statements between the Minister and the committee's response must be in writing and published on the internet. The statement is not a statutory instrument.
- The statements must not be inconsistent with the obligations and duties set out in the Act with respect to statutory committees.
- Each committee will control and manage their workplans.
- As the statements are not legally binding, the committee's failure to consider them when carrying out their duties and functions is not grounds for the termination of the appointment of the Chair of that committee or any other members.
- The Minister may seek advice from the Department and the relevant committee to determine objectives and priorities to be included in the statement. This request and advice do not have to be published.
- The rules may specify the scope of the Minister's statement, for example:
 - National environmental goals and pressures, such as geographic locations for protection or development
 - environmental, heritage and cultural heritage protection priorities
 - natural disaster response
 - emerging sustainable development priorities such as affordable housing.

2.4. Disclosure of interests to the Minister

- A Committee member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's duties.

2.5. Disclosure of interests to the committee

- Disclosure of interest requirements in meetings of the committee that are currently prescribed in the EPBC Regulation 15.01 will be prescribed in the [NPE] Act.

3. Membership and powers of committees

This provision applies to all statutory and advisory committees established under the [NPE] Act.

3.1. Ministerial rule making power

- The Minister may make rules for and in relation to the selection and appointment of committee members and deputy members that include, but may not be limited to:
 - provide that the Minister must ensure that [a specified number of members of] a committee [have] qualifications, knowledge, skills or experience;
 - make provision in relation to the appointment of Indigenous persons as members of a committee;
 - make provision regarding diversity among members of a committee.
- The rules may also prescribe the following for a committee:
 - the number of members the Committee is to have;
 - the minimum and maximum number of members the committee is to have.
- Committee membership details proposed for inclusion in the rules for specific statutory committees are included at **Appendix 2**.
- Rules are made under the [NPE] Act and are disallowable by the Parliament.

3.2. Appointment of committee members

- A committee member is to be appointed by the Minister by written instrument, on a part time basis.
- A person must not be appointed as a member of a committee unless the Minister is satisfied that the person has the qualifications, knowledge, skills or experience prescribed by the rules in relation to the committee.
- In appointing members of a committee, the Minister must ensure, as far as practicable, that the committee members collectively possess an appropriate balance of qualifications, knowledge, skills or experience in the fields prescribed by the rules that are relevant to the functions of the committee.
- The Minister must appoint one of the members of a committee to chair the committee.
- The Minister may appoint two members of the Indigenous Advisory Committee (IAC) to co-chair the committee.

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3.3. *Period of appointment*

- A member of a committee holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- A member of a committee must not be reappointed as a member of the Committee more than once.

3.4. *Acting committee members*

Acting Chair of a committee

- The Minister may appoint a member of a committee to act as the Chair of the committee:
 - during a vacancy in the office of the Chair of the Committee (whether or not an appointment has previously been made to the office); or
 - during any period, or during all periods, when the Chair of the Committee:
 - is absent from duty or from Australia; or
 - is, for any reason, unable to perform the duties of the office.

Acting Committee member (other than the Chair)

- The Minister may appoint a person to act as a member of a committee (other than a Chair of the committee):
 - during a vacancy in the office of a member of the committee (other than the Chair of the committee), whether or not an appointment has previously been made to the office; or
 - during any period, or during all periods, when a member of the committee (other than the Chair of the committee):
 - is absent from duty or Australia; or
 - is, for any reason, unable to perform the duties of the office.

Eligibility

- A person is not eligible for appointment to act as:
 - the Chair of a committee; or
 - a member of a committee (other than the Chair of the committee);
- unless the person is eligible for appointment as a member of the committee.

Note: Rules that apply to acting appointments are prescribed in sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Vacancy in the office of member of a committee

- For the purposes of a reference in:
 - this Act to a vacancy in the office of a member of a committee; or
 - the *Acts Interpretation Act 1901* to a vacancy in the membership of a body, as it applies in relation to a committee.
- the number of offices of member of a committee is the following:
 - if rules prescribe the number of members a committee is to have—that number; or

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- if rules prescribe a maximum number of members a committee is to have—that maximum number.

3.5. *Leave of absence*

- The Minister may grant the Chair of a committee leave of absence on the terms and conditions that the Minister determines.
- A Chair of a committee may grant leave of absence to another member of the committee on the terms and conditions that the Chair determines.

3.6. *Other paid work*

- A committee member must not engage in any paid work that, in the Minister's opinion, conflicts or could conflict with the proper performance of the member's duties.

4. Transitional Arrangements

- Committee members appointed under the EPBC Act will be retained and continue to be engaged under the same terms and conditions of appointment until such time as the Minister issues a new instrument of appointment or until the maximum period of appointment under the [NPE] Act is complete (whichever comes first).

Definitions

Indigenous person: a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

paid work: work for financial gain or reward (whether as an employee, a self employed person or otherwise).

statement of expectations: a statement issued by the Minister under this part.

statement of intent: a statement issued by a committee under this part.

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Appendix 1 – Statutory Committee advisory functions and requirements on seeking, considering and publishing advice

In addition to the specific requirements set out in the table, section AA455 of the NPE Bill provides the Minister and CEO EPA with generic powers to request information (including advice) from any person if they reasonably believe that person has information that is relevant to deciding in relation to an application, notice or request.

Decision	Decision maker	Obligation	provision	Ref. Insert for Nature Positive (Environment) Bill 2023
REGIONAL PLANNING				
making a regional plan	Minister	must have regard to	any advice provided by the IESC in relation to the regional plan. The Minister has discretion to seek such advice.	regional planning
NATIONAL ENVIRONMENTAL STANDARDS				
making, varying or revoking a national environmental standard	Minister	must request and consider may request	IAC advice in relation to any national environmental standard that relates to Indigenous engagement and participation in decision making under this Act. a statutory committee with functions under this Act to provide advice in relation to any national environmental standard the Minister proposes to make, or any proposed variation or revocation of a standard.	national environmental standards subsection C10 (4) discretionary consultation
CONSERVATION PLANNING				
nominations for the listing of threatened species and ecological communities, marine species and key threatening processes	Minister	must give	the TSSC accepted nominations for inclusion in the list [from the publication and invitation process], for the committee to consider in preparing the proposed priority assessment list for provision to the Minister	conservation planning – listings and permits

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make changes to the priority assessment lists	Minister	must consider may have regard to	the proposed priority assessment list provided by the TSSC . statement from the TSSC .	conservation planning – listings and permits
inclusion of an item in the finalised priority assessment lists	TSSC	must publish and invite comment on	the finalised priority assessment list in accordance with the provisions in the Act and rules.	
assessment of items on the finalised priority assessment lists	TSSC	may obtain advice must take into account	from a person with expertise relevant to the inclusion of an item in a list, including the AHC any advice obtained and received, including from the AHC in finalising their written assessment to be provide to the Minister.	
amend threatened marine and key threatening process lists on TSSC’s written assessment	Minister	must have regard to and publish	the TSSCs written assessment of the item.	
amend lists on Minister’s initiative and related matters	Minister	must obtain and consider	advice from the TSSC on proposed amendments before deciding whether to amend a list to delete items, make taxonomic changes, corrections or updates. This includes combining and splitting key threatening processes.	
amend lists as result of accredited assessment and listing process	Minister	must consider	advice from the TSSC (if any) during the accreditation process on proposed amendments before deciding whether to amend a list to include items, transfer items from one category to another, or delete items from the list as a result of an accredited process.	

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review threatened lists outside annual nomination process	TSSC	may identify and assess	listed threatened species and ecological communities that should be confirmed as eligible in certain categories (e.g., following a major natural disaster).	conservation planning – listings and permits
	TSSC	may identify	other species and ecological communities to be assessed for potential inclusion in the threatened lists (e.g., following a major natural disaster).	
once a key threatening process is listed, deciding not to have a threat abatement strategy	Minister	must seek the advice of	the TSSC (and may seek the advice of anyone else they consider appropriate).	conservation planning – threat abatement strategies
approve recovery strategy or variation to approved recovery strategy or threat abatement strategy	Minister	must consult	in relation to the strategy or variation, in the way (if any) prescribed by the rules, with the TSSC, unless in relation to content of a variation of an approved recovery strategy to the extent that the Minister has previously consulted with the TSSC on that content.	conservation planning – recovery strategies conservation planning – threat abatement strategies
revoke threat abatement strategy	Minister	must seek the advice of	the TSSC on any proposed revocation of a threat abatement strategy.	conservation planning – threat abatement strategies
STRATEGIC ASSESSMENTS				
endorse a strategic plan	CEO EPA	may request	advice from the IESC if the CEO is satisfied the action or class of actions included in the strategic plan are unconventional gas or coal mining development and are environmentally significant for a water resource.	strategic assessments and Minister’s call in powers
	CEO EPA Minister (if called in)	must have regard to	any relevant advice provided by the IESC .	

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strategic assessment approval (<i>approve action/class of actions to be taken in accordance with endorsed plan</i>)	CEO EPA	may request	advice from the IESC if the CEO is satisfied the action or class of actions included in the strategic plan are unconventional gas or coal mining development and are environmentally significant for a water resource.	strategic assessments and Minister’s call in powers
	CEO EPA Minister (if called in)	must have regard to	any relevant advice provided by the IESC or other committee established under this Act.	
PROJECT ASSESSMENT AND APPROVAL				
approval of action is not required (<i>action is not environmentally significant for any protected matters</i>)	CEO EPA Minister (if called in)	must consider	any relevant information provided by the IESC .	environmental assessments and approvals and Minister’s call in powers subsection AA50(2) mandatory considerations, section B50 Minister’s decision on called in application
approval of action is required (<i>action (or varied action) is environmentally significant for one or more protected matters</i>)	EPA CEO	may invite	the AHC to provide comments on impacts of the action on: <ul style="list-style-type: none"> - National Heritage values of a National Heritage Place. - heritage values of a place (where environment is a protected matter). 	section AA95 section AA100
	EPA CEO Minister (if called in)	must have regard to	any relevant information provided by the IESC .	subsection AA120(2) and AA275(2) mandatory considerations, section B50
grant an approval to take an environmentally significant action and impose conditions	EPA CEO	must obtain	the advice of the IESC if the action involves unconventional gas or coal mining development and is environmentally significant for a water resource	section AA150
	EPA CEO Minister (if called in)	must have regard to	any advice obtained from the IESC under section AA150.	section AA185 Grant of approval and conditions: considerations

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RESTORATION CONTRIBUTIONS				
Determine an appropriate restoration action	Restoration Contributions Holder	must obtain	advice from the RCAC on restoration actions that will deliver the best overall environmental outcome, in certain circumstances (see Restoration Actions and Contributions Consultation Paper – February 2024)	Not currently available
Spend or invest restoration contributions	Restoration Contributions Holder	may invite	advice from the RCAC on how to invest restoration contributions, in certain circumstance, (see Restoration Actions and Contributions Consultation Paper – February 2024)	Not currently available
Environmental expenditure	Minister	may invite	advice on investments in environment protection, management and restoration, or any matters relevant to the committee and the members' expertise.	Not currently available

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Appendix 2 – Committee membership details proposed for inclusion in the rules

Committee	Appointments	Knowledge and expertise
IAC	Minister must appoint a maximum of 10 and minimum of 5 committee members (including the Chair/s).	Minister must use best endeavours to appoint committee membership (including the Chair/s) based on their skills, experience and expertise in Indigenous land and sea management, conservation and sustainable use of biodiversity, and cultural heritage management. All members are to be Indigenous persons and are not appointed to represent regions or organisations.
IESC	Minister must appoint a maximum of 13 and minimum of 5 committee members (including the Chair) Minister must use best endeavours to maintain the membership of the committee at 8 members (including the Chair).	Minister must use best endeavours to appoint committee membership (including the Chair/s), to include a diverse range of scientific qualifications and expertise including but not limited to geology, hydrology, hydrogeology, ecology, ecotoxicology, mining engineering, geomechanics, reservoir engineering, agronomy, soils, natural resource management, risk assessment, and Indigenous water management.
TSSC	Minister must appoint a maximum of 15 and a minimum of 10 committee members (including the Chair).	Minister must use best endeavours to appoint committee membership (including the Chair/s) suitably credentialled with scientific expertise across threatened species and ecological communities, as well any other skills relevant to the committee's functions.
RCAC	Minister must appoint a maximum of [15] and a minimum of [10] committee members (including the Chair).	Minister must use best endeavours to appoint committee membership (including the Chair/s) with a high level of expertise in one or more fields relevant to the Committee's functions (e.g. relevant expertise in ecology, economics, land management, First Nations knowledge and other relevant areas of expertise).

WILDLIFE TRADE, LIVE IMPORT LIST AND SUSTAINABLE FISHERIES

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The powers of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be retained but drafting will be modernised,¹ duplication removed, and processes streamlined and clarified. This will result in changes to structure and terminology when compared to the existing EPBC Act.

Key changes for this element of the new laws are:

- Streamlining the existing seven commercial export program types to three.
- Strengthening welfare requirements for live animal exports.
- Introducing a mandatory conservation benefit requirement for export of certain live native species to zoos.
- Enabling additional permitting exemptions for low-risk trade.
- Establishing 'passports' for frequently traded items (e.g., musical instruments and travelling exhibitions).
- Allowing for the use of established feral animals when certain conditions are met.
- Streamlining the strategic assessment process for Commonwealth fisheries by reducing duplicative assessment processes.
- Broadening powers of the Minister to amend, suspend or revoke approvals, providing more flexibility and adaptability to changing circumstances.
- Increasing transparency and access to data associated with interactions with protected species and communities.

Power

The wildlife trade provisions implement Australia's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and Convention on Biological Diversity. They provide for the Minister/CEO of the Environment Protection Agency to regulate the export of Australia's native wildlife and import/export of CITES specimens and the import of regulated live specimens through a permitting system. This includes a regulatory framework to enable the ecologically sustainable commercial export of Australian native wildlife, and use of Australian wildlife for non-commercial purposes (such as research and exhibition). Associated provisions also allow for the accreditation of plans/regimes/operations for commercial fisheries by requiring persons to take all reasonable steps to ensure listed species are not killed or injured as a result of the fishing, and any interactions are not detrimental to the species conservation status or survival in the wild.

Key policy changes

The new legislation for this element of the reform will have similar effect to the existing EPBC Act, with the improvements listed below.

¹ including to align powers, obligations, and duties with the principles in the Commonwealth of Australia Senate Standing Committee for the Scrutiny of Bills Guidelines, July 2022, which can be found online at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Committee_guidelines.

