



Consultation on National Environmental Laws

26-28 March 2024

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

Papers

- Transitional and Consequential
- Concept Model for Calculating Restoration Contributions

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 **[NOT PUBLISHED]**

- Exposure Draft: Nature Positive (Environment Protection Australia) Bill 2024
- Exposure Draft: Nature Positive (Environment Information Australia) Bill 2024
- Insert - Nature Positive (Environment) Bill 2024: Objects
- Insert - Nature Positive (Environment) Bill 2024: Accreditation
- Insert – Nature Positive (Environment) Bill 2024: Definitions (March update)

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



TRANSITIONAL ARRANGEMENTS AND CONSEQUENTIAL AMENDMENTS

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Overview

The Nature Positive (Transitional and Consequential Amendment Bill will set out the transitional arrangements for relevant sections of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). These transitional arrangements will ensure the efficient and effective transfer between the existing legislation (EPBC Act and other legislation listed in part 10 of this document) and the new Nature Positive Act (the Nature Positive legislation) and associated legislation (NP legislation).

Transitional arrangements will be clear, sensible and efficient to minimise confusion and disruption for regulators, the regulated community and broader community stakeholders.

Types of transitional arrangements outlined include:

- Temporary transitional arrangements;
- Permanent transitions to the Nature Positive legislation and NP legislation;
- Consequential amendments
- Policy elements which will not require legislative change.

Practical guidance will be published on the department's website to assist proponents, stakeholders, heritage place managers during the transition to the new laws. Where similar provisions are carried from the EPBC Act, the Nature Positive legislation may use updated terminology to streamline, reduce complexity and modernise, as required.

Power

Transitional arrangements for relevant sections of the EPBC Act will be set through a Nature Positive (Transitional and Consequential Amendments) Acts

Provisions

1. Protection of properties and places- Ramsar wetland and heritage declarations

Effect

This section covers transitional arrangements for the protection of World Heritage Properties, National Heritage Places, Wetlands of international importance, Commonwealth Heritage places and overseas, Overseas Places of Historic Significance to Australia under Part 3 of the EPBC Act.

1.1. *Declarations under Part 3 of the EPBC Act*

Protection of properties and places protected under Part 3 Division 1, Subdivision A – World Heritage, Subdivision AA – National Heritage, Subdivision B Wetlands of international importance and Division 2 Subdivision AA—Protection of Commonwealth Heritage places outside the Australian jurisdiction

- Protection of world heritage properties, national heritage places, Commonwealth heritage places, wetlands of international importance (known as Ramsar wetlands under the Convention on Wetlands of International Importance), Commonwealth heritage places overseas, Overseas

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Places of Historic Significance to Australia under the EPBC Act will continue under the Nature Positive legislation.

- All current statements of significance, including in Statements of Outstanding Universal Value, Heritage Management Plans, official values, and other relevant documents will continue to have effect. All current ecological character descriptions will continue to have effect. These may be updated following the process set out in the Nature Positive legislation.
 - The Nature Positive legislation will clarify and set out amended processes for Ramsar wetland and heritage nominations, assessments and listings, including amendments to existing listings, values and boundaries, and developing, reviewing and endorsing Heritage Management Plans (see Ramsar Wetlands Information Sheet and Heritage Reforms Consultation Papers February 2024).
 - All existing assessments for listing heritage places underway will continue and transition to the new system to avoid halting work or starting from scratch on this work.
2. Cases in which environmental approvals are not needed – ministerial declarations, conservation agreements and Great Barrier Reef Marine Park

Effect

This section covers transitional arrangements for cases in which environmental approvals are not needed (Part 4 Division 3, 3A and 5 of the EPBC Act).

2.1. Cases in which environmental approval were not needed under Part 4 Division 3 – Actions covered by Ministerial declarations and bioregional plans and Part 4 Division 3A – Actions covered by conservation agreements

- Division 3: Current Bioregional plans made under Part 12 will be transitioned to the Nature Positive legislation (see part 6 of this consultation paper for details) to remain in effect. Currently no declarations have been made under the EPBC Act for bioregional plans that would require transition.¹
- Division 3A: Any declarations relating to conservation agreements will be transitioned to the Nature Positive legislation. Cases in which environmental approvals are not needed Part 4 Division 5 – Actions in the Great Barrier Reef Marine Park
- Cases in which environmental approvals are not needed for actions in the Great Barrier Reef Marine Park will be reflected in the new legislation in the same manner as it is in the current EPBC Act. The Nature Positive legislation may use updated terminology to streamline, reduce complexity and modernise as required.

¹ A new 'regional plan' pathway will be included in the Nature Positive legislation. Any future marine regional plans will be created by the Commonwealth government (in partnership with the relevant state or territory government(s) where the regional plan area is in a state or territory) following the new regional planning processes set out in the Nature Positive legislation.

3. Bilateral Agreements and Accreditation

Effect

This section covers transitional arrangements for bilateral agreements and accredited management arrangements or authorisation processes under Division 1 and 2 of Part 4 and Part 5 of the EPBC Act.

3.1. Existing Bilateral Agreements and Accreditation under Division 2, Part 4 and Part 5

- A new accreditation framework will replace bilateral agreements (Part 5), accredited management arrangements and accredited authorisation processes (Divisions 1 and 2 of Part 4). EPA will be responsible for the accreditation of assessment processes and the Minister of the Environment will be responsible for accreditation of authorisation processes.
- Existing bilateral agreements, management arrangements and authorisation processes will be grandfathered for up to two years after the Nature Positive legislation commences.²
- There will be transitional arrangements put in place allowing existing bilateral agreements to be used for a limited period for assessment under the Nature Positive legislation.³ The CEO of EPA would be responsible for the operation of these arrangements.
- All existing section 33 declarations for accredited Commonwealth fishery management arrangements will be carried over into the new legislation. In time, these may be replaced by new declarations made under the protected species/communities and wildlife trade elements of the Nature Positive legislation. Where such a replacement occurs, the new assessment and accreditation process will apply.

4. Projects subject to assessment and approval processes underway at time of commencement of the Nature Positive legislation

Effect

This section covers transitional arrangements for projects subject to the assessment and approvals process under Parts 7, 8, 9 and 10 underway at the time of commencement of the new laws. This also covers the transitional approach for permits assessments under Parts 13 and 13A of the EPBC Act and program and listing assessments under Part 13A. New processes will replace the existing processes.

4.1. Part 7 Referrals, Part 8 Assessments and Part 9 Approvals

- Actions referred under Part 7 that have not been determined to be a controlled action before commencement of the Nature Positive legislation will be assessed under the Nature Positive legislation.

² This will enable the assessment of projects currently being assessed under these processes to be completed (having already been determined to be controlled actions and these processes to be the required assessment approach).

³ During this time, the Commonwealth will work with states and territories to revise accredited arrangements based on the National Environment Standards and the relevant provisions in the Nature Positive legislation.

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- EPA will be responsible for project assessments under the corresponding provision of the Nature Positive legislation.
- Actions determined to be controlled actions before the Nature Positive legislation commences will be assessed under the existing provisions of the EPBC Act. Assessments of actions under Parts 8 and 9 that commenced before the Nature Positive legislation comes into effect will continue to be assessed and approved/refused under the EPBC Act. The decision maker will remain the Minister for the Environment or their delegate.
- An applicant may withdraw an action which has been referred or is being assessed under the EPBC Act and lodge a new application under the Nature Positive legislation. Withdrawal only applies to projects that have not had a decision whether to approve or refuse the action under the EPBC Act⁴.
- On commencement of the Nature Positive legislation, applications that have been under a stopped clock for more than three months while more information is sought (unless a timeframe is already specified in the stop-clock correspondence in which case that timeframe will apply) or have had information requirements for assessment documents issued more than three months earlier will be offered the opportunity to provide outstanding information and continue to be assessed for approval under the EPBC Act.
- Projects that cannot meet the assessment requirement and timeframe or for which a response is not received within a reasonable defined timeframe (specified in correspondence with the proponent) will be lapsed. An applicant for a lapsed project may lodge a new application under the new system provided by the Nature Positive legislation.

