



# Consultation on National Environmental Laws 13-14 December 2023

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

## Papers

- Strategic Assessments
- Regional Planning
- Decision making at the landscape and/or seascape scale
- Accreditation
- Environment Protection Australia (EPA)
- Environment Information Australia (EIA)
- Assessment and approval pathways Addendum: EPA's role in community consultation

## Draft National Environmental Standards

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

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

- Environmental assessments and approvals (not including compliance and enforcement)
- National Environmental Standards
- National interest exemptions
- Recovery strategies
- Definitions for December exposure drafts

To ask questions and send written feedback, please contact the Nature Positive Taskforce via [environmentlawEPATaskforce@dceew.gov.au](mailto:environmentlawEPATaskforce@dceew.gov.au)

Documents included in the December consultation pack:



= Papers (policy)



= Draft national environmental standards (policy)



= Exposure Draft inserts

# National Environment Law

## Matters of National Environmental Significance

### National Environmental Standards



Matters of National Environmental Significance



Restoration actions and contributions



First Nations Engagement and Participation in Decision-making

Community Engagement and Consultation



Regional Planning



Data and Information



## Conservation Planning

Listing reforms

Recovery strategies



Protected areas

Management Plans

### Environmental assessments and approvals (EPA)

Approval decisions for single actions



Guidance and advice for business



### Landscape-scale approaches

Regional plans



Strategic assessments



### Accreditation



States and Territories

Commonwealth agencies

### Approvals and exemptions (Minister)

Approval decisions for 'called-in' actions

National Interest Exemption



### New independent entities



Environment Protection Australia

Environment Information Australia



### Permits and compliance

Wildlife trade

Compliance and enforcement

Transparency, accountability and publication of information

Governance (including statutory committees)

## **STRATEGIC ASSESSMENTS**

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#### Power

Actions that may have a significant impact on nationally protected matters can be strategically assessed at a landscape scale. The CEO of Environment Protection Australia (EPA) can endorse a strategic plan, grant an approval for one or more classes of actions covered by the strategic plan and attach conditions to the approval.

EPA will be responsible for compliance with the plan and provide an oversight and assurance role.

#### Provisions

##### 1. Agreement to conduct assessment

###### Effect

This section covers strategic assessment process and particulars related to the agreement between a party and the CEO of EPA to conduct a strategic assessment.

###### *1.1. Registration and agreement to conduct a strategic assessment*

- A strategic assessment is a landscape-scale assessment of the impact of multiple actions on protected matters.
- Before an approval of a class of actions can be granted, a strategic plan must be developed, which details the actions, and an impact assessment undertaken.
- The person developing the strategic plan and conducting the impact assessment is referred to as the responsible person.
- Before conducting the impact assessment, the responsible person must register their intent to do so with EPA, and obtain the agreement of the CEO of EPA to conduct the strategic assessment.
- The CEO of EPA may attach specific requirements for the strategic assessment to the agreement.
- The CEO of EPA and the responsible person may also agree on an approach for EPA to cost recover the time and resources it will dedicate to engagement with the responsible person prior to them submitting a strategic plan for endorsement.
- If the CEO of EPA agrees to the responsible person conducting the strategic assessment, the CEO of EPA must publish their decision as soon as practicable after making the decision.
- A person conducting a strategic assessment will need to produce an impact assessment. The impact assessment must include the contents specified in section 2.2, the CEO of EPA may specify additional matters that must be included in the strategic plan or the impact assessment.
- There is no requirement that the strategic plan has been developed prior to obtaining the CEO of EPA's agreement to conduct a strategic assessment.

## 2. Application

### Effect

This section provides for EPA assessment and review of the plan and particulars related to the assessment process.

It is intended that a proponent will develop the strategic plan in accordance with the Act and national environmental standards prior to submitting the plan to EPA.

Development of the strategic plan and strategic assessment prior to submission for endorsement will be in collaboration between the responsible person and EPA and is likely to be an iterative process. This process is not legislated and will allow for negotiations between parties.

### 2.1 Application eligibility gateway

- When the responsible person has completed their strategic assessment, they may then apply for endorsement of the strategic plan.<sup>1</sup>
- Prior to commencing an assessment of an application EPA must ensure that the application has been made in the correct form, contains required information, and is accompanied by the prescribed fee (if any).
- If the CEO of EPA determines that an application does not meet the requirements for submission, the application will not be accepted.
- If an application is not accepted the CEO of EPA must notify the applicant as soon as practicable after the decision is made.
- The application must be accompanied by the payment of a fee for EPA's assessment of the application.

### 2.2 Application to endorse a strategic plan

- The application must include the strategic plan that is proposed for endorsement and the impact assessment.
- The impact assessment must include the following information:
  - the person responsible for implementation of the strategic plan (responsible person);
  - the action or class of actions that is proposed to be taken in accordance with the strategic plan; and
  - a description of the area to be covered by the strategic plan (the strategic assessment area), including:
    - the protected matters that are located in the strategic assessment area; and
    - the protected matters that are certain or likely to be impacted by the action or classes of action proposed to be taken in accordance with the strategic plan; and

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<sup>1</sup> In practice, it is anticipated that the responsible person will work with EPA to develop the content of the strategic assessment prior to application for endorsement.

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- an assessment of the certain and likely impacts (including cumulative impacts) and risks to protected matters from the action or classes of action proposed to be taken in accordance with the strategic plan;
  - an assessment of how those impacts and risks are proposed to be (in a hierarchy) avoided, then mitigated and then compensated for under the strategic plan;
  - information that demonstrates that implementation of the strategic plan would not be inconsistent with a national environment standard (if any) prescribed for the purpose of this provision<sup>2</sup>;
  - an assessment of the extent to which the strategic plan considers climate change, including environmental adaptation and resilience measures;
  - a description of how environmental performance will be monitored and recorded;
  - any other matters that were specified by the CEO of EPA when agreeing to the strategic assessment;
  - any other matters prescribed in the rules.
- The application must also demonstrate how, when preparing the strategic plan, the responsible person has acted not inconsistently with a national environment standard (if any) prescribed in the rules for the purpose of this provision.

### 3. Strategic assessment and decision-making criteria

#### Effect

This section sets out the public consultation requirements and decision-making criteria for the decision whether to endorse the strategic plan and grant approval to take actions of a class. Note that the considerations for making an approval decision on a single project are the same as those for making a strategic assessment approval, with the exception that strategic assessments must also consider climate change, including environmental adaptation and resilience measures.

The CEO of EPA is the decision-maker for endorsement and approval of strategic plans.

#### 3.1 Assessment by the CEO of EPA

- On receiving the application, the CEO of EPA must:
  - assess the application against the criteria for endorsement of a strategic plan (see section 3.2); and
  - assess the proposed action or class of actions against the criteria for approving the taking of an action or class of actions in accordance with the strategic plan (see section 3.5).
- The CEO of EPA may request additional information from a person in relation to the strategic assessment. This includes, but is not limited to, the responsible person.

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<sup>2</sup> It is anticipated this would include the national environmental standards for Matters of National Environmental Significance, Restoration Actions and Restoration Payments, Community Engagement and Consultation, First Nations Engagement and Participation in Decision Making, and Data and Information.

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- This power should be able to be exercised if the CEO reasonably believes that the additional information is necessary for any of the following:
  - to allow the application to be properly assessed against the criteria for:
    - endorsing a strategic plan; and
    - approving an action or class of actions to be taken in accordance with the endorsed strategic plan; and
    - attaching conditions to a strategic assessment approval.
- This power may be exercised multiple times in relation to an application. It may also be exercised at any time after the application is made until a decision to endorse the strategic plan and approve a class of actions are made.
- The CEO of EPA may obtain advice from the Independent Expert Scientific Committee (IESC) if the CEO is satisfied the action or class of actions included in the strategic plan are likely to significant impact on water resources from unconventional gas and large coal mining developments.
- The CEO of EPA may recommend that the responsible person make modifications to the strategic plan or the strategic assessment report in order to address issues raised in the CEO's assessment of the strategic plan.

#### 3.2 *Criteria to endorse a strategic plan*

- Following assessment of the application, the CEO of EPA must decide whether to endorse the strategic plan. This will be a statutory decision.
- There is no statutory timeframe imposed on the CEO of EPA
- The CEO of EPA may only endorse the strategic plan if the CEO is satisfied that:
  - the strategic plan includes the mandatory content for a strategic plan (see section 2.2); and
  - the strategic plan is not inconsistent with any national environmental standards prescribed for the purposes of this provision;
  - the responsible person has taken all reasonable steps to design the strategic plan so as to first avoid, and then mitigate, the likely significant impacts on protected matters; and
  - implementation of the strategic plan would promote the objects of the Act; and
  - the strategic plan adequately addresses the impacts of actions proposed to be taken under the strategic plan; and
  - that the strategic plan includes consideration of the expected impacts of climate change, and includes appropriate adaptation and resilience measures in response to these impacts; and
  - either the recommended modifications of the strategic plan (if any) have been made or any modifications having the same effect have been made; and
  - the strategic plan takes into account any relevant advice of the IESC in relation to relevant matters within the strategic assessment area; and
  - any other matter prescribed by the rules.



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- In deciding whether to endorse the strategic plan, the CEO of EPA must have regard to the following:
  - the impact assessment for the strategic plan;
  - any relevant information obtained from a request for information (see above);
  - any relevant IESC advice;
  - any relevant public comments received (as required by the relevant national environmental standards);
  - any other matters the CEO of EPA considers relevant.

#### 3.3 *Approval of a class of actions taken in accordance with an endorsed strategic plan (a strategic assessment approval)*

- Where the CEO of EPA has decided to endorse a strategic plan, the CEO must then decide whether to approve the taking of an action or a class of actions in accordance with the endorsed strategic plan.
- The CEO of EPA cannot grant a strategic assessment approval that does not name an approval holder.
- The approval holder does not need to be the responsible person.
- The approval holder must have consented to being named the approval holder for the strategic assessment approval.
- The CEO of EPA must consider whether the approval holder is a suitable person to hold an approval.

#### 3.4 *Power to attach conditions to a strategic assessment approval*

- The CEO of EPA may attach one or more conditions to a strategic assessment approval where the CEO is satisfied:
  - the proposed action or class of actions would, or is likely to, have a significant impact on a protected matter; and
  - the condition is necessary or convenient to either:
    - protect the protected matter (whether or not the protection is protection from the action or class of actions); or
    - avoid, mitigate, or repair damage to, or compensate for damage to, a protected matter (whether or not the damage may, will be, or has been, caused by the action or class of actions).
- The CEO of EPA may attach conditions that must be complied with by persons taking an action included in the approved class of actions<sup>3</sup>
- The CEO of EPA may attach conditions requiring the delivery of measures to compensate for the impacts of actions taken under the strategic assessment approval (in accordance with the endorsed strategic plan).
  - such conditions must have the consent of the person on whom they are imposed.

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<sup>3</sup> Note that these persons may not be the approval holder).

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- such conditions may require or allow the payment of a 'restoration contribution' of a specified amount.
- The CEO of EPA may impose conditions requiring the responsible person to maintain a register of persons taking action under the strategic plan including a requirement to inform persons on the register of any changes to the strategic assessment approval.
- In addition, if the strategic assessment approval specifies a person or persons who can take an action included in the approved class of actions and that person or persons authorise, permit or request another person to undertake any part of the action (for example, a subcontractor), the person must take all reasonable steps to ensure:
  - that the other person is informed of any condition attached to the approval that restricts or regulates the way in which that part of the action may be taken; and
  - that the other person complies with any such condition.
- The CEO of EPA must be satisfied that any condition attached to a strategic assessment approval is not inconsistent with the endorsed strategic plan.

#### *3.5 Criteria to grant a strategic assessment approval*

- The CEO of EPA must only approve an action or a class of actions to be taken in accordance with an endorsed strategic plan, and attach the proposed conditions to the approval, if the CEO is satisfied that:
  - approving the taking of the action or class of actions is not inconsistent with any national environmental standard prescribed in the rules;
  - the endorsed strategic plan addresses (including avoiding and mitigating, where possible) the likely significant impacts of the action or class of actions on protected matters; and
  - approving the taking of the action or class of actions, and attaching the proposed conditions to the approval, would not be inconsistent with Australia's obligations under any of the following international agreements (where relevant):
    - the World Heritage Convention;
    - the Ramsar Convention;
    - the Biodiversity Convention;
    - the Apia Convention;
    - Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES);
    - the Bonn Convention;
    - China-Australia Migratory Bird Agreement (CAMBA);
    - Japan-Australia Migratory Bird Agreement (JAMBA);
    - Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA);
    - an international agreement prescribed by the rules.

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- approving the taking of the action or class of actions and attaching conditions would not be inconsistent with the protection statement within a recovery strategy, or the threat mitigation statement within a threat abatement Strategy;
- approving the taking of the action would not be inconsistent with any of the following:
  - the Australian World Heritage Management Principles;
  - a plan that has been prepared for the management of a declared World Heritage property under (or as described in) the Act;
  - the National Heritage Management Principles;
  - an agreement to which the Commonwealth is a party in relation to a National Heritage place;
  - a plan that has been prepared for the management of a National Heritage place under (or as described in) the Act;
  - the Australian Ramsar Management Principles;
  - any relevant Ramsar Management Plans; and
  - Plans (made under the National Parks Act) for the management of Commonwealth reserves.
- Any other matters prescribed by the rules.
- The CEO of EPA must not approve the taking of an action or class of actions if the CEO is satisfied that taking the action would have, or is likely to have, an unacceptable impact on a protected matter.

#### 3.6 *Mandatory considerations in deciding whether to approve, and attach conditions to the taking of an action*

- In deciding whether to approve an action or a class of actions to be taken in accordance with an endorsed strategic plan, and in deciding to attach the proposed conditions to the approval, the CEO of EPA must have regard to the following:
  - the endorsed strategic plan;
  - the impact assessment;
  - matters relevant to any protected matter that will be, or is likely to be, impacted by the proposed action or class of actions if taken in accordance with the endorsed strategic plan. This includes consideration of:
    - the nature and extent of the likely impacts of the proposed action or class of actions on protected matters;
    - any conditions proposed to be attached to the strategic assessment approval and the extent to which those conditions would avoid, reduce, mitigate, or compensate for any likely significant impacts on protected matters.
  - relevant information provided by the responsible person, including (but not limited to) information provided in the application, in response to any request for further information or in response to the request to comment on the proposed strategic assessment approval;

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- the principles of ecologically sustainable development;
- any relevant recovery strategy;
- any relevant threat abatement strategy;
- any relevant regional plan;
- any other information the CEO of EPA has on the likely impacts of the proposed action or class of action, taken in accordance with the endorsed strategic plan, on protected matters;
- any relevant advice received from the IESC or other statutory committee under the new legislation;
- any other matters prescribed in the rules.
- any other information the CEO of EPA considers relevant.

#### *3.7 Consultation on strategic assessment approval*

- Before deciding whether to approve an action or class of actions to be taken in accordance with an endorsed strategic plan the CEO of EPA must:
  - provide a copy of the draft strategic assessment approval (including any draft conditions) to the responsible person and the proposed approval holder (if different to the responsible person); and
  - inform any other Commonwealth Minister whom the CEO of EPA believes has administrative responsibilities relating to the proposed action or class of actions of the draft strategic assessment approval (including any draft conditions); and
  - invite the responsible person (and proposed approval holder, if different from the responsible person) and other Ministers to give the CEO of EPA any comments on the draft strategic assessment approval within a specified period (which must be at least 20 business days).
- The CEO of EPA must have regard to any relevant comments received in response to such a notice or invitation, when deciding whether to approve the proposed action or class of actions to be taken in accordance with the endorsed strategic assessment plan, and what conditions (if any) to attach to the approval.

#### *3.8 Ministerial call-in of the endorsement of a strategic plan*

- The Minister may elect to call-in and make a specified decision on whether to endorse a strategic plan and approve any action or class of actions set out in that strategic plan.
  - This is referred to as the ministerial call-in power, and means that the Minister is electing to make the endorsement decision that would otherwise be made by the CEO of EPA.
- The Minister may call-in a decision on whether to endorse a strategic plan at any time up until the business day before the CEO of EPA makes the decision. The decision cannot be called-in by the Minister after the CEO has made the endorsement decision.
- For the avoidance of doubt, the Minister may not call-in a strategic assessment approval for actions set out in a strategic plan that has already been endorsed by the CEO of EPA.

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- The Minister must publish the reasons for electing to make an approval decision and the reasons for the final decision on approval as soon as practicable.

#### 3.9 Ministerial decision on the endorsement of a strategic plan and approval of multiple actions or a class of actions in accordance with a called-in strategic plan

- If the Minister has called in and made an endorsement decision on the strategic plan, the Minister must also make any corresponding decision on the approval of an action or class of actions taken in accordance with the endorsed strategic plan.
- The CEO of EPA cannot make such an approval decision on an action or class of actions where the Minister has called in and made the endorsement decision on the strategic plan.
- In making these decisions, the Minister must:
  - not act inconsistently with Australia's international obligations;
  - be satisfied that endorsing the plan or approving the action would not be inconsistent with any of the following (if relevant):
    - World and National Heritage management principles;
    - Australian Ramsar management principles;
    - Heritage and Ramsar Managements Plans;
    - agreements to which the Commonwealth is a party regarding National Heritage places;
    - Plans of management for Commonwealth Reserves; and
    - instruments prescribed by Rules.
  - must have regard to:
    - information relevant to the proposed action/s, impacts and protected matters (including extent to which impacts may be avoided, mitigated, repaired or compensated for);
    - any relevant comments received from Ministers, or the person proposing to take the action;
    - national environmental standards;
    - recovery strategies;
    - threat abatement strategies;
    - recommendation report provided by the CEO of EPA;
    - the principles of environmentally sustainable development (ESD);
    - social and economic matters;
    - any potential unacceptable impacts on protected matters;
    - any relevant regional plan;
    - any relevant advice received from the IESC or other statutory committee under the new legislation; and

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- other matters the Minister considers relevant.
- Be satisfied that the strategic plan includes consideration of the expected impacts of climate change, and includes appropriate adaptation and resilience measures in response to these impacts.
- In deciding whether to approve an action or a class of actions the Minister may decide to attach the conditions to the approval.
- The Minister must also undertake consultation on the draft decision with the responsible person, the proposed approval holder and relevant Commonwealth Ministers, as set out above.
- To avoid doubt, the Minister cannot remake a decision that has already been made by the CEO of EPA or an accredited decision-maker.
- To avoid doubt, EPA will be responsible for any compliance and enforcement matters relating to decisions made by the Minister.

#### 4. EPA oversight and compliance

##### Effect

This section sets out the post-approval matters, including oversight and compliance provisions.

The CEO of EPA is responsible for oversight and compliance matters for endorsed strategic plans and strategic assessment approvals.

##### 4.1 Reviews

- The CEO of EPA will conduct reviews of an endorsed strategic plan at least once every 5 years following endorsement of the strategic plan. The CEO may also conduct more regular, or one off, reviews of an endorsed strategic plan if the CEO considers it appropriate to do so.
- When undertaking a review of an endorsed strategic plan, the CEO will be able to audit any of the matters prescribed in the rules. The CEO may also request information from a person if necessary.
- A person must provide the CEO of EPA with all reasonable facilities and assistance necessary for the effective exercise of the CEO's powers to conduct a review. This includes complying with any request for information or documents.
- Following completion of the review, the CEO of EPA will prepare a review report.
- As part of the review, the CEO of EPA may determine that:
  - the endorsed strategic plan should be varied; or
  - the strategic assessment approval should be varied, suspended or revoked.
- The CEO of EPA will provide the report and any recommendations to the approval holder and the responsible person. The CEO must also publish the report and recommendations on EPA website.

##### 4.2 Compliance with conditions

- Failure to comply with conditions of an approval is an offence.