1. Streamlining commercial export programs (including fisheries)

Effect

Provide streamlined program approval types for the commercial export of CITES and Australian native specimens. CITES and Australian native specimens will continue to be eligible for commercial purpose export permits when they come from an approved program. The existing seven program types will become three - wild-sourced programs, combined source programs and closed system programs.

Each program type will have bespoke assessment criteria, based on risk. Welfare considerations will underpin decision making. The commercial trade of live native mammals, reptiles, birds and amphibians will continue to be prohibited.

1.1. Wild-sourced program

This new program type will apply where specimens are only obtained from a wild source.

- Assessment requirements for this program type will be the most stringent and comprehensive. Approval holders will need to demonstrate that harvesting of wildlife is not detrimental to the survival of the species in the wild or to the ecosystem from which the specimen originates.

1.2. Combined source program

This new program type will apply where specimens are obtained from multiple sources that can include both controlled or closed system environments and the wild.

This new program type may include specimens are bred to the first generation, or where there is an assisted or managed production operation (e.g., artificially propagated plants where there is addition of stock from the wild).

- Approval requirements will consider risks to the species both in the wild and controlled environments. Furthermore, ecosystem impacts will be considered for wild-sourced specimens.
- Approval holders will be able to apply to the Minister to renew these programs where the fundamentals of the program remain, and approval compliance is demonstrated.
- Assessment requirements will be established to distinguish combined source specimens from other program types, based on risk (e.g. requiring traceability to reduce potential for black marketing and increase transparency around provenance).

1.3. Closed system program

This new program type will apply where specimens are only obtained from a controlled environment with no additions from the wild (e.g. captive breeding).

- Approval will require demonstration of lawful origin of stock and specimens bred to second generation.
- There will be limited consideration of impacts to species in the wild and ecosystems.
- CITES-registered Captive Breeding Program approval will still be required for CITES Appendix I species.
- Approval holders will be able to apply to the Minister to renew these programs where the fundamentals of the program remain, and approval compliance is demonstrated.

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1.4. General considerations

- All commercial program types will now be valid for a maximum of 5 years.
- A person or organisation (including a state/territory agency, Commonwealth agency, or other regulatory body) will continue to be able to apply to the Minister for the approval of a commercial export program.
- Provisions will be added to enable the Minister to consider whether the applicant is a fit and proper person to hold a program approval. Where possible these will align with similar provisions across the Act and have consideration to environmental, criminal and compliance history to ensure that we have confidence the applicant will be able to meet the objects of the Act.
- Program assessment criteria will be provided for in the Rules.
- Existing public consultation requirements and timeframes will be retained.
- The Minister will continue to be able to apply conditions to the approval of a program, if required. In addition, the Minister will be able to amend those conditions.
- Provisions will be added to enable the Minister to amend a program approval including to:
 - correct administrative errors or make minor administrative changes; or
 - correct species scientific names due to taxonomic revisions; or
 - correct references where the name of those references have changed (for example legislation, standards, frameworks); or
 - add or amend conditions; or
 - revise or add quotas; or
 - remove or add species; or
 - any other amendments as outlined in the rules.
- Provisions will be modified to enable the Minister to suspend or revoke a program approval in certain circumstances, including where:
 - the approval holder gives false, misleading or incomplete information, or in the event of non-compliance with program conditions or legislative requirements; or
 - for administrative reasons (e.g., at the request of the approval holder); or
 - there are exceptional circumstances (e.g., to prevent serious or irreversible harm to human health or the environment).
- Provisions will be included to enable cost recovery in the future, if required.

2. Conservation and welfare outcomes considerations for live exports and zoos

Effect

Permitting will enable live animals to be imported and exported for zoo and other non-commercial purposes where strict requirements, including animal welfare requirements, are met. Conservation and welfare provisions will be strengthened. This will include restricting live native animal exports to zoos that meet high standards for conservation and animal welfare, and introducing a mandatory conservation benefit test for priority native species. Provisions will be added to enable welfare assessment considerations to be applied to additional species, families or higher taxa.

2.1. Live animal export permits

- Provisions added to enable checks on the recipient and/or institution, establishment or organisation receiving a living specimen to ensure they can suitably house and care for a species.
- Provisions added to enable consideration of whether the applicant is a fit and proper person. Where possible these will align with similar provisions across the Act and have consideration to environmental, criminal and compliance history to ensure that we have confidence the applicant will be able to meet the objects of the Act.
- Create a schedule that will provide flexibility to list species, families or higher taxa, which require animal welfare assessment prior to export.

2.2. Agreements for native species

- Enhance protection for iconic, special needs or highly valuable specimens by establishing a list of priority native species for which live export requires an agreement (legally binding), which may be modified by the Minister.

2.3. Exhibition of native species

- Provisions added to restrict the export of live native animals to zoos that have conservation as one of their tenets. Zoos will need to demonstrate to the Minister or delegate that they actively contribute and work to improve animal conservation in the wild through programs or funding, by partnering in or leading conservation programs. Conservation of species in the wild must be prominent within their mission statement or business plans.
- Provisions added for live native specimen export permit assessment to consider industry standards and the facilities' stated mission, contributions to species conservation, animal welfare standards and educational value. Approvals by the Minister or Ministers delegate will only be granted only where it can be demonstrated through the assessment that the export will have an overall beneficial environmental impact.
- Introduce a mandatory conservation benefit requirement for the export of priority live native species to zoos and other exhibitions. Permit holders will need to demonstrate that the export will improve the conservation status of the species.

3. Permits

Effect

The legislation will continue to regulate the import and export of CITES specimens, the export of regulated native specimens, and the import of regulated live specimens through a permitting system. CITES and regulated native specimen permitting provisions will be updated to provide for permitting exemptions, streamlined permitting arrangements for low-risk trade, and other special trade provisions allowed for under the CITES framework.

3.1. Permitting exemptions

- Add provisions to future proof the legislation, with the potential to later enable CITES permit exemptions. The legislation will include provisions which may allow for exemptions to be granted while the Rules establish under which circumstances (e.g. personal effects exemptions). Provisions and rules will comply with CITES requirements and enable any changes that may occur with CITES requirements.
- Retain provisions to exempt low risk native specimens from export permitting requirements through listing on the List of Exempt Native Specimens (LENS).

3.2. Native household pets

- Establish a list of native species eligible to be exported as a household pet, which the Minister can modify. This list will include native species that are abundant in the pet trade (both within Australia and overseas) and Australian species not under threat.
- Broaden the scope of species that can be exported as household pets.

3.3. Special CITES trade provisions

- Establish introduction from the sea certificates for imports of CITES-listed specimens taken from the high seas.
- Establish certificates of origin for the export of CITES Appendix III specimens sourced from within Australia or for the re-export of specimens from a country to which the Appendix III listing does not apply.
- Establish 'passports' (multiple use certificates) for specimens that are or contain CITES specimens and are frequently traded across borders (e.g., musical instruments and travelling exhibitions). These passports will be valid for up to 3 years.
- Add provisions for the issue of permits for goods that require expedient import without the prior issue of a CITES export permit from the exporting CITES Management Authority.
 - the applicant would have to demonstrate that the item requires rapid movement for a specified reason (e.g., perishable, threats to human or animal health);
 - the applicant must be able to demonstrate that they are lawfully able to export/re-export the relevant specimens.
- Establish permitting provisions enabling non-commercial samples relating to law enforcement, human health, or matters deemed extremely urgent for environmental or human protection to be expedited. These provisions will enable assessments to be fast tracked and approvals granted within tighter time frames to reflect the urgency of the application, while still maintaining

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regulatory and environmental rigor. Exact circumstances in which approvals may be expedited will be set out in the Rules with processes established through operational policy.

3.4. *Other modernising measures for permits*

- Provide for electronic permits to have the same legal status as an officially issued hard copy permit.
- Enable a single permit to be issued for the export of a specimen that is both CITES listed and a regulated Australian native specimen.

4. Live imports

Effect

The legislation will continue to regulate the import of live animal and plant specimens into Australia. The list criteria will be updated, including to allow the use, after an environmental impact assessment, of established feral animals for the purposes of research and testing. This will only be allowed within jurisdictions in which the feral animals are established and with the agreement of those jurisdictions.

- Retain the ability to list unregulated specimens (Part 1). This will include live plant specimens where the introduction is not inconsistent with the *Biosecurity Act 2015*.
- Add provisions to exclude International Union for Conservation of Nature (IUCN) red listed species that are critically endangered or endangered in the wild, where trade is a major risk, from Part 1 (unregulated specimens).
- Retain the ability to list allowable regulated specimens (Part 2). Listings may include notations, restrictions or conditions. It will include CITES live plant specimens where the introduction is not inconsistent with the *Biosecurity Act 2015*.
- Add a list of established feral pests that a person may possess in one or more Australian states and territories (Part 3). The Minister must only add a specimen if satisfied that:
 - the specimen is part of a feral population in a State or Territory
 - the State or Territory has agreed to the inclusion of the specimen in the list; and
 - possession of the specimen would not be likely to harm the environment.
- New provisions will clarify hybrids are not permitted to be imported unless explicitly listed.

5. Sustainable Fisheries

Effect

Under the Nature Positive Act, the government will continue its role in regulating the environmental performance of commercial fisheries in all waters where those fisheries apply to export fisheries product from Australia. It will also continue to assess and accredit fisheries that interact with protected species or communities in Commonwealth waters.

The new legislation will streamline some aspects of the existing regulatory framework (refer section 1 above on export permits), remove duplication of 'assessment effort' associated with strategic assessments of Commonwealth fisheries and increase transparency to ensure decisions are based on quality data and information.

Decisions on accreditation of commercial fisheries will continue to sit with the Minister and will not transfer to Environment Protection Australia.

5.1. Removal of strategic assessments for Commonwealth fisheries

- Provisions modified to enable the Minister to consider if a fishery is approved under either the protected species and ecological communities or wildlife trade elements of the Act, and does not meet one of the triggers for a significant impact on a protected matter, the Minister will have the power to declare it also satisfies the Act's matters of national environmental significance requirements and therefore not require a strategic assessment.
- The assessment process already applied to Commonwealth fisheries for export, and protected species and ecological communities already examines issues required for a strategic assessment. It will retain a robust process while providing for streamlining and reducing administrative burden.

5.2. Accreditation against the Act's protected species and ecological communities provisions

- Retain the requirement for the Minister to assess and accredit state, territory, and Commonwealth commercial fisheries operating in a Commonwealth area against listed species and ecological communities provisions. These approvals will continue to be assessed against the *Guidelines for the ecologically sustainable management of fisheries – 2nd edition* as updated from time to time.
- Provisions modified to enable the Minister to suspend, amend or revoke an accreditation in certain circumstances – providing a more flexible range of actions than currently. Situations where this may occur include where a condition is contravened, changes to a management plan pose too high a risk to a species, or where an extension is agreed to deliver a condition.
- Retain the ability for the Minister to consider matters including the precautionary principle, public consultation and relevant government policies and plans (e.g. recovery strategies, threat abatement strategies).
 - The Minister would have the ability to accredit fisheries for up to 5 to 10 years depending on the risks posed by the fishery and to amend timeframes (potentially for shorter periods) if information changes the risk from the fishery.

5.3. General considerations

- New provision added to place an obligation on management agencies to inform the Minister of any major changes to an approved fishery management regime, or the circumstances of the approved fishery. (Note this is currently a standard condition on approvals, so is not a new burden on management agencies);
- New provision added to place an obligation on management agencies to make information and data more transparent and accessible where they relate to fisheries interactions with protected species or ecological communities.

5.4. Accreditation against the Act's wildlife trade provisions

- As specified in Section 1 – these will be aligned.

5.5. Discontinuation of the EPBC Act's "declared commercial fishing activities" elements

- For clarity, the powers set out in Part 15B of the EPBC Act will not be duplicated in the new Act.
- Part 15B provides the Minister with the power to establish an independent expert panel to conduct an assessment on the environmental impacts of a 'declared commercial fishing activity' and to prohibit the fishing activity while the assessment is undertaken.
- These powers were only intended to be in place for a defined period and have now expired.

NATURE POSITIVE EPBC ACT HERITAGE REFORMS

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The powers of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be retained but drafting will be modernised,¹ duplication removed, and processes streamlined and clarified. This will result in changes to structure and terminology when compared to the existing EPBC Act.

Key changes for this element of the new laws are:

- clarifying and streamlining assessment, listing and management processes
- making it easier to protect non-contiguous heritage places.

Power

The EPBC Act provides the framework for listing and protecting National, Commonwealth and World Heritage Areas. EPBC Act provisions that relate directly to the listing and management of heritage places are in Part 15 of the EPBC Act. Other provisions of the EPBC Act that promote the protection of heritage include impact assessment process provisions, the identification and protection of species and ecological communities and the protection of the environment on Commonwealth land and in Commonwealth marine areas.

Key policy changes

The new legislation for this element of the reform will have similar effect to the existing EPBC Act, with the improvements listed below.

Effect

Reforms will clarify and simplify administrative processes and make it easier to protect non-contiguous heritage places. The changes will make it easier for people to nominate a heritage place and clarify arrangements for heritage place managers. There will be no substantive changes to arrangements for Commonwealth Places Overseas and the List of Overseas Places of Historic Significance to Australia.

1. Assessment and Listing of National and Commonwealth Heritage places

1.1. Nominations

- The Minister and the Australian Heritage Council (AHC) will have more flexibility to call for nominations for the inclusion of places in the National Heritage List (NHL) and Commonwealth Heritage List (CHL). Currently, the call for nominations must occur once a year. The proposed changes enable the AHC to undertake additional engagement with nominees on their nominations.
 - For example, the change will enable the AHC to work with First Nations communities on First Nations-led nominations to address identified gaps in the NHL and CHL.

¹ including to align powers, obligations, and duties with the principles in the Commonwealth of Australia Senate Standing Committee for the Scrutiny of Bills Guidelines, July 2022, which can be found online at [www.aph.gov.au/Parliamentary Business/Committees/Senate/Scrutiny of Bills/Committee guidelines](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Committee_guidelines).

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- Prior to proceeding to the Proposed Priority Assessment List (PPAL) stage, the Minister and the AHC will be able to reject a nomination if the nomination is considered vexatious, frivolous, or not made in good faith; or the nomination clearly fails to comply with criteria prescribed.