4.2. Part 10 Strategic Assessments

- If a plan, policy or program is being considered for endorsement under Part 10 of the EPBC Act, it will continue to be assessed under the existing Act.
- However, if on commencement of the Nature Positive legislation, assessments that have not progressed for a period of three months or more due to lack of required information will be considered to be lapsed.
- The responsible person for a lapsed strategic assessment approval may request the CEO of EPA to undertake a new strategic assessment of their strategic plan under the Nature Positive legislation.
- EPA will be responsible for strategic assessments under the Nature Positive legislation.

4.3. Parts 13 and 13A Permits

- Specific transitional arrangements will be prepared for Parts 13 and 13A permits. These arrangements will specify the point at which an assessment of a permit will continue under the EPBC Act or transition to the Nature Positive legislation. These arrangements will specify any differences between the transitional approach for commercial and non-commercial wildlife trade permits, Commonwealth land and Cetacean permits. As a general principle, an application received and accepted and fee paid prior to the new legislation coming into force will be assessed under the EPBC Act.

⁴ Consideration will be given to the refund or partial refund of cost recovery fees in certain circumstances. Any refunds will be consistent with the current Cost Recovery Implementation Statement – Cost Recovery for Environmental Assessments Under the Environment Protection and Biodiversity Conservation Act 1999 (2016-2017).

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- Assessing and issuing commercial, personal wildlife trade, Commonwealth land and cetacean permits under the Nature Positive legislation will transfer to EPA.
- Assessing and issuing non-commercial wildlife trade permits will remain with the Minister/ Department of Climate Change, Energy, the Environment and Water (DCCEEW) under the Nature Positive legislation.

4.4. Part 13A lists and assessments (excluding permits)

- Assessing commercial trade operations, plans and programs and management of the *List of Specimens Taken to be Suitable for Live Import* (Live Import List) will continue to be undertaken by the Minister/DCCEEW under the Nature Positive legislation.
- Applications submitted and accepted, prior to the Nature Positive legislation commencing, for amending the Live Import List or for approval of a wildlife trade export program under the EPBC Act, will continue to be assessed and approved/refused under EPBC Act provisions.
- An applicant may withdraw an application which has been submitted under the EPBC Act and lodge a new application under the Nature Positive legislation.
- Lists made under Part 13A (the List of Exempt Native Specimens (LENS), Live Import List (LIL), List of native household pets, CITES list & Stricter domestic measures) will continue to be in force through transition. The Nature Positive legislation will allow for creation, review, amendment and replacement of these lists, where relevant.

5. Existing EPBC Act authorisations

Effect

This section covers transitional arrangements for existing EPBC authorisations (Parts 7, 9, 10, 13 and 13A). Authorisations will continue to have effect and variations/suspension/revocation/termination/reviews/transfers and compliance will be managed under the Nature Positive legislation. This section also includes details on Exempt Native Specimens (LENS), Live Import List (LIL), List of native household pets and CITES list & Stricter domestic measures.

5.1. Authorisations and decisions

- Authorisations and decisions made under the EPBC Act that are in effect on commencement of the Nature Positive legislation, will continue to have effect as if the authorisation had been made under the new Act. This includes:
 - Not controlled actions under Part 7;
 - Not controlled actions - particular matter under Part 7;
 - Actions that are clearly unacceptable under Part 7;
 - Approvals under Part 9;

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- Action or class of action approvals under Part 10 (strategic assessments)^{5 6};
- Permits under:
 - Part 13 subdivision A and B;
 - Part 13A.
- Approvals under Part 13A:
 - Wildlife Trade approved programs for export;
 - Non-commercial scientific exchange registrations;
 - Facility assessments;
 - Ambassador agreements.
- All new actions not covered by an authorisation will be regulated by the Nature Positive legislation (where the Act applies).

5.2. Variations/suspension/revocation/termination/reviews/reporting/transfers

- Any variations, including suspending or revoking conditions and/or approvals for Part 9 approvals will be made under the relevant provisions of the Nature Positive legislation. Any timeframes/expiry dates and conditions not specified to change as part of the variation will remain as they were when the approval was granted.
- Any transfer of approvals for Part 9 approvals are to be made under the relevant provisions of the Nature Positive legislation.
- The new termination process outlined in the Nature Positive legislation will apply to existing Part 9 approvals under the EPBC Act. The termination process may only be applied prospectively to Part 9 approvals granted before the commencement of the new law where all the criteria for termination are satisfied after the commencement of the Nature Positive legislation.
- Any reporting requirements under authorisations will remain as they are listed in the authorisation, unless an administrative change is advised by the department or Environment Protection Australia (e.g. change in contact email or phone).
- Requests for reconsideration of existing controlled action decisions will be made under the relevant provisions of the Nature Positive legislation.
- Existing Part 13 and 13A permits and program approvals may be suspended, revoked or amended under the EPBC Act requirements, to the extent that they are different from any requirements of the Nature Positive Legislation.

5.3. Compliance

- Offences under the EPBC Act will be subject to EPBC Act offence provision until the Nature Positive legislation commences when offences will then be subject to the Nature Positive legislation. Compliance will be undertaken by EPA. See Compliance and Enforcement February 2024 consultation paper for more details.

⁵ Inactive or lapsed strategic assessments will not be transitioned. Arrangements for the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) strategic assessment approval are being worked through with the Department of Industry, Science and Resources.

⁶ Strategic assessments will no longer be required for Commonwealth-managed fisheries. These reforms were set out in detail in the 'Wildlife Trade, Import List, and Sustainable Fisheries' paper considered at the February 2024 consultations.

6. Bioregional plans

Effect

This section covers transitional arrangements for bioregional plans under Part 12 of the EPBC Act. A new regional planning process will replace the bioregional planning processes.

6.1. Bioregional plans

- Current Bioregional plans made under Part 12 will be transitioned under the NP legislation to remain in effect. The NP legislation will include provisions to update or revoke the four existing bioregional plans (Marine bioregional plan for the North Marine Region (2012), Marine bioregional plan for the South-west Marine Region (2012), Marine bioregional plan for the Temperate East Marine Region (2012) and Marine bioregional plan for the North-west Marine Region (2012)).
- Any future regional plans will be created in accordance with the new regional planning provisions set out in the Nature Positive legislation.

Species, Ecological Communities, Key Threatening Process Listings and conservation planning

Effect

This section covers transitional arrangements for Species, Ecological Community and Key Threatening Process Listings under Part 13 of EPBC Act. Further information on conservation planning is available in the Conservation Planning – Listing Reforms February 2024 Consultation paper.

6.2. Part 13 Species and Communities

- All threatened species and ecological community listings will transition into the Nature Positive legislation in their current categories.
- Under the Nature Positive legislation the Minister will, by legislative instrument, establish new lists of marine species and migratory species within 30 days after the commencement of the Nature Positive legislation. The grandfathered list will remain in effect unless replaced with the new list.
- Current Key Threatening Process list will be transitioned under the Nature Positive legislation.
- All existing assessments of species, ecological communities and threatening processes on the Finalised Priority Assessment List would continue under the new legislation given the process for prioritisation and assessment is largely unchanged.
- All current Conservation Advices, Recovery Plans, Wildlife Conservation Plans and Threat Abatement Plans will continue to have effect until replaced with Recovery Strategies or Threat

Abatement Strategies approved under the Nature Positive legislation⁷ ⁸or revoked. Existing mandatory 5 year review periods for Recovery Plans, Wildlife Conservation Plans and Threat Abatement Plans will no longer be required. Instead, the Minister will determine, including with advice from the Threatened Species Scientific Committee, the priority of species and ecological communities to transition to new Recovery Strategies, and the priority of Threat Abatement Plans to be transitioned to Threat Abatement Strategies. .