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#### 4.3 Variations to a strategic plan after endorsement

- The responsible person may apply to the CEO of EPA to approve a variation to the strategic plan.
- Variations will be determined to be either:
  - minor; or
  - not minor.
- The application must be in the approved form and include:
  - details of the proposed variation; and
  - the reasons for the proposed variation; and
  - state whether the responsible person considers the proposed variation to be a minor variation or not, and the reasons for this view; and
  - if the responsible person considers the proposed variation to not be a minor variation – be accompanied by a supplementary assessment report;
  - any other information prescribed by the rules.
- A supplementary assessment report must adequately address the certain and likely impacts of the proposed variation on protected matters; and include any other information prescribed by the rules.
- The application must be accompanied by the payment of a fee to cover EPA's assessment of the application.
- The CEO of EPA may require the responsible person to vary an endorsed strategic plan in certain circumstances.

#### ***Minor variations to endorsed strategic plan***

- A variation will be considered minor if both:
  - the variation is not likely to lessen the level of protection provided under the strategic plan to a protected matter; and
  - there are no changes to measures to repair or mitigate damage to, or to compensate for damage to, a protected matter.
- If the CEO of EPA refuses to approve the variation, they must provide the responsible person with reasons for the refusal.

#### ***Other Variations to an endorsed strategic plan (i.e. variations that are not minor variations)***

- Where an application has been made to vary an endorsed strategic plan, and the CEO of EPA is satisfied that the proposed variation is not a minor variation, the responsible person must:
  - undertake public consultation in relation to the certain and likely impacts of the proposed variation on protected matters; and
  - provide the CEO of EPA with a supplementary assessment report; and

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- provide the CEO of EPA with details of how the public consultation was taken into account in preparing the report.<sup>4</sup>
- The CEO of EPA will only be able to approve the proposed variation if the CEO is satisfied that:
  - the character of the strategic plan as varied would be substantially the same as the endorsed strategic plan; and
  - implementation of the strategic plan as varied would promote the objects of the Act; and
  - the strategic plan as varied adequately addresses the impacts of actions proposed to be taken under the strategic plan; and
  - that the strategic plan addresses impacts of climate change, and includes appropriate adaptation and resilience measures in response to these impacts.
- If the CEO of EPA approves a variation to an endorsed strategic plan, the CEO may vary a strategic assessment approval that is in force in relation to the endorsed strategic plan in a way the CEO considers appropriate as a result of the variation to the strategic plan.
- The CEO of EPA must have regard to any relevant comments received in response to an invitation to comment on the proposed variation when deciding whether to vary the strategic assessment approval.
- The CEO of EPA will only be able vary a strategic assessment approval as a result of a variation to the endorsed strategic plan if satisfied that approving the variation would not be inconsistent with the same matters required for making an approval decision in the first instance.
- When deciding whether to vary a strategic assessment approval as a result of a variation to the endorsed strategic plan, the CEO of EPA must have regard to:
  - the strategic plan, as proposed to be varied;
  - the supplementary assessment report;
  - the same matters to which the CEO of EPA is required to have regard when deciding whether to grant a strategic assessment approval in the first place.
- If the CEO of EPA refuses to approve the variation, the CEO must provide the responsible person with the reasons for the refusal.
- The variation may specify whether the plan applies to actions that have already commenced, or only to actions that have not yet commenced.

#### 4.4 *Variation of conditions of a strategic assessment approval*

##### ***Variation on application***

- The holder of a strategic assessment approval may apply to the CEO of EPA to vary the conditions attached to the approval or the period of effect of the approval.
- The application must be accompanied by the payment of a fee to cover EPA's assessment of the application.

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<sup>4</sup> Note it is anticipated that public consultation would need to be undertaken in accordance with relevant national environmental standards.



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- The CEO of EPA may request further information from the approval holder or any other person if they believe on reasonable grounds that they don't have sufficient information to make the decision on the requested variation to the approval.
- The CEO of EPA will only be able to approve a variation to the period of effect of the approval if satisfied that:
  - the extension will not result in a substantial increase in, or substantial change in the nature of, the adverse impacts the actions covered by the approval will have on one or more protected matters; and
  - extending the period of effect of the approval would not be inconsistent with the endorsed strategic plan.

#### ***Variation of conditions on the CEO of EPA's initiative***

- The CEO of EPA may vary the conditions attached to a strategic assessment approval on the CEO's initiative.
- This power may be used where:
  - a condition imposed on the approval holder has been, or is being, contravened; or
  - an action covered by the approval has had, or is likely to have, an unacceptable impact on one or more protected matters; or
  - both:
    - an action covered by the approval has had, or is likely to have, a significant impact on one or more protected matters; and
    - varying the conditions of the strategic assessment approval is reasonably necessary to protect, to avoid, to mitigate or repair damage to, or to compensate for damage to, the relevant protected matter; or
  - both:
    - the CEO of EPA has approved a variation of the period of effect of the approval; and
    - it is necessary or convenient to vary the conditions attached to the approval in order to protect, or to avoid, mitigate or repair damage to, a protected matter, or compensate for damage to a protected matter (whether or not the protection, or the damage, is from the action itself) over the new approval period; or
  - the condition is no longer necessary to protect, or to avoid, mitigate or repair damage to a protected matter, or to compensate for damage to a protected matter; or
  - a ground prescribed by the rules exists.
- The CEO of EPA must have regard to any relevant comments received in response to an invitation to comment on the proposed variation when deciding whether to vary the conditions of a strategic assessment approval.
- Any variation would specify which actions the variation applies to.

#### ***Mandatory considerations for varying conditions of a strategic assessment approval (other than as a result of a variation to the endorsed strategic plan)***

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- In deciding whether to vary, or approve the variation of, conditions attached to the strategic assessment approval, the CEO of EPA must have regard to the same matters, and be subject to the same limitations, as are prescribed for the decision whether to attach a condition to the approval in the first place.

#### 4.5 *Transfer of strategic assessment approval or responsible person*

- An approval holder may transfer their strategic assessment approval to another person by written agreement, subject to obtaining consent for the transfer from the CEO of EPA.
- In deciding whether to consent to the transfer, the CEO of EPA must consider:
  - whether the transferee is a suitable person to hold an approval; and
  - whether the transferee is capable of complying with the conditions attached to the strategic assessment approval.
- The role of responsible person for the endorsed strategic plan may be transferred to another person. The process is the same as for transfer of approval.

#### 4.6 *Suspension of a strategic assessment approval*

- The CEO of EPA may suspend a strategic assessment approval where the CEO is satisfied of any of the following criteria:
  - a condition imposed on the approval holder, has been, or is being, contravened; or
  - an action covered by the approval has had, or is likely to have, an unacceptable impact on one or more protected matters; or
  - both:
    - an action covered by the approval has had, or is likely to have, a significant impact on one or more protected matters; and
    - suspending the strategic assessment approval is reasonably necessary to lessen the threat to the relevant protected matter; or
  - a ground prescribed by the rules exists.
- Before deciding to suspend a strategic assessment approval, the CEO of EPA must give a notice to the approval holder (and the responsible person, if different from the approval holder) that specifies the grounds on which the suspension is proposed and invites the approval holder or responsible person to show cause why the approval should not be suspended.
  - The CEO of EPA must have regard to any response provided when making the decision whether to suspend the strategic assessment approval.
- The CEO of EPA is not required to give a notice if the CEO reasonably believes that the proposed suspension is necessary to prevent or lessen a serious and imminent threat to human health or the environment.
- As soon as practicable after making the decision to suspend a class of action approval, the CEO of EPA must give the approval holder, the responsible person, and any person specified in the approval, written notice of the suspension. The notice will specify:
  - the reasons for the suspension; and
  - the day the suspension takes effect; and

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- either:
  - the actions the approval holder must take for the suspension to end;
  - a fixed period for the suspension.
- The suspension of an approval ends:
  - if the suspension notice specifies actions the approval holder must take for the suspension to end – at the start of the day after the CEO of EPA gives notice that they are satisfied that the required actions have been taken;
  - if the suspension notice specifies a fixed period for the suspension – immediately after the end of the fixed period.
- While a strategic assessment approval is suspended it will not be considered to be in force. This means that actions included in the class of actions covered by the strategic assessment approval would be subject to the prohibitions and requirements for assessment and approval in the Act as though there was no strategic assessment approval.

#### 4.7 *Revocation of strategic assessment approval*

- The CEO of EPA may revoke a class of action approval where the CEO is satisfied of any of the following criteria:
  - a condition imposed on the approval holder, has been, or is being, contravened; or
  - an action covered by the approval has had, or is likely to have, an unacceptable impact on one or more protected matters; or
  - both:
    - an action covered by the approval has had, or is likely to have, a significant impact on one or more protected matters; and
    - revoking the strategic assessment approval is reasonably necessary to lessen the threat to the relevant protected matter;
  - a ground prescribed by the rules exists.
- Before deciding whether to suspend a strategic assessment approval, the CEO of EPA must obtain the advice of the CEO of EPA on the proposed revocation.
- Before deciding to revoke a strategic assessment approval, the CEO of EPA must give a notice to the approval holder (and the responsible person, if different from the approval holder) that specifies the grounds on which the revocation is proposed and invites the approval holder or responsible person to show cause why the approval should not be revoked.
- The CEO of EPA is not required to give a notice if the CEO reasonably believes that the proposed revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

#### 4.8 *Reinstatement of suspended or revoked strategic assessment approval*

- The approval holder for a strategic assessment approval that has been suspended or revoked under the Act may apply to the CEO of EPA to reinstate the approval.
- The application must be made within 2 months of the revocation or suspension taking effect.

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- In deciding whether to reinstate a strategic assessment approval that has been suspended or revoked, the CEO of EPA is subject to the same prohibitions and mandatory considerations that applied to the decision to grant the approval in the first place.

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#### Definitions

**Approval holder:** A person may seek approval for an action or class of actions set out in a strategic plan. If approved, this person becomes the approval holder. The 'person' may be an individual, a state or territory agency or a body corporate.

**Class of actions:** A group of actions of a similar nature and impact as defined in an endorsed strategic plan.

**Protected matter:** matters protected under the equivalent of Part 3 of the EPBC Act in the new legislation.

**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 mediums.

**Recovery strategy:** a statutory document that will replace the existing suite of conservation planning documents, including conservation advices and recovery plans.

**Responsible person:** A person or entity who develops and enters into the strategic assessment process, and is responsible for application for endorsement of the strategic plan.

**Significant impact:** will be defined in policy and includes unacceptable impacts. Current EPBC Act significant impact policy is available at [Significant Impact Guidelines 1.1 – Matters of National Environmental Significance](#).

**Strategic assessment approval:** the approval of a class of actions taken in accordance with an endorsed strategic plan.

**Threat abatement strategy:** will replace existing threat abatement plans, covering threats to natural and cultural heritage values of matters of national environmental significance, including relating to species and ecological communities.

**Unacceptable impact:** a significant adverse impact that is prohibited under the new legislation.<sup>5</sup>

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<sup>5</sup> Note that the full legislative definition of 'unacceptable impact' is set out in the assessment and approval insert.

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#### Particulars

##### *Publication of materials*

- Where the CEO of EPA is required to publish public comments in relation a strategic plan or strategic assessment approval, there will be exceptions to the requirement to publish comments. These may include protection for privacy or matters that are commercial in confidence.

##### *Content of a strategic assessment approval*

- Where the CEO of EPA decides to approve an action or a class of actions taken in accordance with an endorsed strategic plan, the strategic assessment approval must:
  - be in writing; and
  - specify the approval holder;
  - specify the action or class of actions that may be taken in accordance with the endorsed strategic plan;
  - specify the period for which the approval has effect; and
  - set out the conditions attached to the approval (if any).
- The strategic assessment approval may also specify other person or persons who can take an action included in the approved class of actions.
- The CEO of EPA must, as soon as possible after making the decision to approve the taking of an action or class of actions in accordance with the endorsed strategic plan:
  - give a copy of the strategic assessment approval to the approval holder (and responsible person, if different) and to any persons named in the approval as permitted to take an action included in the approved class of actions;
  - publish a copy of the strategic assessment approval on EPA's website;
  - publish the reasons for the decision on the Department's website.
- If the CEO of EPA decides not to approve an action or class of actions taken in accordance with an endorsed strategic plan, the CEO must provide reasons for the decision to the responsible person.

##### *Legal effect of a strategic assessment approval*

- The strategic assessment approval will permit the approval holder to take an action included in the approved class of actions in accordance with the endorsed strategic plan.
- The strategic assessment approval may also specify other person or persons who can take an action included in the approved class of actions. Where the strategic assessment approval specifies other person or persons who can take an action under the approval, the approval should be considered an approval to take the action (in accordance with the endorsed strategic plan and in compliance with any conditions attached to the strategic assessment approval that apply to the taking of an action) by:
  - the approval holder and other specified person or persons; and

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- a person who is authorised, permitted or requested by the approval holder or other specified person or persons, or by another person with the consent or agreement of the approval holder or the other specified person or persons, to take the action.
- If the strategic assessment approval does not specify a person or persons who can take an action under the approval (other than the approval holder), any person may take an action included in the approved class of actions, provided the action is taken in accordance with the endorsed strategic plan (and in compliance with any conditions attached to the strategic assessment approval that apply to the taking of an action).
- The CEO of EPA can specify additional matters that must be included in the strategic plan or the strategic assessment impact report. This could include requiring that a strategic plan includes a registration process, in circumstances where the responsible person intends that the strategic plan (and any strategic assessment approval granted for the strategic plan) would not specify all persons who can take an action included in the class of actions.

#### *Prohibitions on approval of a class of actions under an endorsed strategic plan*

- The CEO of EPA is prohibited from approving an action or class of actions to be taken in accordance with an endorsed strategic plan if satisfied of any of the following:
  - The action or class of actions consists of, or involves, the construction or operation of a nuclear installation that is a nuclear fuel fabrication plant, a nuclear power plant, enrichment plant or a reprocessing facility.
    - However, this prohibition will not extend to a nuclear power plant that is a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine.
  - Approving the action or class of actions would have the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State – but only where the proposed action is a nuclear action:
    - by a person for the purposes of trade or commerce between Australia and another country or between 2 states; or
    - by a constitutional corporation.

#### *Compliance with conditions*

##### **Conditions imposed upon person taking the action**

- The legislation will include a prohibition that applies to a person where each of the following is satisfied:
  - a person is approved to take an action in accordance with an endorsed strategic plan;
    - this may be because the person is the holder of the strategic assessment approval, the person is specified in the strategic assessment approval as a person who can take an approved action, or because the strategic assessment approval allows any person to take an approved action.
  - the approval of the action or class of action is subject to one or more conditions that are imposed upon a person taking the action;
  - the person taking the action was informed of the conditions;

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- the person contravenes a condition of the approval.
- Failure to comply with this prohibition will be a fault-based offence, a strict liability offence, or contravention of a civil penalty provision.
- Both an action and an omission may contravene the prohibition.

#### ***Conditions imposed upon the approval holder***

- The legislation will include a prohibition that applies to the approval holder where each of the following are satisfied:
  - The CEO of EPA has approved an action or class of actions to be taken in accordance with the endorsed strategic plan:
  - The approval of the class of action is subject to one or more conditions that are imposed on the approval holder;
  - the approval holder contravenes a condition of the approval.
- Failure to comply with this prohibition will be a fault-based offence, a strict liability offence, or contravention of a civil penalty provision.
- Both an action and an omission may contravene the prohibition.
- This prohibition will apply to conditions that did not directly relate to the taking of the action – such as conditions requiring the approval holder to deliver restoration action or restoration contribution to compensate for the impacts of persons taking the approved action or class of actions.

#### *Variation to strategic assessment approval as a result of a variation of an endorsed strategic plan*

- If the CEO of EPA approves a variation to an endorsed strategic plan, the CEO may vary a strategic assessment approval that is in force in relation to the endorsed strategic plan in a way the CEO considers appropriate as a result of the variation to the strategic plan.
- It will not be necessary for the approval holder to make a separate application to the CEO of EPA to vary a strategic assessment approval as a result of a variation to the endorsed strategic plan. The CEO will be able to do this of the CEO's own initiative.
- The requirements on the CEO of EPA's decision to vary a strategic assessment approval as a result of a variation to the endorsed strategic plan are the same as those for variations to strategic assessment approvals on the CEO of EPA's own initiative. This includes the matters that the CEO of EPA must have regard to in making the decision, and the matters that the CEO must be satisfied of.
- The CEO of EPA must also have regard to:
  - the endorsed strategic plan as varied; and
  - the supplementary assessment report; and
  - the advice obtained from the CEO of EPA in relation to the proposed variation.



## **REGIONAL PLANNING**

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## Power

Regional plans are a tool for governments to facilitate priority development activities and net positive outcomes for protected matters at the landscape and/or seascape scale in regions where there is conflict between land-use values. The Minister must not make a regional plan unless satisfied that it will deliver a net positive outcome for protected matters.

The Minister has the power to make a regional plan which will create two regulatory zones:

- [Conservation Zones], in which specified classes of action are prohibited;
- [Development Zones], in which persons seeking to undertake specified classes of activity (priority development activities) in the [Development Zone] must register with Environment Protection Australia (EPA) and comply with conditions set out in the regional plan.

Regional Plans must also identify persons responsible for delivery of measures that compensate for the impacts on protected matters of priority development activities in the [Development Zone] and impose conditions on the delivery of those measures.

The EPA will monitor and enforce compliance with the prohibitions and conditions in regional plans.

It is the combined effect of the prohibitions, conditions and regional restoration measures in a regional plan that will deliver a net positive outcome for protected matters in the region.

The new Act will include provisions related to: the core elements of regional plans, the requirements for making a regional plan, the governance and administration of regional plans, the variation, suspension, revocation and review of plans and compliance and enforcement.

The National Environmental Standard for Regional Planning will set out additional requirements for regional plans, including for ongoing monitoring, evaluation and reporting. The Standard provides a benchmark for regional planning practice, ensuring enhanced outcomes through understanding of values, and the development of guidance for protection, conservation, restoration, and development.

## Provisions

### 1. Core elements of regional plans

#### Effect

This section covers core elements of the regional planning construct, including the:

- [Development Zone], in which conditions will apply to the taking of specified classes of action (priority development activities).
- Requirement for persons proposing to take priority development activities in the [Development Zone] to register with EPA.
- [Conservation Zone], in which specified classes of action will be prohibited.
- Identification of persons responsible for delivering regional restoration measures to more than compensate for the impacts on protected matters of priority development activities in the [Development Zone]. This person must be the Commonwealth, a state or territory agency or a third party that has consented to deliver the regional restoration measures.

The [Development Zone] and [Conservation Zone] do not need to cover the whole of the regional plan area. EPA will monitor and enforce compliance with prohibitions and conditions.

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1.1 *Regional plans*

- The Minister may make a regional plan in accordance with requirements specified in the Act and the rules.
- The regional plan must specify the region to which it relates. The region must be in one or more of:
  - a Commonwealth area,
  - a State or
  - a Territory.
- The regional plan must be in writing.
- A regional plan is not a legislative instrument.

1.2 *[Development Zone]*

- A regional plan must specify one or more areas in the region to which the plan relates that are the [Development Zone].
- For each [Development Zone] the regional plan must specify:
  - one or more classes of action in the [Development Zone] to which conditions prescribed in the regional plan will apply; and
  - regional restoration measures to more than compensate for the impact of actions taken in the [Development Zone]; and
  - a person or persons who are responsible for delivering those regional restoration measures.
- The person specified for having responsibility for the regional restoration measure must be one or more of the following:
  - Where the [Development Zone] is located in a Commonwealth area, the Commonwealth;
  - Where the [Development Zone] is located in a State or Territory, the State or Territory and/or the Commonwealth
  - A person who has consented to be specified.
- A [Development Zone] must be specified having regard to the location of protected matters in the region. This will ensure that the boundary of the [Development Zone] is informed by the location of protected matters.
- The [Development Zone] must not include a critical protection area.
  - Note: A regional plan must be varied if a new critical protection area is recognised within a [Development Zone] – (see Section 4.2)
- A person must give notice to EPA prior to undertaking priority development activities in a [Development Zone].
  - The notice must include information about the person's proposed activities in the [Development Zone], environmental compliance history and capacity to meet and maintain environmental requirements as prescribed by the rules.

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#### 1.3 [Conservation Zone]

- A regional plan must specify one or more areas in the regional plan area that are [Conservation Zones].
- [Conservation Zones] must be specified having regard to the location of protected matters within the regional plan area.
- A regional plan must specify, for each [Conservation Zone], one or more classes of actions that are prohibited in the [Conservation Zone].