1.2. Assessments

- The Minister will be able to discontinue an assessment for a place included on the Finalised Priority Assessment List (FPAL), if the AHC advises that the listing is not viable. This may be due to a lack of requisite information or stakeholder support for the nomination.
 - Places that have had their assessment discontinued can be renominated in future with further evidence of appropriate support, for example support from relevant First Nations groups or other interested parties.

1.3. Listings

- The Minister will be able to make minor amendments to National or Commonwealth Heritage values (or aspects of values), boundaries and listing details by way of notifiable instrument. This will enable the Minister to update details where circumstances change. For example, changes to a listing may include:
 - correcting typographical errors or incorrectly described boundaries;
 - adding or amending place names to include First Nations language names; or
 - amending species names that may have changed.
- The definition of a National or Commonwealth Heritage 'place' will be expanded to enable an area with non-contiguous boundaries to be included in a single listing.
 - This reform aims to represent a 'place' comprising more than one site with shared heritage values, or values contributing to a larger narrative, including across different jurisdictions and time.
 - Allowing non-contiguous areas to be included on the NHL or CHL will improve the comprehensive representation of heritage themes across large or disparate areas, such as the expression of song lines, trading routes, historical structures, geological formations, narratives, or natural areas divided by landholdings.

2. Heritage Management

2.1. Making Heritage Management Plans

- A Heritage Management Plan for a World Heritage property or a National Heritage place that is not in a Commonwealth area will be considered a plan for the purposes of decision making if it is endorsed by the Minister. This, along with guidance material on the department's website, will provide greater certainty around the legal status of plans made by States and Territories. For example, the guidance could include a requirement for a Heritage Management Plan to be in place in order to access Commonwealth grant funding.
- State and Territory governments remain responsible for the management of heritage places within their jurisdiction. The reforms will clarify that the Commonwealth's role is to support and provide advice to place managers on how to prepare and implement plans, in cooperation with State and Territory governments.

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- States and Territories will be encouraged to draft Heritage Management Plans in a manner which is not inconsistent with the heritage management principles and relevant National Environmental Standards.

2.2. Reporting and review

- The Commonwealth, in cooperation with the States and Territories, will be able to seek information on the management of heritage places for the purposes of reporting and other statutory responsibilities and international obligations.
- The timeframe for reviewing and reporting on the management of heritage places will be made consistent for all listings. The Minister will ensure that reviews are undertaken and reports are drafted for heritage management once every 5 years.

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Definitions

Australian Heritage Council: the body established by the [Australian Heritage Council Act 2003](#).

Commonwealth area: has the meaning given by [section 525](#) of the EPBC Act.

Commonwealth Heritage List: means the [list](#) referred to in [section 341C of the EPBC Act](#).

Commonwealth Heritage value: A place has a Commonwealth Heritage value if and only if the place meets one of the criteria (the Commonwealth Heritage criteria) prescribed by the regulations. Commonwealth Heritage value has the meaning given by [section 341D](#) of the EPBC Act.

Finalised Priority Assessment List: the list of nominated National and Commonwealth heritage places that have been approved for assessment by the Minister responsible for the EPBC Act for a particular assessment period. These have a statutory timeframe in which the assessment must be completed.

Heritage value: of a place includes the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians.

National Heritage List: means the [list](#) referred to in [section 324C](#) of the EPBC Act.

National Heritage value: A place has a National Heritage value if and only if the place meets one of the criteria (the National Heritage criteria) prescribed by the regulations for the purposes of this section. National Heritage value has the meaning given by [section 324D](#) of the EPBC Act.

Proposed Priority Assessment List: the list of nominated National and Commonwealth heritage places that have been nominated for assessment by the Minister responsible for the EPBC Act for a particular assessment period. The proposed priority assessment list for an assessment period is to include, for each place in the list: a description of the place; an assessment completion time and any other information required by the regulations.

World Heritage List: means the [list](#) kept under that title under [Article 11](#) of the [World Heritage Convention](#).

World Heritage values: A property has world heritage values only if it contains natural heritage or cultural heritage. The world heritage values of the property are the natural heritage and cultural heritage contained in the property, whereby "cultural heritage" and "natural heritage" have the meanings given by the [World Heritage Convention](#).

RAMSAR WETLANDS INFORMATION SOURCE

Existing powers of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be broadly retained for this element of the reform.

Provisions relating to wetlands of international importance (Ramsar sites) will be updated to clarify the primary source of information, align with requirements under the Ramsar Convention and inform assessments and decision-making regarding development impacts on Ramsar sites. These amendments complement other reforms to improve conservation planning across matters of national environmental significance.

This will be done through:

- a requirement to prepare and maintain the Ramsar Information Sheet, which describes the ecological character of each Ramsar site.
- a requirement to review and update each Ramsar Information Sheet every 6 years.

These inclusions in the legislation will formalise the already existing Ramsar Information Sheet as the most reliable and up-to-date source of information on ecological character, the matter protected under national environment law.

Power

Wetlands listed under the Convention on Wetlands (Ramsar wetlands) are a matter of national environmental significance and will remain so in the new legislation.

Ecological character is the matter protected under the existing Act, and that will be transferred to the new legislation.

The Ramsar Information Sheet is a document that describes the ecological character of the site. It must be prepared by the relevant landowner as part of the process for listing a site with the Ramsar Convention. There is one for each Ramsar site. The EPBC Act does not refer to the Ramsar Information Sheet.

Key policy changes

The parts of the EPBC Act that relate to wetland management are sections 328 to 336.

The new legislation will update these sections to make it clear that the Ramsar Information Sheet is the most reliable source of data on the ecological character of a site and should be used by the regulator in any assessments.

This addition will resolve confusion surrounding the primacy of information sources that the regulator can refer to in protection and compliance matters. Basing decisions on best available information will support stronger environmental outcomes. This is consistent with the other improved conservation planning approaches under Nature Positive Plan such as Recovery Strategies.

A Ramsar Information Sheet must be consistent with Australian Ramsar management principles and comply with the information and formatting requirements of the Convention. The legislation currently refers to management plans which can be useful sources regarding site management, but don't contain the necessary data on which to base an assessment. Provisions for Ramsar Management Plans will also be maintained but will not form part of the regulatory system.

Background

The Ramsar Convention is an international treaty that Australia has signed up to, to halt worldwide loss of wetlands and conserve, through wise use and management, those that remain. Australia has 67 wetlands of international importance.

The management planning provisions of the EPBC Act have not been effective for Ramsar listed wetlands. Management plans should be in place for each site and are considered best practice, however, only one quarter of Australia's Ramsar wetlands currently have updated management plans in place. None of these plans have been endorsed by the Australian Government. The Commonwealth has no power to require states and territories to prepare management plans.

Conversely, every Australian Ramsar site has a Ramsar Information Sheet as required by the Ramsar Convention. The Ramsar Information Sheet, and not the management plan, is the primary source of information about the Ramsar wetland including values, threats, monitoring and management arrangements and ecological character.

While not referenced in the EPBC Act, national policy and guidance provides that a Ramsar Information Sheet must be prepared as part of the package of information provided to nominate a site for listing. The Convention requires that the Ramsar Information Sheet for each site is updated every 6 years.

MANAGING BIOSPHERE RESERVES – PROVISIONS NOT REPLICATED IN NATURE POSITIVE (ENVIRONMENT) LEGISLATION

Policy approach

It is proposed that Australia's commitment to the UNESCO Man and the Biosphere (MaB) Programme continue, but without replicating the provisions in Division 3 (Managing biosphere reserves), Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in the [Nature Positive (Environment)] Act. The associated Australian biosphere reserve management principles in schedule 7 of the EPBC Regulations 2000 are proposed to be reviewed, updated and published as guidance to inform preparation of plans for managing biosphere reserves.

The Managing biosphere reserve provisions are not required in the [Nature Positive (Environment)] Act because the existing provisions are redundant, duplicate existing mechanisms, are rarely used, and are not required to meet international obligations under the UNESCO MaB Programme.

The proposed approach to the biosphere reserve provisions is consistent with the Government's commitment to streamline Australia's environmental laws. By streamlining our national environmental laws and removing duplicative and redundant provisions, our laws will be clearer and obligations under the law will be easier to understand. Australia remains committed to the UNESCO MaB Programme. Biosphere reserves are internationally recognised areas designated by the UNESCO through the MaB Programme. There are 5 biosphere reserves in Australia.

Effect

The [Nature Positive (Environment) Act would not provide statutory provisions for the Australian Government to co-operate with State and Territory governments on the preparation and implementation of management plans for biosphere reserves. Australia's biosphere reserves would continue to be protected as they are now, and the preparation and implementation of plans for their management would continue under existing mechanisms.

Reasons

The EPBC Act provisions for biosphere reserves facilitate a framework under which the Australian Government may co-operate with State and Territory governments on the preparation and implementation of management plans for biosphere reserves. These provisions are not required to support the intergovernmental management of Australia's biosphere reserves.

- The Managing biosphere reserve provisions duplicate existing mechanisms:
 - Core areas of Australia's biosphere reserves are protected as they form part of either a Ramsar listed wetland, a World Heritage property, National Heritage place or a protected area under state legislation. Matters of national environmental significance (MNES) within Australia's existing biosphere reserves will be protected under the [Nature Positive (Environment)] Act. The new laws will strengthen protections for MNES, which will provide stronger protections for biosphere reserves.
 - Management planning arrangements outside core areas (i.e. buffer zones and transition areas of biosphere reserves) can still be made by the relevant governments, either

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Australian, State/Territory or Local, in accordance with their jurisdictional powers and responsibilities, for example to reflect regulatory and non-regulatory requirements for land management, natural heritage, and Indigenous or other cultural heritage protection.

- The Australian Government did not cooperate with State/Territory governments, or biosphere reserve coordinating bodies, on the preparation or implementation of current management plans for Australia's existing biosphere reserves.
- Not replicating the biosphere reserve provisions in the [Nature Positive (Environment)] Act would not breach any internationally binding obligations. The UNESCO MaB Programme does not impose binding obligations on Australia.

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THREAT ABATEMENT STRATEGIES

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Powers of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be retained but drafting will be modernised,¹ duplication reduced and processes streamlined and clarified. This will likely result in changes to structure and terminology when compared to the existing EPBC Act.

Key changes for this element of the new laws are:

- replacing ‘threat abatement plans’ with modular ‘threat abatement strategies’ that largely mirror the approach proposed for recovery strategies, including a core legislative instrument module of a ‘Threat Mitigation Statement’
- expanding the scope for threat abatement (matching the proposal for an expanded scope for key threatening processes)
- explicitly allowing for multiple strategies for a given key threatening process, including to address the ‘one TAP : one KTP’ design flaw (while retaining the ability for threat abatement strategies to cover one or more KTPs)
- making it easier for the Minister to decide to develop a threat abatement strategy
- modernising consultation requirements and considerations before the Minister approves a threat abatement strategy
- allowing explicitly for relevant State and Territory collaboration in developing a threat abatement strategy
- strengthening strategy publication requirements by introducing a deadline
- making strategy review processes more flexible, including to allow for prioritisation, as well as public engagement in the prioritisation process.

Power

Provisions provide for the Minister to develop, approve, review and vary a threat abatement strategy to abate a key threatening process² (reduce the effect of the process). The strategy provides for the research, management and other actions necessary to reduce the effect of the key threatening process to an acceptable level in order to maximise the chances of the long-term survival in nature of native species and ecological communities affected by the process.

¹ including to align powers, obligations, and duties with the principles in the Commonwealth of Australia Senate Standing Committee for the Scrutiny of Bills Guidelines, July 2022, which can be found online at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Committee_guidelines.

² See Paper A8: In addition to existing criteria for listing KTPs related to threatened species and ecological communities, a KTP could be listed if it adversely affects species and ecological communities that are part of any of the following:

- the natural heritage values of a declared World Heritage property
- the natural heritage values of a National Heritage place
- the ecological character of a declared Ramsar wetland
- the Commonwealth Marine Area.

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The Minister must ensure a threat abatement strategy is in force for a key threatening process except if the Minister considers a plan is not a feasible, effective and efficient way of abating the process. The Minister must consult before making such a decision.

A threat abatement strategy can be developed and implemented in collaboration with relevant States and Territories. There must be public consultation and advice from the Threatened Species Scientific Committee about the strategy.

Key policy changes

The new legislation for this element of the reform will have similar effect to the existing EPBC Act, with the improvements listed below.

1. Relationship between threat abatement strategies and key threatening processes

Effect

The provisions for threat abatement planning will be retained, modernised and strengthened by enabling more than one threat abatement plan to be made for a key threatening process. This will improve planning where processes have broad application and cannot sensibly be addressed in a single plan.

- A key threatening process may have more than one threat abatement strategy.
- A threat abatement strategy may cover more than one key threatening process and may cover more than one relevant matter.
- Provision will be made for rules about how threat abatement strategies interact with each other.

2. Application of and compliance with a threat abatement strategy

Effect

These provisions provide for the Threat Mitigation Statement (see section 6) of a threat abatement strategy to bind the Commonwealth and Commonwealth agencies.

- Consistent with the EPBC Act, the Commonwealth must:
 - implement a threat abatement strategy to the extent to which it applies in Commonwealth areas
 - where a threat abatement strategy applies outside Commonwealth areas in a particular State or Territory, invite the co-operation of the State or Territory with a view to implementing the strategy jointly with that jurisdiction(s) to the extent to which the strategy applies there.
- Closely reflecting the EPBC Act, a Commonwealth agency must not take any action that contravenes the threat mitigation statement (see section 6).

3. Deciding whether to have a threat abatement strategy

Effect

The requirement for the Minister to decide whether to have threat abatement strategy will be retained and streamlined.

3.1. *Decision to have a threat abatement strategy*

- The Minister may decide at any time to have a threat abatement strategy for a threatening process in the list of key threatening processes.
 - The assumption will be that a threat abatement strategy is feasible, effective and efficient unless the Minister considers otherwise.
 - As set out in Paper A9, at the time of listing of a key threatening process, the Minister must decide whether to have a threat abatement strategy.
 - The requirement under the EPBC Act for a decision to not have a threat abatement strategy to be reviewed within five years will not be replicated (see section 8).
 - Provision for rules will be made to clarify the feasible, effective and efficient test.

3.2. *Decision to not have a threat abatement strategy*

- The requirement will remain for the Minister to decide to not have a threat abatement strategy if they consider a strategy is not feasible, effective and efficient.
 - Before deciding to not have a strategy, the Minister must seek the advice of the Threatened Species Scientific Committee and may seek the advice of anyone else they consider appropriate. The Minister must consider advice given on request within the specified period.
- As is currently the case, if the Minister decides to not have a threat abatement strategy, they must publish the decision and the reasons for the decision.