- Places listed on the EPBC Act register of critical habitat (EPBC Act s207A) will be recognised under the Nature Positive legislation until such time as a protection statement in a recovery strategy is made for the effected species or ecological community under the Nature Positive legislation.

7. Conservation Agreements

Effect

This section covers transitional arrangements for Conservation Agreements under Part 14 of EPBC Act.

7.1. Part 14 Conservation agreements

- All current conservation agreements that have been entered into under the EPBC Act that are in effect on commencement of the new laws, will continue to have effect as if the agreement had been entered into under the new Act. This includes any declaration made under section 306A and related exemptions under section 37M of the EPBC Act.

8. Environment Protection Australia

Effect

This section covers transitional arrangements required for the establishment of Environment Protection Australia.

8.1. New agency arrangements

- Transitional arrangements and consequential amendments will include, the details of:
 - relevant administrative arrangements to ensure that day-to-day operations can be transferred from the Department of Climate Change, Energy, the Environment and Water to EPA;
 - the transfer of records and other information between the two entities;
 - any specific requirements for the first annual reporting period;

⁷ There will be a prioritisation process for currently listed species/ecological communities to be transitioned to recovery strategies

⁸ Listing assessments will continue to be undertaken by jurisdictions consistent with *the Intergovernmental memorandum of understanding – Agreement on a common assessment method for listing threatened species and ecological communities* until state or territory processes are accredited under the Nature Positive legislation.

9. Other legislation – EPA CEO decision maker

Effect

This section covers transitional arrangements required for the transfer of certain decision-making powers under the following legislation to EPA:

- the *Environment Protection (Sea Dumping) Act 1981*;
- the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*;
- the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*;
- the *Product Emissions Standards Act 2017*;
- the *Recycling and Waste Reduction Act 2020*;
- the *Underwater Cultural Heritage Act 2018*.

9.1. Transfer of decision-making powers to EPA

Appendix 1 details the specific transitional arrangements and some consequential amendments to transfer the decision-making powers to EPA.

Appendix 1

Consequential amendments and transitional arrangements for 'other' legislation transferring to Environment Protection Australia

1. Introduction

EPA will exercise powers and functions under environmental legislation. Relevant powers and functions will reside in existing legislation, with amendments the existing legislation to update who the power and function is vested in (for instance, updating Minister/Secretary to CEO of EPA).

Broadly, these powers and functions will relate to regulatory matters, such as the granting of permits or licences, compliance and enforcement.

2. Overview of functions of EPA

The primary function of EPA is to assist the CEO in delivering their powers and responsibilities conferred on them under relevant parts of some Commonwealth laws, including:

- [the legislation to establish EPA];
- **the *Environment Protection (Sea Dumping) Act 1981***;
- **the *Hazardous Waste (Regulation of Exports and Imports) Act 1989***;
- the [Nature Positive legislation];
- **the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989***;
- **the *Product Emissions Standards Act 2017***;
- **the *Recycling and Waste Reduction Act 2020***;
- **the *Underwater Cultural Heritage Act 2018***;
- any other Acts under which the government has conferred powers on the CEO; and
- a legislative instrument or provision made under any of the above Acts and [EPA legislation].

Broadly, EPA will undertake regulatory functions under the above Commonwealth environmental laws, including:

- Project assessments, decisions and post-approval management.
- Issuing permits and licenses.
- Education, compliance and enforcement.
- Assuring that states, territories and Commonwealth decision makers meet their obligations, such as applying National Environmental Standards, under accredited arrangements.
- Regarding the *Underwater Cultural Heritage Act 2018*, EPA will have responsibility for compliance investigation functions only, with other regulatory functions being retained by DCCEEW.

3. Purpose of this appendix

This appendix outlines the key functions currently undertaken by the Department of Climate Change, Energy, the Environment and Water (DCCEEW) under the existing laws in **bold** above, including where functions will transfer to EPA or be retained by DCCEEW.

Transferring of these functions to EPA will require *consequential amendments* to these Acts, primarily to change the decision-maker from the Minister/Secretary of DCCEEW to the CEO of EPA. For each function transferring to EPA, there must also be *transitional arrangements*, such as outlining the date from which a decision will be taken by the CEO of EPA rather than the previous decision maker. Responsibility will shift to the EPA on commencement of the amendments or standing up of the EPA whichever is the latter.

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Act / Background	What is staying with the Minister/DCCEEW	What is transferring to EPA
<p><i>Environment Protection (Sea Dumping) Act 1981</i></p> <p>Regulates the loading and dumping of waste at sea and the creation of artificial reefs in Australian waters. Australian waters stretch from the low-water mark of the Australian shoreline out to 200 nautical miles (nm). It does not include waters within the limits of a state or territory. The Sea Dumping Act:</p> <ul style="list-style-type: none"> • prohibits the ocean disposal of material considered too harmful to be released into the marine environment • regulates permitted ocean waste disposal to minimise its environmental impacts • regulates the placement of artificial reefs for the purposes of enhancing the marine environment • applies to all vessels, aircraft, and platforms in Australian waters, and to all Australian vessels and aircraft in any part of the sea. 	<p>Responsibility for matters relating to jurisdictional policy and international treaties under the Act will remain with the Minister. For example:</p> <ul style="list-style-type: none"> • Responsibility for the application of the Act in relation to certain waters (including in respect of the Australia-Indonesia Delimitation and Treaty, Torres Strait Treaty) (sections 4A and 4B). • Declarations (by legislative instruments) that limit the operation of the Act in relation to State and coastal waters of the State (section 9). • Being satisfied of certain matters prior to regulations being made for the purposes of definition to <i>seriously harmful material</i> ((section 41(3)-(5)). 	<p>Matters relating to assessment and granting of permits along with compliance operations. For example:</p> <ul style="list-style-type: none"> • Permitting functions including: <ul style="list-style-type: none"> - Receiving applications for permits (section 18) - granting, refusing of permits (section 19) - suspension and revocation of permits (section 20) - conditions of permits (section 21) - applications to vary operation of permits (section 23). • The following functions: <ul style="list-style-type: none"> - appointment of inspectors (section 26) and the issuing of identity cards to inspectors (section 28) - giving an evidential certificate that is prima facie evidence ((section 38(4)) - appointing a person to be an analyst for the purposes of evidential certificate (section 39) - waiving or remitting fees ((section 40(3)-(4)). <p>Where permits and operations relate to the Great Barrier Reef Marine Park, delegations will continue to be granted to the Great Barrier Reef Marine Park Authority to administer these activities.</p>
<p><i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i></p> <p>The <i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i> ('the Act') regulates the export, import and transit of hazardous waste to ensure that hazardous waste is dealt with appropriately so that human beings and the environment, both</p>	<ul style="list-style-type: none"> • Article 11 arrangements (section 4C) – declaration of an Article 11 arrangement. <ul style="list-style-type: none"> - This includes the Minister, in writing, declaring an agreement or an arrangement an Article 11 arrangement for the purposes of the Act, if they are satisfied that the 	<ul style="list-style-type: none"> • Permitting functions including: <ul style="list-style-type: none"> - Applications for import permits (section 12), export permits (section 13), transit permits (section 13A), Basel permit or special permits (section 13B). • Compliance and enforcement function and powers.