#### 1.4 Regional plan conditions

- A regional plan must impose conditions upon a person taking one or more actions in a [Development Zone] where it is necessary or convenient for the protection of, or to avoid, repair, mitigate or compensate for damage to, protected matters.
  - A condition must not be included in a regional plan unless the Minister is satisfied that the condition is necessary or convenient for any of these purposes:
    - to protect a protected matter (regardless of whether the protection is from the action being undertaken),
    - to avoid, repair, mitigate or compensate for damage to a protected matter (regardless of whether the damage is or will be caused by the action being undertaken).
  - Offences and civil penalties attach to failure to comply with conditions (see Section 3.1).

#### 1.5 Regional restoration measures

- A regional plan must specify conditions in relation to the delivery of regional restoration measures to more than compensate for the impact of priority development activities in the [Development Zone].
  - Regional restoration measures must more than compensate for the impacts on protected matters, and can include prohibitions on specified classes of action in the [Conservation Zone], restoration actions, restoration contributions and other actions agreed in the regional plan.
  - The design of regional restoration measures will be informed by the National Environmental Standard for Restoration Actions and Restoration Contributions.
- Offences and civil penalties attach to failure to comply with conditions, including about regional restoration measures (see Section 7.2).
- Conditions related to the delivery of regional restoration measures may be imposed upon;
  - where the [Development Zone] is located in a Commonwealth area, the Commonwealth;
  - where the [Development Zone] is located in a State or Territory, the State or Territory and/or the Commonwealth;
  - a person who has consented to be specified.
- A condition related to the delivery of regional restoration measures must not be included in a regional plan unless the Minister is satisfied that the condition is necessary or convenient for any of these purposes:

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- To repair or mitigate damage to a protected matter that was or is likely to be caused by one or more actions in the [Development Zone].
- To more than compensate for damage to a protected matter that was or is likely to be caused by one or more actions in the [Development Zone].

#### 1.6 *When a regional plan is in force*

- A regional plan is in force beginning on the day on which it commences until the day it is revoked. A regional plan can also be suspended, during which time it is not in force.

## 2. The process for making a regional plan

### Effect

This section covers preconditions to the making of a regional plan and the requirement to publish draft and final regional plans.

The Minister must have regard to certain matters before making a regional plan (see [Section 2.2](#)) and must be satisfied of various matters before making a regional plan, including that the plan will deliver, or be likely to deliver, a net positive outcome for protected matters in the region. This will involve an assessment of whether the prohibitions and conditions in the plan (which will avoid and mitigate impacts) and regional restoration measures (which will repair and compensate for impacts) will combine to deliver a net positive outcome for protected matters.

Other requirements include that the Minister be satisfied that the regional plan:

- has been endorsed by the relevant state or territory;
- includes consideration of the impacts of climate change and how to address them;
- is consistent with various international agreements and domestic environmental instruments.

The plan will be published in draft for public comment before it can be made under legislation.

#### 2.1 *Publication of draft plan*

- The Minister must not make a regional plan unless;
- A draft of the regional plan, and the notice requesting comments, have been published.
- The closing date for providing comments on the draft of the regional plan has passed; and
- The Minister has had regard to matters specified in relation to the regional plan (See Section 2.3).
- The notice period for comments must be at least [30] business days.

#### 2.2 *National Environmental Standards*

- The rules may prescribe national environmental standards:
  - to which the Minister must have regard to when deciding whether to make a regional plan, or
  - with which the Minister's decision to make a regional plan must not be inconsistent.

#### 2.3 *Matters to which the Minister must have regard (general)*

- The Minister must have had regard to the following matters in deciding whether or not to make a regional plan:
  - the principles of ecologically sustainable development.

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- relevant economic and social matters.
- relevant recovery strategies.
- relevant threat abatement strategies.
- relevant comments received in response to a notice inviting comments on the draft regional plan.
- any advice provided by the Independent Expert Scientific Committee in relation to the regional plan.
- relevant marine bioregional plans prepared under the EPBC Act.
- any matters prescribed by the rules.
- any other matter the Minister considers relevant.

#### 2.4 *Matters of which the Minister must be satisfied (agreements)*

- The Minister must not make a regional plan unless the Minister is satisfied:
  - that the regional plan has been agreed to by each State and Territory in which any part of the region is located; and
  - if the regional plan imposes conditions on a person related to the delivery of regional restoration measures – that the person has agreed to the imposition of the conditions.

#### 2.5 *Matters of which the Minister must be satisfied (outcomes)*

- The Minister must not make a regional plan unless the Minister is satisfied that:
  - making the regional plan would promote the objects of the Act;
  - threats to protected matters in the region have been identified and addressed;
  - making the regional plan would promote the survival of, or enhance the conservation status of listed threatened species, ecological communities or migratory species in the region;
  - making the regional plan would result in, or be likely to result in, a net positive outcome for protected matters in the region;
    - Note: The National Environmental Standard for Regional Planning articulates what a 'net positive outcome' for protected matters means in the context of regional planning. The outcome is measured relative to a baseline that reflects what would have happened in the absence of the priority development activities in the [Development Zone].
  - making the regional plan would not result in, or be likely to result in, an action having an unacceptable impact on a protected matter; and
  - the plan includes consideration of the impacts of climate change and appropriate adaptation and resilience measures to protect protected matters in response to those impacts.

#### 2.6 *Consistency with international conventions*

- The Minister must not make a regional plan unless satisfied that making the regional plan would not be inconsistent with Australia's obligations under:

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- The World Heritage Convention;
- The Ramsar Convention;
- The Biodiversity Convention;
- The Apia Convention;
- Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- The Bonn Convention;
- China-Australia Migratory Bird Agreement (CAMBA);
- Japan-Australia Migratory Bird Agreement (JAMBA);
- Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA);
- An international agreement prescribed by the rules.

#### 2.7 *Consistency with recovery strategies, threat abatement strategies and other instruments*

- The Minister must not make a regional plan unless satisfied that making the regional plan would not be inconsistent with:
  - the protection statement in a relevant recovery strategy; or
  - the threat mitigation statement in a relevant threat abatement strategy; or
  - the following:
    - the Australian World Heritage management principles
    - a world heritage property management plan
    - the National Heritage management principles
    - an agreement to which the Commonwealth is a party in relation to a National Heritage place
    - a national heritage management plan
    - the Australian Ramsar management principles
    - a Ramsar property management plan
    - a Commonwealth reserve management plan; or
  - a relevant instrument prescribed by the rules.

#### 2.8 *Commencement*

- A regional plan must specify the date on which it commences which must not be earlier than the date on which it is published on the Department's website.
- Actions which have already commenced prior to the regional plan coming into effect will not be bound by the regional plan. Only new actions will be required to comply.

#### 2.9 *Publication*

- The Minister must publish each regional plan on the Department's website.



### 3. Compliance and enforcement

#### Effect

This section covers the offences and penalties that will apply to breaches of the conditions in a regional plan.

EPA will be the regulatory authority that has the primary responsibility for compliance and enforcement functions for the regional planning conditions and prohibitions.

Each state and territory will administer their own legislation and regulation which relate to their state or territory protected matters.

#### 3.1 *Non-Compliance with conditions on priority development activities*

- It will be a non-compliance offence, subject to a penalty, if a person takes an action that is permissible in a [Development Zone] in a manner which is not in accordance with a condition imposed by the regional plan.

#### 3.2 *Non-Compliance with conditions about a regional restoration measure*

- It will be a non-compliance offence, subject to a penalty, if a person contravenes a condition specified in a regional plan to deliver a measure to compensate for impacts of priority development activities in a [Development Zone].

#### 3.3 *Requirement to provide notification of actions*

- It will be a non-compliance offence, subject to a penalty, if a person does not give notice to the EPA prior to undertaking priority development activities in a [Development Zone] (see Section 1.2).

#### 3.4 *Actions must not be taken in [Conservation Zones]*

- It will be a non-compliance offence, subject to a penalty, if a person takes an action that is not-permissible in a [Conservation Zone].
- Exemptions may be prescribed by the Minister where a relevant exemption is not inconsistent with:
  - the objects of the Act;
  - the objectives of the regional plan and Australia's obligations under a designated international agreement.
- The Minister may also grant an exemption from this provision where the Minister is satisfied that exceptional circumstances exist that warrant the granting of the exemption.

#### 4. Varying a regional plan

##### Effect

This section provides the power for the Minister to vary regional plans. There are mandatory and discretionary triggers for variations.

There are protections for activities that commenced or were registered with EPA prior to the variation. Such activities will not be impacted by changes to features of the regional plan other than conditions on priority development activities.

The Minister will have a discretion to apply varied conditions on priority development activities retrospectively.

##### 4.1 *Elements of a plan that can be varied*

- A variation of a regional plan may vary one or more of the following:
  - [Development Zones];
  - [Conservation Zones];
  - classes of actions specified for one or more [Development Zones];
  - classes of actions specified for one or more [Conservation Zones];
  - listed regional restoration measures to compensate for impacts of actions;
  - conditions on priority development activities;
  - conditions about regional restoration measures;
  - the person or persons responsible for delivering the regional restoration measures to compensate for impacts of actions taken in one or more development priority areas.

##### 4.2 *Variation of plans (critical protection areas)*

- The Minister must vary a regional plan if there is a:
  - new critical protection area in the [Development Zone], or
  - change in the boundaries of a critical protection area that places it within a [Development Zone].

##### 4.3 *Variation of plans (discretionary triggers)*

- The Minister will be able to vary a regional plan if satisfied that:
  - a review of the regional plan has recommended the regional plan be revoked; or
  - the objectives of the regional plan are not being met; or
  - both:
    - a detrimental ecological event has occurred that has or is likely to impact one or more protected matters within the regional plan area (such as a major bushfire or widespread flooding); and
    - varying the regional plan is reasonably necessary to protect, or lessen the threat to, the relevant protected matter; or

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- there has been a change in development pressures that mean that varying the regional plan is appropriate in the circumstances; or
- both:
  - significant new information about the risks to one or more protected matters within the regional plan area is available; and
  - having regard to that new information, varying the regional plan is reasonably necessary to protect, or lessen the threat to, the relevant protected matter.
- one or more actions taken under the regional plan has had, or is likely to have, an unacceptable impact on a protected matter; or
- the regional plan has not resulted, or is not likely to result, in a net positive outcome for protected matters within the region; or
- both:
  - there has been a change in the protected matters, or in the status of one or more protected matters, within the region; and
  - varying the regional plan is reasonably necessary to protect, or lessen the threat to, the protected matters within the region; or
- both:
  - an action taken under the regional plan has had, or is likely to have, a significant impact on one or more protected matters; and
  - varying the regional plan is reasonably necessary to protect, or lessen the threat to, the relevant protected matter; or
- both:
  - an action taken outside the region has had, or is likely to have, a significant impact on one or more protected matters within the region; and
  - varying the regional plan is reasonably necessary to avoid, mitigate or repair damage to, or to compensate for damage to, the relevant protected matter; or
- a condition relating to the delivery of regional restoration measures has been, or is likely to be, contravened; or
- if the variation is to a condition of the regional plan – the condition is no longer necessary to protect, or to avoid, mitigate or repair damage to a protected matter, or to compensate for damage to a protected matter; or
- the variation has been agreed to by the relevant State or Territory (or the relevant Commonwealth agency if the regional plan covers Commonwealth areas only); or
- the variation is to a part of the regional plan that does not have regulatory effect; or
- a ground prescribed by the rules exists.

#### 4.4 *Process for varying plans*

- Before the Minister varies a regional plan, the Minister must,

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- Publish a draft of the proposed variation, the grounds on which the Minister is proposing to vary the regional plan, and a notice inviting comments within a period of at least [30] business days. These materials must also be provided to the relevant state or territory.
- These requirements do not apply in the case of minor or technical variations, or where the Minister reasonably believes that the proposed variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.
- When varying a plan, the Minister must have regard to the same matters as are relevant to the making of a plan (see Section 2.2 above) and be satisfied of the same matters as are relevant to the making of a plan (see Sections 2.4 to 2.7 above). The Minister must also have regard to any comments received in response to the invitation for comments.

#### 4.5 *Formal requirements for variations*

- A variation of a regional plan must be in writing and is not a legislative instrument.
- A variation of a plan must specify the date on which the variation commences, which must not be earlier than the date on which it is published.
- The Minister must publish the plan as varied, and give a copy of the variation to the relevant state or territory, and each person who has registered their intent to take an action in the [Development Zone].

#### 4.6 *Consequences of a variation*

- Variations to the [Development Zone] boundary, or to the priority development activities, will not apply retrospectively to an action that has been registered with the EPA, if a period of less than five years has elapsed since registration of the action.
- Variations to a [Conservation Zone] boundary, or to the classes of action prohibited in a [Conservation Zone], do not apply retrospectively to an action that has already been approved under [Parts X-Y] of the Act, or to an action that has already commenced where approval was not required under the Act because the action did not have a significant impact on protected matters.
- Consistent with the proposed power to vary conditions for actions under [Parts X-Y] of the Act, the Minister will have the power to vary conditions on priority development activities. This will include the power to specify whether the varied conditions apply retrospectively, including to actions that have already been registered with the EPA.

## 5. Suspension of plans

### Effect

This section provides the power for the Minister to suspend a regional plan on specified grounds, following a specified process. Procedural fairness protections apply. There are also protections for priority development activities that have already commenced in the [Development Zone], or that have been registered with the EPA in the preceding [5] years.

#### 5.1 *Grounds for suspension*

- The grounds for suspension of a regional plan (and the related procedural fairness provisions) should be the same as the grounds for revocation of a regional plan (see **6.1**).

5.2 *Suspensions – Procedural fairness*

- The same procedural fairness protections apply to the suspension of regional plans as apply to the decision to revoke a regional plan (see Section 6.3).

5.3 *Process for suspension*

- As soon as practicable after making the decision to suspend a regional plan, the Minister must give the relevant state, territory or Commonwealth agency written notice of the suspension. The notice must specify:
  - the grounds and reasons for the suspension; and
  - the day the suspension takes effect; and
  - either:
    - the actions the state, territory or Commonwealth agency must take for the suspension to end; or
    - a fixed period for the suspension.
- The date the suspension takes effect must not be a date earlier than the date the notice is given to the state, territory or Commonwealth agency. The notice should also be required to be published on the Department's website.

5.4 *Ending a suspension*

- If the suspension notice specifies actions the state, territory or Commonwealth agency must take for the suspension to end, the Minister must give written notice to the state, territory or Commonwealth agency when satisfied that the required actions have been taken. This notice must be published.
- The suspension of a regional plan will end:
  - if the suspension notice specifies actions the state, territory or Commonwealth agency must take for the suspension to end – at the start of the day after the Minister gives notice that they are satisfied that the required actions have been taken; or
  - if the suspension notice specifies a fixed period for the suspension – immediately after the end of the fixed period.

5.5 *Consequences of suspension*

- If an action in the [Development Zone] has already been registered with the EPA at the time a regional plan is suspended, it can continue. Conditions of a plan will still be enforced while the plan is suspended.
- If an action in the [Development Zone] has not been registered with the EPA at the time of suspension, it will be required to seek approval through the EPA under the under [Parts X-Y] of the Act.
  - If the suspension is ended before the EPA has made a decision on the action, the action would need to occur through the regional plan and comply with conditions.
  - If the suspension is ended after the EPA has made a decision on the action, the action would not be bound by the regional plan.

## 6. Revocation of plans

### Effect

This section provides the power for the Minister to revoke a regional plan on specified grounds, following a specified process. Procedural fairness protections apply. There are also protections for priority development activities that have already commenced in the [Development Zone], or that have been registered with the EPA in the preceding [5] years.

### 6.1 *Grounds for revocation*

- The Minister may revoke a regional plan if the Minister is satisfied that one or more of the following grounds are met:
  - a review of the regional plan has recommended the Regional Plan be revoked; or
  - the objectives of the Regional Plan are not being met; or
  - both:
    - a detrimental ecological event has occurred that has or is likely to impact one or more protected matters within the region (such as a major bushfire or widespread flooding); and
    - revoking the Regional Plan is reasonably necessary to protect, or lessen the threat to, the relevant protected matter; or
  - both:
    - significant new information about the risks to one or more protected matters within the region is available; and
    - having regard to that new information, revoking the regional plan is appropriate.
  - one or more actions taken under the Regional Plan has had, or is likely to have, an unacceptable impact on a protected matter; or
  - the regional plan has not resulted, or is not likely to result, in a net positive outcome for protected matters within the region;
  - both:
    - there has been a change in the protected matters, or in the status of one or more protected matters, within the region; and
    - revoking the Regional Plan is reasonably necessary to protect, or lessen the threat to, the protected matters within the region; or
  - both:
    - an action taken under the Regional Plan has had, or is likely to have, a significant impact on one or more protected matters; and
    - revoking the Regional Plan is reasonably necessary to protect, or lessen the threat to, the relevant protected matter; or
  - a condition relating to the delivery of regional restoration measures has been, or is likely to be, contravened; or

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- the revocation has been agreed to by the relevant State or Territory (or the relevant Commonwealth agency if the Regional Plan covers Commonwealth areas only); or
- a ground prescribed by the rules exists.

#### 6.2 *Process for revocation*

- As soon as practicable after making the decision to revoke a regional plan, the Minister must notify:
  - the relevant state, territory or Commonwealth agency; and
  - each person who has registered their intent to take an action in the [Development Zone].
- The notice must specify the day the revocation takes effect. The date the revocation takes effect must not be a date earlier than the date the notice is given to the state, territory or Commonwealth agency or person. The notice must also be published.

#### 6.3 *Revocations - Procedural fairness*

- Before deciding to revoke a Regional Plan, the Minister must give a notice to the relevant State or Territory (or Commonwealth agency, if the regional plan only covers Commonwealth areas) that:
  - specifies that the Minister proposes to revoke the regional plan; and
  - specifies the grounds on which the Minister proposes to revoke the regional plan; and
  - invites the state, territory or Commonwealth agency to give the Minister, within [10] business days after the day the notice is given, a written statement showing cause why the regional plan should not be revoked.
- The Minister must have regard to any response provided by the State/Territory/Commonwealth agency when making the decision whether to revoke the regional plan.
- The Minister is not required to give a notice if the Minister reasonably believes that the proposed revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

#### 6.4 *Consequences of a revocation*

- If the Regional Plan is revoked:
  - a person who has registered with the EPA to take an action in a [Development Zone] under that Regional Plan should be able to continue to take their action without requiring approval under the Act, provided that they continue to comply with the conditions of the (now revoked) regional plan and that the action commences within 5 years of their registration; and
  - a person who has not registered to take an action in the [Development Zone] cannot take the action under the regional plan (but must be approved under [Parts X-Y] of the Act).
- Further, revoking the regional plan removes the prohibition on taking actions in the [Conservation Zone], such that:

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- a person who wishes to take an action in the [Conservation Zone] would need to refer their action to the EPA if they considered it was likely to have a significant impact on a protected matter (under the ordinary process); and
- if a person has an exemption from the prohibition on taking actions in the [Conservation Zone] – nothing changes for that person; they can continue to take their action if they have been approved to do so by the EPA under the ordinary process (or if their action is unlikely to have a significant impact on a protected matter); and
- if a person has applied for, but not yet been granted an exemption from the prohibition on taking actions in the [Conservation Zone] – the application is taken to be withdrawn and the person would need to refer their action to the EPA if they considered it was likely to have a significant impact on a protected matter (under the project assessment and approval process, [Parts X-Y] of the Act).

## 7. Review of plans

### Effect

This section provides the power for the Minister to initiate a review of a regional plan, following a specified process. Reviews are to occur at least every 5 years. Regional plans can be varied in response to the recommendations of a review – see Section 4.3.

Reviews will be able to assess the effectiveness of a regional plan in meeting its objectives, taking into account information gathered through monitoring, evaluation and reporting processes.