3.3. *Decision to revoke a threat abatement strategy*

- The Minister may revoke an existing threat abatement strategy if they decide to not have a strategy for a key threatening process.
 - The same requirements for a decision to not have a threat abatement strategy apply to this decision.
 - The Minister must publish their reasons for revoking the strategy.

4. Approving a new, or varying an existing, threat abatement strategy

Effect

The provisions for the Minister to approve or vary a threat abatement strategy will be retained and clarified.

Consultation will be required unless changes are minor or insubstantial.

4.1. Power to approve or vary a threat abatement strategy is vested in the Minister

- The power to approve a threat abatement strategy or part of a threat abatement strategy will remain with the Minister.

4.2. Prerequisites before approval or variation

4.2.1. Consultation

- Before approving a threat abatement strategy, or part of a threat abatement strategy, the Minister must consult.
 - In line with modern drafting practice, consultation requirements will be in subordinate legislation so they can be kept contemporary and appropriate.
 - In the case of a variation, the Minister will be required to consult unless the content of the threat abatement strategy or module is substantially the same as material on which the Threatened Species Scientific Committee, the public or relevant State or Territory has previously been consulted.
 - For example, a strategy could be varied to reflect updated taxonomy – where the cane toad’s nomenclature *Bufo marinus* becomes *Rhinella marina*.

4.2.2. Considerations

- As is currently the case, before approving or varying a threat abatement strategy, or part of a threat abatement strategy, the Minister must consider the advice of the Threatened Species Scientific Committee; any relevant public comments received; and comments provided by the appropriate Minister of each State and Territory where the key threatening process occurs.
- In line with modern drafting practice, rules about how advice and comments are sought and received will be in subordinate legislation so requirements can be kept contemporary and appropriate.

4.2.3. Matters to which the Minister must have regard

- In approving or varying a threat abatement strategy, the Minister must have regard to the following matters:
 - the objects of the Act
 - the most efficient and effective use of the resources that are allocated for the protection of the natural and cultural heritage values of species and ecological communities, natural values of a listed World, National or Commonwealth heritage place, and the ecological character of a listed Ramsar wetland or and the broader environment

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- minimising any significant adverse social and economic impacts consistently with the principles of ecologically sustainable development
- the precautionary principle
- meeting Australia's obligations under international agreements between Australia and one or more countries relevant to the key threatening process /es that is the subject of the strategy; and
- the rights and interests of First Nations peoples with respect to /concerning Australia's environment and managing threats to natural and cultural heritage values of species and ecological communities, natural values of a listed World, National or Commonwealth heritage place, and the ecological character of a listed Ramsar wetland.

4.2.4. Matters about which the Minister must be satisfied

- Additionally, the Minister must be satisfied that any variation to a threat abatement strategy, or part thereof (including removing a part), will better address the relevant key threatening process
 - except if variations are minor in nature.

5. Collaborative development & cooperative implementation of a threat abatement strategy

Effect

This provision requires the Minister to make best endeavours to develop jointly a threat abatement strategy with relevant States or Territories.

It also replicates the EPBC Act's requirement for the Commonwealth to cooperate with relevant States and Territories to implement a threat abatement strategy.

- An equivalent to the EPBC Act's provision for 'joint making' of a threat abatement plan is not proposed for replication, given a State or Territory Environment Minister cannot in fact make a threat abatement plan under the Act.
- This will not preclude States and Territories agreeing to 'sign on' to or 'endorse' a threat abatement strategy; nothing in this provision prevents a State or Territory incorporating a Commonwealth threat abatement strategy into jurisdictional legislation or policy.

- To the extent a key threatening process occurs or could occur in a State or Territory, the Commonwealth must seek
 - to collaborate with that jurisdiction to develop jointly a threat abatement strategy (or parts thereof)
 - to cooperate with that jurisdiction to implement jointly any relevant threat abatement strategy (or parts thereof).

6. Content and structure of a threat abatement strategy

Effect

Provisions for making threat abatement strategy will be amended to provide flexibility and make threat abatement strategies more useful. Structural arrangements will be similar to those for recovery strategies.

- An approved threat abatement strategy must include
 - a **threat mitigation statement**, which will be made as a legislative instrument, that specifies what needs to happen (research, management or other actions) to abate and avoid exacerbating the impact of the key threatening process
 - and any other information the Minister considers appropriateand must include, if the threat abatement strategy scope departs from that of a (or relates to more than one) listed key threatening process,
 - a **threat scoping statement** that identifies the scope of the threat abatement strategy including the key threatening process, and
 - a **scope rationale** that provides an explanation of the strategy's relationship with the relevant key threatening process (including the Threatened Species Scientific Committee's assessment for the process).
- Other parts of the threat abatement strategy will provide factual information and guidance to support a range of decisions and actions to abate or avoid exacerbating the key threatening process and may include:
 - **abatement objectives** that indicate what needs to be achieved to abate and avoid the impact of the key threatening process through the priority abatement measures for research, management, and coordination
 - **abatement actions** that describe what proactive activities are to be undertaken to abate and avoid the key threatening process
 - **management principles** that outline recommendations for a decision-maker on the appropriate management of the key threatening process
 - **costing information** that describes the cost of the threat abatement strategy
 - **background information**, for example, links to other threat abatement strategies and historical information about the key threatening process.
- The threat abatement strategy may reference other relevant strategies or plans.
- Provision for rules will be made to specify the purpose and minimum content for each module.

7. Publishing a threat abatement strategy

Effect

Provide, as does the current Act, for the publication of a strategy. This requirement is being strengthened with the introduction of a publication deadline.

- The approved or varied threat abatement strategy or parts whereof must be published within 10 days of approval.
- A threat abatement strategy comes into force on the day it is published.
- Provision for rules will be made to specify publication requirements.

8. Reviewing a threat abatement strategy

Effect

Provide, as does the current Act, for a strategy to be reviewed to ensure it remains current and applicable.

Rather than the current requirements for a 5-yearly review of all strategies, the proposal is for a more flexible approach that allows for prioritisation of the review of particular strategies or part of a strategy, as well as public engagement in that prioritisation. (See also section 4.)

- The Minister may approve a review of a threat abatement strategy or a part within the strategy, at any time.
- Any person may nominate a threat abatement strategy or a part within the strategy, for review where:
 - there is substantial new information, or
 - a triggering threshold has been met in accordance with the nomination and prioritisation process and criteria set out within the rules.
- Provision for rules will be made to specify a prioritisation process and criteria for reviewing threat abatement strategies, and publishing requirements for decisions relating to the outcomes of this prioritisation.

9. Miscellaneous

Effect

Provide for other aspects related to threat abatement, but not the specifics of threat abatement strategies, to be replicated from the current EPBC Act.

- Provisions in the EPBC Act will be replicated to maintain:
 - a requirement for the Commonwealth, in the event that threat abatement strategy actions include the eradication of a non-native species which is threatened in its native country, to offer to provide stock to that country before eradication proceeds.

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- the Commonwealth’s ability to give assistance, subject to any conditions the Minister thinks fit, to a State or Territory or to a person to make or implement a threat abatement strategy
 - but for a change to allow for, rather than requiring, the Minister to request the advice of the Threatened Species Scientific Committee in the setting of any conditions to such assistance.
- provision for rules to be made for the control of non-native species (section 301A in the EPBC Act).

10. Transition

Effect

Provide for transitional arrangements relating to threat abatement plans under the EPBC Act.

- Threat abatement plans will remain in force until they are replaced by a threat abatement strategy or revoked.

CONSERVATION PLANNING – LISTING REFORMS

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The powers of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be retained but drafting will be modernised,¹ duplication reduced and processes streamlined and clarified. This will result in changes to structure and terminology when compared to the existing EPBC Act.

Key changes for this element of the new laws are:

- Streamlining the permitting process for protected species and ecological communities
- Accrediting state and territory listing processes for species and ecological communities in-line with the Common Assessment Method agreement with state and territory governments
- Amending the migratory species list consistent with international agreements
- Amending the marine species list to better focus on native species in the Commonwealth Marine Area
- Amending the criteria for listed threatened ecological community categories (risk of collapse) consistent with IUCN criteria.

Power

Provisions contributing to the protection of Australia's native species and ecological communities in Part 13 of the EPBC Act will be maintained and enhanced. The provisions enable the Minister to establish and amend lists of threatened species, threatened ecological communities, key threatening processes, migratory and marine species and provide protection for cetaceans. Offence provisions will be retained and permits will still be required for actions that would otherwise be prohibited.

Key policy changes

The new legislation for this element of the reform will have similar effect to the EPBC Act, with the improvements listed below.

1. Establishing and amending lists of threatened species and threatened ecological communities (ECs) and key threatening processes (KTPs)

Effect

This section provides for the listing of threatened species and ecological communities (ECs) that meet relevant eligibility criteria, and key threatening processes (KTPs) that adversely affect the biodiversity of Matters of National Environmental Significance (MNES). Improvements include the ability for a state or territory to request the Minister accredit their process for assessing species and/or ECs to be included in the threatened species and threatened EC lists.

¹ including to align powers, obligations, and duties with the principles in the Commonwealth of Australia Senate Standing Committee for the Scrutiny of Bills Guidelines, July 2022, which can be found online at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Committee_guidelines.

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1.1. *Retaining lists of threatened species and threatened ECs*

- The lists of native threatened species and ECs established under s178(1) and s181(1) of the EPBC Act will transition to the new Act without change.
- A species or EC will be eligible to be included on the list if:
 - It meets relevant criteria consistent with International Union for Conservation of Nature (IUCN) Red List criteria and categories.
 - Species included on the threatened species list are included in one of the following categories based on their risk of extinction:
 - Extinct
 - Extinct in the wild
 - Critically endangered
 - Endangered
 - Vulnerable
 - Conservation dependent².
 - ECs on the threatened ECs list are included in one of the following categories based on their risk of **collapse**. New criteria align with IUCN criteria, replacing EPBC Act “*risk of extinction*” criteria:
 - Critically endangered - at an extremely high risk of **collapse**
 - Endangered – at very high risk of **collapse**
 - Vulnerable – at high risk of **collapse**.
- The Minister must obtain and consider advice from the Threatened Species Scientific Committee (TSSC) before deciding whether to amend the lists of native threatened species and ECs.

1.2. *Nomination, listing, assessment and decision processes*

- The existing nomination, prioritisation and assessment process for species, ECs and KTPs will be retained with the following changes aimed at streamlining and modernising the legislation:
 - enabling the call for listing nominations to be advertised electronically (on the department’s website (not in newspapers as is currently legislated)
 - providing transparency on any changes made by the Minister to listing assessment priorities proposed by the TSSC
 - deleting redundant provisions such as the option to determine a conservation theme (which has had no positive impact on public listing nominations).
- The Minister’s timeframe for listing decisions will be reduced from 90 business days to 60 business days. Extension to the decision timeframe will be based on the conservation of the entity and limited to one extension (currently not limited).

² IUCN definition differs from the Nature Positive legislation definition. The EPBC Act definition of Conservation Dependent will be retained.

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- The Minister must be satisfied that in delisting an entity it will not become eligible for listing again in the medium-term future (based on IUCN guidance relevant to the species/EC – for example, for short lived species, this would be 10 years). This change clarifies the timeframe over which the Minister must consider the likely effect of delisting.
- The new legislation will provide for the TSSC to review the threatened lists outside the regular annual process (for example following major natural disasters), to confirm the eligibility of species/ECs in relevant categories and/or identify new species/ECs to be assessed for potential inclusion in the threatened lists.
- At the time of listing of a threatened species/EC, a recovery strategy must be published.
 - Recovery strategies will guide and direct the protection and recovery of threatened species/ECs.
- All listed threatened species (except those in the extinct and conservation dependent categories) and listed threatened ECs (except those in the vulnerable category) will continue to be MNES.

1.3. New requirements for a Common Assessment Method (CAM) accredited assessment process

- The Minister may amend the threatened species list and the threatened EC list based on an accredited assessment process undertaken by a relevant state or territory government.
- A state or territory may request the Minister accredit their process for assessing species and/or ECs to be included in the threatened species list and threatened ECs list.
- A process will be accredited when listing eligibility criteria, consultation and any other relevant matters are equivalent to Commonwealth requirements and an agreement has been made between the relevant jurisdiction and the Commonwealth to implement the process.
- The Minister may vary or revoke accreditations.
- A state or territory must invite comment from the TSSC during the accredited assessment process. The Minister may consider any TSSC advice in deciding to amend the lists of threatened species or ECs based on accredited assessments.

1.4. Retaining the existing list of KTPs and enabling amendments

- The list of KTPs established under s183(1) of the EPBC Act will be directly transitioned under the new Act.

1.5. Changes to amending lists of KTPs

- In addition to existing criteria for listing KTPs related to threatened species and ecological communities, a KTP could be listed if it adversely affects species and ECs that are part of any of the following:
 - the natural heritage values of a declared World Heritage property
 - the natural heritage values of a National Heritage place
 - the ecological character of a declared Ramsar wetland
 - the Commonwealth Marine Area

- the Great Barrier Reef Marine Park.
- At the time of listing of a key threatening process, the Minister must decide if a threat abatement strategy must be developed on the basis that a threat abatement strategy will be feasible, effective and efficient to abate the process.
 - Threat abatement strategies will guide action to abate the key threatening process.
 - A threat abatement strategy may apply to more than one key threatening process, and a key threatening process may be addressed by multiple threat abatement strategies.
- The Minister may amend the list at any time, including by combining and splitting listed processes. The Minister must obtain and consider advice for the TSSC and undertake public consultation before deciding whether to amend the list.

2. Establishing and amending the migratory species list

Effect

This section provides for the listing of migratory species that meet the eligibility criteria. Improvements include the establishment of a new list that is more closely aligned to Australia's international obligations under relevant international agreements.

2.1. *Establishing a new migratory species list*

- The Minister must create a new list of migratory species by amending the list of migratory species established under s209(1) the EPBC Act. The new list may be amended but not repealed.
- The new list must include all migratory species that are native species and included in Appendix I to the Bonn Convention and all native species listed under other international agreements for protection of migratory species (EPBC Act s209(3)(b-c)).
 - Species listed on Appendix II of the Bonn Convention will not be included in the list, thereby improving alignment with Australia's obligations under this international agreement.
- The Minister must amend the new list as any amendments are made to the list of species on Appendix I to the Bonn Convention and other relevant lists established under other international agreements for protection of migratory species.
- Species included in the new list will be MNES.