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Act / Background	What is staying with the Minister/DCCEEW	What is transferring to EPA
<p>within and outside Australia, are protected from the harmful effects of the waste.</p> <p>The original Act of 1989 only controlled movements of wastes that lacked financial value, usually destined for final disposal operations (for example, by incineration or landfill).</p> <p>In 1996, the Act was amended to include wastes that possess financial value, usually destined for recycling and recovery operations. These amendments enabled Australia to meet all of its obligations under the Basel Convention.</p>	<p>agreement is of a kind mentioned in Article 11 of the Basel Convention.</p> <ul style="list-style-type: none"> • Publishing notices in the Gazette giving details of regulations that give effect to Article 11 arrangements (section 13C). 	
<p><i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i></p> <p>The <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> protects the environment by reducing emissions of ozone depleting substances and synthetic greenhouse gases.</p> <p>The key objectives of the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> are to:</p> <ul style="list-style-type: none"> • control the manufacture, import, export, use and disposal of substances that deplete ozone in the stratosphere and contribute to climate change; 	<ul style="list-style-type: none"> • The Minister will continue to be able to terminate all Part III licences (including suspended licences of the kind specified in a notice that are held by licensee, if satisfied that it is necessary to do so for the purpose of giving effect to Australia's treaty obligations (section 19A(1) and 19A(2)). • Determining Hydrochlorofluorocarbons (HCFC) quota periods (23A(2)-(3)) and also publishing notices in the Gazette where the Minister becomes aware that in any year (the excess year) the total quantity of HCFCs, expressed in ODP tonnes, involved in regulated HCFC activities engaged in by licensees is more than 90% of the HCFC industry limit for that year (section 26(1)). 	<ul style="list-style-type: none"> • Part III licencing functions including: <ul style="list-style-type: none"> - the person to whom applications for licences are made (section 13), - the granting of licences (section 16), - the deemed refusal of licences (section 17) - conditions of licences (section 18) – note: With the exception that in respect of the conditions of licences, the Minister will announce, by notifiable instrument, the day changes come into force in Australia (section 18(3)). - renewal of licences (section 19AA) including deemed refusal of renewals (19AD) - transfer of licences (section 19B)

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Act / Background	What is staying with the Minister/DCCEEW	What is transferring to EPA
<ul style="list-style-type: none"> • achieve a faster and greater reduction in the levels of production and use of ozone depleting substances than are required under the Montreal Protocol; and • promote responsible management and handling of ozone depleting substances and synthetic greenhouse gases to minimise their impact on the atmosphere. 	<ul style="list-style-type: none"> • Annual report obligations (section 68) • Disclosure provisions including where the Minister discloses information to: <ul style="list-style-type: none"> - Commonwealth entities (section 65F) - State/Territory Govts - for purposes of law enforcement - to reduce serious risk to human health - reduce risk to the environment 	<ul style="list-style-type: none"> - amendment of licence at the request of the licensee (section 19C) - suspension, cancellation and surrender of licences (sections 19D; 20 and 21 respectively) • Enforcement powers under Part VIII of the Act. This includes the power to appoint inspectors (section 49) and monitoring and investigation powers (sections 50 and 52).
<p>Product Emissions Standards Act 2017</p> <p>The Product Emissions Standards Act 2017 provides a national framework for Australia to address the adverse impacts of emissions from products on human and environmental health. Under the Product Emissions Standards Act 2017, all emissions-controlled products imported into or supplied in Australia must be certified to either a recognised foreign standard or the Australian standard. Emissions-controlled products regulated under the PES Act include outdoor power equipment containing a new spark-ignition engines with a maximum power of 19 kilowatts and new spark-ignition marine engines.</p> <p>The Key objectives of the Product Emissions Standards Act 2017 are to:</p>	<p>The Minister will continue to be able to:</p> <ul style="list-style-type: none"> • disclose information obtained under the PES Act (section 43); • delegate any of his or her powers or functions under this Act (section 46); • Cause a review of the operation of this Act (section 47); • Set rules prescribing to matters set out in section 51. 	<p>Compliance and enforcement function and powers:</p> <ul style="list-style-type: none"> • Determining if a product complies with an emissions standard set out in the rules for the product (Section 10); • Determining if an exemption will be granted (Section 11); • Ensuring importers and suppliers of emissions-controlled products keep records (Section 19) and can supply these records if requested by the CEO of EPA. request they supply these records (Section 21, 22). <p>The following functions:</p> <ul style="list-style-type: none"> • enforcement powers under Part 5 of the Act. This includes the power to appoint inspectors (Part 7 - section 41) and monitoring and investigation powers (sections 24 and 25) as well as the ability to enforce civil penalty provisions (Section 26) / infringement notices (section 27);

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DRAFT FOR DISCUSSION: NOT OFFICIAL GOVERNMENT POLICY/LEGISLATION

Act / Background	What is staying with the Minister/DCCEEW	What is transferring to EPA
<ul style="list-style-type: none"> regulate outdoor power equipment and marine engines to contribute to improved air quality in Australia; maintain and improve air quality, human health and the environment by reducing emission from outdoor petrol-powered equipment and marine engines; ensure any emission-reduction measures provide for a consistent national approach and are commensurate with international trade requirements and accepted international standards; ensure that any compliance approach provides a net benefit to the community and meets the objectives of the Australian Government's regulation reform agenda by minimising the impact and costs on business to the extent possible. 		<ul style="list-style-type: none"> forfeiture of emissions-controlled products (Part 6) including interfering with seized product (section 33) and the disposal of forfeited products (section 39); appointing inspectors (section 41), publishing information relating to certifications and exemptions (section 42) and compliance audits (section 44).
<p><i>Recycling and Waste Reduction Act 2020</i></p> <p>The <i>Recycling and Waste Reduction Act 2020</i> creates a framework for reducing the environmental and human health impacts of products, waste from products and waste material.</p> <p>The key objectives are to:</p> <ul style="list-style-type: none"> reduce the impact on human and environmental health of products, waste from products and waste material; 	<p>The Minister will continue to have responsibility for:</p> <ul style="list-style-type: none"> granting, varying, and revoking waste export exemptions, the Act specifies the only reason for an exemption to the requirement to have a licence to export regulated waste types is that the Minister is satisfied that it is appropriate; and preparing and tabling in Parliament a report on the operation of the Act each financial year. 	<p>EPA will have responsibility for:</p> <ul style="list-style-type: none"> granting, varying, suspending, and revoking waste export licences; granting waste export licence variations and renewals; publishing information and reports about waste export licences and exemptions; monitoring, auditing, investigating, and enforcing the waste export requirements of the Act; and authorising persons to be authorised under the Act, and associated responsibilities re variation, suspension and revocation.

OFFICIAL: SENSITIVE
DRAFT FOR DISCUSSION: NOT OFFICIAL GOVERNMENT POLICY/LEGISLATION

Act / Background	What is staying with the Minister/DCCEEW	What is transferring to EPA
<ul style="list-style-type: none"> • realise the community and economic benefits of taking responsibility for products, waste from products and waste material; • develop a circular economy that maximises the continued use of products and waste material over their life cycle and accounts for their environmental impacts; • contribute to Australia meeting its international obligations. <p>Waste exporters for regulated waste types must hold a waste export licence for that particular waste type, unless the Minister has granted an exemption to this requirement.</p>		
<p><i>Underwater Cultural Heritage Act 2018</i></p> <p>The Act aims to protect the integrity of Australia's underwater cultural heritage sites in-situ and individual artefacts associated with those sites. This includes our unique historic shipwrecks, sunken aircraft and military vessels, and associated human remains, both in Australian waters and in waters outside Australian jurisdiction. Shipwrecks and other underwater cultural heritage sites are each unique and their cultural values cannot be recovered once they are damaged or destroyed.</p>	<p>All permitting and administrative functions will remain in DCCEW.</p>	<p>The compliance and enforcement function and powers will move to EPA.</p>

OFFICIAL: SENSITIVE

DRAFT FOR DISCUSSION: NOT OFFICIAL GOVERNMENT POLICY/LEGISLATION

Act / Background	What is staying with the Minister/DCCEEW	What is transferring to EPA
The protection of underwater cultural heritage sites includes the natural environment that immediately surrounds them and the archaeological context, such as the positions of artefacts located within the site		