### 7.1 *Review of plans*

- The Minister can initiate a review of a regional plan. Reviews must commence within [5] years of the regional plan being made or within 5 years of the previous review having been completed.
- A review of a regional plans is to be undertaken by a person appointed by the Minister.
- A review of a regional plan:
  - must deal with matters specified by the Minister; and
  - must be undertaken within the period specified by the Minister; and
  - may make recommendations in relation to the matters with which it deals.
- The Minister must publish their response to a review of the regional plan, giving reasons for accepting or rejecting the recommendations of the review.



## Definitions

**Commonwealth Area:** Areas of land, sea, seabed and airspace as defined in section 525 of the EPBC Act.

**Priority development activities:** Classes of action specified in a regional plan to which conditions attach when undertaken in a [Development Zone].

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## **DECISION MAKING AT THE LANDSCAPE AND/OR SEASCAPE SCALE**

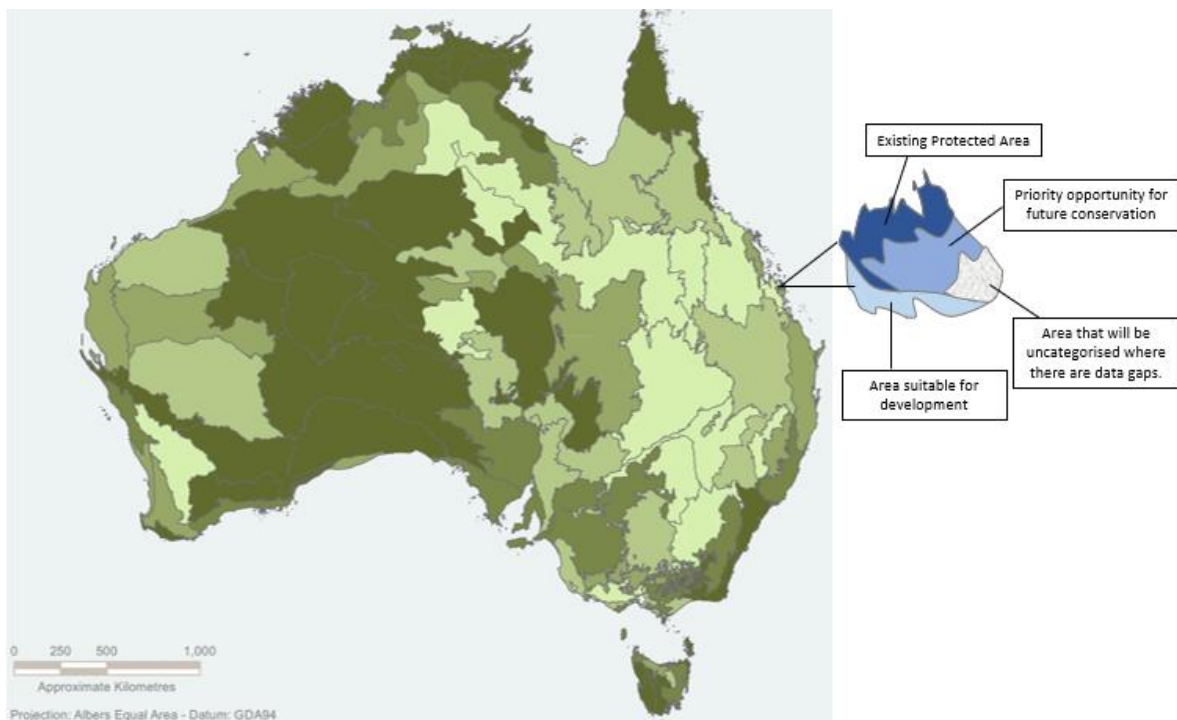
The new environmental laws will provide for a range of tools to support decision making at the landscape and/or seascape scale. These include:

- a nationwide mapping visualisation tool developed by Environment Information Australia;
- environmental and other values mapping using a regional planning approach;
- Regional plans made under the new environmental legislation;
- Strategic assessments.

### **Mapping visualisation tool**

Environment Information Australia (EIA) is developing a mapping visualisation tool to provide nationwide, regional level data and information, such as data on each of Australia's bio-geographic regions (bioregions). The tool will provide spatial information on:

- existing protected areas including boundaries of listed World Heritage places and Ramsar wetlands;
- Critical Protection Areas for threatened species, migratory species and ecological communities, designated through statutory conservation planning documents (recovery strategies) with advice from the Threatened Species Scientific Committee;
- environmental values data collected in collaboration with state and territory and other organisations.



The information presented in the visualisation tool will be progressively improved in scope and accuracy. It will support a broad range of uses including:

- Guidance for project proponents to help avoid and mitigate impacts on environmental values and achieve faster environmental approvals.

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- Investment in nature through programs including but not limited to Australia's 30 by 30 target, the Natural Heritage Trust, the Nature Repair Market and restoration contributions.

#### Regional plans

Regional planning can improve environmental management and protection, including the management of cumulative impacts and threats like invasive species. Regional planning can also help proponents to avoid and mitigate impacts on environmental, cultural, heritage and social values.

Regional plans made under the new environmental law are a tool for governments to facilitate priority development activities and net positive outcomes for protected matters at the landscape and/or seascape scale in specific regions where there is conflict between land-use values.

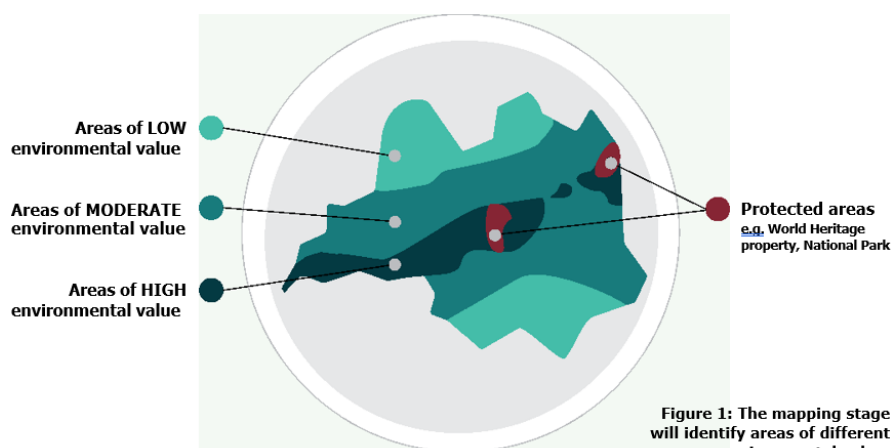
Regulatory zones will restrict development in areas with higher environment and heritage value, and permit priority development activities to proceed subject to conditions in lower value areas.

Regional plans will be developed in stages, underpinned by robust data, modelling and stakeholder consultation. Even before the regional plan is formally 'made' under the new environmental law, the mapping stage will provide valuable information on environmental and heritage values to guide decision making and speed up approvals under existing legislation.

The National Environmental Standard for Regional Planning will be a guide for regional planning practice. This will be useful for both the mapping stage and for making a regional plan under law.

#### *Stage 1 – Mapping*

The Commonwealth will work with state and territory governments to map the environmental and other values of a region, as well as areas that are important for development, to inform the design of regulatory zones. Environmental values will be prioritised using a system of at least three tiers (such as high, moderate and low environmental value) or on a scale (such as percentages or heatmaps) (Figure 1). Plans will also identify and map heritage and cultural heritage values. Governments will collaborate with Traditional Owner groups to understand important cultural assets in the region, and to ensure First Nations data and knowledge is appropriately handled to inform the plan.

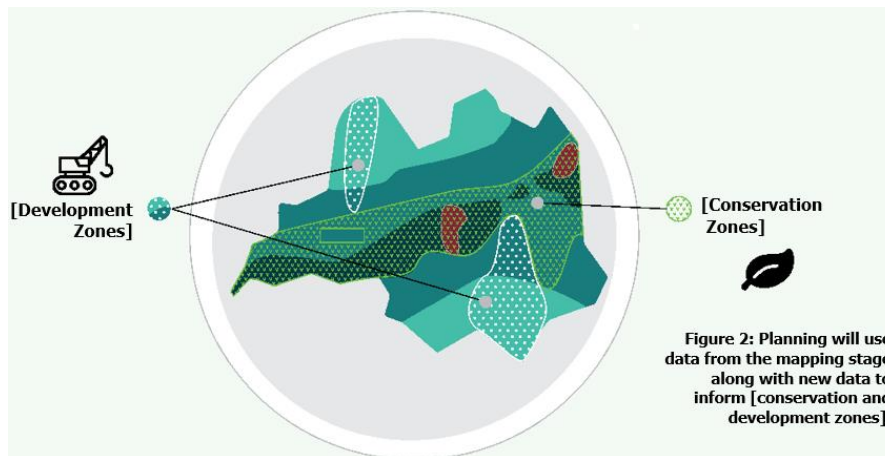


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#### Stage 2 - Planning

This stage sets priorities, objectives and strategies to achieve a nature positive outcome for the region. This stage will also determine whether approval will be sought for a regional plan to be made under law. Once made under law the regional plan will include two regulatory zones (Figure 2).



**[Conservation Zone]** – areas in which specified classes of action will be prohibited to support the protection, conservation and restoration of environmental values.

**[Development Zone]** – areas where developers planning to undertake specified priority development activities (e.g. renewable energy projects, transmission infrastructure, critical mineral projects, or housing developments) will be required to register with the EPA and comply with conditions set out in the regional plan.

These regulatory zones will guide development towards areas of lower environmental value.

Impacts of priority development activities in the [Development Zone] on protected matters will be assumed to occur upfront and be addressed through proportional [Conservation Zones] and commitments to deliver regional restoration measures set out in the regional plan. Regional restoration measures will be identified based on the cumulative impacts of pressures on the environment from a range of sources including climate change and can include restoration actions and other actions designed to benefit protected matters.

The combined effect of the prohibitions, conditions and regional restoration measures in a regional plan will deliver a net positive outcome for protected matters in the region. EPA will monitor and enforce compliance with these requirements.

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### Strategic Assessments

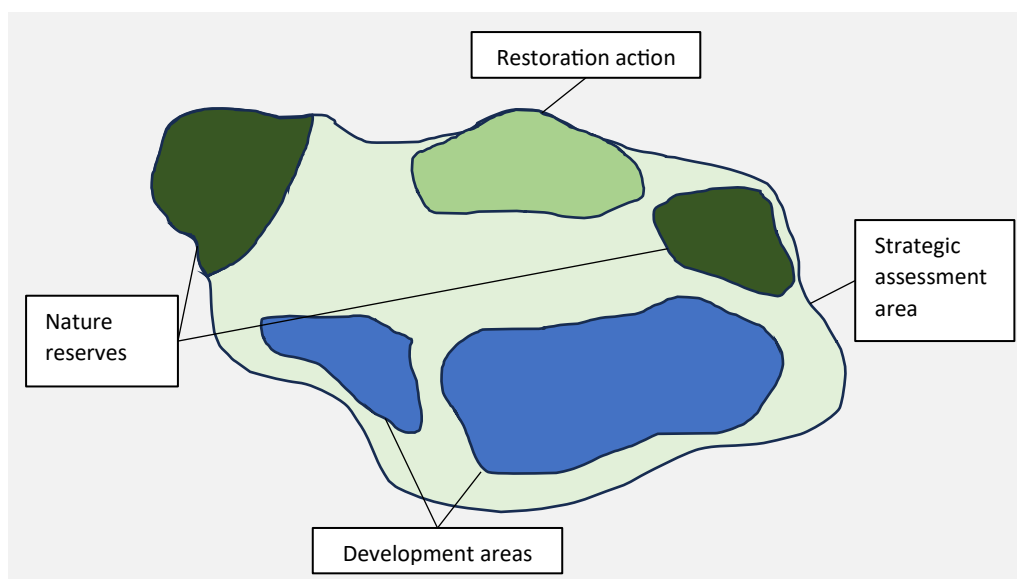
Strategic assessments are a tool for proponents to conduct landscape-scale impact assessments and seek approval for a class of actions. They allow a landscape scale approach to achieving net positive outcomes for protected matters, and require proponents to give consideration to climate change, environmental adaptation and resilience measures.

Strategic assessments are well-suited to complex developments and can be more efficient than project-by-project assessments. Strategic assessments can also provide greater long-term certainty for the community, government, and business.

Proponents will develop a strategic plan that sets out their proposed class, or classes, of action and prepare an impact assessment report. This will be assessed by EPA who must then endorse the plan and approve the class(es) of action.

The criteria to endorse a strategic plan and approve any class of actions set out in the plan will be set out in legislation. For example, EPA must assess that the strategic plan and the class of actions are not inconsistent with national environmental standards.

The strategic assessment framework allows for flexible updates and amendments to plans and approvals, enabled by clear ongoing responsibilities for strategic assessment partners and overseen by EPA. EPA will also conduct reviews of an endorsed strategic plan at least once every 5 years to ensure that it is functioning as intended.



## **ACCREDITATION**

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#### Power

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

Actions that may have significant impacts on nationally protected matters can be regulated (assessed, approved and enforced) by a state, territory or Commonwealth regulator under an accreditation arrangement that has been approved by the Commonwealth Environment Minister and tabled in Parliament.

#### Provisions

##### 1. Accreditation to undertake assessments

###### Effect

This section covers accreditation arrangements that allow a state, territory or Commonwealth regulator to assess all or part (i.e. not all protected matters) of a proposed action under their own legislation as long as that legislation, and other relevant aspects of the regulatory framework, give effect to the outcomes and processes set out in the relevant national environmental standards and relevant provisions of the Act.

Assessment of any remaining parts of the application, approval of the action, and ongoing compliance will be the responsibility of the CEO of EPA.

##### 1.1. EPA agreement to apply for accreditation of an authorisation process

- States, territories or Commonwealth regulators seeking accreditation of one or more assessment processes under their regulatory framework must obtain agreement from the CEO of EPA to commence the application process.
- The request for agreement must be made in the approved form and include the information or documents required by the approved form.
- An assessment process should:
  - provide for the assessment of actions;
  - be set out wholly in law or, alternatively, it may include laws and policies, procedures or other non-legislative documents.
- The request for agreement must be made by the agency responsible for administering the process or the Minister responsible for administering the process.
- If the CEO of EPA agrees to the applicant making an application for accreditation of an authorisation process, the CEO will, as soon as practicable after making the decision:
  - notify the applicant of the decision; and
  - publish their decision as soon as practicable after it is made.



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#### *1.2. Application for accreditation of an assessment process*

- Applicants seeking accreditation will conduct a self-assessment of their regulatory framework to ensure that it gives effect to the relevant national environmental standards and the relevant provisions in the legislation.
- Applications must include the applicant's self-assessment, including appropriate documentation of their regulatory framework and legislation.
- The application may seek to accredit the assessment process in relation to the assessment of actions (or a class or classes of action) that are likely to impact on any kind of protected matter, or on specified kinds of protected matters.
- An application must be made in the approved form to the CEO of EPA for assessment and must include any information or documents required by the approved form and any information prescribed in the rules (if any).
- The application will not be considered to be accepted unless and until all required information, and the prescribed fee, have been submitted.

#### *1.3. Assessment of the application by the CEO of EPA*

- The CEO of EPA must assess any application for accreditation that meets the legislated requirements for an application.
- The CEO of EPA may request additional information from a person. This can include, but is not limited to, the applicant.
- This power may be exercised if the CEO reasonably believes that the additional information is necessary:
  - to allow the application to be properly assessed against the criteria for accrediting an assessment process. This will include the power to request additional information to decide whether accrediting the assessment process is not inconsistent with relevant national environment standards or other criteria for accreditation; or
  - to allow the CEO to make a decision on whether or not to accredit the assessment process; or
  - to allow the CEO to make a decision relating to the class of actions for which the authorisation process should be accredited;
  - to allow the CEO to make a decision relating to the protected matters for which the authorisation process should be accredited;
  - to allow the CEO to make a decision about the conditions (if any) to attach to the accreditation of the authorisation process.
- This power may be exercised multiple times in relation to an application. It may be exercised at any time after the application is made until the CEO of EPA makes a decision on whether to approve the accreditation of the assessment process.
- Once satisfied that all application requirements have been met, the CEO of EPA will conduct a review of the suitability of the regulatory framework to be accredited based on the self-assessment provided.

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- The CEO of EPA will provide sufficient feedback for the applicant to finalise the details of the draft for public comment.

#### 1.4. Consultation on draft accreditation arrangement

- Before making a decision to accredit an assessment process, the CEO of EPA must:
  - Provide a copy of the draft accreditation arrangement, including any draft conditions, to the applicant; and
  - invite the applicant to give the CEO of EPA any comments on the draft accreditation instrument within a specified period of at least 20 business days;
  - publish, on EPA's website:
    - a draft of the accreditation arrangement;
    - a draft of the CEO of EPA's decision; and
    - a notice inviting public comment on the draft accreditation instrument within a specified period of at least 20 business days.
- The CEO of EPA must publish on EPA's website all comments received in response to the notice inviting public comment as soon as practicable, before making a decision to accredit.

#### 1.5. Decision whether to accredit an assessment process

- Following assessment of the application and the opportunity for public comment, the CEO of EPA must decide whether to accredit an assessment process.
- When making a decision to approve an accreditation for assessment, the CEO of EPA must be satisfied that assessments conducted under the accredited regulatory framework would provide EPA with all the necessary information that it requires to satisfy its decision-making criteria.
- In making this decision, the CEO of EPA must be satisfied of the following:
  - that accrediting the assessment process would promote the objects of the Act;
  - that the assessment of actions under the assessment process would include the assessment of the impacts the action has, will have or is likely to have on each relevant protected matter;
  - that the environmental protections considered under the assessment process will provide the CEO of EPA with the necessary information to consider the following matters when making an approval decision, as relevant:
    - that the proposed action is not inconsistent with a national environment standard (if any) prescribed for the purpose of this provision<sup>1</sup>;
    - that the proposed action is not likely to have an unacceptable impact on a protected matter;
    - that any likely significant impacts on protected matters will be appropriately avoided, mitigated or compensated for;

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<sup>1</sup> It is anticipated this would include the national environmental standards for Matters of National Environmental Significance, Restoration Actions and Restoration Payments, Community Engagement and Consultation, First Nations Engagement and Participation in Decision Making, and Data and Information.

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- that the approval of an action would not be inconsistent with Australia's obligations under any of the following international agreements (where relevant):
  - the World Heritage Convention;
  - the Ramsar Convention;
  - the Biodiversity Convention;
  - the Apia Convention;
  - Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES);
  - the Bonn Convention;
  - China-Australia Migratory Bird Agreement (CAMBA);
  - Japan-Australia Migratory Bird Agreement (JAMBA);
  - Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA);
  - an international agreement prescribed by the rules.
- that the approval of an action would not be inconsistent with the Protection Statement within a Recovery Strategy (where relevant);
- that the approval of an action would not be inconsistent with the Threat Mitigation Statement in a Threat Abatement Strategy (where relevant);
- that the approval of an action would not be inconsistent with any of the following (where relevant):
  - the Australian World Heritage Management Principles;
  - a plan that has been prepared for the management of a declared world heritage property under (or as described in) the Act;
  - the National Heritage management principles;
  - an agreement to which the Commonwealth is a party in relation to a National Heritage place;
  - a plan that has been prepared for the management of a National Heritage place under (or as described in) the Act;
  - a plan that has been prepared for the management of a National Heritage place under (or as described in) the Act;
  - the Australian Ramsar Management Principles;
  - a Ramsar Management Plan;
  - a Plan (made under the National Parks Act) for the management of Commonwealth reserves.
- that the action does not consist of, or involve the construction or operation of a nuclear installation that is, a nuclear fuel fabrication plant, a nuclear power plant, enrichment plant or a reprocessing facility (other than a nuclear power

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plant that is a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine);

- that the assessment process involves appropriate transparency in decision making, including, where appropriate, public consultation;
- any other matters prescribed by the rules.
- The CEO of EPA will be prohibited from accrediting an assessment process if accrediting the process would have the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

#### 1.6. *Mandatory considerations*

- In deciding whether to accredit an assessment process, the CEO of EPA must have regard to the following matters:
  - relevant information provided by the applicant;
  - any perceived or actual conflict of interest that could occur if the authorisation process were accredited, and any proposed management strategies;
  - the capacity of the agency responsible for administering the assessment process being considered for accreditation;
  - any relevant public comments received on the draft accreditation instrument;
  - any other matters prescribed in the rules;
  - any other matters the CEO of EPA considers relevant.