3. Establishing and amending the marine species list

Effect

The Marine Species List protects native marine species of public and conservation concern in Commonwealth waters and ensures that marine species protected in state and territory waters received similar protection in Commonwealth waters. This section provides for the listing of marine species that meet the eligibility criteria. Improvements include the establishment of a new list that provides better coverage of species that regularly and predictably occur in the Commonwealth Marine Area.

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3.1. Establishment of a new marine species list

- The Minister will create a new list of marine species by amending the list of marine species established under s248(1) the EPBC Act. The new list may be amended but not repealed.
 - Species included on the amended list will align more accurately to listing eligibility.
- Species are eligible to be included in the list if they are a native species, regularly and predictably occur in the Commonwealth Marine Area, the Minister is satisfied that listing is required to ensure the conservation of the species, and are one of the following:
 - Subfamily Hydrophiinae (sea-snakes)
 - Family Otariidae (eared seals)
 - Family Phocidae (“true” seals)
 - Genus *Crocodylus* (crocodiles)
 - Genus *Dugong* (dugong)
 - Family Cheloniidae (marine turtles)
 - *Dermochelys coriacea* (leatherback turtles)
 - Family Syngnathidae (seahorses, sea-dragons and pipefish)
 - Family Solenostomidae (ghost pipefish)
 - Class Aves (birds).
- The purpose of this change is to remove itinerant and non-marine species from the list.
- To amend the new marine list, the Minister must obtain and consider advice from the TSSC and consult with each Minister who has an interest in a Commonwealth marine area where the species occurs. The reasons for any amendment must be published.
- Only marine species that are also listed in the threatened species list or migratory species list will be MNES. This is consistent with the EPBC Act. Species included in the new list may be considered as a component of the Commonwealth Marine Area (MNES).

4. Retaining Protection for Cetaceans

Effect

This section provides for the protection of cetaceans. Improvements include changing the name of the sanctuary to provide clarity that all cetaceans (not just whales) are protected.

4.1. Retained protection of cetaceans

- Provisions for the Australian Whale Sanctuary established under s225(1) of the EPBC Act will be retained and renamed the Australian Cetacean Sanctuary to better reflect extent of protections. This is a name change only. There will be no change in the extent of the sanctuary either spatially or in regard to species protected.
- All cetaceans will continue to be protected within the Australian Cetacean Sanctuary.
 - Protections that extend to cetaceans occurring outside Australia’s jurisdiction and apply to all Australian citizens, permanent residents, the Commonwealth, Commonwealth agencies,

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aircraft, vessels and crew members (as established in Part 13 Division 3 of the EPBC Act) will be maintained.

- Only cetaceans that are listed in the threatened species list or migratory species list will be MNES. This is consistent with the EPBC Act. Cetaceans may also be considered as a component of the Commonwealth Marine Area (MNES).
- Provisions for identifying important cetacean habitat will not be retained and instead enabled through recovery strategy provisions for habitat protection.

5. Offence and permitting provisions for protected species and communities

Effect

This section provides the power to grant a permit for an action in relation to a protected species or EC which would otherwise be an offence (Part 13 of the EPBC Act). These provisions will be streamlined and clarified. Offence provisions will be modernised and penalties for some prohibitions increased in line with relevant Commonwealth policy. Provisions will be made for the Environment Protection Agency (EPA) to administer the permitting regime.

5.1. Retained offence provisions

- Offence provisions for killing, injuring, taking, trading or moving a listed threatened species or EC, listed migratory species or listed marine species or cetacean in a Commonwealth area (under Part 13 of the EPBC Act) will be streamlined.
- Offence provisions will be modernised to create general prohibitions instead of specific prohibitions for each type of permit. Contraventions of the general prohibitions could result in both offence (strict liability and fault-based) and civil penalties.

5.2. New or amended offence and permitting provisions

- Under the new legislation, the Environment Protection Agency (EPA) will administer permits for protected matters. The Chief Executive Officer (CEO) of EPA may grant a permit to take an action in relation to a listed protected (threatened, migratory or marine) species or listed threatened EC or cetacean in a Commonwealth area.
- Provisions for granting a permit will be streamlined so that there is a single, consistent permitting process for all protected species, ECs or cetacean.
- In granting a permit, the CEO must be satisfied that:
 - the action will contribute significantly to the conservation of the protected species or EC or cetacean, or
 - all the following apply:
 - the impact is incidental, not the purpose of, taking the action
 - taking the action will not adversely affect the survival or recovery in nature of the protected species, EC or cetacean's survival
 - the action is not inconsistent with a protection statement that is in force for the affected class
 - the permit holder will take all reasonable steps to minimise the impact of the action on the protected species or EC or minimise interference with cetaceans

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- where the action is of particular significance to Indigenous tradition and where the affected class is a threatened species, EC or cetacean, the action will not adversely affect the survival or recovery in nature of the threatened species, EC or cetacean.
- In granting a permit the CEO must consider the following:
 - comments received during a public consultation process
 - any recovery strategy in force for the affected class
 - any regional plan in force in the area of activity
 - if the action would take place in a Commonwealth marine protected area - whether the action is consistent with any management plan for the area
 - if the action is consistent with Australia's international obligations
 - any other matters prescribed in rules.

5.2.1. *Permitting provisions for cetaceans*

- Offence provisions for killing, injuring, taking, trading, moving or interfering with a cetacean in the Australian Cetacean Sanctuary under s229-232 of the EPBC Act will be amended to include offence provisions for interacting with cetaceans consistent with Part 8 of the EPBC Regulations.
- The provision for the Minister to issue a permit if the specified action is whale watching (EPBC Act s238(3)(c)) will not be retained as all recreational and commercial whale watching activities (vessel and aircraft) must be conducted in accordance with regulated approach distance as specified currently in the EPBC Regulations Part 8 Division 8.1s.

Definitions

CAM: Common Assessment Method – Memorandum of Understanding between Commonwealth, states and territories that provides for a consistent national approach to assessment and listing of threatened species and ecological communities.

Collapse: collapse of an ecological community occurs when: the defining biotic or abiotic features of the community have been lost; and the native biota characteristics of the community are no longer being sustained.

**DIRECTOR OF NATIONAL PARKS, COMMONWEALTH RESERVES AND
CONSERVATION ZONES**

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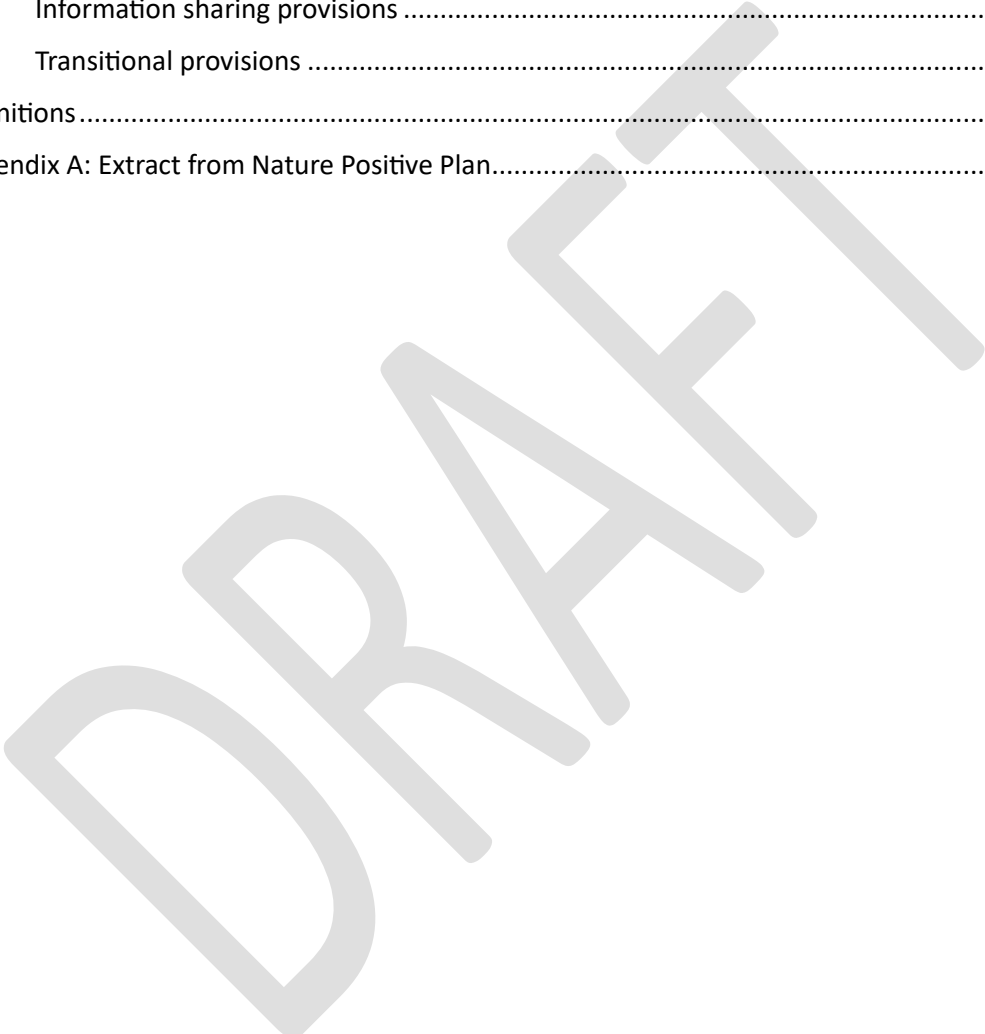
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The powers of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) will be retained but drafting will be modernised,¹ duplication removed, and processes streamlined and clarified. This will result in changes to structure and terminology when compared to the existing EPBC Act.

Key changes for this element of the new laws are:

- provisions will be modernised and refined to address contemporary drafting, Commonwealth policy and regulatory practice.

Power

A new standalone Nature Positive (National Parks) Act (the National Parks Act) establishes the Director of National Parks (the Director) and provides for the declaration and management of **Commonwealth reserves** and **conservation zones**. The National Parks Act also provides the framework to administer, manage and control Commonwealth Reserves and conservation zones, including those located on Indigenous land leased by the Director on behalf of the Commonwealth.

Consistent with the Nature Positive Plan, a second stage of reform—currently being designed and with consultation to commence from 2024—will seek to improve trust and confidence in the management of **jointly managed reserves**, and to more closely link and align the role and functions of the Director with environmental goals and objectives for the management of protected areas (see Appendix A). The two-stage approach allows for longer time to co-design new joint management policy settings with Traditional Owners, while supporting ongoing protection and regulation of the Commonwealth reserves and conservation zones.

Key Policy Changes

The National Parks Act will have similar effect to the relevant parts of the existing EPBC Act, with the improvements listed below.

1. Compliance and enforcement

Effect

The provisions will modernise the regulatory framework for Commonwealth Reserves through alignment with the *Regulatory Powers (Standards Provisions) Act 2014* (the Regulatory Powers Act), while retaining some powers under Part 17 of the EPBC Act, where necessary.

The National Parks Act and the Nature Positive Act will each contain their own separate compliance and enforcement regimes.

The compliance regime under the Nature Positive Act will be enforced by the new national Environment Protection Australia (EPA) agency. The Chief Executive Officer of the EPA will be the

¹ including to align powers, obligations, and duties with the principles in the Commonwealth of Australia Senate Standing Committee for the Scrutiny of Bills Guidelines, July 2022, which can be found online at www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Bills/Committee_guidelines.

chief executive for the purposes of the Nature Positive Act. This regime will have jurisdiction in the Australian jurisdiction and other areas under the extended jurisdiction of the Nature Positive Act.

The Director will be the **relevant chief executive** for the compliance regime in the National Parks Act, which will have jurisdiction in Commonwealth Reserves (including extraterritorially when a Commonwealth reserve is declared outside Australia).

The Director will be designated with the power to authorise compliance personnel, such as **wardens** and **rangers**.

While the compliance regimes in the National Parks Act and the broader Nature Positive legislation are separate, they will be aligned as far as possible. The intent is for those powers applicable to **authorised persons** in the parks context to be consistent with those of the new EPA legislation. This would provide certainty for compliance personnel to be able to exercise the same powers regardless of the jurisdiction in which they are operating.

Above the base provisions provided in the Regulatory Powers Act, and consistent with the intent in the Nature Positive Plan, to provide strong environmental compliance and enforcement, the new National Parks legislation will retain certain powers currently provided in Part 17 of the EPBC Act.

The National Parks Act will also:

- Provide for increased penalties for breaches of provisions that prohibit certain actions in a Commonwealth reserve in the absence of a management plan.
- Introduce aggravated offences for particular offences or contraventions in Commonwealth reserves, consistent with the approach taken in the Great Barrier Reef Marine Park Act 1975. This provides the Director with more tools to ensure that criminal penalties are applied in a way that is proportionate to the non-compliant conduct and provide an effective deterrent.
- Include a penalty for breach of provisions prohibiting **mining operations** in Kakadu National Park (the current EPBC Act provision does not contain an associated penalty).
- Increase the retention period for items seized for evidential purposes.

2. Information sharing provisions

Effect

An information sharing regime in the National Parks Act that governs the use and disclosure of information that is obtained under the National Parks Act by the Director of National Parks, the Department and the Minister.

The intention is to provide for flexible sharing of information to allow effective and efficient administration of legislation, while maintaining appropriate protections and controls to minimise the possibility of misuse of information.

The provisions are consistent with the approach recently taken to the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (new sections 41G to 41W), and the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (new sections 65E to 65V). It was also largely the approach used in the drafting of the *Industrial Chemicals Environmental Management Act 2021*.

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Information sharing provisions will aim to ensure that information collected under the National Parks Act can be used or disclosed for:

- the purpose for which it was obtained; and
- other purposes under the Nature Positive Act;
- the purpose of other legislative regimes administered by the Minister;
- the purpose of other Commonwealth legislation (with restrictions, to ensure information is not misused);
- the purpose of State or Territory legislation (with restrictions, to ensure information is not misused);
- for law enforcement purposes;
- the purposes of complying with international obligations;
- to prevent or lessen a serious risk to human health or the environment; or
- where authorised such as disclosing information with consent, where it is already publicly available or to the person to whom the information relates.

The National Parks Act will include provisions to protect against the unauthorised use and disclosure of certain information for which disclosure could reasonably be expected to cause certain harms.

