



Climate Council of Australia

Submission to: Expert consultation process - design of the Nature Positive package

Addressed to: Taskforce for Environmental Law Reform and EPA establishment
Department of Climate Change, Energy, the Environment and Water
environmentlawEPATaskforce@dcceew.gov.au

Submission from: Climate Council of Australia Ltd
223 Liverpool St, NSW 2010
Tel: 02 9356 8528
Email: info@climatecouncil.org.au

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About the Climate Council

The Climate Council is Australia's own independent, evidence-based organisation on climate science, impacts and solutions.

We connect decision-makers, the public and the media to catalyse action at scale, elevate climate stories in the news and shape the conversation on climate consequences and action, at home and abroad.

We advocate for climate policies and solutions that can rapidly drive down emissions, based on the most up-to-date climate science and information.

We do this in partnership with our incredible community: thousands of generous, passionate supporters and donors, who have backed us every step of the way since they crowd-funded our beginning as a non-profit organisation in 2013. To find out more about the Climate Council's work, visit www.climatecouncil.org.au.

Introduction

The Climate Council welcomes the opportunity to provide further input to the expert consultation process informing the development of the Albanese Government's reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

These reforms are an essential step in strengthening Australia's environmental and climate frameworks to genuinely protect our precious natural environment from the major threats it faces. They are a once-in-a-generation opportunity to tackle the interconnected climate and biodiversity crises which are escalating extinction risks. It is critical that holistic reforms to Australia's nature laws progress during 2024, and are delivered in the current parliamentary term – in line with the Albanese Government's commitments in the [Nature Positive Plan](#) (DCCEEW, 2022).

An enormous amount of departmental and stakeholder time, effort, policy and legal work has been contributed towards developing these reforms in recent years. With the Albanese Government having concluded expert consultations on the proposed policy settings and legislation in late March, it is now time to accelerate progress towards the public release of complete reform proposals and the introduction of a legislative package to the Parliament.

The Climate Council takes this opportunity to highlight and reiterate feedback previously provided to the Taskforce about how the proposed reforms need to be strengthened to ensure Australia's new national nature law protects nature from climate change for the first time. The current EPBC Act has a gaping hole at its heart because it does not address climate change. At a time of escalating climate harm to nature and communities alike around Australia, this critical gap ***must be fixed*** in the new nature law. Protecting nature from climate change is an essential priority for a modern and holistic national nature law. The Parliament and the Australian community should rightly expect to see this embedded as a clear priority in the Albanese Government's reform package.

1. The urgency of reforming Australia's national environment law is well understood and acknowledged

The extreme threats now facing Australia's environment, and the inability of the current EPBC Act to effectively address these, have been extensively documented in recent years. Taskforce members would be well aware of the findings and evidence-based insights of both the [Independent Review of the EPBC Act](#) conducted by Professor Graeme Samuel (2020) and the [State of the Environment Report](#) (2021). These important works have underlined that Australia's environment is under extreme and escalating pressure, and urgent action is needed to tackle major threats including habitat loss, invasive species, extractive land use practices and climate change.

The Albanese Government has acknowledged these critical threats, and taken welcome responsibility for addressing them. With the release of the *Nature Positive Plan* in December 2022, the government confirmed its commitment to “reform Australia’s environmental laws to better protect, restore and manage our unique environment.” (Australian Government, 2022). Since that time, the government and a range of stakeholders have worked together to develop a comprehensive package of laws and policy that can replace the EPBC Act with a stronger, modern and comprehensive nature protection framework. With over 18 months of consultation and policy development now having been undertaken – building on several years of work and analysis by the Samuel Review – it is time for the Albanese Government to accelerate finalisation of a reform package which reflects this detailed stakeholder input, and release this for the community and Parliament to scrutinise.

2. Holistic reforms must be delivered this term, to get Australia on track with tackling our twin climate and biodiversity crises

The climate and biodiversity crises are threatening nature here and now, so time is of the essence. Climate Council’s (2023) report [*Beating Around the Bush: How Australia’s national environment law is failing climate and nature*](#) catalogues a wide range of environmental harms that are being aggravated and accelerated by global warming. These range from more frequent and extreme bushfires, floods and droughts devastating natural landscapes; to ocean heating and acidification putting marine species at risk; and changing climatic niches driving some plants and animals to extinction. Rampant habitat loss and other human-induced threats are driving high rates of species decline and loss of biodiversity at record levels. Worse is on the way if we do not act now to cut climate pollution and protect nature through a holistic set of interlocking environment and climate laws.

