

Nature Positive

Department of Climate Change, Energy, the Environment and Water

E: naturepositivewebinar@dcceew.gov.au

Hon Tanya Plibersek MP

Minister for the Environment and Water

E: Minister.Plibersek@dcceew.gov.au

29 March 2024

Dear Minister,

RE: Comment on the proposed new Nature Positive laws

Thank you for the opportunity to make this submission in response request for comment on the proposed changes to Australia's environmental legislation.

Environmental Advocacy in Central Queensland

Environmental Advocacy in Central Queensland (**EnvA**) is a Central Queensland association concerned about the risks associated with coal mining, coal seam gas and climate change.

EnvA believes that opening new and expanding coal and gas projects:

- is contrary to meeting Australia's emission targets and Queensland's emission targets,
- is likely to result in irreparable damage to our local landscape and result in stranded assets,
- will put our local community at further risk of extreme weather such as increasing the intensity and frequency of storms, floods, droughts and bushfires,
- will damage our significant coastal resources including our beaches and the Great Barrier Reef through storm surge and increased coral bleaching events,
- will further degrade wildlife habitats of state and national significance through both habitat loss and climate change, and
- rarely take into consideration the views of Traditional Owners and local communities who are concerned about protecting their land from fossil fuel development.

EnvA's submission

Matters of National Environmental Significance

EnvA is concerned about the weakening of two Matters of National Environmental Significance (**MNES**) currently provided for in the Environment Protection and Biodiversity Conservation Act 1999 (**EPBC Act**).

1. Species at risk of extinction are protected as MNES, as are species considered extinct in the wild. The proposed changes to the Nature Positive laws would remove species considered extinct in the wild from this protection which would be a significant negative



outcome for any future re-release of such species from seedbank stock or captive breeding projects. It would also have significant negative consequences for re-discovery of any previously determined extinct in the wild species. Retaining 'extinct in the wild' species as MNES will provide automatic protection for both releases and re-discoveries and negate the need for slow relisting processes which will be ineffective to deal with any urgent threats.

2. The draft reforms propose a change to how nuclear actions are defined. The current EPBC Act includes a nuclear action trigger to protect MNES from the impacts of nuclear actions. The proposed reforms will narrow this definition to 'radiological impacts'. EnvA considers that the current nuclear action trigger must be retained in any new environmental laws.

EnvA also considers that two additional 'triggers' should be included in the new environmental laws:

1. Of high importance is the introduction of a climate change trigger. Severe impacts from climate change on ecosystems and wildlife are becoming more frequent and devastating for our wildlife species and important 'protected' ecosystems. A new mechanism must be included in the reformed legislation to enable the proper assessment of new and expanding projects on the basis of their total carbon emissions.
2. A land clearing trigger needs to be introduced to address the failure of the current EPBC Act in responding to the land clearing crisis. This should include a trigger for any proposal for clearing land that does, or is likely to contain, threatened species and communities. Here in Queensland, 2.1 million hectares cleared between 2016 and 2021 was in areas mapped by the Federal Government as likely to contain threatened species, but this was rarely assessed under the EPBC Act. Reducing land clearing will also assist in Australia's commitment at the COP 26 climate summit to end deforestation by 2030.

National Environmental Standards

EnvA notes that clear and specific standards were the centre-piece of the Graeme Samuel's independent review of the EPBC Act.¹ The draft standards proposed are very weak and fail to set clear rules and offer minimal protection to threatened species and communities.

We consider that the new standards must include:

- Clear requirements to maintain and improve both habitat and population numbers of threatened species and ecological communities.
- Rule out impacts that cause declines in population numbers of threatened species, or adverse impacts to habitat critical to the survival of threatened species, including cumulative impacts.
- A requirement to be consistent with threat mitigation statements, recovery plans, listed threatening processes and threat mitigation statements.

Climate Change

EnvA acknowledges that climate change threatens every ecosystem and our most vulnerable and iconic wildlife. As noted above under MNES, a climate trigger is critical to ensure that decision-makers properly scrutinise the climate risk of proposed projects, including all new and expanding coal and gas projects. Decision-makers must also have the power to reject projects when the estimated emissions are not consistent with the protection of MNES and/or legislated emission reduction targets.

¹ <https://epbcactreview.environment.gov.au/resources/final-report>

Project assessments should have to consider the total and cumulative impacts of a project or group of projects by the same proponent including all Scope 3 emissions.

Community Engagement

EnvA has an environmental advocacy role with a focus on new and expanding coal and gas projects. We work closely with landholders, stakeholders and like-minded environmental groups.

We have made numerous submissions on many proposed projects and policies related to the coal, gas and the transition to a renewable energy economy².

Our work in preparing submissions is challenging, time consuming and usually with very limited timeframes. We are a mostly volunteer-based group, and hence we only do this because of a commitment to help our environment.

It is always disappointing when nearly all of the projects we make comment on are approved with some tokenistic conditions and offsets, despite the obvious significant environmental impacts on MNES.

EnvA strongly suggests that an opportunity for a merits review is essential to include in the new legislation. Community participation must not end with a project's final decision. The new laws must ensure that once a decision has been made, groups that care about the environment have the right to seek independent review of the merits of decisions, not just whether decisions followed the right process.

An opportunity for a merits reviews will also ensure the proposed EPA rigorously assesses and decides on applications based on the best available science. In doing so, this will create a culture of scientifically sound and justifiable decision making.