3. Transitional provisions

Transitional provisions will be located in the Nature Positive (Consequential and Transitional) Act, to ensure continuity of the actions arising from the *EPBC Act 1999*. For example, existing park management plans, created under the EPBC Act, will continue in effect.

Definitions

This section provides definitions of terms (**bolded**) used in this paper.

Commonwealth reserve means a reserve declared under Division 4 of Part 15 of the EPBC Act.

Note: The term “reserve” is currently being reviewed to address sensitivities raised by Aboriginal and Torres Strait Islander peoples and is subject to change.

Conservation zone means a Commonwealth area that is declared to be a conservation zone under Division 5 of Part 15 of the EPBC Act.

Jointly managed reserve means a Commonwealth reserve:

- that includes Indigenous people’s land held under lease by the Director; and
- for which a Board is established.

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Mining operations is consistent with the definition in section 355(2) of the EPBC Act.

Ranger means a person holding an appointment as a ranger; under the EPBC Act, this is done under Part 17.

Relevant chief executive has the meaning given in sections 15, 45 and 102 of the *Regulatory Powers (Standard Provisions) Act 2014*. The Act will provide for the Director to be the “relevant chief executive” for the purpose of exercising specified enforcement powers.

Warden means a person holding an appointment as a warden; under the EPBC Act, this is done under Part 17.

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Appendix A: Extract from Nature Positive Plan

[Extract from Nature Positive Plan: better for the environment, better for business. December 2022, page 32]

Traditional Owners will have more control over Commonwealth National Parks

Transforming management arrangements for Commonwealth National Parks

The government and the Director of National Parks have committed to restoring trust and confidence in the management of Commonwealth National Parks, including providing Traditional Owners with more control over the management of their Country.

Joint management arrangements are in place for three Commonwealth National Parks: Kakadu, Uluru-Kata Tjuṯa and Booderee. In these areas, Traditional Owners lease their land to the Director of National Parks (a statutory position established under the current EPBC Act) and each park is jointly managed through lease agreements, statutory management plans, and boards of management for each park.

The government and the Director of National Parks will work with the Traditional Owners of Kakadu, Uluru-Kata Tjuṯa and Booderee National Parks to examine the legal and institutional settings in the current EPBC Act that establish the Director of National Parks and frame the joint management relationship between the Director of National Parks and Traditional Owners.

Possible future management models will be co-designed based on the aspirations of Traditional Owners and will provide the foundation for reform, including amendments to national environmental law and changes to associated policy and internal governance arrangements. This will include consideration of models that allow for more direct management by Traditional Owners and where appropriate, creating pathways towards sole management.

Throughout this process the Director of National Parks will continue to improve joint management arrangements and ensure the highest level of protection for the environment and cultural heritage in Commonwealth National Parks. This includes enabling traditional land use and maintaining public access to Commonwealth National Parks in a way that supports cultural, social and economic benefits for Traditional Owners.

Reform associated with the Director of National Parks will include changes to the legislative approach to support the creation and management of other Commonwealth Reserves including marine parks, the Australian National Botanic Gardens, Norfolk Island National Park, Christmas Island National Park and Pulu Keeling National Park. It will also explore opportunities to more closely link and align the role and functions of the Director of National Parks with environmental goals and objectives for the management of protected areas.

Potential updates to the legislative and regulatory framework creating zoning definitions for Australian Marine Parks will also be considered. The focus will be on strengthening the effectiveness of the marine parks, including scope for the Director of National Parks to report on the contribution of marine protected areas to ocean health. Improvements to the current legislative and regulatory framework will be informed by science, consultation with stakeholders and international better practice models.

National Environmental Standard for Matters of National Environmental Significance

National objective

Matters of national environmental significance represent the elements of the environment and heritage that the Australian, State and Territory Governments have all agreed are in the national interest to protect, conserve and restore. The protection of these matters is guided by the Objects of [this Act].

National Standard

Relevant decisions must:

1. Maintain and improve conservation, management and, where relevant, recovery of MNES, consistent with the principles of ecologically sustainable development, including:
 - a. Firstly minimising harm to MNES, including employing all reasonably practicable measures to avoid and then mitigate impacts through project design;
 - b. Addressing impacts through repair and appropriate use of restoration actions or contributions;
 - c. Addressing detrimental cumulative impacts and threatening processes.
2. Provide early opportunities for First Nations to identify and protect their cultural heritage, as it relates to MNES.
3. Enable and, where relevant, provide for monitoring, evaluation and reporting of outcomes for MNES.
4. Be based on suitable and appropriate data and information.

Requirements for Threatened Species and Ecological Communities

Relevant decisions must:

1. Protect, conserve and support the restoration and recovery of **habitat**, including **critical protection areas**, for **threatened species and ecological communities**;
2. Support the **viability of threatened species and ecological communities** in the wild, through protection and recovery actions;
3. Not be inconsistent with a relevant protection statement in a **conservation planning document**, and have regard to other relevant information in **conservation planning documents**;
4. Deliver a **net positive outcome** for affected **threatened species and ecological communities** [Note: to avoid doubt, this may include restoration contributions made in accordance with the Standard for Restoration Actions and Contributions].

Requirements for Migratory species

Relevant decisions must:

1. Protect, conserve and support the restoration and recovery of **habitat**, including **critical protection areas**, for the **migratory species**;
2. Support the **viability of migratory species** in the wild;
3. Not be inconsistent with a relevant protection statement in a **conservation planning document**, and have regard to other relevant information in **conservation planning documents**;
4. Deliver a **net positive outcome** for affected **migratory species** [Note: to avoid doubt, this may include restoration contributions made in accordance with the Standard for Restoration Actions and Contributions].

Requirements for World Heritage

Relevant decisions must:

1. Protect, conserve and rehabilitate (where necessary) the **Outstanding Universal Value** of the **World Heritage property**, consistent with Australia's obligations under the **World Heritage Convention**;
2. Not be inconsistent with the **Australian World Heritage Management Principles** and relevant **conservation planning documents** for the **World Heritage property**; and
3. Deliver a **net positive outcome** for the **Outstanding Universal Value** of the property.

Requirements for National Heritage

Relevant decisions concerning a **National Heritage place** [must]:

1. Protect, conserve and rehabilitate (where necessary) the **National Heritage values** of the place.
2. Not be inconsistent with the **National Heritage Management Principles** and relevant **conservation planning documents** for the place; and
3. Deliver a **net positive outcome** for the **National Heritage values** of the place.

Requirements for Wetlands of International Importance (Ramsar wetlands)

Relevant decisions must:

1. Protect, conserve and restore (where it is in decline) the **ecological character** of the **Ramsar wetland**;
2. Not be inconsistent with the **Ramsar Management Principles** and relevant **conservation planning documents** for the **Ramsar wetland**; and
3. Deliver a **net positive outcome** for the **ecological character** of the **Ramsar wetland**.

Requirements for Commonwealth Marine Environment

Relevant decisions must:

1. Protect, restore and sustainably manage **Commonwealth marine areas**;
2. Not be inconsistent with relevant marine park management plans, marine bioregional plans, and **conservation planning documents**; and
3. Deliver a **net positive outcome** for the environment of the Commonwealth marine area.

[Note: for this matter environment refers to whole of the environment]

Requirements for Great Barrier Reef Marine Park

Relevant decisions must:

1. Protect and conserve the environment, biodiversity and heritage values of the **Great Barrier Reef Marine Park**, and its individual components;
2. Not be inconsistent with relevant policies, zoning plans and plans of management made under section 7(4), section 32A or section 39W of the *Great Barrier Reef Marine Park Act 1975*; and
3. Deliver a **net positive outcome** for the environment, biodiversity and heritage values of the **Great Barrier Reef Marine Park**, and its individual components.

Requirements for Protection of the Environment from Radiological Exposure Actions

Relevant decisions must:

1. Not be inconsistent with the **ARPANSA national codes** for protection from radiological exposure actions including in relation to:
 - a. human health and environmental risks and outcomes; and
 - b. radiological impacts on biological diversity, the conservation of species and the natural health of ecosystems.

[Note: for this matter environment refers to whole of the environment]

Requirements for Protection of Water Resources from [Unconventional Gas] and Coal Mining Development

Relevant decisions must:

1. Protect the values of the **water resource** including the:
 - a. ecological and cultural components of the **water resource**;
 - b. integrity of the hydrological and/or hydrogeological connections of the **water resource**;
 - c. reliability and supply of water to **associated users** of the **water resource**; and
 - d. water quality of the **water resource**.
2. Have regard to relevant advice developed by the [Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development] under [section xx of legislation].

Definitions

[Drafting note: where definitions are provided in primary legislation, they will not be included in final Standards]

ARPANSA national codes: the regulatory codes and standards as set and updated by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).

Associated Users: individuals who use an impacted **water resource** as a provisioning service (including agriculture or drinking water), cultural service (including recreation, tourism, science, or education) or for traditional uses.

Australian World Heritage Management Principles: as defined in [Schedule 5 of the EPBC Regulations].

Baseline: an evidence-based estimate of the likely condition of an MNES in the absence of any action requiring approval under this [Act].

Commonwealth marine area: as defined in [section 24 of the EPBC Act].

Conservation planning documents: a statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of an MNES, that is made under [legislation], or endorsed or accredited by the [EPA/Minister].

Critical protection area: as defined in [Section, Act].

Ecological character (Ramsar wetlands): the combination of the ecosystem components, processes and benefits/services that characterise a wetland at a given point in time (Ramsar Resolution IX.1 Annex A para 15). The ecological character of each Australian Ramsar wetland is as described in its Ecological Character Description and Ramsar Information Sheet.

Ecologically sustainable development: as defined in [section 3A of the EPBC Act].

Environment: as defined in [section 528 of the EPBC Act].

Great Barrier Reef Marine Park: as defined in Section 3B of the *Great Barrier Reef Marine Park Act 1975*.

Great Barrier Reef Marine Park values: the environment, biodiversity and heritage values of the Great Barrier Reef Marine Park as defined in the *Great Barrier Reef Marine Park Act 1975*.

Habitat: the biophysical medium or media:

- occupied (continuously, periodically or occasionally) by an organism or group of organisms; or
- once occupied (continuously, periodically or occasionally) by an organism, or group of organisms, and into which organisms of that kind have the potential to be reintroduced; or
- that may be reasonably be expected to become occupied in the future through natural processes, environmental change, habitat restoration or conservation translocation.

Marine park management plans: refer section [366 and 367 of the EPBC Act].

Matters of national environmental significance (MNES): refer [EPBC Act Part 3 Division 1]

Migratory Species: a species that is listed in the List of Migratory Species in [Section 209 of the EPBC Act].

National Heritage place: a place included on the National Heritage List, as defined in [section 324C of the EPBC Act].

National Heritage Management Principles: as defined in [Schedule 5B of the EPBC Regulations].

National Heritage values: as defined in [section 324D of the EPBC Act].

Net positive outcomes: a regulatory outcome where the projected gain from all measures to mitigate, repair and (where required) compensate for impacts is greater than a **baseline** that reflects what would have happened in the absence of the relevant action(s).

Net positive outcomes can be achieved through project design and activities, including:

- sensitive design or where applicable, biodiversity inclusive design;
- improving and restoring ecological or heritage values;
- improved and ongoing management of key threats; and/or
- implementing management or recovery actions identified within conservation planning documents.

For impacts on some protected matters, net positive outcomes can also be achieved through actions in accordance with the National Environmental Standard for Restoration Actions and Restoration Contributions. In a regional planning area, net positive outcomes are provided through the requirements of the regional plan, in accordance with the Regional Planning Standard.

Nuclear actions: as defined in [section 22 of the EPBC Act].

Outstanding Universal Value: defined in accordance with paragraphs 49-53 and 77-78 of the Operational Guidelines for the Implementation of the World Heritage Convention (as updated from time to time). This includes the criteria under which the World Heritage property is inscribed on the World Heritage List, the statements of authenticity and/or integrity, and the statement of protection and management.

Ramsar Management Principles: as defined in [regulation 10.02] of the [EPBC Regulations].

Ramsar wetland(s): as defined in [section 17 of the EPBC Act].

Threatened species or ecological community: those species or communities listed under section [178 and 181 of the EPBC Act], following a scientific assessment of their threat status against a set of criteria in the [EPBC Act] and assigned to a conservation category: vulnerable, endangered, critically endangered, extinct, extinct in the wild or conservation dependent.

[Unconventional] gas or coal mining developments: as defined in [section 528 of the EPBC Act].

Viability: means the ability of the species or community to survive and recover in the wild, as defined in [section XX of the legislation].

Water resource(s): as defined by the *Water Act 2007*.

World Heritage Management principles: defined in [regulation 10.01] of the [regulations].

World Heritage property: a property included in the World Heritage list or specified in a declaration [see section 13 and 14 of the EPBC Act].

National Environmental Standard for Restoration Actions and Restoration Contributions

National Objective

Restoration actions and restoration contributions support the achievement of net positive outcomes by delivering a projected gain for significantly impacted Matters of National Environmental Significance (see MNES Standard) and other protected matters.

In accordance with the mitigation hierarchy, restoration actions and contributions may only be used where a project is not unacceptable and a proponent has taken all reasonable steps to avoid and mitigate impacts on protected matters.

National Standard

Requirement to compensate for all residual significant impacts

1. The proponent must compensate for all **residual significant impacts** by:
 - a. delivering a **restoration action** or actions, and/or
 - b. by making a **restoration contribution** in circumstances where the significantly impacted protected matters are listed threatened species and ecological communities, listed migratory species and/or the Commonwealth marine environment,. For impacts on these protected matters, a proponent may choose their preferred option, or use a combination of **restoration actions** and **restoration contributions**.