At the same time, Australia is in the midst of a once-in-a-century renewal of our energy and industrial systems as we seek to move beyond fossil fuels and embrace renewable electricity. An effective, modern national environment law can help to enable responsibly delivered clean energy and industry projects which deliver for nature, climate and communities. We need a national environment law which is able to say an efficient yes to projects which will help us drive down climate pollution and deliver nature positive outcomes, and a clear no to projects which will cause more climate harm and nature loss.

For all these reasons, it is essential the Albanese Government’s promised reforms to the EPBC Act are delivered in full, during this term of Parliament. Extensive expert input, provided in good faith by stakeholders over the last 18 months, should mean the government is well positioned to deliver a comprehensive and effective package in the coming months. Failing to deliver these reforms this term would leave our natural environment dangerously exposed to escalating risks and threats from climate change and habitat loss.

3. It's time to take the next step – the community and the Parliament must have a chance to join this conversation

Climate Council has valued the opportunity to be part of expert stakeholder consultations on the initial policy development and legislative drafting underpinning the reforms to the EPBC Act. We note that inputs to this process have been diverse and extensive, incorporating peak bodies and major industry representatives from across the Australian economy including mining, energy, manufacturing, industry, housing and business groups alongside climate and environment stakeholders.

To date, this consultation has involved eight full-day sessions held over a period of six months, during which stakeholders have had the opportunity to interact directly with representatives of the Department of Climate Change, Energy, the Environment and Water. These sessions have been augmented by extensive direct engagement and written feedback on the consultation materials in between sessions. In short, expert stakeholders – including the Climate Council – have had extensive opportunities to make our views known, and the government has had extensive access to feedback and insights about the reforms as they have been developed.

With this phase of consultation having been concluded in March, it is now essential that the government rapidly consolidates and incorporates this expert input and moves the reform process forward by releasing its full, proposed legislative package. Expert stakeholders need visibility of how consultation inputs have been addressed and incorporated; the community needs to understand the proposed final scope of these reforms; and the Parliament needs to assess their effectiveness in addressing key priorities for effective nature protection. The release of a detailed and comprehensive Exposure Draft of the legislative package which indicates how the Albanese Government plans to address critical gaps in the current EPBC framework is the clear and logical next step.

4. The final reform package must protect nature from climate change

As part of preparing this comprehensive Exposure Draft for release, the Albanese Government should take on board the clear and consistent feedback from a wide range of stakeholders and ensure the package includes reforms to properly protect nature from climate change for the first time.

The Climate Council has previously provided clear, detailed and specific feedback to the Department and the Government about how climate considerations can be built into the new law, so that it effectively deals with one of the biggest threats now facing our environment. We reiterate and provide this feedback again in the following section, and would be happy to assist the Taskforce in further steps to incorporate these recommendations into the final legislative package.

4.1 Addressing climate in the federal government's Nature Positive framework

Reducing climate pollution requires a whole-of-government approach. There are a range of federal government laws and regulations for regulating and reducing emissions from *existing* projects, facilities and industries, including the *Climate Change Act 2022* and the Safeguard Mechanism. However, expert legal advice (Peel, 2023) confirms emissions from proposed, individual new projects are not currently assessed anywhere under Commonwealth law. This is a major gap in our existing regulatory framework that leaves all Matters of National Environmental Significance critically exposed.

The Nature Positive reform package developed so far risks replicating this gap, because it does not currently recognise or deal with the impacts of greenhouse gas emissions on Matters of National Environmental Significance. The new law should embed mandatory consideration of climate change impacts as a core part of project assessments. In practice, this means assessing the greenhouse gas emissions of all proposed new projects, and their expected role in contributing to, or reducing, climate heating. This can be achieved by ensuring the new nature law can identify proposed actions which may cause climate harm and the full range of protected matters these may impact, and by embedding climate considerations throughout the new bill in the following ways.