DISCUSSION PAPER

CONCEPT MODEL FOR CALCULATING RESTORATION CONTRIBUTIONS

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1. Background

1.1 Introduction

- **Restoration actions** and **restoration contributions** cannot be used to make unacceptable impacts acceptable and enable conditional approval of a project that would not otherwise be approved.
- The Nature Positive Act will require a proponent to avoid and mitigate significant impacts on protected matters before undertaking a **restoration action** or making a **restoration contribution** to compensate for residual significant impacts.
- The Restoration Actions and Restoration Contributions (RARC) Standard requires that a project proponent must compensate for all **residual significant impacts** to protected matters by:
 - delivering and managing their own **restoration actions**,
 - paying a **restoration contribution** to enable the government to deliver **restoration actions**, or
 - using a combination of both.
- **Restoration contributions** can only be used where the impacted matter is a threatened species and ecological community, migratory species and/or the Commonwealth marine environment.
- A new [Restoration Contributions Calculator tool] will determine the cost of a **restoration contribution**. This cost will be based on the expected cost to government for delivering **restoration actions** that compensate for the residual impacts of the project.
- The [Restoration Contributions Calculator tool] will also be used for managing **regional restoration measures** in [Development Zones] under regional plans.

1.2 Restoration Contributions Calculator Tool

- **Restoration contributions** will fully recover the government's costs to manage the delivery and liability of **restoration action(s)** to compensate for residual significant impacts taken on from the proponent. **Restoration actions** must deliver a projected gain for the impacted matters.
- The [Restoration Contributions Calculator tool] will be able to consider more than one **residual significant impact** on one or more protected matters and will allow for several **restoration actions** to fully compensate for the impacts with a **projected gain**.
- The current offsets calculator used by the Department under the EPBC Act (called the Offsets Assessment Guide) provides a starting point to inform development of the [Restoration Contributions Calculator tool].
- The [Restoration Contributions Calculator tool] will operate at both project and landscape / seascape scales. Landscape / seascape scales will be important to enable the tool to be used for strategic assessments and for managing **regional restoration measures** under regional plans.
- This paper provides the framework for the [Restoration Contributions Calculator tool] to step through the operation of the proposed approach for estimating payment amounts.

2. Restoration Contributions Calculator Tool

2.1 Overview of the Restoration Contribution Calculator Tool

- The [Restoration Contributions Calculator tool] will set **restoration contributions** at a level that provides reasonable certainty that the Restoration Contributions Holder will be able to fully recover the costs associated with delivering **restoration action(s)** necessary to fully compensate (with a **projected gain**) for **residual significant impacts** on the affected protected matter(s), and to maintain the outcome for the duration of the impact.
- The [Restoration Contributions Calculator tool] requires the user to input information about the impacted protected matters and the impact site.
- The calculator then uses these inputs, together with a range of pre-set variables within the calculator, to determine several cost components that make up the total cost. These cost components will be set out in the primary legislation. These are:
 1. the cost to deliver the **restoration action(s)**. These will include:
 - i. Search costs - costs associated with finding a suitable **restoration action(s)**.
 - ii. Access costs – costs to access land or waterways (as appropriate). This could include costs associated with the access to/acquisition of land by third party **restoration action** providers.
 - iii. Project establishment costs – resource costs associated with designing and then initiating **restoration action** activities (e.g. labour, materials, freight); transaction costs associated with engaging contractors to undertake **restoration action** activities; consultation costs, etc.
 - iv. Project maintenance costs – costs associated with conducting ongoing management activities associated with **restoration actions** (e.g. pest and weed control), including

repair and maintenance of fences and other infrastructure like nesting and roosting boxes for the duration of the impact.

- v. the monitoring, reporting and verification costs – costs associated with undertaking monitoring activities that verify the **restoration action(s)** are being and have been conducted and that the intended outcomes have been delivered and maintained.
 2. administration costs – a component of the overhead costs associated with the functions of the Restoration Contributions Holder and operation of the **Restoration Contribution Fund**, including monitoring and evaluation of investments.
 3. contingency costs – costs associated with managing the risk taken on and managed by the government in delivering **restoration actions** that fully compensate for impacted protected matters with a **projected gain**.
- Legislation will require the [Restoration Contributions Calculator tool] to be reviewed every five years to identify where changes are necessary to ensure the costs generated by the calculator continue to accurately reflect the cost to government.

2.2 Restoration Contributions Calculator Tool model map

- See A3 attached [Restoration Contributions Calculator tool] model map.

2.3 Proposed steps to determine the cost of restoration contribution payments

User inputs

- Step 1: The user will input the *impacted protected matter(s)*. (Unit = Name of protected matter, e.g. Koala, Carnaby's black cockatoo, Black Grevillea).
- Step 2: The user will provide inputs relevant to the *impact site*. These include the location (Unit = location details (e.g. IBRA region, geospatial coordinates)) and quantum of the estimated residual significant impacts on the protected matter/s. (Unit = hectares, number of individual plants / animals etc)
- Step 3: The user will input an appropriate *impact site condition category* relevant to each of the impacted protected matters and this will be informed by the environmental assessment the proponent provides to the EPA. The use of condition categories is intended to account for the fact that it is harder and more expensive to compensate for an impact which occurs when the impact site is high condition habitat for the protected matter. (Unit = Category level).

Table 1: Example of User Inputs

Impacted protected matter	Impact Site		Impact site condition (as relevant to the species impacted)
	Bioregion	Impact size (ha or individuals)	
Vulnerable bird 1	Region A	400 ha of Habitat X	6/10
Vulnerable bird 2	Region A	400 ha of Habitat X	5/10
Endangered plant	Region A	300 ha of Habitat X	8/10
Endangered frog	Region A	100 ha of Habitat X	7/10

Restoration Action Obligation

Calculation of the Restoration Action Obligation

- Step 4: The calculator will select the *priority restoration action(s)* for the impacted protected matter(s). This will be drawn from a lookup table that sets out priority actions for common groups of species as determined in Recovery Strategies and other conservation planning documents.

Note: Where there are multiple priority restoration actions for a protected matter or grouping, further consideration will be given to whether a weighted average across several restoration actions, rather than a selected 'default' priority action, is used. This approach could be appropriate in addressing different variable costs associated with the different restoration actions.

Example Categories:

Table 2: Example Species categories

Example Species Categories
Marine turtles
Woodland birds
Cetaceans
Small to medium-sized ground-dwelling mammals
Freshwater fish
Seabirds

Table 3: Example Restoration Action Categories

Example Restoration Action categories
Restoration of cleared ecosystems
Improvement of condition of degraded remnant ecosystems
Threat reduction to improve condition of ecosystems to support native fauna (e.g. feral cat control)
Conservation translocation
Artificial habitat creation or reserve populations

Table 4: Example use of species categories and restoration action categories:

Impacted protected matter	Species Category	Restoration Action Category
Vulnerable bird 1	Woodland bird	Restoration of cleared ecosystems
Vulnerable bird 2	Woodland bird	Restoration of cleared ecosystems
Endangered plant	TBC	Restoration of cleared ecosystems
Endangered frog	TBC	Threat reduction to improve condition of ecosystems to support native fauna

- Step 5: The calculator will determine a *quantity of the priority restoration action(s)* necessary to deliver a projected gain for the impacted matter (this is the restoration action obligation). (Example of Units = Number of hectares restored; number of threats removed etc).
 - The calculation of the *quantity of priority restoration action(s)* for a single protected matter is a function of the size of the impact and the habitat quality on the impact site. The calculation will also include some relevant risk factors – for example the likely time delay to delivering the required outcome for the protected matter or the threat status of the protected matter. The details of this calculation methodology will draw on the existing offsets calculator.
 - Where the **restoration action** needs are the same for multiple impacted protected matters, e.g. if the species are in the same ‘species category’ (see Table 4), the calculator will use the largest requirement to determine the variables used to calculate the *quantity of priority restoration action*. See Table 5 for an example.