Requirements for restoration actions

2. A **restoration action** must:
 - a. be feasible and based on suitable and appropriate data and information or expert assessment that it will contribute to the viability of the impacted protected matter with **high certainty**;
 - b. deliver '**like for like**' benefits consistent with the priorities for the impacted protected matter identified in **conservation planning documents** and any relevant Regional Plan;
 - c. deliver a **projected gain** for the protected matter [of at least X%] relative to a **baseline** that reflects what would have happened in the absence of the proposed action;
 - d. be situated in an area relevant to the impacted protected matters:
 - i. for threatened species and ecological communities, migratory species, the Commonwealth Marine Environment, the Great Barrier Reef Marine Park, and

- the environment on Commonwealth land the **restoration action** must be located within the same **Bioregion** as the impact, or, where this is not reasonably practicable, be located within an alternative, ecologically relevant **Bioregion** that will offer the same or better outcome for the protected matter;
- ii. for World Heritage properties, National Heritage places and Ramsar wetlands, the **restoration action** must target the same value or critical component that is impacted;
 - iii. for all protected matters, prioritise an area within the same state/territory as the impact;
- e. include activities that restore or manage the protected matter unless an area is at **clear and imminent risk of impact**, in which case **secure protection** of a site may be accepted as part of the **restoration action** (limiting what are known as ‘averted loss’ actions);
 - f. provide a **direct restoration action** unless **conservation planning documents** identify an indirect action (e.g. research project or public education) as a higher priority for the protected matter;
 - g. be additional to existing actions and regulatory obligations, except where the **restoration action** is (or will be) an approved state or territory **restoration action** for the same action that meets the requirements of this standard or is a **registered advanced restoration action**;
 - h. be **securely protected** such that there is a reasonable expectation that the projected gain will be delivered, and maintained for the duration of the impact;

Delivery and reporting requirements for restoration actions

3. A restoration action delivered by an approval holder must:
 - a. be identified and have **commenced** prior to the impact(s) from the approved action; and
 - i. in circumstances where a project will be delivered in distinct stages over an extended time period, a **restoration action** may be identified for each stage of the development, and must commence prior to the impact(s) from the relevant stage.
 - b. be detailed in a **restoration action** management plan that:
 - i. details the method for projecting the gain as a result of the action, including the baseline projections and assumptions on which projections are made,
 - ii. details the actions and the projected outcomes for the impacted protected matter, and the timeframe over which the outcomes will be achieved,
 - iii. outlines the monitoring, evaluation, reporting, and adaptive management actions to deliver the projected outcomes for the impacted protected matters within the timeframe, including consideration of likely climate change scenarios,
 - iv. is subject to expert review (if directed by the decision-maker) to confirm the integrity of the **restoration action** activity and method for projecting the gain from the project, monitoring and reporting, and

- v. is published, alongside any expert review, prior to commencement of the action.
4. A **restoration action** may be delivered by the proponent or by another party on behalf of the proponent.

Requirements for restoration contributions

5. A **restoration contribution** must:
- a. be included in the conditions of approval;
 - i. A project proponent may not direct the expenditure of a **restoration contribution**.
 - ii. Conditions of approval may not direct the expenditure of a **restoration contribution**.
 - b. be made to the **Restoration Contributions Fund** prior to the commencement of the impact(s).

Definitions

Baseline: An evidence-based estimate of the likely condition of an MNES in the absence of the action requiring approval under this [Act].

Bioregion: As described in the Interim Biogeographic Regionalisation for Australia (IBRA).

Clear and imminent risk of impact: Where there is a known [activity/action] that will directly result in an impact to a protected matter and there are no further regulatory mechanisms to prevent or manage the potential impact(s). This may include circumstances where there is an exemption from further regulation under the [EPBC Act] and the impact would not be regulated by other state or territory laws. If the impact would itself be the subject of regulation under the [EPBC Act], this is not clear and imminent threat.

Commenced: Restoration actions and secure protection mechanisms are demonstrably underway. For **direct restoration actions**, this requires the commencement of on-ground activities (e.g. fencing areas that will be planted, commencing weed management). For **secure protection**, this means a [legal] mechanism is in place to provide the security (e.g. contract in place with management action provider; or, a market certificate has been purchased; or, a covenant is in place over purchased land).

Conservation planning documents: A statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of a MNES, that is made under [legislation], or endorsed or accredited by the [EPA/Minister].

Direct restoration action: Provides quantifiable and tangible conservation benefits to the impacted protected matter by undertaking actions specifically designed to improve environmental or heritage outcomes in the immediate future. Actions may include: planting, land restoration, removal of pressures, active threat management, ongoing management to sustain improved environmental or heritage outcomes and captive breeding or propagation programs.

High certainty: A high level of confidence that a **projected gain** will be achieved and that the outcome of this gain will contribute to the viability of the protected matter. For **restoration actions** this can be demonstrated by providing evidence that the action proposed will deliver the proposed outcomes for the impacted protected matter, including:

- i. existing peer reviewed science on how the **restoration action** will achieve restoration objectives with a high confidence of success, taking into consideration the future adverse impacts of climate change (including recommended actions in **conservation planning documents**); and/or
- ii. independent verification of prior success for an analogous activity; and/or
- iii. independent expert review and endorsement of the proposed **restoration action** and associated outcomes for the protected matter, as well as comprehensive adaptive management plans. This will be necessary for innovative **restoration actions**.

Like for like: 'Like for like' means residual significant impacts to a specific protected matter are compensated by a **restoration action** that benefits the same specific protected matter that is impacted (e.g. the same species or value).

- For listed threatened species and ecological communities and listed migratory species, a 'like for like' **restoration action** should prioritise the greatest need for the specific protected matter that is being impacted, as set out in **conservation planning documents** or in a regional plan (e.g. the highest priority for the Grey-headed Flying-fox is increasing winter feeding habitat). Where the greatest need for a specific protected matter is not known, the **restoration action** should focus on the attribute of the matter that is being impacted (e.g. breeding habitat).
- For other protected matters, a 'like for like' **restoration action** must benefit the same specific attribute that is impacted (e.g. the same Outstanding Universal Value of a World Heritage Property).

Projected gain: A projected gain for a **restoration action** is achieved when the projected gain delivered by the **restoration action** is estimated to be greater [(at least X%)] than the projected loss as a result of the proposed action. [The calculation of projected gain will include consideration of other factors, such as the certainty of **restoration action** effectiveness and the expected time required to deliver a restoration benefit. The underpinning considerations and architecture used to calculate the projected gain will form part of the legislative framework.]

Registered advanced restoration action: A **restoration action** that is consistent with the Standard for Restoration Actions and Restoration Contributions, has been registered with EPA for this purpose and has commenced prior to the approval of an action to reduce the time lag from the impact. A registered advanced restoration action may be considered by the CEO of the EPA against the requirements of this Standard in making their decision.

Residual significant impacts: A **significant impact** on a protected matter that remains after measures are taken to avoid and/or mitigate the impacts of an action. An unacceptable impact cannot be made acceptable through the delivery of a **restoration action** and/or by making a **restoration contribution**.

Restoration action: Measures taken to compensate for the **residual significant impacts** of an action to a protected matter.

Restoration contribution: A payment made to a **Restoration Contributions Fund** that compensates for a **residual significant impact**, in accordance with [reference to legislation]. This payment acquits a proponent's liability for those impacts.

Restoration Contributions Fund: a special account established by the Australian Government for the purposes of receiving and investing **restoration contributions**.

Securely protected/secure protection: Suitable protection mechanisms are, or will be, in place to ensure the projected gain will be delivered, and will be maintained [for the duration of the impact].

- A suitable protection mechanism must have regard to the available legal protection options in the bioregion where the impact occurs. Strong legal mechanisms should be preferred where these are available (e.g. covenants on the land where the restoration activities will take place, including land acquired by the proponent or land owned by another third party, land purchased for addition to a protected area estate, the use of state-based offset schemes, or certain types of certificates under statutory-based markets). Where it can be demonstrated that these mechanisms are not available, alternative options can be considered where it is reasonable to expect there is a low risk of other activities occurring that may diminish the outcomes for the protected matter.
- Where the impact is permanent, there must be high confidence that the gain will be delivered and will be maintained.

Significant impact: As defined by the [legislation].

National Environmental Standard for Regional Planning

National Objective

Regional Plans, developed by the Commonwealth and state and territory governments, provide a tool to deliver **net positive outcomes** for Matters of National Environmental Significance (MNES) in regional plan areas where there is conflict between development priorities and environmental and heritage values.

A **net positive outcome** for MNES is achieved through:

- Regional Plans that avoid, and mitigate the impacts of **priority development actions** on MNES (through features such as the location of, and conditions applicable in, the [**Development Zone**]), and
- **regional restoration measures** in the regional plan that repair and compensate for impacts of priority development actions on MNES.

Nature Positive outcomes for the region will be supported through identification of priority areas and opportunities for investment into protection, conservation and restoration actions and activities within the region. Regional Plans will provide a mechanism for Commonwealth and/or state and territory governments to identify commitments for the region, and will also provide guidance for investment by the private and philanthropic sector.

Regional Plans will:

- Establish clearly delineated [**Conservation Zones**] for the protection, management and restoration of environmental values where specified classes of action will be prohibited and [**Development Zones**] where specified classes of action (**priority development actions**) can [subject to registration with Environment Protection Australia] proceed with specified conditions.
- Increase and better target the protection, conservation and restoration of environment and heritage values.
- Enhance coordination between Commonwealth and State/Territory governments to reduce duplication of administrative and regulatory processes.

National Standard

1. Regional Plans must:

*To deliver **net positive outcomes** for MNES in regional plan areas*

- a. Specify a region of sufficient ecological scale to deliver **net positive outcomes** for MNES and achieve the objectives of the regional plan. The spatial boundary should be based on relevant ecological boundaries and adjusted to account for relevant factors such as administrative and development boundaries, hydrological or hydrogeological features, and boundaries relevant to Traditional Owners.

To ensure understanding of the region's values

- b. Identify and indicate areas of environmental value in a system of at least 3 tiers (such as high, moderate and low environmental value) or on a scale (e.g. percentages) to inform the planning process and the design of [**Conservation Zones**] and [**Development Zones**].
- c. Identify and indicate the heritage and cultural heritage values of the region to inform the planning process and the design of [**Conservation Zones**] and [**Development Zones**].
- d. Identify **priority development actions** and assess their potential impacts on environment, heritage and cultural heritage values.
- e. Specify drivers of environmental/heritage decline, including but not limited to development actions and/or activities and key threatening processes.

To guide future protection, conservation, restoration and development

- f. Set environmental, heritage, cultural heritage and development objectives for the region that deliver a **net positive outcome** for MNES at a regional scale.
- g. Set out strategies to achieve these objectives, including:
 - i. Identification of [**Conservation Zones**] and [**Development Zones**].
 - ii. Identification of **regional restoration measures** that more than compensate for the impacts on MNES of **priority development actions** in the [**Development Zone**]. **Regional restoration measures** should:
 - 1. take into account uncertainty.
 - 2. address drivers of environmental/heritage decline, including key threatening processes and key threats described in relevant Commonwealth, state and/or territory **conservation planning documents**.
 - 3. increase resilience to, and reduce risks from, climate change.
 - iii. Processes to measure and adaptively manage cumulative impacts over time, including by establishing a **baseline** of values in the region, accounting for environmental gains and losses and undertaking management activities. Tools, such as the United Nations' System of Environmental-Economic Accounting, could be used to measure and monitor changes.

Consultation and engagement

- 2. Regional Plans will be developed through engagement with local communities, local government, First Nations groups and other relevant stakeholders.

Data

- 3. Regional Plans will be informed by relevant scientific evidence, expert judgment and Traditional knowledge (including information gathered during the mapping of the region's values) and relevant Commonwealth, state and/or territory **conservation planning documents**. The approach taken will be informed by the National Environmental Standard on Data and Information.
- 4. Information gaps will be identified and addressed through risk-based management that may include the collection of additional information.

5. Regional Plans must specify ongoing monitoring, evaluation and reporting requirements. Regional Plans must specify a **baseline** for MNES and may specify other **baselines** relevant to the objectives of the Regional Plan.

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Definitions

Baseline: an evidence-based estimate of the likely condition of an MNES in the absence of the **priority development actions**.

Conservation planning documents: [As defined by the Standard for MNES] a statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of an MNES, that is made under [legislation], or endorsed or accredited by the [EPA/Minister].

[**Conservation Zones**]: Areas of a Regional Plan in which specified classes of action will be prohibited. These prohibitions will aim to protect important environment and heritage values in the region from development impacts.

[**Development Zones**]: Areas of a Regional Plan in which persons proposing to undertake **priority development actions** must register with Environment Protection Australia and comply with conditions specified in the regional plan.

Net positive outcomes: It is a condition of the Minister's power to make a Regional Plan that the Minister be satisfied that the plan will deliver, or is likely to deliver, a net positive outcome for MNES ([section XXX] of the Act). In a Regional Planning context, a net positive outcome is where the **projected gain** from **regional restoration measures** is greater than a **baseline** that reflects what would have happened in the absence of the **priority development actions**.

Net positive outcomes can be achieved through:

- sensitive design or where applicable, biodiversity inclusive design;
- improving and restoring ecological or heritage values;
- improved and ongoing management of key threats; and/or
- implementing management or recovery actions identified within conservation planning documents.

Priority development actions: Classes of action specified in a Regional Plan to which conditions attach when undertaken in a [**Development Zone**].

Projected gain: A projected gain is achieved when the projected gain delivered by **regional restoration measures** is estimated to be greater [(at least X%)] than the projected loss as a result of the **priority development actions**.

Regional restoration measures are measures designed to more than compensate for the impacts on MNES of **priority development actions** in [**Development Zones**]. They can include the size and duration of the prohibition on specified classes of actions established by **restoration actions***, **restoration contributions*** and other actions agreed in the Regional Plan designed to benefit MNES. The design of regional restoration measures will be informed by the National Environmental Standard for Restoration Actions and Restoration Contributions.

Note: Terms marked with * are defined in the National Environmental Standard for Restoration Actions and Restoration Contributions.

National Environmental Standard for Data and Information

National objective

This Standard fosters transparency, accountability, and public trust in decision-making concerning Australia's environment and heritage. It achieves this by establishing principles that guide the assessment of suitability and determine the appropriate use of environment data and information.

National standard

The principles in the Standard must be read together with the detail provided in relevant Technical Guidance issued by the Head of Environment Information Australia (HEIA).

Environment data and information used to support a decision, under the Nature Positive regulatory framework, which may affect the long-term viability of a protected matter, must be:

1. **Discoverable**, environment data must be promptly published after collection ensuring timely access, allowing for the integration of historical context into future decisions and emphasising its enduring nature for sustained re-use over time
2. **Accessible**, data should be made available under the least restrictive conditions possible, preferably utilising a Creative Commons No Rights Reserved license and user-friendly platforms and formats
3. **Reliable**, through a foundation in science, and/or adherence to recognised and enduring processes for traditional knowledge management, and/or creation using national protocols for data collection and sharing
4. **Reusable**, accompanied by transparent metadata detailing origin and intended use to enhance reusability and provide clarity on data sources and objectives
5. **Ethical**, data development, creation, and management must comply with relevant legislation, incorporating robust safeguards for private and sensitive information, and adhere to ethics approvals and best practices for appropriate inclusion and informed consent of stakeholders.