#### 1.7. *Accreditation arrangement*

- If the CEO of EPA decides to accredit the assessment process, this will be set out in an accreditation arrangement.
  - Accreditation for assessment will not be given effect by legislative instrument.
- The accreditation arrangement will come into effect on the day specified in the arrangement.
- The accreditation arrangement will remain in effect for the period specified in the arrangement unless it is revoked or suspended at an earlier date.
- Where the CEO of EPA makes an accreditation arrangement, they must, as soon as practicable after making the arrangement:
  - notify the Minister of their decision; and
  - publish a copy of the accreditation arrangement on EPA's website.

#### 1.8. *Content of accreditation arrangement*

- The accreditation arrangement made by the CEO of EPA will include the following information:
  - the assessment process being accredited, by reference to the relevant legislative provisions, policies, procedures and other non-legislative documents that make up the authorisation process;
  - when the accreditation commences;
  - the class (or classes) of actions to be covered by the accreditation;

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- the relevant protected matters that are covered by the accreditation;
  - the relevant 'accreditation partner';
  - any conditions that are attached to the accreditation (see below);
  - if the accreditation is intended to only last for a specified period – the duration of the accreditation and when it expires;
  - any additional information prescribed by the rules.
- Unless expressly provided for in the accreditation arrangement, an accredited assessment process in relation to a state or territory does not have any effect in relation to:
    - an action that is to be taken by a Commonwealth agency;
    - an action that is to be taken in, or that is likely to impact on, a Commonwealth area;
    - an action that is to be taken in, or that is likely to impact on, the Great Barrier Reef Marine Park.
  - An accredited assessment process does not have any effect in relation to an action that is to be taken in, or that is likely to impact on, Booderee National Park, Kakadu National Park or Uluru-Kata Tjuta National Park.

#### *1.9. Provision of environmental data*

- Accreditation arrangements must comply with the data and information requirements set out in any relevant standards.
- Environmental data must be shared with Environment Information Australia (EIA) in a way that is equivalent to assessments where no accreditation is in place.

#### *1.10. Power to attach conditions to the accreditation of an assessment process*

- The CEO of EPA can attach conditions to the accreditation of an assessment process.
- These conditions may require the accreditation partner to do things, such as provide certain information or reporting on environmental outcomes.
- Conditions may also impose restrictions on the way that the accreditation partner is able to exercise certain powers that form part of the accredited process, so that the CEO of EPA is able to be satisfied of the matters listed above under heading 1.5.
- The CEO of EPA will only be able to attach a condition to an accreditation if the accreditation partner has agreed to the condition.

#### *1.11. Varying amending or updating an accredited arrangement*

- The CEO of EPA can vary an accreditation.
- This may be initiated on application by the accreditation partner, or on the CEO's own initiative.

#### *Variation on application*

- An application to vary an accreditation may request a variation of any of the following:
  - the assessment process;
  - the class of actions;

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- the protected matters;
- the conditions;
- any other aspect of the accreditation.
- An application must be in the approved form and must include the information or documents required by the approved form.
- The application must demonstrate how the applicant has acted not inconsistently with a national environment standard (if any) prescribed in the rules for the purpose of this provision.

#### *Variation initiated by CEO of EPA*

- If the CEO of EPA seeks to vary the accreditation on their own initiative, the variation may be to any of the following:
  - the assessment process;
  - the class of actions;
  - the protected matters;
  - the conditions.

#### *1.12. Process for varying an accreditation*

- Before varying an accreditation instrument, the CEO of EPA must:
  - provide a copy of the draft variation instrument to the accreditation partner; and
  - invite the accreditation partner to give the CEO of EPA any comments on the draft variation instrument within a specified period (which must be at least 20 business days);
  - publish, on EPA's website:
    - a draft of the variation instrument; and
    - a notice inviting public comment on the draft variation instrument within a specified period (which must be at least 20 business days).
- The CEO of EPA will also be required to publish on EPA's website comments received in response to the notice inviting public comment.
- The consultation requirements set out above do not apply if:
  - the variation is a minor variation; or
  - the CEO of EPA reasonably believes that the proposed variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.
- A variation to an accreditation is a 'minor variation' if the CEO of EPA is satisfied that:
  - the changes made by the variation would not materially affect the environmental protections to protected matters;
  - the changes made by the variation would not materially affect whether an action can be assessed under the accredited process.
- Changes to the classes of action or protected matters covered by the accreditation are not minor variations.

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- As soon as practicable after making the decision to vary an accreditation, the CEO of EPA must give the accreditation partner written notice of the variation.
- The notice must specify the reasons for the variation and the day it takes effect.
  - The date the variation takes effect will not be a date earlier than the date the notice is given to the accreditation partner.
- The CEO of EPA must publish the notice and the reasons for their decision on EPA's website as soon as practicable after making the decision.

#### 1.13. *Suspension of accreditation*

- The CEO of EPA may suspend an accreditation under certain circumstances, such as where an accredited assessment process no longer aligns with the outcomes and processes set out in the relevant national environmental standards and relevant provisions of the Act.
- An accreditation may be suspended in whole or in part. For instance, the accreditation may be suspended in relation to actions (or a class or classes of action) that are likely to have a significant impact on specified kinds of protected matters.
- While an accreditation is suspended it is not in force and proposed actions will require assessment by EPA as if there was no accreditation.

#### 1.14. *Process for suspension of an accreditation*

- Before deciding to suspend an accreditation, the CEO of EPA must give a notice to the accreditation partner that:
  - specifies that the CEO of EPA proposes to suspend the accreditation;
  - specifies the grounds on which the CEO of EPA proposes to suspend the accreditation;
  - invites the accreditation partner to give the CEO of EPA, within 10 business days after the day the notice is given, a written statement showing cause why the accreditation should not be suspended.
- The CEO of EPA must have regard to any response provided by the accreditation partner when making the decision whether to suspend the accreditation.
- The CEO of EPA will not have to give a notice if they reasonably believe that the proposed suspension is necessary to prevent or lessen a serious and imminent threat to human health or the environment.
- As soon as practicable after making the decision to suspend an approval, the CEO of EPA must give the accreditation partner written notice of the suspension. The notice must specify:
  - the reasons for the suspension; and
  - the day the suspension takes effect; and
  - either:
    - the actions the accreditation partners must take for the suspension to end; or
    - a fixed period for the suspension.
- The date the suspension takes effect must not be a date earlier than the date the notice is given to the accreditation partner. The notice will be published on EPA's website.

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- If the suspension notice specifies actions the accreditation partner must take for the suspension to end, the CEO of EPA must give written notice to the accreditation partner when satisfied that the required actions have been taken. This notice will be published on EPA's website.
- The suspension of an accreditation will end:
  - if the suspension notice specifies actions the accreditation partner must take for the suspension to end – at the start of the day after the CEO of EPA gives notice that they are satisfied that the required actions have been taken;
  - if the suspension notice specifies a fixed period for the suspension – immediately after the end of the fixed period.
- The CEO of EPA can extend a fixed period of suspension if they are satisfied that the reason for suspension has not been resolved.

#### 1.15. *Revocation of an accreditation*

- The CEO of EPA can revoke an accreditation.
- The CEO of EPA can revoke an accreditation on application by the accreditation partner, or on the CEO's own initiative.
- An application from the accreditation partner to revoke an accreditation must be in the approved form and must include the information or documents required by the approved form.
- Before deciding to revoke an accreditation, the CEO of EPA must give a notice to the accreditation partner that:
  - specifies that the CEO of EPA proposes to revoke the accreditation;
  - specifies the grounds on which the CEO of EPA proposes to revoke the accreditation;
  - invite the accreditation partner to give the CEO of EPA, within 10 business days after the day the notice is given, a written statement showing cause why the accreditation should not be revoked.
- The CEO of EPA must have regard to any response provided by the accreditation partner when making the decision whether to revoke the accreditation.
- The CEO of EPA will not have to give a notice if they reasonably believe that the proposed revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.
- Once an accreditation has been revoked, it will not be considered to be in force and proposed actions will require assessment by EPA as if there was no accreditation.
- An accreditation may be revoked in whole or in part. For instance, the accreditation may be revoked in relation to actions (or a class or classes of action) that are likely to have a significant impact on specified kinds of protected matters.

#### 1.16. *Process for revoking an accreditation*

- As soon as practicable after making the decision to revoke an accreditation, the CEO of EPA must give the accreditation partner written notice of the revocation. The notice must specify:
  - the reasons for the revocation; and



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- the day the revocation takes effect.
- The date the revocation takes effect will not be a date earlier than the date the notice is given to the accreditation partner.
- The CEO of EPA must publish the notice and the reasons for their decision on the Department's website as soon as practicable after making the decision.

#### 1.17. *Changes to accredited processes*

- It is likely that, from time to time, a relevant State, Territory or Commonwealth law, policy or procedure that makes up the accredited assessment process may be amended or revoked.
- In these circumstances the accreditation partner must notify the CEO of EPA of any changes to the accredited process.
- The notification must be in the approved form and to include any information or documents required by the approved form. The notification must comply with any requirements prescribed in the rules.
- Once the CEO of EPA is notified of a change in an accredited process, they must decide:
  - whether the change is fundamental to the assessment process.
    - In these circumstances, the assessment process cannot remain accredited and the CEO of EPA must revoke the accreditation (using the revocation powers described above).
    - The accreditation partner can then make a new application for the new assessment process to be accredited. An example of this might be if a state repeals and rewrites their environmental assessment and approval laws to provide for a fundamentally different process.
  - whether the change is not fundamental to the authorisation process, but is likely to materially affect the environmental protections to protected matters provided by the assessment process.
    - In these circumstances, for the process to remain accredited the accreditation partner must apply to the CEO of EPA to vary the accreditation to reflect the changed assessment process.
    - The CEO of EPA will then assess the proposed variation under the variation provisions described above (and must only approve the variation if it meets the criteria in the Act for approving variations).
    - The variation must also comply with the relevant consultation requirements for variations of accreditation instruments (see above).
  - whether the change is minor and would not materially affect the environmental protections to protected matters provided by the authorisation process.
    - In these circumstances, the CEO of EPA may vary (either on application or unilaterally) the accreditation instrument to change the reference to the specified assessment process to take account of the change. This will be a minor variation to the accreditation arrangement (see above).

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#### 1.18. *Changes to national environmental standards*

- The CEO of EPA must notify an accreditation partner of:
  - any change to an existing national environment standard that the CEO of EPA considers is relevant to the accreditation; and
  - any new national environment standard that the CEO of EPA considers is relevant to the accreditation.
- The accreditation partner then must assess whether the environmental protections provided by the accredited process are not inconsistent with the relevant (new or updated) national environment standard, and if so, whether changes to the accredited process are required.
- If the accreditation partner considers changes to the accredited process are required to maintain compliance with a relevant national environment standard, the accreditation partner can:
  - make any necessary changes to the assessment process; and
  - apply for a variation of the accreditation instrument so that the accredited process reflects the updated assessment process.
- The CEO of EPA can review whether an accredited process is not inconsistent with a relevant national environment standard.
- If an accredited process is inconsistent with a national environment standard (either a new or existing/updated standard), it will be grounds for the CEO of EPA to vary, suspend and revoke the accreditation.

#### 1.19. *EPA reviews of accredited assessment arrangements*

- The CEO of EPA can conduct reviews into accreditation arrangements.
- When undertaking a review, the CEO of EPA can consider any or all of the following:
  - whether the accreditation partner is complying with the accreditation, including any conditions attached to the accreditation;
  - whether the accredited process remains consistent with the relevant assessment process (i.e. whether the State, Territory or Commonwealth has made changes to the assessment process and failed to notify the CEO of EPA);
  - whether the environmental protections provided by the assessment process:
    - remain not inconsistent with a relevant national environment standard;
    - will continue to not result in the approval of an action that is likely to have an unacceptable impact on a protected matter.
  - any other matter prescribed by the rules.
- Accreditation partners must agree to being subject to assurance reviews by the CEO of EPA in order for the accreditation to be approved.
- For the purpose of carrying out a review, the CEO of EPA may request a person who the CEO reasonably believes has information or documents relevant to the review to:
  - provide any such information; or

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- produce any such documents.
- Such a person must provide the CEO of EPA with all reasonable facilities and assistance necessary for the effective exercise of the CEO's powers to conduct a review. This includes complying with any request for information or documents.
- Following the completion of a review, the CEO of EPA must prepare a review report that complies with the requirements (and contain the information) prescribed by the rules.
- Assurance reviews of an accreditation will occur at least every 5 years. However, reviews may occur more frequently in some circumstances.

## 2. Accreditation for approval

### Effect

This section covers accreditation arrangements that allow a state, territory or Commonwealth regulator to assess, approve and enforce compliance for an action, with no requirement for the proponent to apply to EPA for approval of their action.

Accredited regulatory frameworks must give effect to the outcomes and processes set out in the relevant national environmental standards and relevant provisions of the Act.

EPA will have responsibility for oversight of accredited arrangements.

### 2.1 Minister agreement to apply for accreditation of an authorisation process

- States, territories or Commonwealth regulators seeking accreditation of one or more authorised processes under their regulatory framework must obtain agreement from the Commonwealth Environment Minister to commence the application process.
- The request for agreement must be made in the approved form and to include the information or documents required by the approved form.
- An authorisation process should:
  - provide for the assessment and approval of actions;
  - be set out wholly in law or alternatively it may include both laws and policies, procedures or other non-legislative documents.
- The request for agreement should be made by the agency responsible for administering the process or the Minister responsible for administering the process.
- If the Minister agrees to the applicant making an application for accreditation of an authorisation process, the Minister must, as soon as practicable after making the decision, to:
  - notify the applicant of the decision; and
  - publish their decision on the Department's website as soon as practicable after making the decision.

### 2.1. Application for accreditation of an authorisation process

- Where the Minister agrees to the applicant applying for accreditation of an authorisation process, the application must be submitted to the CEO of the EPA.

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- Applicants seeking accreditation must conduct a self-assessment of their regulatory framework to ensure that it gives effect to the relevant national environmental standards and the relevant provisions in the legislation.
- Applications must include the applicant's self-assessment, including appropriate documentation of their regulatory framework and legislation.
- The application may seek to accredit the authorisation process in relation to the assessment and approval of actions (or a class or classes of action) that are likely to impact on any kind of protected matter, or on specified kinds of protected matters.
- An application must be made in the approved form and include any information or documents required by the approved form or any information prescribed in the rules (if any).
- The application will not be accepted unless and until all required information, and the prescribed fee, have been submitted.

#### 2.2. *Assessment of the application by the CEO of EPA*

- The CEO of EPA must assess the application for accreditation and make a recommendation to the Minister on whether to accredit the authorisation process.
- The CEO of EPA's recommendation report must include:
  - the application and any additional information provided by the applicant;
  - an assessment of the application against the criteria for accrediting an authorisation process;
  - a recommendation on whether to accredit the authorisation process, including reasons;
  - if the recommendation is to accredit the authorisation process – the class of actions for which the process should be accredited;
  - if the recommendation is to accredit the authorisation process – any conditions proposed to be attached to the accreditation;
  - any additional information prescribed by the rules.
- The CEO of EPA may request additional information from a person. This can include, but is not limited to, the applicant.
- This power can be exercised if the CEO reasonably believes that the additional information is necessary to allow:
  - the application to be assessed against the criteria for accrediting an authorisation process. This includes the power to request additional information to decide whether accrediting the authorisation process is not inconsistent with relevant national environment standards or other criteria for accreditation; or
  - the CEO to make a recommendation to the Minister whether or not to accredit the authorisation process; or
  - the CEO to make a recommendation relating to the class of actions for which the authorisation process should be accredited;
  - the CEO to make a recommendation relating to the protected matters for which the authorisation process should be accredited;

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- the CEO to make a recommendation about the conditions (if any) to attach to the accreditation of the authorisation process.
- This power may be exercised multiple times in relation to an application. It may be exercised at any time after the application is made until the recommendation report is given to the Minister.

#### 2.3. *Assessment of the application by the Minister*

- After receiving the recommendation report from the CEO of EPA, the Minister may request additional information from the applicant, the Department, or any other person where the Minister reasonably believes the additional information is necessary to allow the Minister to make an informed decision about:
  - whether to accredit the authorisation process; or
  - the class of action to be covered by the accreditation; or
  - the kinds of protected matters to be covered by the accreditation; or
  - the conditions to attach to the accreditation (if any).
- This power may be exercised multiple times in relation to an application. It may be exercised at any time after the Minister receives the recommendation report from the CEO of EPA until the Minister's decision on the application.
- The Minister can seek further advice from the CEO of EPA relating to the application at any time prior to making a decision on the application. This includes the ability to seek further advice from the CEO after public consultation on the draft accreditation instrument.

#### 2.4. *Consultation on draft accreditation instrument*

- Before making an accreditation instrument, the Minister must:
  - Provide a copy of the draft accreditation instrument, including any draft conditions, to the applicant; and
  - invite the applicant to give the Minister any comments on the draft accreditation instrument within a specified period of at least 20 business days;
  - publish, on the Department's website:
    - a draft of the accreditation instrument; and
    - a notice inviting public comment on the draft accreditation instrument within a specified period of at least 20 business days.
- The Minister must publish any comments received in response to the notice inviting public comment.

#### 2.5. *Decision whether to accredit an authorisation process*

- Following assessment of the application, the Minister must decide whether to accredit an authorisation process.
- The Minister's power to decide whether to accredit an authorisation process, and to make an accreditation instrument, will not be delegated.
- In doing so, the Minister must be satisfied of the following:

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- that accrediting the authorisation process would promote the objects of the Act;
- that the assessment of actions under the authorisation process would include the assessment of the impacts the action has, will have or is likely to have on each relevant protected matter
- that the environmental protections provided by the authorisation process:
  - are not inconsistent with a national environment standard (if any) prescribed for the purpose of this provision<sup>2</sup>; and
  - will not result in the approval of an action that is likely to have an unacceptable impact on a protected matter; and
  - will result in actions only being approved where any likely significant impacts on protected matters will be appropriately avoided, mitigated or compensated for;
  - will not result in the approval of an action that would be inconsistent with Australia's obligations under any of the following international agreements (where relevant):
    - the World Heritage Convention;
    - the Ramsar Convention;
    - the Biodiversity Convention;
    - the Apia Convention;
    - Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES);
    - the Bonn Convention;
    - China-Australia Migratory Bird Agreement (CAMBA);
    - Japan-Australia Migratory Bird Agreement (JAMBA);
    - Republic of Korea-Australia Migratory Bird Agreement (ROKAMBA);
    - an international agreement prescribed by the rules.
  - will not result in the approval of an action that would be inconsistent with the Protection Statement within a Recovery Strategy (where relevant);
  - will not result in the approval of an action that would be inconsistent with the Threat Mitigation Statement in a Threat Abatement Strategy (where relevant);
  - will not result in the approval of an action that would be inconsistent with any of the following (where relevant):
    - the Australian World Heritage Management Principles;
    - a plan that has been prepared for the management of a declared world heritage property under (or as described in) the Act;

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<sup>2</sup> It is anticipated this would include the national environmental standards for Matters of National Environmental Significance, Restoration Actions and Restoration Payments, Community Engagement and Consultation, First Nations Engagement and Participation in Decision Making, and Data and Information.