What	Why
<p>As part of the new National Environmental Standard for Matters of National Environmental Significance, clearly articulate that maintaining a healthy environment and protecting Matters of National Environmental Significance requires addressing climate change and its key cause - greenhouse gas emissions.</p>	<p>National Environmental Standards are a new feature of the Nature Positive Bill. They are intended to articulate the outcomes we seek to achieve through the national environment law, and provide a reference point for decision-makers in aligning individual project assessments with long-term environmental protection objectives.</p>
<p>State that the objects of the Bill include: helping to achieve the commitments of Australia's <i>Climate Change Act</i>, contributing to the global Paris Agreement goal of holding global warming as close as possible to 1.5 degrees, and protecting Matters of National Environmental Significance from harmful climate change and its impacts.</p>	<p>The objects of the Bill are an important place for articulating its overarching intent and purpose. The objects provide guidance to decision-makers about how the provisions of the Bill should be interpreted and applied. There are currently 14 pieces of Commonwealth legislation that are explicitly and directly linked to Australia's <i>Climate Change Act</i> - the current EPBC Act is not among them.</p>
<p>Ensure project proponents are required to provide full disclosure of direct and downstream greenhouse gas emissions from proposed projects, on both an annual and lifetime basis, when lodging applications for project assessment.</p>	<p>The proposed reforms would require disclosure of Scope 1 (direct) and Scope 2 (electricity) emissions. Disclosure of downstream emissions is also essential because these emissions drive climate change - which threatens the environment - no matter where they are burned in the world.</p> <p>The purpose of our national environment law is to protect the environment; considerations about which country's emissions ledger downstream emissions will ultimately be recorded in is not a relevant consideration in this context. The inclusion of 'direct and downstream' greenhouse gas emissions intentionally moves away from the language of Scope 1, 2 and 3 which are drawn from an emissions accounting paradigm.</p>

What	Why
<p>Ensure information on greenhouse gas emissions, and the impact of these on increasing climate change risks to the environment, is a mandatory consideration for decision-makers when assessing projects under the Act.</p>	<p>The new Bill will set out a specific list of factors decision-makers have to take into account when assessing project proposals. Including climate change impacts on nature in this list will ensure that every project is considered for its role in either contributing to, or helping to address, this significant risk to nature. Making climate change a mandatory consideration for decision-makers would ensure that the negative impact of projects producing greenhouse gas emissions is properly considered. It would also mean that the positive benefit of projects which help reduce greenhouse gas emissions could be acknowledged.</p>
<p>Ensure the Bill reflects the need for alignment with Australia's international and national climate commitments by explicitly referencing the UNFCCC framework and <i>Climate Change Act</i>.</p>	<p>The new Bill will include a list of international and national agreements and laws that project decisions must be 'not inconsistent with'. Adding the core international and national climate governance agreements and laws to this list will ensure that decision-makers have to consider whether approving individual projects is consistent with Australia delivering on its climate commitments.</p>
<p>Update the definition of environment to recognise that 'natural atmospheric cycles and processes', and/or 'the climate system' are aspects of the environment which require protection under the law.</p>	<p>The existing EPBC Act defines 'environment' in a manner which does not recognise the climate system and atmospheric conditions as an integral part of the environment. Updating this definition to encompass these integral components could improve how the law's protection obligations are interpreted and applied by decision-makers.</p>
<p>Update the definition of impact to encompass the harm caused by greenhouse gas emissions in fuelling climate change which damages the environment. Require decision-makers to apply this definition in a way which reflects up-to-date scientific knowledge about the drivers of climate change and its risks to the environment.</p>	<p>The existing EPBC Act defines 'impact' in a manner that is too narrow to encompass the harm that greenhouse gas emissions do in fuelling climate change threats to nature. Clarifying the definition of impact in the new Bill will mean decision-makers must properly consider the strong link between greenhouse gas emissions and climate change impacts on nature.</p> <p>In establishing a more appropriate definition of impact, this can ensure that:</p> <p>i) project proponents understand and recognise when a project must be referred</p>

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	<p>for assessment;</p> <p>ii) decision-makers apply appropriate tests, when determining whether a proposed project will have an impact on protected matters, and whether this impact is significant or unacceptable.</p>
<p>Update the definition of unacceptable impact to encompass major contributions to additional greenhouse gas pollution.</p>	<p>The new Bill will determine ‘unacceptable impacts’ for each of the Matters of National Environmental Significance. Decision-makers will be able to decide that a project has unacceptable impacts on protected environmental matters and should not proceed. Updating the definition of unacceptable impacts to encompass projects which would produce significant new greenhouse gas emissions is an important practical way to ensure decision-makers are empowered to make decisions which are consistent with Australia’s climate commitments, where these are warranted in individual project assessments.</p>
<p>Properly connect the Safeguard Mechanism and the new Bill so that key pieces of Australia’s climate and environmental regulatory architecture work cohesively together. Ensure that information on consistency with the Safeguard Mechanism’s fixed carbon budget and ability of projects to comply with requirements under the scheme is available to decision-makers when assessing project proposals.</p>	<p>Under the current proposals, Australia’s national environment law and the Safeguard Mechanism will not be effectively connected to each other. Projects are proposed to be assessed by the Environment Protection Authority; only once they are approved will they then formally be referred to the Climate Change Minister for assessment of their liabilities under the Safeguard Mechanism’s regulatory framework and impacts on its fixed carbon budget.</p> <p>The Safeguard Mechanism and the national environment law should be seamlessly integrated with each other so that the federal government can assess projects holistically for their consistency with national laws and policies. Requiring the Environment Protection Authority to seek advice from the Climate Change Minister as part of primary project assessments, and consider it as part of their assessment of project impacts, would ensure these two laws work positively together.</p>