Table 5: Calculating the **restoration contribution** payment amount where there are multiple species, and some share the same **restoration action** category.

Protected matter impacted	Variables used to calculate priority restoration action required – per impacted protected matter	Variables used to calculate priority restoration action required – Final quantity.
Vulnerable bird 1	Restoration of ecosystems (Habitat X) required to more than compensate for the clearance of 400ha of condition 6/10	Restoration of at least 400 ha of Habitat X to at least a condition 8/10
Vulnerable bird 2	Restoration of ecosystems (Habitat X) required to more than compensate for the clearance of 400ha of condition 5/10	
Endangered plant	Restoration of ecosystems (Habitat X) required to more than compensate for the clearance of 300ha of condition 8/10	
Endangered frog	Threat reduction to improve condition of ecosystems (Habitat X) required to more than compensate for the loss of 100ha of condition 7/10	Threat reduction to more than compensate for the loss of 100 ha of condition 7 Habitat X.

Calculation of other cost categories

- Step 6: Each restoration action category will be assigned a *Restoration cost category* within the calculator. This cost reflects the average [mean or median] cost of delivering that **restoration action**, (e.g. restoration of woodland habitat versus grassland habitat), and reflects the complexity associated with the relevant action for the protected matter(s). Example categories: low, low-medium, medium, medium-high, and high. (Unit = Cost category)
- Step 7: Each protected matter will be assigned a *Search cost category*, based on how easy or difficult it is to find an appropriate **restoration action location** (e.g. scarcity of restoration action sites). Example categories: low, low-medium, medium, medium-high, and high. (Unit = Cost category)

Table 6: Example of Restoration Cost and Search Cost categories:

Impacted protected matter	Restoration Action Category	Restoration Cost Category	Search Cost Category
Vulnerable bird 1	Restoration of cleared ecosystems	Medium	Medium-High
Vulnerable bird 2	Restoration of cleared ecosystems	Medium	Medium-High
Endangered plant	Restoration of cleared ecosystems	High	Medium-High
Endangered frog	Threat reduction to improve condition of ecosystems to support native fauna	Low	Low

- Step 8: A *Remoteness category* is intended to account for the additional costs to undertake restoration actions in remote areas (e.g. 5 categories based on distance from a major centre). The category will be determined based on the *Impact Site* (Step 2). The remoteness category is a multiplier that interacts with restoration and contingency costs. (Unit = Cost multiplier).

Costing calculations

- Step 9: The *Restoration cost per unit gain* estimates the cost per unit to deliver the **restoration action**. This reflects the cost of establishment, maintenance, and monitoring reporting and verification, and is calculated as a function of:
 - the impacted protected matter (Step 1),
 - The impact site elements (Step 2),
 - the impact site condition category (Step 3),
 - the priority restoration action(s) (Step 4),
 - the restoration action cost category (step 6) and
 - the remoteness category (Step 8).
 (Unit = \$ per Quantity unit of restoration action(s))
- Step 10: The *Search cost* reflects the level of ease, or required effort to find a suitable location to undertake the restoration action(s). This will be based on the *search cost category* (Step 7) and the *required quantity of restoration action(s)*. (Units = \$)
- Step 11: The *Access cost* reflects the cost to access the restoration action – for example, the costs associated with third-party access to/acquisition of land or the cost to negotiate a conservation covenanting agreement. This cost will be based on the *required quantity of restoration action(s)* (Step 5), type of action and region. (Units = \$)
- Step 12 The *Administration cost* will be automatically populated by the calculator and will reflect the costs associated with the operations of the Restoration Contributions Holder and the

Restoration Contributions Fund. This will be proportionately attributed based on the complexity and scale of the impacts of the project on protected matters. (Unit = \$)

- Step 13: The *Contingency factor* will account for delivery risk taken on by the Commonwealth and will be a multiplier applied to the sum of Steps 9 to 12 above. (Units = \$)

Restoration contribution amount

- Step 14: The *Restoration Contribution amount* is the sum of the *restoration cost*, the *search cost*, the *access cost*, and the *administration cost* multiplied by the *Contingency factor*.

3. Key policy settings underpinning calculators

- The delivery of **restoration actions** and **restoration contributions** must be consistent with the national environmental standards. The RARC Standard sets out requirements that must be met when delivering **restoration actions**, which includes that **restoration actions** must be ‘like for like’. The calculation of **restoration contributions** will be based on delivery of a **like for like restoration action**.
- The approaches used to estimate payment amounts for **restoration contributions** will be set out in sub-ordinate legislation.
- The restoration contributions calculator is intended to support a proponent to use a combination of **restoration actions** and **restoration contributions**. To do this, the user could input their proposed **restoration action** to determine the percentage of compensation acquitted by the **restoration action**, and the remaining impact would be inputted to the Restoration Contributions Calculator to determine the remaining compensation obligation to be acquitted as a **restoration contribution**.

4. Definitions

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

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) and be informed by the best available science.
- For other protected matters, a ‘like for like’ restoration action must benefit the same specific attribute that is impacted (e.g. the same value as described for a listed heritage place).

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

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 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.]

Regional restoration contribution: An amount paid by the Commonwealth [, a state or territory, or a consenting third party] as a regional restoration measure.

Regional restoration measures: measures taken to compensate for the residual significant impacts on protected matters of **priority actions** in [Development Zones]. They can include actions that meet the requirements of the National Environmental Standard for Restoration Actions and Restoration Contributions and **regional restoration contributions**. 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 at the time they register to operate in a [Development Zone] to contribute to the cost of delivering **regional restoration measures**.