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- the National Heritage management principles;
  - an agreement to which the Commonwealth is a party in relation to a National Heritage place;
  - a plan that has been prepared for the management of a National Heritage place under (or as described in) the Act;
  - the Australian Ramsar Management Principles;
  - a Ramsar Management Plan;
  - a Plan (made under the National Parks Act) for the management of Commonwealth reserves.
- will not result in the approval of an action that consists of, or involves the construction or operation of a nuclear installation that is, a nuclear fuel fabrication plant, a nuclear power plant, enrichment plant or a reprocessing facility (other than a nuclear power plant that is a naval nuclear propulsion plant related to use in a conventionally-armed, nuclear-powered submarine);
- that there is an appropriate compliance and enforcement regime that would apply to actions assessed and approved under the authorisation process;
  - that the authorisation process appropriately promotes the role and interests of First Nations peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the accreditation of the authorisation process, taking into account Australia's relevant obligations under the Biodiversity Convention
  - that the authorisation process involves appropriate transparency in decision making, including, where appropriate, public consultation;
  - that the applicant has agreed to:
    - any conditions proposed to be attached to the accreditation (see below);
    - be subject to reviews by the CEO of EPA (see below);
  - any other matters prescribed by the rules.
- The Minister will be prohibited from accrediting an authorisation process if accrediting the process would have the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

#### *2.6. Mandatory considerations*

- In deciding whether to accredit an authorisation process, the Minister must have regard to the following matters:
  - the recommendation report from the CEO of EPA;
  - relevant information provided by the applicant;
  - any perceived or actual conflict of interest that could occur if the authorisation process were accredited, and any proposed management strategies;
  - the capacity of the agency responsible for administering the authorisation process being considered for accreditation;

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- any relevant public comments received on the draft accreditation instrument;
- any other matters prescribed in the rules;
- any other matters the Minister considers relevant.

#### 2.7. Accreditation instrument

- If the Minister decides to accredit the authorisation process, this will be done by legislative instrument (the accreditation instrument).
- The accreditation instrument will be a disallowable instrument subject to ordinary Parliamentary scrutiny processes. It will also be subject to sunseting under the *Legislation Act 2003*.
- The accreditation instrument will come into force:
  - the day after it is registered on the Federal Register of Legislation, or
  - if a later date is specified in the instrument – that date.
- The accreditation instrument will remain in force for the period specified in the instrument unless it is:
  - revoked; or
  - repealed by section 42 (disallowance) of the Legislation Act 2003 (Legislation Act); or
  - repealed by Part 4 of Chapter 3 (sunseting) of the Legislation Act.
- Where the Minister makes an accreditation instrument, the Minister must, as soon as practicable after making the instrument, to publish:
  - a copy of the accreditation instrument; and
  - a copy of the recommendation report given to the Minister by the CEO of EPA; and
  - a statement of reasons for the decision to make the accreditation instrument.

#### 2.8. Content of accreditation instrument

- The accreditation instrument made by the Minister must include the following information:
  - the authorisation process being accredited, by reference to the relevant legislative provisions, policies, procedures and other non-legislative documents that make up the authorisation process;
  - when the accreditation commences;
  - the class (or classes) of actions to be covered by the accreditation;
  - the relevant protected matters that are covered by the accreditation;
  - the relevant 'accreditation partner';
  - any conditions that are attached to the accreditation (see below);
  - if the accreditation is intended to only last for a specified period – the duration of the accreditation and when it expires;
  - any additional information prescribed by the rules.



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- Unless expressly provided for in the instrument, an accredited authorisation process in relation to a state or territory does not have any effect in relation to:
  - an action that is to be taken by a Commonwealth agency;
  - an action that is to be taken in, or that is likely to impact on, a Commonwealth area;
  - an action that is to be taken in, or that is likely to impact on, the Great Barrier Reef Marine Park.
- An accredited authorisation process does not have any effect in relation to an action that is to be taken in, or that is likely to impact on, Booderee National Park, Kakadu National Park or Uluru-Kata Tjuta National Park.

#### *2.9. Power to attach conditions to the accreditation of an authorisation process*

- The Minister may attach conditions to the accreditation of an authorisation process.
- These conditions may require the accreditation partner to do things, such as provide certain information or reporting on environmental outcomes.
- Conditions that may also impose restrictions on the way that the accreditation partner is able to exercise certain powers that form part of the accredited process, so that the Minister can be satisfied of the matters listed above under heading 2.5).
- The Minister may only attach a condition to an accreditation if the accreditation partner has agreed to the condition.

#### *2.10. Legal effect of accreditation instrument*

- Actions that are included in a class of actions covered by an accreditation instrument; and that have been assessed and approved under the accredited process will be exempt from the requirement to be assessed and approved by EPA.
- This exemption will be set out in legislation and will not require the Minister to make a declaration or other instrument to exempt such actions from needing assessment or approval by EPA.
- A person who intends to take an action that is covered by an accreditation instrument cannot apply to the CEO of EPA for an approval to take that action. Where an accredited process applies, the action can only be assessed and approved under the accredited process.
- This continues to apply if a decision-maker has refused to approve the action under the accredited process. The proponent cannot apply to the CEO of EPA for approval to take that action.

#### *2.11. Variation of an accreditation*

- The Minister can vary an accreditation.
- This may be initiated on application by the accreditation partner, or on the Minister's own initiative.
- As the accreditation is done by legislative instrument, a variation to the accreditation will also need to be done by legislative instrument.

#### *Variation on application*

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- An application to vary an accreditation may request variation of any of the following:
  - the authorisation process;
  - the class of actions;
  - the protected matters;
  - the conditions;
  - any other aspect of the accreditation.
- An application must be in the approved form and must include the information or documents required by the approved form.
- The application must demonstrate how the applicant has acted not inconsistently with a national environment standard (if any) prescribed in the rules for the purpose of this provision.
- Before deciding whether to approve a variation to an accreditation on application from the accreditation partner, the Minister must obtain the advice of the CEO of EPA on the proposed variation.
- If the Minister seeks to vary the accreditation on their own initiative, the variation may be to any of the following:
  - the authorisation process covered by the accreditation;
  - the class of actions covered by the accreditation;
  - the protected matters covered by the accreditation;
  - the conditions attached to the accreditation.
- Before deciding whether to vary an accreditation on the Minister's initiative, the Minister must obtain the advice of the CEO of EPA on the proposed variation.

#### 2.12. *Process for varying an accreditation*

- Before varying an accreditation instrument, the Minister must:
  - provide a copy of the draft variation instrument to the accreditation partner; and
  - invite the accreditation partner to give the Minister any comments on the draft variation instrument within a specified period (which must be at least 20 business days);
  - publish, on the Department's website:
    - a draft of the variation instrument; and
    - a notice inviting public comment on the draft variation instrument within a specified period (which must be at least 20 business days).
- The Minister must publish any relevant comments received in response to the notice inviting public comment.
- The consultation requirements set out above do not apply if:
  - the variation is a minor variation; or
  - the Minister reasonably believes that the proposed variation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.

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- A variation to an accreditation is a 'minor variation' if the Minister is satisfied that:
  - the changes made by the variation would not materially affect the environmental protections to protected matters;
  - the changes made by the variation would not materially affect whether an action can be assessed under the accredited process.
- Changes to the classes of action or protected matters covered by the accreditation are not minor variations.
- As soon as practicable after making the decision to vary an accreditation, the Minister must give the accreditation partner written notice of the variation.
- The notice must specify the reasons for the variation and the day it takes effect.
  - The date the variation takes effect must not be a date earlier than the date the notice is given to the accreditation partner.
- Minister must publish the notice and the reasons for their decision as soon as practicable after making the decision.

#### 2.13. *Suspension of accreditation*

- The Minister may suspend an accreditation under certain circumstances, such as where an accredited process no longer gives effect to the outcomes and processes set out in the relevant national environmental standards and relevant provisions of the Act.
- Before deciding whether to suspend an accreditation, the Minister must obtain the advice of the CEO of EPA on the proposed suspension.
- While an accreditation is suspended it is not in force and proposed actions will require assessment and approval by EPA as if there was no accreditation.
- An accreditation may be suspended in whole or in part. For instance, the accreditation may be suspended in relation to actions (or a class or classes of action) that are likely to have a significant impact on specified kinds of protected matters.

#### 2.14. *Process for suspension of an accreditation*

- The Minister can suspend an accreditation.
- Before deciding to suspend an accreditation, the Minister must give a notice to the accreditation partner that:
  - specifies that the Minister proposes to suspend the accreditation;
  - specifies the grounds on which the Minister proposes to suspend the accreditation;
  - invites the accreditation partner to give the Minister, within 10 business days after the day the notice is given, a written statement showing cause why the accreditation should not be suspended.
- The Minister must have regard to any response provided by the accreditation partner when making the decision whether to suspend the accreditation.

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- The Minister will be exempt from the requirement to give a notice if the Minister reasonably believes that the proposed suspension is necessary to prevent or lessen a serious and imminent threat to human health or the environment.
- As soon as practicable after making the decision to suspend an approval, the Minister must give the accreditation partner written notice of the suspension. The notice must specify:
  - the reasons for the suspension; and
  - the day the suspension takes effect; and
  - either:
    - the actions the accreditation partners must take for the suspension to end; or
    - a fixed period for the suspension.
- The date the suspension takes effect cannot be a date earlier than the date the notice is given to the accreditation partner. The notice must also be published.
- If the suspension notice specifies actions the accreditation partner must take for the suspension to end, the Minister must give written notice to the accreditation partner when satisfied that the required actions have been taken. This notice will also be published.
- The suspension of an approval ends:
  - if the suspension notice specifies actions the accreditation partner must take for the suspension to end – at the start of the day after the Minister gives notice that it is satisfied that the required actions have been taken;
  - if the suspension notice specifies a fixed period for the suspension – immediately after the end of the fixed period.
- The Minister may extend a fixed period of suspension if the Minister is satisfied that the reason for suspension has not been resolved.

#### 2.15. *Revocation of an accreditation*

- The Minister can revoke an accreditation.
- The Minister can revoke an accreditation on application by the accreditation partner, or on the Minister's own initiative.
- An application from the accreditation partner to revoke an accreditation must be in the approved form and must include the information or documents required by the approved form.
- Before deciding to revoke an accreditation, the Minister must give a notice to the accreditation partner that:
  - specifies that the Minister proposes to revoke the accreditation;
  - specifies the grounds on which the Minister proposes to revoke the accreditation;
  - invite the accreditation partner to give the Minister, within 10 business days after the day the notice is given, a written statement showing cause why the accreditation should not be revoked.

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- The Minister must have regard to any response provided by the accreditation partner when making the decision whether to revoke the accreditation.
- The Minister will be exempt from the requirement to give a notice if the Minister reasonably believes that the proposed revocation is necessary to prevent or lessen a serious and imminent threat to human health or the environment.
- Before deciding whether to revoke an accreditation, the Minister must obtain the advice of the CEO of EPA on the proposed revocation.
- Once an accreditation has been revoked, it is not in force and proposed actions will require assessment and approval by EPA as if there was no accreditation.
- An accreditation may be revoked in whole or in part. For instance, the accreditation may be revoked in relation to actions (or a class or classes of action) that are likely to have a significant impact on specified kinds of protected matters.

#### 2.16. *Process for revoking an accreditation*

- As soon as practicable after making the decision to revoke an accreditation, the Minister must give the accreditation partner written notice of the revocation. The notice must specify:
  - the reasons for the revocation; and
  - the day the revocation takes effect.
- The date the revocation takes effect cannot be a date earlier than the date the notice is given to the accreditation partner.
- The Minister must publish the notice and the reasons for their decision as soon as practicable after making the decision.

#### 2.17. *Changes to accredited processes*

- It is likely that, from time to time, a relevant State, Territory or Commonwealth law, policy or procedure that makes up the accredited process may be amended or revoked.
- In these circumstances the accreditation partner must notify the Minister of any changes to the accredited process.
- The notification must be in the approved form and to include any information or documents required by the approved form. The notification must also be required to comply with any requirements prescribed in the rules.
- Once the Minister is notified of a change in an accredited process, the Minister must decide:
  - whether the change is fundamental to the authorisation process.
    - In these circumstances, the authorisation process cannot remain accredited and the Minister must revoke the accreditation (using the revocation powers described above).
    - The accreditation partner would then need to make a new application for the new authorisation process to be accredited.
  - whether the change is not fundamental to the authorisation process, but is likely to materially affect the environmental protections to protected matters provided by the authorisation process.

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- In these circumstances, for the process to remain accredited the accreditation partner must apply to the Minister to vary the accreditation to reflect the changed authorisation process.
- The Minister will then assess the proposed variation under the variation provisions described above (and would only be able to approve the variation if it meets the criteria in the Act for approving variations).
- The variation must also comply with the relevant consultation requirements for variations of accreditation instruments (see above).
- whether the change is minor and would not materially affect the environmental protections to protected matters provided by the authorisation process.
  - In these circumstances, the Minister may vary (either on application or unilaterally) the accreditation instrument to change the reference to the specified authorisation process to take account of the change. This would be a minor variation to the accreditation instrument (see above).

#### 2.18. *Changes to national environmental standards*

- The Minister must notify an accreditation partner of:
  - any change to an existing national environment standard that the Minister considers is relevant to the accreditation; and
  - any new national environment standard that the Minister considers is relevant to the accreditation.
- The accreditation partner must assess whether the environmental protections provided by the accredited process are not inconsistent with the relevant (new or updated) national environment standard, and if so, whether changes to the accredited process are required.
- If the accreditation partner considers changes to the accredited process are required to maintain compliance with a relevant national environment standard, the accreditation partner may:
  - make any necessary changes to the authorisation process; and
  - apply for a variation of the accreditation instrument so that the accredited process reflects the updated authorisation process.
- The CEO of EPA can review whether an accredited process is not inconsistent with a relevant national environment standard (see reviews below).
- If an accredited process is inconsistent with a national environment standard (either a new or existing/updated standard), it will be grounds for the Minister to vary, suspend and revoke the accreditation.

#### 2.19. *Reviews*

- The CEO of EPA must conduct reviews into accreditation arrangements that are in force.
- When undertaking a review, the CEO of EPA may consider any or all of the following:
  - whether the accreditation partner is complying with the accreditation, including any conditions attached to the accreditation;

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- whether the accredited process remains consistent with the relevant authorisation process (i.e. whether the State, Territory or Commonwealth has made changes to the authorisation process and failed to notify the Minister);
- the operation of the relevant compliance and enforcement regime that applies to the accredited process, including whether any breaches of the accredited process are appropriately dealt with;
- whether the environmental protections provided by the authorisation process:
  - remain not inconsistent with a relevant national environment standard;
  - will continue to not result in the approval of an action that is likely to have an unacceptable impact on a protected matter.
- any other matter prescribed by the rules.
- Accreditation partners must agree to being subject to reviews by the CEO of EPA in order for the accreditation to be approved.
- For the purpose of carrying out a review, the CEO of EPA may request a person who the CEO reasonably believes has information or documents relevant to the review to:
  - provide any such information; or
  - produce any such documents.
- Such a person must provide the CEO of EPA with all reasonable facilities and assistance necessary for the effective exercise of the CEO's powers to conduct an assurance review. This includes complying with any request for information or documents.
- Following the completion of an assurance review, the CEO of EPA must prepare a review report.
- The review report must comply with the requirements (and contain the information) prescribed by the rules.
- The CEO of EPA must give the review report to the Minister as soon as practicable following completion of the review.
- Reviews of an accreditation will occur at least every 5 years. However, such reviews may occur more frequently in some circumstances.

#### 2.20. *Declaration to exclude a specific action*

- There will be a mechanism in the Act whereby particular actions may be declared to be excluded from an accredited process and must instead be assessed by the CEO of EPA.
  - This mechanism would be utilised in circumstances such as where an accredited decision-maker requests that a particular action, that would otherwise be captured by the accreditation arrangement, should not be assessed under that arrangement.
- The Minister can make this declaration in writing. The declaration will not be a legislative instrument.
- The Minister must publish the declaration on the Department's website as soon as practicable after making it.
- The accreditation partner must:

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- notify the proponent of an action that is the subject of a declaration that the action is no longer exempt from requiring assessment and approval under the Commonwealth's environmental law; and
  - provide the CEO of EPA with any information the accreditation partner has on the relevant action. This must include any information on the assessment of the likely impacts of the action on protected matters that the accreditation partner has undertaken.
- The proponent would then need to decide whether to apply to EPA for an approval.

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#### Definitions

**Accredited process:** a process of a State, Territory or Commonwealth agency that provides for the assessment and/or approval of actions, and which has been accredited for a specific purpose under the new Act by the CEO of EPA or the Minister.

**Proponent:** equivalent to 'person proposing to take the action' and 'designated proponent' in the EPBC Act.

**Protected matter:** matters protected under the equivalent of Part 3 of the EPBC Act in the new legislation.

**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 mediums

**Recovery strategy:** a statutory document that will replace the existing suite of conservation planning documents, including conservation advices and recovery plans.

**Significant impact:** will be defined in policy and includes unacceptable impacts. Current EPBC Act significant impact policy is available at [Significant Impact Guidelines 1.1 – Matters of National Environmental Significance](#).

**Threat abatement strategy:** will replace existing threat abatement plans, covering threats to natural and cultural heritage values of matters of national environmental significance, including relating to species and ecological communities.

**Unacceptable impact:** a significant adverse impact that is prohibited under the new legislation.

**ENVIRONMENT PROTECTION AUSTRALIA**

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## Overview

The establishment of Environment Protection Australia (EPA), including its functions, powers of its Chief Executive Officer (**CEO**), and its administrative arrangements, will be provided in a standalone piece of legislation. Other Acts and Regulations will confer powers and responsibilities on the CEO.

### 1. Purpose

#### Effect

This section outlines the purpose of establishing EPA.

The purpose of establishing EPA is:

- To enhance the protection of Australia's **environment** through establishing a national environmental regulator, Environment Protection Australia, including its functions under relevant Commonwealth legislation and administrative arrangements.
- To prevent the degradation of the environment and reduce risks to human health through the administration of relevant Commonwealth legislation.
- To deliver accountable, efficient, outcome-focused and transparent regulatory decision-making.
- To deliver proportionate and effective risk-based compliance and enforcement responses, using data and information, including providing assurance that environmental outcomes are being met.
- To promote public trust in environmental decision-making through publication of information, transparency of decisions and providing opportunities for the community, including First Nations people, to inform decision-making processes.

### 2. Establishment and functions of Environment Protection Australia

#### Effect

This section covers the establishment of EPA and provides an overview of its functions. EPA will be established in alignment with related measures under the Nature Positive Agenda, including the enactment of new Nature Positive legislation, implementation of Environment Information Australia, and implementation of the National Environmental Standards.

#### 2.1. *Establishment of Environment Protection Australia (EPA)*

EPA will be established:

- as a non-corporate **Commonwealth** entity.
- with a Chief Executive Officer (CEO) as the accountable authority of EPA.
- with CEO and the staff of the EPA as **officials** of EPA.

EPA will consist of the Chief Executive Officer (CEO) and staff:

- The staff of EPA are employed under the *Public Service Act 1999*.

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- The CEO and staff together constitute a Statutory Agency.
- The CEO is the Head of the Statutory Agency.

#### 2.2. *The 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].

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

- Project assessments, decisions and post-approvals.
- 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.

### 3. Chief Executive Officer

#### Effect

This section lays out the functions and powers, independence and appointment of the CEO.

#### 3.1. *Functions of the CEO*

The primary function of the CEO is to:

- Carry out the functions conferred on the CEO through relevant Commonwealth legislation (refer to section 2.2 of this paper).
- Undertake compliance and enforcement under the Regulatory Powers Act in relation to relevant legislation.

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The CEO also has the following functions:

- To advise and assist the **Minister** in relation to the exercise of the Minister's regulatory functions and powers under the [Nature Positive legislation] and other laws that confer functions on the CEO.
- To make recommendations to the Minister in relation to opportunities to improve regulation under laws that confer functions on the CEO.
- Any other functions that are conferred on the CEO by:
  - the rules; or
  - any other law of the Commonwealth.

The CEO has power to do all things necessary or convenient to be done for, or in connection with, the performance of the CEO's functions.

#### *3.2. Independence of the CEO*

The CEO will be independent in that they will have the discretion to perform their functions, and exercise their powers, without being subject to the direction of any other person.

#### *3.3. Statement of expectations and statement of intent*

- The Minister may, at any time, prepare and give a statement of expectations to the CEO, that sets out the Minister's expectations for the CEO and EPA. A statement of expectations cannot direct the CEO in the performance or exercise of the CEO's functions or powers.
- The Minister must publish a statement of expectations as soon as practicable after it is given to the CEO.
- A statement of expectations replaces any previous statement of expectations.
- A statement of expectations is not a legislative instrument.
- If the Minister issues a statement of expectations, the CEO must prepare and give the Minister a written response (a statement of intent).
- The CEO must publish a statement of intent on EPA's website as soon as practicable after it is given to the Minister.
- A statement of intent is not a legislative instrument.