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<p>Use regional planning to achieve positive outcomes for the environment and climate together</p>	<p>Regional planning is a positive feature of the proposed new environmental protection framework. Areas will be assessed at a regional scale to pre-identify sites for protection, restoration and sustainable development. Regional planning can be used to advance priority initiatives which help address climate change, like responsible development of clean energy and industry infrastructure. The use of regional planning to enable large scale fossil fuel development or other environmentally-damaging activities can be explicitly ruled out, so that this mechanism is specifically used to advance positive impacts for nature and climate together.</p>
<p>Link threat abatement planning to whole-of-government emissions reduction strategies and plans.</p>	<p>'Loss of terrestrial climatic habitat caused by anthropogenic emissions of greenhouse gases' is recognised as a Key Threatening Process for protected matters. To date, a Threat Abatement Plan has not been developed and enacted because addressing the threat of greenhouse gas emissions requires a broad set of actions - many of which occur beyond the scope of the EPBC Act or DCCEEW responsibility. The new Bill will provide for Threat Abatement Strategies to be developed to address Key Threatening Processes within the updated environmental protection framework.</p> <p>The federal government's broader emissions reduction plans and commitments could be leveraged as the overarching Threat Abatement Strategy for this Key Threatening Process. This would allow decision-makers to determine whether proposed projects are consistent with these national plans, and therefore whether approving them is consistent with addressing the Key Threatening Process.</p>
<p>Enable environmental decision-makers to seek advice from the Climate Change Authority in their assessment of projects.</p>	<p>The Bill will name a list of Statutory Committees which decision-makers can seek advice from in the course of assessing proposed projects. Adding the Climate Change Authority to the list of bodies decision-makers can seek advice from will help bolster consideration of climate risks and impacts, by giving them a source</p>

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	of independent, expert advice to draw on when considering individual projects and the cumulative impacts of projects over time.
Ensure there is consistency in how projects are assessed under the new national environment law and the offshore oil and gas assessment regime .	Arrangements are in place under the existing EPBC Act for the National Offshore Petroleum Safety and Environmental Management Authority to approve offshore oil and gas projects where these are to be undertaken in a manner consistent with a standing environmental authorisation. Once the national environment law has been strengthened and improved, the standing NOPSEMA authorisation should be reviewed and aligned to the new standards of protection applying to onshore projects. This will ensure there is consistency in how proposed projects are assessed under different federal laws, and that the same high environmental standards apply across the board.
Ensure that proposed projects under consideration when the new law takes effect are assessed under the new, stronger environmental protections .	There is an existing pipeline of proposed projects which may cause harm to nature, but which are yet to be fully assessed under the flawed <i>Environment Protection and Biodiversity Act 1999</i> . The government has proposed that any project in the EPBC assessment process when the new Nature Positive Law takes effect will continue to be assessed under the provisions of the old law. The transitional provisions for the new law should state that any project which has not received a final decision on the day it takes effect transfers to the new regime for assessment under its stronger criteria.

Conclusion

Australia's national environment protection law is supposed to protect our precious natural places and species. It is comprehensively failing, but we have the opportunity to fix this in 2024.

The Albanese Government must not let this important moment pass, or allow the current momentum to lapse. The urgency of this task is too great, and both government and stakeholders have committed too much time, effort and goodwill to this essential reform, to change course now.

We urgently need an effective, modern nature law that comprehensively deals with the major threats now facing our environment - including climate change. The Albanese Government committed to fix this law, as part of halting Australia's extinction crisis and getting us on track for a nature-positive future. The government should now take the next step towards delivering on this commitment by releasing the full proposed reform package and moving to legislate it during the current Parliamentary term.

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