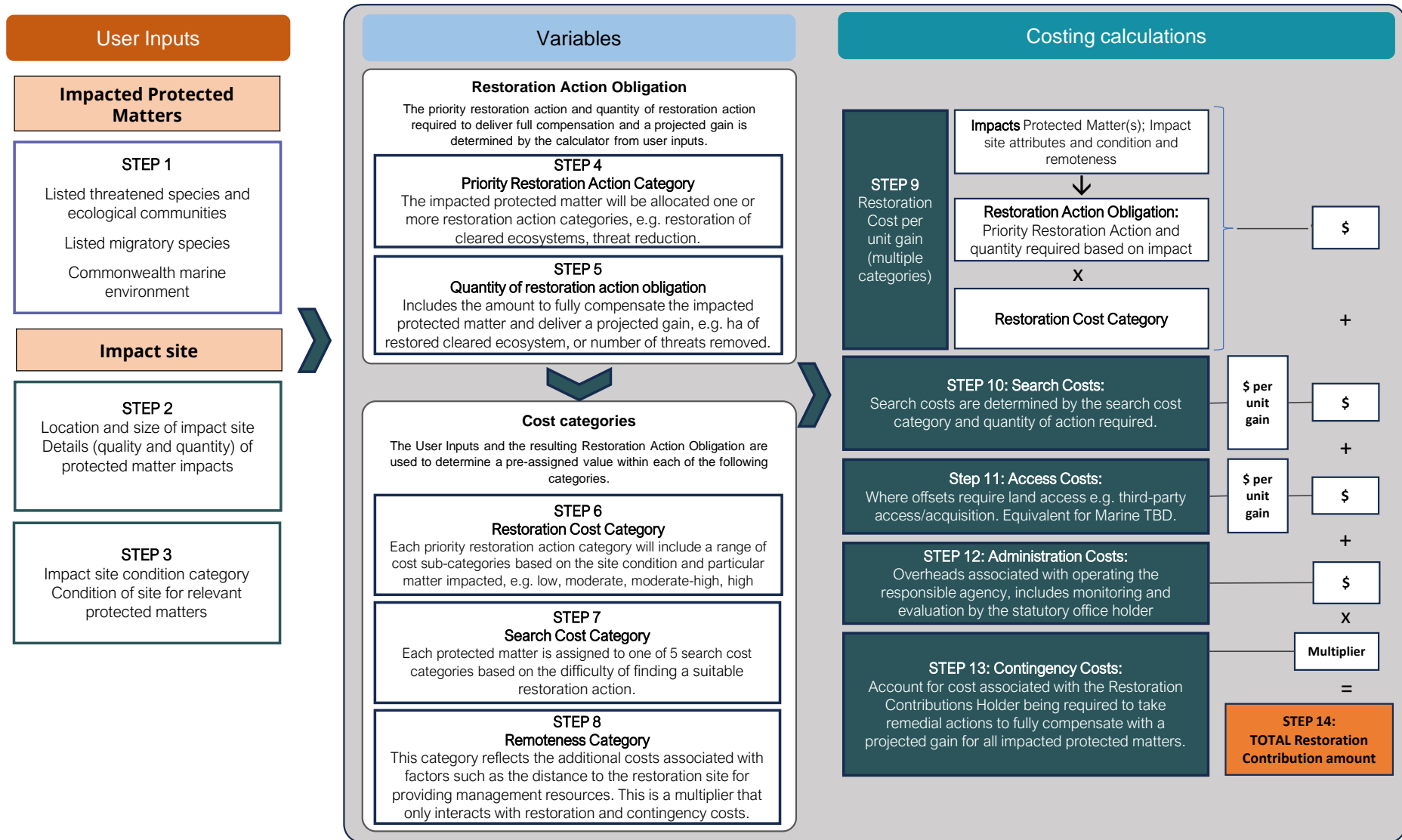
Residual significant impacts: A **significant impact** on a protected matter that remains after measures are taken to avoid and/or mitigate the impacts of an action (or **priority action**, in the case of regional planning). An unacceptable impact cannot be made acceptable through the delivery of a **restoration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

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**, **regional restoration contributions** and **regional restoration payments**.

Calculation of Restoration Contribution cost



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].

The National Environmental Standard for Matters of National Environmental Significance will help contribute to a nature positive Australia.

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, conserve and restore (where necessary) 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** if 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 restoration action, including the baseline projections and assumptions on which projections are made,
 - ii. details the restoration 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 and maintain 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, an applicable 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 (for example): 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) and be informed by the best available science.
- For other protected matters, a 'like for like' **restoration action** must benefit the same specific attribute that is impacted (e.g. the same value as described for a listed heritage place).

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 certificates under applicable 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 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 protect or conserve MNES or avoid, mitigate, repair or compensate for damage to MNES, including any **residual significant impacts** of **priority actions**.

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 at a landscape and/or seascape scale, 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 (**restricted actions**) will be prohibited and [**Development Zones**] where specified classes of action (**priority actions**) can, subject to registration with Environment Protection Australia, proceed with specified conditions.
- Increase and better target the protection, conservation and restoration of environmental 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 actions** and assess their potential impacts as a class on environmental, 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 residual significant impacts on MNES of **priority 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.

Definitions

Baseline: an evidence-based estimate of the likely condition of an MNES in the absence of the **priority 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 environmental and heritage values in the region from development impacts.

[Development Zones]: Areas of a Regional Plan in which persons proposing to undertake **priority 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 in the region. In a regional planning context, a net positive outcome is a regulatory outcome 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 actions**.

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.

Priority actions: Classes of action specified in a Regional Plan to which conditions attach when undertaken in a **[Development Zone]**. Before specifying priority actions, the Minister must be satisfied that, taken as a whole, the actions in the class have, will have, or are likely to have, a **significant impact** on one or more MNES.

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 actions**. [The calculation of projected gain will include consideration of other factors, such as the certainty of **regional restoration measure** 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.]

Regional restoration contribution: An amount paid by the Commonwealth[, a state or territory, or a consenting third party] as a **regional restoration measure**.

Regional restoration measures are measures taken to compensate for the **residual significant impacts** on MNES of **priority actions** in **[Development Zones]**. They can include [actions that meet the requirements of the National Environmental Standard for Restoration Actions and Restoration Contributions] and **regional restoration contributions**. The design of regional restoration measures will be informed by the National Environmental Standard for Restoration Actions and Restoration Contributions.

Residual significant impact: A **significant impact** on a MNES that remains after measures are taken to avoid and/or mitigate the impacts of **priority actions**. An unacceptable impact cannot be made acceptable through the delivery of **regional restoration measures**.

Restricted actions: Classes of action specified in a Regional Plan which are prohibited in a [**Conservation Zone**]. Before specifying restricted actions, the Minister must be satisfied that, taken as a whole, the actions in the class have, will have, or are likely to have, a **significant impact** on one or more MNES.

Significant impact: As defined by the [legislation].

DRAFT

National Environmental Standard for Data and Information

National objective

Guide assessment of appropriate and suitable data and information crucial for informing relevant decision making under the [Nature Positive (Environment)] Act.

Enable decision makers, proponents and third parties to effectively implement an assessment of appropriate and suitable data and information when preparing for or undertaking decision making processes.

National standard

Appropriateness

Following six core principles will uphold best practice in the collection, utilisation and sharing and provide appropriate data and information for relevant decision making under the [Nature Positive (Environment)] Act:

- **Fit for purpose:** Data and information meet the specific needs of the decision being made.
- **Ethical:** Data and information are demonstrably compliant with relevant legislation protecting sensitive data and information, were obtained and are managed under appropriate ethics approvals, and were obtained and are managed in a transparent and inclusive manner for stakeholders.
- **Reliable:** Data and information have a demonstrably robust scientific foundation and/or were collected under a recognised and enduring survey protocol or traditional knowledge system.
- **Reusable:** Data and information have adequate metadata (on the data's structure, lineage, sources, objectives and intended use) to ensure it remains meaningful for decision making.
- **Accessible:** Data and information are made available under the least restrictive conditions possible (preferably Creative-Commons-No-Rights-Reserved).
- **Discoverable:** Data and information are made available on an enduring, searchable and interoperable platform so they can be readily found when needed for a decision.

These principles are drawn from existing international and national frameworks including the FAIR Guiding Principlesⁱ, CARE Principles for Indigenous Data Governanceⁱⁱ, Australian Bureau of Statistics Data Quality frameworkⁱⁱⁱ, Shared Analytic Framework for the Environment^{iv} and the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999^v.

Suitability

The extent to which these principles are followed will determine the suitability of data and information for relevant decision making under the [Nature Positive (Environment)] Act, in accordance with the following tiered structure:

- **Tier 1:** Suitable: Data and information that fully adhere to the six core principals are deemed suitable for the specific decision under consideration.
- **Tier 2:** Potentially Suitable: Data and information that require additional scrutiny to ascertain suitability. May transition to Tier 1 (Suitable) or Tier 3 (Unsuitable) based on further review.

- **Tier 3: Unsuitable:** Data and information that do not meet the six core principals and are deemed unsuitable for the specific decision under consideration.

Requirements for Technical Guidance

To facilitate the effective implementation of the National Environmental Standard for Data and Information Environment Information Australia will collate and publish a comprehensive library of Technical Guidance.

The Technical Guidance library will provide operational support to decision makers, proponents and third parties by providing clarity on how to ensure suitable data and information is provided for relevant decisions consistent with the National Environmental Standard for Data and Information.

Initial Technical Guidance will draw from existing international, national and jurisdictional frameworks guiding best practice and jurisdictional processes seen to be consistent with relevant decision making under the [Nature Positive (Environment)] Act.