#### *3.4. Appointment of the CEO*

- The CEO will be appointed by the Governor-General.
- To be appointed, the Minister must be satisfied that the CEO is qualified and experienced in public sector administration or governance and regulation, and one or more of the following matters:
  - ecologically sustainable development;
  - law;
  - conservation of biodiversity;
  - heritage;

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- Indigenous affairs;
- law enforcement;
- natural resource management; or
- any other matters specified in the rules.
- The Minister must be satisfied that the person does not have any interests, pecuniary or otherwise, that conflict or could conflict with the proper performance of the CEO's functions.
- The CEO will be appointed:
  - on a full-time basis for up to 5 years, and
  - must not be reappointed more than once.
- The Minister may appoint a person to act as the CEO during:
  - a vacancy in the office of the CEO, or
  - any other period of the CEO's absence, or
  - if they are unable to perform their duties of the office.

- The person acting must be eligible for appointment under the same criteria as the CEO.

#### 3.5. Salary, leave of absence and conditions

- The CEO will be paid the remuneration that is determined by the Remuneration Tribunal and the allowances that will be prescribed in legislation.
- The Minister may (by legislative instrument) prescribe the CEOs remuneration and allowances.
- The CEO will have recreation leave entitlements that are determined by the Remuneration Tribunal.
- The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- The CEO is unable to engage in paid work outside their regular duties unless approved by the Minister.
- The CEO may resign from their appointment by written notice to the Governor-General.
- The Governor-General may cease the appointment of the CEO for:
  - Misbehaviour, [as defined under existing legislation];
  - Where the CEO is unable to perform their duties because of physical or mental incapacity; or
  - If the CEO:
    - becomes bankrupt or insolvent,
    - compounds with the CEO's creditors,
    - has an unexplained absence for a specified period,
    - engages in paid work outside their duties without approval, or

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- fails to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

#### 4. Registers

##### Effect

This section sets out the registers that must be maintained and published by EPA. The CEO may establish and maintain other registers.

##### 4.1. Establishing and maintaining registers

The CEO must establish and maintain the following registers:

- A register of **registrable decisions**.
- A register prescribed:
  - in any Commonwealth law for which the CEO has powers and responsibilities conferred on them, and
  - any other matter relevant to the functions of EPA as prescribed by the rules.

Registers will be maintained electronically and published on EPA's website, and they will not be legislative instruments.

##### 4.2. Register of registrable decisions

The CEO must publish on the register of registrable decisions each registrable decision made by the CEO.

The CEO is not required to publish sensitive information.

The CEO must publish the information on the register as soon as practicable after making the registrable decision.

The rules may make provisions in relation to the register including any other information in relation to registrable decisions that the CEO must publish on the register.

##### 4.3. Suspension of registers

The CEO may temporarily suspend the operation of a register if the CEO is satisfied:

- The suspension is required so that maintenance can be carried out; or
- It is prudent to suspend the operation of the register in order to:
  - ensure the integrity of the register; or
  - prevent, mitigate or minimise abuse of the register; or
  - prevent, mitigate or minimise criminal activity involving the register.

If the CEO suspends the operation of a register:

- The CEO must publish a notice on EPA's website informing the public of the suspension; and
- The CEO may defer taking action in relation to the register until the suspension ends.

## 5. Information and confidentiality

### Effect

This section sets out the criteria to guide the CEO of EPA's use and disclosure of relevant information for the purposes of the functions and powers bestowed upon the CEO.

#### 5.1. Information gathering

The CEO may, in writing, request information, advice or documents that relate to the performance of the CEO's functions or the exercise of the CEO's powers, from any person or body.

#### 5.2. Use and disclosure of relevant information

The CEO may disclose **relevant information** as follows:

- If the CEO is satisfied that the disclosure is for the purposes of assisting a Commonwealth entity to perform its functions or exercise its powers.
- In relation to State and Territory government bodies or law enforcement bodies (where they have functions related to enforcement or protection), if the CEO reasonably believes that the disclosure of the information is necessary for:
  - The enforcement of criminal law, or
  - The enforcement of a law imposing a pecuniary penalty, or
  - The protection of public revenue.
- If the CEO reasonably believes that the disclosure is necessary to prevent or lessen a serious risk to human health, or to prevent or lessen a serious risk to the environment.

#### 5.3. Authorised use and disclosure by entrusted persons

An **entrusted person** is the CEO or a staff member of EPA (or another person as prescribed in the rules). An entrusted person may:

- Use and disclose relevant information if the information has already been lawfully made available to the public.
- Disclose relevant information to the person to whom the information relates.
- Use or disclose relevant information that relates to a person if the person has consented to the use or disclosure and the use or disclosure is in accordance with that consent.
- Disclose relevant information to the person who provided the information.
- Disclose summaries of relevant information, or statistics derived from relevant information if those summaries or statistics do not enable the identification of a person.
- Disclose relevant information, or a document containing relevant information, for the purposes of proceedings before a court or tribunal, authority or person that has the power to require the answering of questions or the production of documents, or in accordance with an order of a court or such a tribunal, authority or person.



#### 5.4. Offences

Unless the use or disclosure is authorised or required by Commonwealth legislation, or a prescribed law of a state or territory, it is an offence if:

- A person is, or has been, an entrusted person; and
- The person has obtained relevant information in the person's capacity as an entrusted person; and
- The information is **protected information**; and
- The person uses or discloses the information.

It is also an offence if:

- A person is, or has been, an official of a Commonwealth entity that is not the Department; and
- The person has obtained relevant information in the person's capacity as an official of the entity; and
- The information is protected information that was disclosed to the entity; and
- The person uses or discloses the information other than for the purpose for which it was disclosed to the entity.

#### 6. Advisory group

##### Effect

This section sets out how the CEO will establish and utilise the advisory group.

- The CEO may establish an **advisory group** to provide the CEO, at the CEO's request, advice or assistance in relation to the performance of the CEO's functions and the exercise of the CEO's powers.
- The advice or assistance of the advisory group may be provided by a single member, combination of members, or the advisory group as a whole.
- Members of the advisory group can only be appointed by the CEO.
- The CEO may appoint as many members as the CEO considers appropriate.
- The CEO must not appoint a person to the advisory group unless satisfied that the person has the relevant skills and expertise.
- The terms and conditions of member appointment are determined by the CEO.
- The CEO may determine the advisory group's terms of reference and the procedures to be followed in providing advice and assistance.
- If the advisory group or one of its members provides advice to the CEO in relation to the performance of the CEO's functions or the exercise of the CEO's powers, the CEO may publish the advice on EPA's website if the CEO considers it appropriate to do so.
- If the advisory group or one of its members provides advice to the CEO in relation to a decision to be made by the CEO then the advice must be considered when making the decision, but the CEO is not bound by the advice.

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#### Definitions

**Advisory group** means the group established by the CEO of EPA.

**CEO** means the Chief Executive Officer of EPA.

**Civil penalty provision** has the same meaning as in the Regulatory Powers Act.

**Commonwealth entity** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**Enforcement body** includes any of the following:

- a Commonwealth entity;
- a State or Territory government body;
- the Australian Federal Police;
- the police force or police service of a State or Territory.

**Entrusted person** means:

- the CEO; or
- a staff member of EPA; or
- any other person prescribed by the rules.

**Environment** has the same meaning as in [the Nature Positive legislation].

**Minister** means the Commonwealth Minister for the Environment.

**Official** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

**Paid work** means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

**Protected information** means information of any of the following kinds obtained by an entrusted person:

- information the disclosure of which by the entrusted person could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence;
- information the disclosure of which could reasonably be expected to prejudice the effective working of government;
- information the disclosure of which could reasonably be expected to prejudice the prevention, detection, investigation, prosecution or punishment of one or more offences;
- information the disclosure of which could reasonably be expected to endanger a person's life or physical safety;
- information the disclosure of which could reasonably be expected to prejudice the protection of public safety or the environment (within the meaning of the [Nature Positive legislation]).

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**Registrable decision:** A decision made by the CEO in relation to:

- whether an approval of the taking of an action is required;
- approving the taking of an action;
- imposing conditions on an approval;
- varying the action covered by an approval;
- varying the period of an approval;
- imposing, varying or revoking conditions on an approval;
- transferring an approval;
- suspending an approval;
- revoking an approval;
- reinstating an approval; and
- other decisions as prescribed by the rules.

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014*.

**Relevant information** means information obtained by an entrusted person under, or in accordance with the [Nature Positive legislation] or, as relevant, the Regulatory Powers Act.

**State or Territory government body** means:

- a Department of State of a State or Territory; or
- an agency of a State or Territory; or
- an authority of a State or Territory.

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#### Particulars

- The CEO may, in writing, delegate all or any of the CEO's functions or powers to a member of EPA staff (executive level or above). In performing a delegated function, a delegate must comply with any written directions of the CEO.
- The CEO must prepare an annual report (which may include a regulatory assurance statement) to give to the Minister for the Environment and that will be tabled in the House of Representatives. The annual report must be published on EPA's website as soon as practicable after tabling.
- The EPA will be regularly subject to a range of external reviews and audits to ensure it continues to be effective. There are a number of external entities that are empowered to assess the performance of the EPA against objective standards, including the Australian National Audit Office, the Commonwealth Ombudsman and the Australian Public Service Commission in conducting capability reviews of Commonwealth entities. Staff employed by the EPA will also be subject to the jurisdiction of the National Anti-Corruption Committee.
- The EPA will be subject to regular operational review by the Minister. The first of these reviews is proposed to occur three years after establishment of the EPA and commencement of its operations, and every five years thereafter. These reviews will assess the operational effectiveness of the EPA and will be tabled by the Minister in the House of Representatives.
- The CEO will be required to consult proponents on proposed decisions related to assessments and approvals before making such decisions. Certain decisions may also be subject to reconsideration, including in circumstances such where a substantial change in circumstances that was not foreseen at the time of the decision materialises.
- The Minister may make rules prescribing matters required or permitted, necessary or convenient to enable the carrying out of EPA's functions or to give them effect. However, rules made may not create an offence or civil penalty, provide powers of arrest, detention, entry, search, or seizure, or impose a tax.
- **Civil penalty provisions** are enforceable by the CEO under the Regulatory Powers Act.

**ENVIRONMENT INFORMATION AUSTRALIA**

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#### Power

The legislation will establish a new statutory position, the Head of Environment Information Australia, and provide statutory functions, powers and obligations for this position.

#### Provisions

##### 1. Establishment, functions and powers

###### Effect

The legislation will provide the Head of Environment Information Australia independence in the performance of statutory functions. That is, the Head of Environment Information Australia will not be able to be directed by the Secretary of the Department, the Minister, or anyone else in performing these independent functions.

As a Departmental employee, the Head of Environment Information Australia will also have non-statutory responsibilities outside the scope of the legislation in supporting the environmental data needs of the Department and the Minister.

Environment Information Australia will establish and maintain data and information sharing agreements, Memoranda of Understanding and other agreements with Commonwealth, State and Territory agencies for the purposes of information sharing.

The Head of Environment Information Australia may ask entities to voluntarily provide information. The information provided will be able to be used by the Head of Environment Information Australia to perform any and all of their functions.

Environment Information Australia will provide a public data portal that brings together and makes accessible authoritative data from a range of sources including proponents and State and Territory regulators.

Environment Information Australia will draw on the best available information to establish a baseline and report on [Nature Positive] progress and outcomes. Data and reporting will improve over time. Environment Information Australia will identify and work to address information gaps that hinder reporting on progress towards a nature positive Australia.

National environmental information assets will be designated by the Head of Environment Information Australia, as those having a critical role in informing decisions, monitoring and reporting under environment laws. Environment Information Australia will establish arrangements with relevant stakeholders, custodians and providers to ensure these assets are protected, maintained and improved over time.

##### *1.1 Head of Environment Information Australia*

- There is to be a Head of Environment Information Australia.

##### *1.2 Functions*

- The functions of the Head of Environment Information Australia are:
  - to provide the Minister, Environment Protection Australia and the public with access to authoritative, high-quality information and data relating to:

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- the environment;
  - matters in respect of which Environment Protection Australia has functions; and
  - matters in respect of which the Minister has functions under the Environment Portfolio;
- to oversee and coordinate improvements to information and data in relation to the matters above;
  - to accept and facilitate access to authoritative environment data and information<sup>1</sup>;
  - to designate and create a list/register of National Environmental Information Assets<sup>2</sup>;
  - to develop and implement a national environmental Monitoring, Evaluation and Reporting framework<sup>3</sup> to achieve high quality, holistic environmental data and enable reporting on national environmental objectives, the state of Australia's environment, and environmental trends over time;
  - to set a baseline for, and measure progress towards, achieving a nature positive Australia;
  - to cause the preparation and publication of State of the Environment reports;
  - to report on progress towards environmental goals; and
  - to cause the production, updating, maintenance and publication of the environmental economic accounts.
- Additional functions may be conferred on the Head of Environment Information Australia by other Commonwealth laws, rules and regulations.

#### *1.3 Independence*

- The Head of Environment Information Australia is not subject to the direction of the Secretary of the Department or the Minister, or anyone else, in performing the functions related to:
  - development and implementation of a Monitoring, Evaluation and Reporting framework;
  - preparation of the State of the Environment reports;
  - reporting on progress towards environmental goals; and
  - establishing and maintaining environmental economic accounts.

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<sup>1</sup> Further information will be outlined in a standard.

<sup>2</sup> Further details on the National Environmental Information Assets and the required register will be set out in subordinate legislation or determined in policy by the Head of Environment Information Australia.

<sup>3</sup> The Monitoring, Evaluation and Reporting framework will enable domestic and international reporting obligations including on national environmental objectives and progress towards achieving Nature Positive.

#### *1.4 State of the Environment reports*

##### **Effect**

The preparation of State of the Environment reporting will involve independent authors.

State of the Environment reports will be informed by standardised, high quality national environmental data and analysis including environmental economic accounts and environmental indicators.

Standardising data for State of the Environment reports will allow for trend analysis across future State of the Environment reports. This data will be made available from the Environmental Information Australia data portal when it is developed.

- The Head of Environment Information Australia must cause:
  - the preparation and publication of a report on the environment in the Australian jurisdiction (a State of the Environment report) every 2 years; and
  - the preparation and publishing of the first State of the Environment report following commencement of this Act no later than 30 September 2026.
- State of the Environment reporting is to incorporate and synthesise scientific, traditional, and local knowledge to report on:
  - the progress of conservation;
  - environment and heritage protection; and
  - sustainable management of Australia's environment and heritage.
- State of the Environment reports must contain information about, and the analysis of trends relating to:
  - the condition of the environment; and
  - progress towards meeting national environmental goals.
- Publication of State of the Environment reports may include non-traditional reporting formats such as digital platforms.

#### *1.5 Minister's responsibilities in relation to State of the Environment reports*

- The Minister may designate national environmental goals to be reported against in each 2-year reporting cycle.
- The Minister must:
  - respond to State of the Environment reports, including a response to
    - the national environmental goals committed to in a 2-year cycle, once that 2-year period is complete; and
    - all goals committed to in the upcoming 2-year period; and
  - cause the tabling of Government responses in both Houses of the Parliament within 6 months of the publication of State of the Environment reports.



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- Responses to State of the Environment reports must seek and incorporate input from each State and Territory Government.

#### 1.6 Environmental economic accounts

##### Effect

Environmental economic accounts provide information about the extraction of natural resources, their use within the economy, natural resource stock levels, the changes in those stocks during a specific period and economic activity related to the environment. This information is presented in environmental economic accounts in physical and monetary terms, as appropriate.

Developing a core set of national environmental economic accounts that underpin State of the Environment reporting, environmental indicators and other analysis will support government policy, planning and decision-making alongside the existing system of national (economic) accounts (traditional financial accounts that are compiled in monetary terms).

From 2025, environmental economic accounts will be tabled in the Parliament to align with the annual release of the system of national economic accounts, which is at the last Friday of October each year.

Environment Information Australia will work in partnership with the Australian Bureau of Statistics to progress environmental economic accounts.

Once a core set of accounts has been delivered, Environment Information Australia will make available regularly updated accounts, add new accounts and incorporate additional indicators and statistics within existing accounts.

- The Head of Environment Information Australia must cause the establishment, development and maintenance of environmental economic accounts.

#### 1.7 Minister's responsibilities in relation to environmental economic accounts

- The Minister must cause the tabling of a statement of environmental economic accounts in Parliament annually, on or before the annual release of the System of National Accounts.

*1.8 National Environmental Information Assets*

**Effect**

National Environmental Information Assets are the essential information streams that underpin decision making under the new nature positive legislation.

These could be held by Environment Information Australia, other Commonwealth agencies or non-government entities.

Designating these essential information streams as National Environmental Information Assets will provide transparency, certainty and accountability around the management and availability of critical environmental information.

Custodians of National Environmental Information Assets will be required to notify the Head of Environment Information regarding changes that would impact the use of that Asset in decision making. This will provide opportunity for alternative arrangements to be considered to support the impacted processes.

- The Head of Environment Information Australia may designate essential environmental information assets as National Environmental Information Assets.
- The Head of Environment Information Australia must be satisfied that the information Asset is critical for supporting decision making under nature positive legislation.
- Custodians of designated National Environmental Information Assets must notify the Head of Environment Information Australia when there is a proposed or actual change to the nature or management of the Asset that would materially impact the use of the Asset in decision making.

**2. Other matters**

*2.1. Appointment*

- The position holder will be a Senior Executive Service officer under the *Public Service Act 1999*.

*2.2. Staff*

- The Department may engage persons to assist the Head of Environment Information Australia to perform his or her functions and/or exercise his or her powers. These persons will be subject to the Head of Environment Information Australia's directions.

*2.3. Contractors*

- The Department may engage external assistance (contractors under a written agreement) to assist the Head of Environment Information Australia to perform their statutory functions. These persons will be directed by the Head of Environment Information Australia.

*2.4. Delegation*

- The Head of Environment Information Australia may delegate functions or powers to a Senior Executive Service or Executive Level 2 employee where the employee has appropriate expertise to perform the function or exercise the power.

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#### 2.5. Application of the finance law

- For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Head of Environment Information Australia is an official (within the meaning of that Act) of the Department.

#### 2.6. Annual report

- After the end of each reporting period (within the meaning of *the Public Governance, Performance and Accountability Act 2013*) for the Department, the Head of Environment Information Australia must prepare and give an annual report to the Minister, for presentation to the Parliament, on the Officer's activities during the period.
- If a report on the Head's activities during a reporting period is included in the report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* in relation to the period, the Head is taken to have complied with subsection (1) in relation to the period.

## OFFICIAL

DRAFT FOR DISCUSSION: NOT OFFICIAL GOVERNMENT POLICY/LEGISLATION

### Definitions

**Environmental economic accounts:** mean integrated statistics that illuminate the relationship between the environment and the economy, both the impacts of the economy on the environment and the contribution of the environment to the economy.

**National Environmental Information Asset:** means an asset (e.g., a repository, database, model, workflow or IT system to integrate and combine such elements) designated by the Head of Environment Information Australia because the asset is fundamentally, regularly and uniquely relied upon in decision-making and reporting under national environmental law. Criteria for declaration will include the degree to which the asset directly informs, or provides context for, regulatory approval decisions, monitoring, and reporting, including for State of the Environment reporting and environmental economic accounts.

**Nature Positive:** TBD

**Proponent:** equivalent to 'person proposing to take the action' and 'designated proponent' in the EPBC Act.

**Protected matter:** matters protected under the equivalent of Part 3 of the EPBC Act in the new legislation.

## **ASSESSMENT AND APPROVAL PATHWAYS ADDENDUM: EPA'S ROLE IN COMMUNITY CONSULTATION**

### **1. Registration stage**

#### **Effect**

This section outlines the requirement for proponents to register their intention to undertake an action with Environment Protection Australia (EPA).