Conservation planning

EnvA notes that the proposed new environmental laws will introduce a new concept of "unacceptable impacts" to project assessments. It is our understanding that any new project determined to have unacceptable impacts on a protected matter will not be approved. This is a positive improvement to the legislation and will provide certainty for the proponent and the community concerned about our environment. It has a real potential to deliver increased protection for threatened species and their habitat if the definitions of unacceptable impacts are better defined and strengthened.

It appears that unacceptable impacts are defined as reducing the viability of a threatened species. It is imperative that this is more clearly defined as from our experience, cumulative impacts on any threatened species or community are based on the percentage loss of habitat at the time of application, with no consideration of previous impacts. The definition needs to be clear on how 'viability' will be defined. In our view, this means demonstrating that the species or community is not declining, and that critical or important habitat will not be further impacted by the proposed action.

The current definition of critical habitat must be retained in the new legislation along with the protection of critical habitat. It is a term with a clear legal meaning and is identified in recovery plans for many species. It includes vital habitat for threatened species like are as necessary for breeding, maintaining genetic diversity and long-term evolutionary development,

² <https://envacq.org/home-2/submissions/>

and species recovery. It has the best potential to protect important threatened species habitat on the ground, where it counts.

We also consider that the new law must make it mandatory to identify and protect critical habitat, using its current legal meaning, for every listed threatened species and ecological community.

Environment Information Australia

A key recommendation from the independent review of Australia's national environment laws¹ is to ensure all environmental decision making requires the use of the best available science. This requirement is missing from the proposed new law and should be delivered as a requirement in the new National Environmental Standards, and in the Act.

Environment Protection Australia

The federal government has already committed to introducing a new federal environmental authority to be called Environment Protection Australia.

This is a welcome step forward that has the potential to move decision-making towards the best available science and away from the political views and influences of the government.

EnvA strongly supports the EPA concept and recommends that this authority be established as soon as possible as a trusted decision-maker that:

- Makes independent assessments and decisions based on the best available scientific knowledge,
- Monitors compliance through inspections, investigations and assessments, and
- Takes action against people or companies that damage our environment.

We would like to see that the EPA has safeguards built in to protect its independence from political or company influence through a board with qualified members and supported by clear governance and reporting requirements. The EPA must also be resourced and empowered to undertake their role as an independent and apolitical authority.

We also believe that all decisions made by the board are not only reliant on the CEO of the board's assessment but rather than a consensus of the EPA board.

Environment Assessments and Approvals

In addition to comments already stated above, EnvA also believes that there is a need to retain the key strengths of the current processes including:

- Proponents must continue to be obligated to apply for approval if they think their project may or will have a significance impact on MNES. This critical obligation cannot be weakened to a discretion, as outlined in the proposed reforms.
- Regulators must continue to be required to provide proponents with guidelines conducting their impact assessment. Tailored guidelines may also be provided to suit specific projects.
- Actions that *may* have significant environmental impacts should be required to go through a proper assessment, not progressed on a low-impact pathway. Only projects with *no* significant environmental impacts should be suitable for low-impact pathway approval.

In addition, the amount of time the EPA has to assess project applications must be increased. Under proposed reforms, decision timeframes are insufficient to allow for rigorous assessment:

- For 'low-impact' pathway applications, where the applicant does not believe their proposal will have significant impacts on the environment, the proposed timeframe is 2 weeks.
- For 'standard' pathway applications, where the applicant believes their project may or will have a significant impact, the proposed timeframe is 60 days for the EPA to conduct its assessment and determine any required conditions. Currently, assessment and approval of many projects takes over 3 years.

More time must be built into the system to make sure the EPA has the time it needs to properly scrutinise applications, identify environmental impacts and review these impacts against National Environmental Standards and any listed unacceptable actions, consider any species' recovery and threat abatement plans, decide on the application and determine any required conditions.

Other – offsets

No proponent should be allowed to buy their way out of environmental protection. Australia's new laws must:

- Not permit financial offsets or 'restoration contributions.'
- Only permit offset projects in strictly limited circumstances, in line with the best available science.
- Recognise not everything can be offset. Damage to critical wildlife habitat, World Heritage and National Heritage cannot be made good by a project elsewhere, and must be excluded from restoration contributions on a "pay to destroy" basis.

Proposed reforms could see project proponents able to make payments instead of project-specific offsets – meaning they could buy their way out of protecting the environment.

If allowed, these payments are likely to contribute to the extinction of some threatened species, ecological communities and migratory species.

EnvA is of the view that the reforms are designed to improve, rather than weaken environmental protection and hence we consider that:

- The use of offsets needs to be minimised further, with strict rules applied to their use.
- Offsetting should only be allowed in limited circumstances, in line with the best available science. This is because offsetting rarely leads to achieving good biodiversity outcomes.
- The EPA should be required to identify that the necessary offset for a protected matter can actually be delivered before determining whether an offset will be permitted.

The new laws must recognise not everything can be offset – some of our plants and animals are simply too precious and rare to be traded-off. This includes critical habitat for all threatened species, all World Heritage places and National Heritage places.

Further improvements to offsetting under new laws must:

- Limit time lag to benefits from the offset, particularly if there is a need for rehabilitation or reestablishment of habitat required,
- Require the end condition and quality of the offset site to be at least as high as the impact site over a much larger area,
- Be located in the project region to ensure that the geographical range of species and communities are not impacted, and
- Require offsets to be in biologically similar areas and delivered in biologically meaningful timeframes.

Thank you again for the opportunity to make comment on the proposed environmental legislation reforms.

Kind regards

A handwritten signature in blue ink, appearing to read 'Coral Rowston', with a stylized flourish at the end.

Dr Coral Rowston
Director
Environmental Advocacy in Central Queensland Inc.