Regular review and updates of the Technical Guidance will be required to ensure alignment between relevant decision making processes and best practices for data and information management.

Additional detail on the Technical Guidance is provided in [Attachment A](#).

Definitions

Data and information

Data and information related to understanding patterns and dynamics of the environment required for relevant decision making under the [Nature Positive (Environment)] Act, see Attachment A.

Decision maker

A person making a relevant decision under the [Nature Positive (Environment)] Act. This may be the Environment Protection Agency, Environment Minister or accredited third party.

Environment

As defined in the EPBC Act, environment may include ecosystems and their constituent parts, including people and communities; and natural and physical resources; and the qualities and characteristics of locations, places and areas; and heritage values of places; and the social, economic and cultural aspects of a thing beforementioned.

Proponent

A person or entity advocating for a proposed action. 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.

Relevant decision making

Relevant decision making under the Nature Positive (Environment) Act includes:

- Environmental approvals and strategic assessments
- Regional planning
- Accreditation, and
- Other decisions described in Rules.

Sensitive data and information

Sensitive data and information is a sub-set of data and information requiring a higher level of protection, this includes but is not limited to Matters of National Environmental Significance (MNES), privacy, commercial in confidence and cultural sensitivities around First Nations data.

[First Nations data, information and knowledge systems requires consideration beyond the context of ethics and sensitive data and information – this is currently in progress and will be updated in a later version of the policy position paper]

ⁱ Wilkinson, M. *et al.* (2016). The FAIR Guiding Principles for scientific data management and stewardship. *Scientific Data*, 3, 160018, <https://doi.org/10.1038/sdata.2016.18>.

ⁱⁱ Carroll, S. *et al.* (2020). The CARE Principles for Indigenous Data Governance. *Data Science Journal*, 19, <https://doi.org/10.5334/dsj-2020-043>.

ⁱⁱⁱ Australian Bureau of Statistics (2009). ABS Data Quality Framework, cat. no. 1520.0, ABS, Canberra.

^{iv} Western Australian Biodiversity Science Institute and Western Australian Marine Science Institution (2023). Capabilities for a national supply chain of environmental information: Shared Analytic Framework for the Environment (SAFE 2.0). The Western Australian Biodiversity Science Institute, Perth, Australia.

^v Samuel, G. (2020). Independent Review of the EPBC Act – Final Report. Department of Agriculture, Water and the Environment, Canberra.

Attachment A – Outline of Technical Guidance

Overview

The purpose of the Technical Guidance is to provide operational support to decision makers, proponents and third parties with regard to the National Environmental Standard for Data and Information.

The format of the Technical Guidance is likely to be a collated comprehensive library of frameworks, methods, approaches and processes associated with data and information management.

The structure of the Technical Guidance is still being determined, with dependency on functions and processes to be established in Environment Information Australia (EIA) and Environment Protection Australia (EPA).

We envisage content will be based on the following components:

- Core principles to guide appropriateness of data and information
- Tiers to guide suitability of data and information
- Guidance for implementation
 - Environmental approvals and strategic assessments context
 - Regional planning context
 - Accreditation context
- Library of associated jurisdictional processes.

Regular review and updates of the Technical Guidance will ensure alignment between relevant decision-making processes and the evolving landscape of best practices in environment data and information management.

Scope of data and information

A diverse array of data and information is required to understanding patterns and dynamics of the environment in relation to relevant decision making under the Nature Positive (Environment) Act. This may include, 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 (including attributes relevant to assessing biodiversity persistence at the genetic, species and ecosystem levels) and/or attributes relevant to their protection (including those which indicate magnitude of pressures, threats, and state-changes to populations, ecosystems, landscapes, freshwater systems, seascapes, 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.

[Examples of First Nations data, information and knowledge systems are being drafted for inclusion]

Fitness for purpose principle

Fitness for purpose will be assessed with reference to the following:

- **Completeness:** without critical data gaps that could compromise the rigour and defensibility of a given decision, whether spatial or aspatial
- **Relevance:** offering meaningful insights in the context of a given decision
- **Accuracy:** providing a precise representation of the intended phenomenon to the necessary degree for informed decision-making
- **Interpretability:** readily understandable by the decision-maker
- **Timeliness:** pertinent to a time period that holds significance in the context of a given decision.

Suitability tiering

The following provides examples of data and information within each suitability tier.

Tier 1: Suitable

Data and information that: is discoverable, accessible and findable; was collected/created and shared ethically; ethical (including CARE Principles for Indigenous Data Governance 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 the Technical Guidance library. 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 and information likely to be Tier 1 include:

- Time-stamped, accurately-geolocated species observation data collected by a consultant or proponent, uploaded, 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
- Biological survey data which is consistent with Technical Guidance library 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.

[Examples of First Nations data, information and knowledge systems are being drafted for inclusion]

Tier 2: Possibly 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 and information 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

Environment 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 and information 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.

[Examples of unsuitability due to inappropriate sourcing by a third party or proponent of First Nations data, information and knowledge systems are being drafted for inclusion]

National Environmental Standard for Community Engagement and Consultation

National Objective

To ensure the community has access to meaningful information about the environmental impacts of proposals and the opportunity to effectively contribute to environmental decision-making.

National Standard

Requirement to publish relevant information for public comment

1. The **proponent** must¹:
 - a. **publish relevant information** about the proposal and its likely impacts on protected matters; and
 - b. invite comment from any persons² 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**, or undertake any other actions that discourage public comment on the proposal.
3. A **proponent** submitting a proposal [under the standard pathway for Environmental Assessments and Approvals], must complete the registration process for the proposal, prior to commencement of the public comment period at [item 1].

Requirements for an invitation to comment

4. 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 change³;

¹ "Must" is a mandatory requirement that a decision-maker must be satisfied is met.

² 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.

³ For example, technical reasons relating to the proximity of a relevant resource.

- f. information about opportunity/ies for **engagement** with the proponent about the proposal.

Stakeholder Engagement Plan

- 5. The **proponent** must prepare a Stakeholder Engagement Plan and publish it with the **relevant information** when inviting comment under [item 1].
- 6. The Stakeholder Engagement Plan must:
 - a. identify stakeholders;
 - b. outline the opportunity/ies for **engagement**;
 - c. allow opportunities for persons to seek clarification of the **relevant information** to facilitate the provision of relevant and informed feedback;
 - d. outline how engagement will be publicised to ensure maximum visibility;
 - e. include at least:
 - i. one public online meeting; and
 - ii. one alternative engagement activity that is relevant to the proposal and its location, for example a public hearing, workshop, community discussion or survey.
- 7. The Stakeholder Engagement Plan should:⁴
 - a. provide for multiple opportunities for **engagement**, using different methods;
 - b. provide for additional time for 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

- 8. **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;

⁴ "Should" is an additional requirement that reflects best practice. This may be included in the standard or in guidance or policy published alongside the standard.

- 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. information about whether any parts of the proposal have been changed or modified due to information provided by the public during any previous engagement and consultation;
- m. any other environmental approvals that may be required for the proposal under State, Territory or Commonwealth legislation, and expected timeframes for these approval processes.

9. When proposing a strategic assessment or making a regional plan, in addition to the requirements at [item 8], 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.

10. 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 11] as this can only be prepared following the engagement process.

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11. 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.]

12. 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 7];
 - ii. how persons were informed about the engagement process [item 4];
 - iii. the Stakeholder Engagement Plan [item 5];
 - iv. the relevant information [item 8].

- 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 feedback on the proposal, including written comments;
- 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**.

DRAFT

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: is a planned process with a specific purpose that involves working with individuals and groups to encourage active involvement in the decisions relating to the proposal that affect them or are of interest to them.

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 7].

Summary of Community Engagement and Consultation: is a summary report that addresses the requirements of this standard, as listed at [item 11]. This would be published under the respective decision-making process.