Having a publicly available register maintained by EPA ensures that the community and EPA are aware of actions that may come forward for consultation and/or application to EPA for approval (or an approval not required decision). The register will be made available on EPA's website.

Following registration, EPA would provide proponents with guidance, such as outlining requirements for assessment and approval of actions, and the National Environmental Standards.

- Proponents must register their intention to undertake an action that may require an application to EPA for approval.
- EPA must publish and maintain a public register of projects that may be subject to a future application to EPA.

### **2. Application stage**

#### **Effect**

This section outlines the role of EPA in relation to community consultation upon receiving an application for approval of an action.

EPA will update the public register on EPA's website to include a link to the published project documentation and a current decision due date.

EPA may choose to undertake further consultation at this stage.

- EPA must publish applications (including supporting documentation).
- EPA may undertake further consultation, such as receiving public submissions for a minimum of 10 days after publishing an application package.
- EPA must publish, and provide to the proponent, any additional submissions received by EPA as soon as possible following the close of any submission period.

### 3. Assessment and decision stage

#### Effect

This section outlines how information gathered through consultation contributes to the assessment and decision of an application for approval of an action.

When making the decision regarding whether the action will have, or is likely to have, a significant impact on protected matters, and whether to approve the action EPA will have regard information provided by the proponent and the public for the purposes of the CEO's decision.

In practice this would include the proponent's summary report on the submissions received during consultation and all comments. It would also include any additional submissions received by EPA directly, and any further material provided by the proponent in response to any additional submissions received.

- In deciding whether the action will have, or is likely to have, a significant impact on protected matters, CEO of EPA must have regard to:
  - any relevant information and documents provided by the person for the purposes of the CEO's decision;
  - any relevant information on the application that is provided to the CEO by the public.
- In deciding whether to approve the taking of an action, the CEO of EPA must have regard to:
  - relevant information provided by the proponent including (but not limited to) information provided in:
    - the application;
    - any relevant information and documents provided by the person for the purposes of the CEO's decision;
    - any response to a request for further information;
    - the request to comment on the proposed decision.
  - any relevant information on the application that is provided to the CEO by the public;
  - any relevant comments given to the CEO by a Minister (Commonwealth, State or Territory), any relevant advice received from the Independent Expert Scientific Committee or any relevant notice from a State or Territory about impacts on things other than protected matters.
- EPA must publish the notice of the decision on EPA's decision register including the reasons for the decision.

#### 4. Low impact pathway

##### Effect

This section outlines how, under the 'low impact' pathway, the CEO must undertake public consultation and consider any information gathered through consultation when making the decision regarding whether the action will have, or is likely to have, a significant impact on protected matters.

In practice, if the proponent has undertaken consultation, this would include the proponent's summary report on the submissions received during consultation and all comments. It would also include any additional submissions received by EPA directly.

- The CEO of EPA must publish all applications for an approval not required decision under the 'low impact pathway'.
- The CEO of EPA must undertake public consultation for 10 days after publishing an application package.
- In deciding whether the action will have, or is likely to have, a significant impact on protected matters, the CEO must have regard to:
  - Any relevant information and documents provided by the person for the purposes of the CEO's decision.
  - If the person undertook public consultation on the action before making the application, any information and documents provided by the person relating to the consultation, including any comments received.
  - Any relevant submissions provided by a member of the public in relation to the application – this includes any submissions received during EPA-led consultation.
- EPA must publish the notice of the decision on EPA's decision register including the reasons for the decision.

# 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.

## 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 Nuclear Actions

Relevant decisions must:

1. Not be inconsistent with the **ARPANSA national codes** for protection from radiation, 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.

## 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:** an outcome where the projected gain from all measures to mitigate, repair and (where permitted) 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**, and/or
  - b. where the significantly impacted protected matters are threatened species, ecological communities, migratory species and/or the Commonwealth marine environment, by making a **restoration contribution**. For impacts on these protected matters, a proponent may choose which is their preferred option, and may also 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 can contribute to the long-term 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 and the Great Barrier Reef Marine Park,

- the **restoration action** must be located within the same **Bioregion** as the impact, or be located within an alternative, ecologically relevant **Bioregion** for the protected matter;
- ii. for World Heritage properties, National Heritage places and Ramsar wetlands, the **restoration action** must target the same value 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 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 (i.e. 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 an **endorsed advanced restoration action**, or is an approved state or territory **restoration action** for the same action that meets the requirements of this standard;
  - h. be **securely protected** in perpetuity from activities that may degrade the protected matter, or be securely protected for the duration of the impact where impacts are temporary or are fully remediated;
  - i. 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.
  - j. be detailed in a **restoration action** management plan that:
    - i. details the method for projecting the gain as a result of the action, including the baseline projections and assumptions on which projections are made,
    - ii. details the actions and the projected outcomes for the impacted protected matter, and the timeframe over which the outcomes will be achieved,
    - iii. outlines the monitoring, evaluation, reporting, and adaptive management actions to ensure the projected outcomes for the impacted protected matters will be achieved 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.
3. A **restoration action** may be delivered by the proponent or by another party on behalf of the proponent.

## Requirements for restoration contributions

4. A **restoration contribution** must:
  - a. compensate (with a **projected gain** [of at least X%] relative to a **baseline** that reflects what would have happened in the absence of the proposed action) for the residual significant impact in line with the relevant costs set out in [Regulations];
  - b. 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**.
  - c. be made to an **independent [Conservation Trust]** prior to the commencement of the action.
5. **Restoration contributions** must:
  - a. be invested in:
    - i. **restoration actions** that meet relevant requirements in this standard, including requirements in 2(a) – (h), inclusive; or
    - ii. in circumstances where the **independent [Conservation Trust]**, having sought advice from its expert advisory committee, determines that 5(a)(i) is not feasible, **restoration contributions** must be invested in other direct **restoration actions** that the expert advisory committee advises will deliver the best overall environmental outcome for impacted protected matters within the same **bioregion**, such that:
      - i. actions must benefit the same protected matter that was impacted (for example a **restoration contribution** relating to a threatened species or ecological community must be spent on threatened species and ecological communities),
      - ii. preference is given to actions that include a benefit for the specific threatened species, ecological community or migratory species that was impacted,
      - iii. actions are feasible and expected to deliver a **projected gain** for the protected matter(s), and
      - iv. actions must be additional to existing actions and regulatory obligations.
  - b. deliver actions that commence [within three years] of payment having been received; and
  - c. be reported publicly, including:
    - i. on funds received, including the quantum of each payment and residual significant impact being compensated,



- ii. on funds expended, including the quantum of funds expended and projected outcomes of each action, and
- iii. in line with a monitoring, evaluation and reporting framework tracking whether projected outcomes are being achieved.

## Definitions

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

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

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

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

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

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

**Endorsed advanced restoration action:** A **restoration action** that is consistent with the Standard for Restoration Actions and Restoration Contributions and has commenced prior to the approval of an action to reduce the time lag from the impact to delivering the benefit. [An advanced restoration action must be endorsed by the EPA].

**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 long-term 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 restore the habitat 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**.

**Independent [Conservation Trust]:** an independent Trust established by the Australian Government for the purposes of receiving and investing **restoration contributions**, or any other Trust that is accredited by the Minister for the Environment to receive and invest **restoration contributions** in certain circumstances where the requirements of the Standard for Restoration Actions and Restoration Contributions are met.

**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 (e.g. the same species or value).

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

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

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

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

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

The price of a restoration contribution is set in the [Regulations], and includes the following:

- cost of equivalent restoration to deliver a **projected gain** [(at least X%)] in the **Bioregion** where the impact occurs (including, where relevant, land lease or purchase),
- cost of managing and monitoring the restoration activity,
- administration levy to cover the operation of the [Conservation Trust], and

- risk component to manage uncertainty and adaptive management to ensure an overall environmental benefit from the **restoration contribution**. This risk component will be reduced where a **restoration contribution** is delivered in accordance with the conservation outcomes set out in a regional plan, and increased where an impact is outside a Development Priority Area specified in a regional plan.

**Securely protected:** Gains are appropriately secured for the duration of the impact for conservation purposes, including protecting the gains from future development. Suitable mechanisms could include covenants on the land that the restoration activities are taking place on, 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, contracts with management action providers, or certain types of certificates under statutory-based markets.

**Significant impact:** as defined by the [legislation].

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# National Environmental Standard for Regional Planning

## National Objective

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

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

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

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

Regional Plans will:

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

## National Standard

1. Regional Plans must:

*To deliver **net positive outcomes** for MNES at landscape and/or seascape scale*

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

*To ensure understanding of the region's values*

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

*To guide future protection, conservation, restoration and development*

- f. Set environmental, heritage, cultural heritage and development objectives for the region that deliver a **net positive outcome** for MNES at a regional scale.
- g. Set out strategies to achieve these objectives, including:
  - i. Identification of [**Conservation Zones**] and [**Development Zones**].
  - ii. Identification of **regional restoration measures** that more than compensate for the impacts on MNES of **priority development activities** 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 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 First Nations groups, local communities, local government and other relevant stakeholders. This engagement will be guided by relevant National Environmental Standards.

## *Data*

- 3. Regional Plans will be informed by relevant scientific evidence, expert judgment and Traditional knowledge (including information gathered during the mapping of the region's values) and relevant Commonwealth, state and/or territory **conservation planning documents**. The approach taken will be informed by the National Environmental Standard on Data and Information.

4. Information gaps will be identified and addressed through risk-based management that may include the collection of additional information.
5. Regional Plans must specify ongoing monitoring, evaluation and reporting requirements. Regional Plans must specify a **baseline** for MNES and may specify other baselines relevant to the objectives of the Regional Plan.

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## Definitions

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

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

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

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

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

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

Net positive outcomes can be achieved through:

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

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

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

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

# National Environmental Standard for Data and Information

## National Objective

This Standard promotes transparency, accountability, and public trust in decision-making relating to Australia's environment and heritage through setting out frameworks for collection, sharing, assessing reliability, and determining appropriate use of environment data and information.

## National Standard

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

In providing environment data and information to the decision maker to support a decision, or inform understanding of key issues, parties must demonstrate how it is:

1. **Findable, Accessible, Interoperable and Reusable** (or “[F.A.I.R.](#)”) in accordance with HEIA Technical Guidance [Technical Guidance is being developed]. In brief this means:
  - a. **findable** – ideally by being published as soon as possible after collection and enduring to allow re-use to inform future decisions with historical context;
  - b. **accessible** – by excluding, as reasonable and appropriate, any limitations on access and assigning, where possible, a [Creative Commons No Rights Reserved](#) license;
  - c. **interoperable** – including by being consistent with science-based, published national protocols for data collection and sharing [for example: [EMSA Protocols Manual EMSA Protocols Manual](#)];
  - d. **reusable** – including by being persistent and having metadata clearly describing provenance and intended use.
2. **Ethical**, in accordance with HEIA Technical Guidance, including by having been developed, created and managed through best-practice processes for: compliance with relevant legislation; protecting privacy and sensitive data; transparency of governance; in compliance with ethics approvals and requirements; and appropriate inclusion of stakeholders by informed consent.

First Nations data, knowledge and/or information provided to support decision making under the Nature Positive regulatory framework must satisfy C.A.R.E. principles, in accordance with Technical Guidance issued by the Head of Environment Information Australia:

- a. **Collective benefit:** Data ecosystems shall be designed and function in a way that enables First Nations people to derive benefit from the data.
- b. **Authority to control:** First Nations peoples' rights and interests in First Nations data, knowledge and information must be recognised and their authority to control such data, knowledge and information be empowered.



- c. **Responsibility:** All parties working with First Nations data, knowledge and/or information must demonstrate how it is used to support First Nations people's self-determination and collective benefit.
- d. **Ethics:** First Nations people's rights and wellbeing with respect to their data, knowledge and/or information must be considered at all stages of the data life cycle and across the data ecosystem.<sup>i</sup>

***[Consultation is ongoing in relation to the text on CARE principles under ethical requirements, including with the First Nations Standard working group, First Nations Branch and others]***

3. **Fit for purpose**, in accordance with HEIA Technical Guidance, by ensuring suitability for intended use with reference to:
  - a. **completeness:** the absence of critical data gaps, either spatial or aspatial, that could affect the rigour and defensibility of a given decision;
  - b. **relevance:** how meaningful the data and information are to a given decision.
  - c. **accuracy:** the degree to which data accurately represent the intended phenomenon to the degree necessary to inform a given decision;
  - d. **interpretability:** how easily the data and information can be understood, communicated to others and applied to inform a given decision;
  - e. **timeliness:** how any gap between the date of observation and that of a given decision is understood and explained for how it could be addressed in using the data and information to inform a given decision.
4. **Reliable** for use in decision making. The following three-tiered hierarchy should be used to rate the reliability of environment data and information provided to inform decisions and protected matters under the Nature Positive regulatory framework.

**Tier 1 – Highest reliability:** environment data and information that: meets all F.A.I.R. and ethics principles; originates from a highly trustworthy source; was collected/created and shared ethically; and is based on methods which can be easily gauged for their high degree of accordance with EIA Technical Guidance. Methods are either: published and described in a respected peer-reviewed scientific or data journal; established in a recognised and enduring process for traditional knowledge management; or produced or approved by a persistent, statutory or otherwise independent/impartial, body.

Examples of Tier 1 environment data and information include:

- time-stamped, accurately-geolocated species observation data, maintained and publicly accessible via a state agency digital data repository;
- historical ocean wave statistics available from Australian Ocean Data Network;
- a species distribution model, or mapped critical protection areas, for a listed threatened species, informed by expert advice including from the Threatened Species Scientific Committee, and published by Environment Information Australia; or
- biological survey data which is consistent with HEIA Technical Guidance having been collected by experienced consultant ecologist, using an endorsed protocol and which

results in the relevant environment data and information being shared via the Australian Biodiversity Information Standard;

- a time and geo-referenced species observation which collected using an accepted and recognised method and verified by one or more recognised experts for its veracity.

**Tier 2 – High reliability:** environment data and information that: meets most F.A.I.R. and all ethics principles; originates from a trustworthy source including independent people or entities respected by their peers in relation to the type of data and information concerned; was collected/created and shared ethically; and is based on unpublished or uncertain methods which require review and analysis prior to being endorsed or approved.

Examples of Tier 2 environment data and information 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. The raw 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;
- 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 – Moderate to low reliability:** Environmental data and information that is from a source that cannot be determined as trustworthy and/or has been collected using a method not recognised by peers as credible and reliable.

Examples of Tier 3 environment data and information include:

- a digital photograph of a single specimen captured and stored locally by a non-expert individual, shared by posting to social media and subsequently endorsed as likely to be true 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.

To inform regulatory decision-making, and/or EIA knowledge holdings, environment data and information must meet certain reliability thresholds. The following provides a summary of how the reliability tiers will apply to decisions and protected matters under the Nature Positive regulatory framework:

- **Tier 1 environment data and information** – Automatically accepted to inform relevant regulatory decision-making, accreditation of third-party processes and for inclusion in EIA’s knowledge holdings.
- **Tier 2 environment data and information** – accepted to inform relevant regulatory decision-making, accreditation processes and inclusion in EIA’s knowledge holdings following a detailed and rigorous assessment process.
- **Tier 3 environment data and information** – not sufficient to inform regulatory decisions or accreditation processes. May be accepted for inclusion in EIA knowledge holdings if corroborated by more reliable data and information.

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## Definitions

### Environment data and information

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

- site or point-based observations, made either by humans or sensors (including ground-based, airborne, boat based, acoustic, and satellite sensors), of matters protected by the Act and/or attributes relevant to their protection (including attributes of the landscapes, ecosystems, freshwater systems and seascapes which contain them) including those which indicate magnitude of pressures, threats, and state changes to populations ecosystems, heritage and other protected places;
- locations and nature of interventions administered by the Commonwealth for protection and recovery via regulatory or investment activities;
- models, maps, metrics, data assets and reports made through processing, integrating and interpreting environment data, including through integration with non-environment datasets;
- published classifications, taxonomies, protocols, frameworks, documents identifying heritage or conservation significance of heritage and other protected places as well as of species and ecosystems, conservation planning documentation and management plans relevant to the design of processes to collect, manage and share environment data;
- unpublished or published information, relating to the environment, that is shared by knowledge holders, authors or place managers for the purpose of decision-making or reporting and other purposes of the legislation or to meet Australia's international environment and sustainability obligations.

### Findable, Accessible, Interoperable, Reusable (F.A.I.R.)

For supporting all decision making under the Act, HEIA Technical Guidance will include requirements, including for to ensure data are Findable, Accessible, Interoperable and Reusable F.A.I.R. This framework has international standing for application in data management for researchers and government.

The following definitions for F.A.I.R. are brief forms of what will be provided in HEIA Technical Guidance and which will be continuously improved:

- **Findable** – The data has a unique, persistent identifier and rich metadata. The unique, persistent identifier could be a digital object identifier or Handle. Metadata should be rich enough to ensure it is findable through disciplinary local or international discovery portals, and to allow any potential user to understand its lineage and assign confidence.
- **Accessible** – The data is retrievable by humans and machines through a standardised communication protocol, with authentication and authorisation where necessary. The data should be open by default; however, there may be instances when the data is sensitive due to concerns over privacy, cultural reasons, commercial interests or for ecological reasons. When data and information is not able to be open, the justification for this must be clearly explained including clarity and transparency around the conditions governing access and reuse and timing of review of access constraints.

- **Interoperable** – The associated data and metadata uses a formal, accessible, shared, and broadly applicable language for knowledge representation. This involves using community accepted languages, formats and vocabularies in the data and metadata. Metadata should reference and describe relationships to other data, metadata, and information through identifiers.
- **Reusable** – The associated metadata provides rich and accurate information, and the data comes with a clear usage licence and detailed provenance information. Reusable data should maintain its initial richness. For example, it should not be diminished for the purpose of explaining the findings in one publication. It needs a clear machine-readable licence and provenance information on how the data was formed. It should also use discipline-specific data and metadata standards to give it rich contextual information that will allow reuse.

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

#### **Technical guidance**

The HEIA will develop, publish Technical Guidance on procedures that may be followed, and/or protocols and information technology applications that can be used to support, and give effect to, the application of this standard. Technical Guidance will be revised periodically to maintain currency with best practice.

The HEIA issued Technical Guidance will include the following:

- overall guidance on how to approach reporting to demonstrate compliance with all components of this standard, including the F.A.I.R. and Ethical components.
- reliable links to HEIA-endorsed, enduring guidance developed by third party organisations, including protocols for field surveys and data sharing, and frameworks for describing data quality and reliability, or prescribing vocabularies to support consistency and aggregability.
- descriptions of HEIA-issued datasets, including National Environmental Information Assets, and guidance on their application and intended use;
- guidance on data management and data governance to ensure enduring access to high quality datasets.

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

# National Environmental Standard for Community Engagement and Consultation

## National Objective

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

## National Standard

### Requirement to publish relevant information for public comment

1. The **proponent** must **publish**:
  - a. **relevant information** about the proposal and its likely impacts on protected matters; and
  - b. an invitation for any persons to give the **proponent** comments<sup>1</sup> within 30 **business days** from the date of publishing the **relevant information**, including options for avoiding and mitigating the impacts of the proposal on matters protected under [the relevant part of the Nature Positive (Environment) Act].
2. The **proponent** must not apply a direct financial charge for any person to submit comments or access the **relevant information**.

### Requirements for an invitation to comment

3. The **proponent** must include with the invitation to comment:
  - a. instructions that explain how a person can provide comment;
  - b. an explanation of how any **confidential information** will be stored and shared;
  - c. an option for respondents to remain anonymous;
  - d. an explanation of how the comments received will be considered by the proponent;
  - e. information about which parts of the proposal can be amended and which parts of the proposal cannot change<sup>2</sup>;
  - f. information about whether any parts of the proposal have been changed or modified due to information provided by the public;
  - g. information about opportunity/s for **engagement** with the proponent about the proposal.

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<sup>1</sup> 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.

<sup>2</sup> For example, technical reasons relating to the proximity of a relevant resource.

## Requirement to engage

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

## Relevant information about the proposal and its impacts

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

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

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

## Reporting on community engagement and consultation

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



## Definitions

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

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

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

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

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

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

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

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

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