Note that First Nations data, knowledge and/or information must also satisfy the C.A.R.E.¹ principles:

- a. **Collective benefit**: Data ecosystems shall be designed and function in a way that enables First Nations people to derive benefit from the data
- b. **Authority to control**: First Nations peoples' rights and interests in First Nations data, knowledge and information must be recognised and their authority to control such data, knowledge and information be empowered
- c. **Responsibility**: All parties working with First Nations data, knowledge and/or information must demonstrate how it is used to support First Nations people's self-determination and collective benefit
- d. **Ethics**: First Nations people's rights and wellbeing with respect to their data, knowledge and/or information must be considered at all stage of the data life cycle and across the data ecosystem.

6. **Fit for purpose**, ensuring sufficiency for the intended use by being:
- a. **Complete**: without critical data gaps that could compromise the rigour and defensibility of a given decision, whether spatial or aspatial
 - b. **Relevant**: offering meaningful insights in the context of a given decision
 - c. **Accurate**: providing a precise representation of the intended phenomenon to the necessary degree for informed decision-making
 - d. **Interpretable**: readily understandable by the decision-maker
 - e. **Timely**: pertinent to a time period that holds significance in the context of a given decision.

The above principles collectively establish three tiers of suitability for data and information intended for use in decision-making. These tiers specifically pertain to the appropriateness of environment data and information proposed for utilisation in assessments, approvals, and spatial planning decisions concerning protected matters within the Nature Positive regulatory framework.

Tier 1 – Highly suitable: environment data and information that: is discoverable, accessible and findable; was collected/created and shared ethically; ethical (including C.A.R.E if First Nations data); originates from a highly reliable source; and is based on methods which can be easily gauged for their high degree of accordance with HEIA Technical Guidance. Methods are either: published and described in a respected peer-reviewed scientific or data journal; established in a recognised and enduring process for traditional knowledge management; or produced or approved by a persistent, statutory or otherwise independent/impartial, body.

Examples of data that are likely to be Tier 1 include:

- Time-stamped, accurately-geolocated species observation data, maintained and publicly accessible via a state agency digital data repository
- Historical ocean wave statistics available from Australian Ocean Data Network
- A species distribution model, or mapped critical protection areas, for a listed threatened species, informed by expert advice including from the Threatened Species Scientific Committee, and published by Environment Information Australia (EIA)
- Biological survey data which is consistent with HEIA Technical Guidance having been collected by experienced consultant ecologist, using an endorsed protocol and which results in the relevant environment data and information being shared via the Australian Biodiversity Information Standard
- A time and geo-referenced species observation which collected using an accepted and recognised method and verified by one or more recognised experts for its veracity
- A forecasting or scenario model capable of predicting, with explicit uncertainty, possible outcomes for protected matters based on user-defined values for a number of input parameters, and developed by a highly reliable organisation with established scientific credibility.

Tier 2 – Moderately suitable: environment data and information that: adheres to the majority of criteria outlined in this standard for accessibility and reliability; was collected, created and shared ethically; and originates from dependable sources, including independent individuals or entities with recognised (and demonstrated) expertise relevant to the specific data and information type. Moderately suitable data may be derived from unpublished or uncertain methods, necessitating review and analysis before endorsement or approval.

Examples of data that are likely to be Tier 2 include:

- Recently collected survey data from a consultant ecologist with peer-recognised expertise using a method built on, but not entirely following, a published protocol, and including species data which are yet to be lodged with, and vouchered by, an authorised statutory body at state/territory level
- Raw biodiversity survey data, owned by a development proponent, which has been used and cited in a synthesised published report, but is itself unpublished, with the raw data and methods accessible to the decision maker and/or EIA on request but are not readily available and accessible for members of the public
- Biological survey information collected by a respected ecological researcher who elects not to publicly share their raw data or survey methods, the data and methods are accessible to the decision maker and/or EIA on request but are not readily available and accessible for members of the public.

Tier 3 – Unsuitable: Environmental data and information from a source that cannot be determined as trustworthy and/or has been collected using a method not recognised as credible and reliable.

Examples of data that are likely to be Tier 3:

- A digital photograph of a single specimen captured and stored locally by a non-expert individual, shared by posting to social media, the veracity of which cannot be determined by a recognised expert
- Data gathered by a recognised expert using an approach which breaches ethical standards, for example by not having the necessary permissions for site access or inadequate provision for protection of data sensitivity
- Data purporting to be survey-gathered and published by a non-expert without specimen vouchering to state/territory statutory collections and accessible only via a repository maintained by an organisation not recognised for its scientific rigour and credibility.

The following provides a summary of how the suitability tiers will apply to decisions on protected matters under the Nature Positive regulatory framework:

- **Tier 1 environment data and information** – automatically accepted for all relevant regulatory decision-making, including accredited third-party processes, whether submitted by a proponent, interested third party, or accessed independently by the decision-maker.
- **Tier 2 environment data and information** – requires detailed, rigorous review before acceptance as an input for regulatory decisions relating to development approvals, strategic assessments, and regional planning. Automatically accepted for other decisions within the regulatory framework, such as listing Matters of National Environmental Significance (MNES) and formulating recovery strategies, including through EIA's generation of spatial models based on presence/absence observation data.
- **Tier 3 environment data and information** – deemed insufficient to inform development approvals, including by accredited third party processes, strategic assessments and regional planning. Requires detailed, rigorous review prior to acceptance for other regulatory decisions, such as listing MNES and making recovery strategies, including through EIA's generation of spatial models based on presence/absence observation data.

Definitions

Environment data and information

Data and information related to understanding patterns and dynamics of nature and the environment, as required to meet decision making needs under the Act. This includes, but is not limited to, any of the following:

- Observations, made either by humans (points observations, ecological site surveys and transects) or sensors (including but not limited to camera traps, acoustic sensors, boat based sensors, and satellite sensors), of matters protected by the Act and/or attributes relevant to their protection (including attributes of the landscapes, ecosystems, freshwater systems and seascapes which contain them) including those which indicate magnitude of pressures, threats, and state changes to populations ecosystems, heritage and other protected places
- Locations and nature of interventions administered by the Commonwealth for protection and recovery via regulatory or investment activities
- Models, maps, metrics, data assets and reports made through processing, integrating and interpreting environment data, including through integration with non-environment datasets
- Published classifications, taxonomies, protocols, frameworks, documents identifying heritage or conservation significance of heritage and other protected places as well as of species and ecosystems, conservation planning documentation and management plans relevant to the design of processes to collect, manage and share environment data
- Unpublished or published information, relating to the environment, that is shared by knowledge holders, authors or place managers for the purpose of decision-making or reporting and other purposes of the legislation or to meet Australia's international environment and sustainability obligations.

First Nations data

Refers to information or knowledge, in any format or medium, which is about and may affect indigenous peoples both collectively and individually.

Technical guidance

The HEIA will develop and publish Technical Guidance outlining procedures, protocols, and information technology applications to support the implementation and application of this standard. Regular revisions to the Technical Guidance will ensure alignment with evolving best practices.

The Technical Guidance will include:

- Clear guidance on how to demonstrate compliance with all components of this standard, including the principles and suitability Tiers
- Links to HEIA-endorsed, guidance developed by third party organisations, including protocols for field surveys and data sharing, frameworks for describing data quality and reliability, or prescribing vocabularies to support consistency and aggregability. These may include but are not limited to:
 - the [Shared Environmental Analytics Framework \(S.A.F.E.\)](#) which adopts the [F.A.I.R principles](#) (for data management) and [C.A.R.E. principles](#) (for First Nations data governance)
 - the [Creative Commons](#) license suite for data accessibility
 - the TERN [Ecological Monitoring System Australia \(EMSA\)](#) protocols for site ecological surveys

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- Descriptions of HEIA-issued datasets, including National Environmental Information Assets, and guidance on their application and intended use
- Guidance on data management and data governance to ensure enduring access to high quality datasets.

ⁱ Wording adapted from the Global Indigenous Data Alliance '[CARE Principles](#)'. For supporting material, see Caroll et al, [The CARE Principles for Indigenous Data Governance](#), p 6.

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National Environmental Standard for Community Engagement and Consultation

National Objective

To allow for greater community and business contribution to environmental decision-making and planning processes by ensuring they have access to meaningful information about project impacts and an opportunity to provide feedback early in the project development process.

National Standard

Requirement to publish relevant information for public comment

1. The **proponent** must:
 - a. **publish relevant information** about the proposal and its likely impacts on protected matters; and
 - b. invite comment from any persons¹ for a period of at least 30 **business days**, from the date of publishing the **relevant information**
2. The **proponent** must not apply a direct financial charge for any person to submit comments or access the **relevant information**.

Requirements for an invitation to comment

3. The **proponent** must include with the invitation to comment:
 - a. instructions that explain how a person can provide comment;
 - b. an explanation of how any **confidential information** will be stored and shared;
 - c. an option for respondents to remain anonymous;
 - d. an explanation of how the comments received will be considered by the proponent;
 - e. information about which parts of the proposal can be amended and which parts of the proposal cannot change²;
 - f. information about whether any parts of the proposal have been changed or modified due to information provided by the public;
 - g. information about opportunity/ies for **engagement** with the proponent about the proposal.

¹ Note: persons may also provide comment about the proposal directly to the EPA. Comments received directly by the EPA will be provided to the proponent. Legislation and/or guidance would outline circumstances where consideration of comments and submissions provided to EPA would be undertaken.

² For example, technical reasons relating to the proximity of a relevant resource.

Requirement to engage

4. The **proponent** must provide opportunities for **engagement**, including for persons to seek clarification of the **relevant information** to facilitate the provision of relevant and informed feedback, including by:
 - i. holding at least one public online meeting, or public hearing in a relevant location where internet **accessibility** is limited.
5. The proponent should provide multiple opportunities for **engagement**, offer multiple **engagement** methods and/or provide additional time for provision of public comment when:
 - i. there are material **accessibility** considerations, and/or;
 - ii. the proposal contains **complex information** and/or;
 - iii. there are significant community concerns raised prior to, or during the engagement process.

Relevant information about the proposal and its impacts

6. **Relevant information** must include:
 - a. what is proposed;
 - b. the location and timing of the proposal;
 - c. a description of the impacted area and surrounding environment;
 - d. the nature and extent of likely impacts on any matter protected under [the relevant part of the Nature Positive (Environment) Act];
 - e. information on social and economic impacts of the proposal;
 - f. options for measures to avoid and mitigate impacts on matters protected under [the relevant part of the Nature Positive (Environment) Act] and justification for why the chosen measures were selected over other viable alternatives;
 - g. how the proposal is consistent with applicable requirements of relevant national environmental standards;
 - h. a description of how environmental performance will be monitored and recorded;
 - i. information sources used in the proposal;
 - j. information about opportunities for ongoing **engagement** over the life of the project, where relevant.
 - k. information related to category 1 and category 2 greenhouse gas emissions that may be prescribed by the [Nature Positive (Environment) Act] or Rules, as applicable to the proposal.
 - l. any other environmental approvals that may be required for the proposal under State, Territory or Commonwealth legislation, and expected timeframes for these approval processes.

7. When proposing a strategic assessment or making a regional plan, in addition to the requirements at [item 6], the **relevant information** must also include an assessment of the extent to which the strategic assessment or regional plan considers climate change, including environmental adaptation and resilience measures.

8. The proponent should include in the **relevant information**:
- a. the full package of information being put to the decision maker - except for the **Summary of Community Engagement and Consultation** [item 9] as this can only be prepared following the engagement process.

Reporting on community engagement and consultation

9. The **proponent** must prepare a written **Summary of Community Engagement and Consultation** and provide this to the decision maker with the proposal. [The **Summary of Community Engagement and Consultation** will be published by the decision maker.]
10. The **Summary of Community Engagement and Consultation** must include:
- a. a statement outlining how engagement on the proposal meets the requirements of the Community Engagement and Consultation standard, including:
 - i. reasons for the timing, number of opportunities for engagement and methods of engagement [including duration as at item 5];
 - ii. how persons were informed about the engagement process [item 3];
 - iii. how the consultation was publicised to ensure maximum visibility;
 - iv. the relevant information [item 6].
 - b. the key themes and issues raised in response to the invitation to comment on the proposal and how the **proponent** has considered and responded to each one;
 - c. all written comments on the proposal;
 - d. any **confidential information** submitted to the **proponent** or excluded from the **relevant information**, as an appendix, so that it can be excluded from publication. This should also outline the reason for determining **confidential information**.

Definitions

Accessibility: Consideration should be applied to the characteristics and needs of persons being consulted and services available. Considering accessibility aims to provide that all persons can participate in the consultation process. Accessibility includes known factors that are likely to impact participation in engagement processes. This includes, but is not limited to: location of engagement activities, level of education, language, cultural considerations, availability of services (e.g. internet or access to transportation), severe weather conditions, public holidays.

Business days: means Monday to Friday excluding public holidays in the location of the proposal (all relevant public holidays should be excluded where proposals are cross-jurisdictional), and the period between Christmas Day and New Years Day, inclusive.

Confidential information: includes material that is commercial in confidence, personal identification, culturally sensitive, confidential for reasons of national security, or information that may endanger a protected matter if disclosed. A definition of confidential information is expected to be included in the Nature Positive (Environment) Bill and would take precedence over this policy description.

Complex information: means information about a proposal that would require reading ability more advanced than the lower secondary education level or that uses words or phrases in an unusual or restricted way, including idioms and jargon. Guidance will be developed to assist interpretation of this requirement.

Engagement: means opportunities for persons to ask questions and seek clarification from the proponent, and to share their views, provide feedback and/or make suggestions about a proposal directly with the proponent. Examples of engagement methods include but are not limited to public online forums and public hearings.

Proponent: a person who advocates for a proposal. This may be the person proposing to take an action, the applicant, the relevant party, or a designated proponent acting on behalf of such a person. [This includes a Commonwealth Minister where they are proposing the action].

Publish: information that must be published should be made available to the public. Generally this means publishing on the internet (including through EPA's online system) but may also include other methods.

Relevant information: is key information about a proposal that will inform environmental decision-making, comprising the elements listed at [item 6].

Summary of Community Engagement and Consultation: is a summary report that addresses the requirements of this standard, as listed at [item 10]. This would be published under the respective decision-making process.