



Environment Institute
of Australia and
New Zealand Inc.

18 December 2023

Nature Positive Taskforce
Department of Climate Change, Energy, the Environment and Water
Ngunnawal Country
John Gorton Building
King Edward Terrace
Parkes ACT 2600

Via email: environmentlawEPATaskforce@dcceew.gov.au

Dear Taskforce,

RE: Second round consultation on Australia's new national environment laws – EIANZ feedback

Thank you for the opportunity for the Environment Institute of Australia and New Zealand (EIANZ) to participate in the consultation on Australia's new national environment laws. This submission has been developed collaboratively by our representatives, Carolyn Cameron and Dr Ailsa Kerswell, with endorsement from the EIANZ Board.

The EIANZ is a non-profit, multi-disciplinary association of environmental practitioners. Its membership is represented by a diverse range of technical disciplines including scientists, policy makers, engineers, lawyers and economists. We advocate for environmental knowledge and awareness, advancing ethical and competent environmental practice.

The material reviewed in this second round of consultation included both new material, updated policy proposals presented during the tranche one consultation and draft legislation. We have therefore provided feedback which is further to our previous submission (letter dated 14 November), much of which is still relevant. We also highlight key considerations in the new material.

We note that the policy documents provided as part of this second round of consultation will be made publicly available in January 2024. Therefore, we will consider this material more fully in consultation with our EIANZ colleagues and will provide more detailed feedback in the new year. This will build on our initial key points below.

Feedback further to our previous submission

Much of the feedback in our previous letter still holds, and we note the following:

- We are pleased to see that climate change is more fully addressed and better represented with the new policy statements, particularly regarding regional planning.
- We continue to have concerns about the consultation national environmental standard. The revised standard still does not provide for consultation and community participation outside of project-related decision making e.g. in recovery strategy processes. We elaborate on this below with regard to regional plans.
- We continue to stress the need for internal coherence across all the national environmental standards and the new Act. Each of these instruments must talk to each other and be able to be delivered concurrently.

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- Additionally, the national environmental standards should apply to *all* decision making under the Act, i.e. be more strongly embedded in the Act than the current proposal to ensure project-level decisions are 'not inconsistent with' the standards or only adopted at the discretion of the decision maker. The standards should apply holistically and stringently, as recommended by Dr Samuel in the independent review.
- While we recognise the tight frame the Taskforce is operating within, we recommend policy drafters take a step back and review their recommendations against those of the Samuel Review. We consider the outcomes of the independent review robust and evidence-based and if implemented in full, should lead to better environmental and operational outcomes.

Feedback on new issues

Our feedback on new issues is focused primarily on strategic assessments, regional planning and landscape scale decision making. We will elaborate on the points below and the other policies presented (accreditation, EPA, etc) in the new year and after consultation with the wider EIANZ membership.

Strategic assessment policy paper

We are supportive of the following concepts / elements included in the strategic assessment policy paper:

- Gateway process to commence a strategic assessment
- The existence of and role for an 'approval holder' being included
- A process for enabling minor and major variations to an endorsed plan being included
- The role of and risks from climate change being explicitly addressed.

We note the policy paper suggests that strategic assessments will only encompass a 'strategic plan' rather than the current scope under Part 10 of the EPBC Act to consider a policy, program or plan (PPP). We strongly recommend the proposed scope of strategic assessments under the new Act includes PPPs, as this is aligned with international best practice¹ and indeed consistent with environmental protection legislation in other Australian jurisdictions². The existence of a gateway for strategic assessments should allow for any PPPs that are not compatible with a strategic assessment approach to be diverted at the outset.

Decision making at a landscape scale policy paper

The explicit inclusion of processes to make decisions at a landscape scale is a beneficial inclusion in the new Act and has our support.

The process setting out mapping and planning is a good foundation to landscape scale decisions. However, we also note:

- During implementation, a lack of data to inform mapping should not prevent the implementation of future steps and decisions, noting that uncertainty due to data deficiencies should be accounted for in robust systems and processes.
- In addition to mapping and planning, there also needs to be an assessment pathway that allows for an understanding of potential impacts of development and has iterative

¹ https://www.iaia.org/uploads/pdf/Fastips_7SEAlternatives.pdf.

² E.g. the Northern Territory *Environment Protection Act 2019* allows for the assessment of a policy, program, plan or methodology via a strategic assessment pathway.

feedback loops e.g. plan – assess – revise the plan. See also our comments on regional planning below.

Regional planning policy paper and draft national standard

We are supportive of the concept of regional planning and agree this has the potential to be a useful tool in contributing to better resolving land use planning challenges, particularly in areas of development pressure.

This policy paper focused on the process to make a regional plan. However, it does not include the need for an assessment of impacts and we strongly recommend this omission is addressed in the new Act. Impact assessment is necessary, both to develop a robust regional plan via iterative planning and assessment (as noted above) and to ultimately set the conditions for the regional plan (include restoration measures).

The plan making process does not appear to provide an avenue for community consultation in a meaningful way during developing the regional plan. We recommend the process for stakeholder participation in regional plan development is strengthened – please see our wider suggestions on this issue in our previous letter. Stakeholder participation during plan development is particularly necessary given the role of regional planning in addressing land use conflict where stakeholders have competing priorities. We note the Queensland government has a heavy focus on stakeholder engagement to underpin their Renewable Energy Zone Readiness Assessments, and this may offer a concrete example of how such a process may work.

We note the scope of the regional plan will include conservation zones and development zones, but there may also be areas outside of these zones within the regional plan area. This will require careful thought as to what/if any actions may be allowable within these 'undefined' areas and how they may be authorised. For example, would new action be somehow subject to the conditions of the regional plan or would they need a standalone project approval? Also, how would existing uses be incorporated e.g. farming, particularly as we know the cumulative impacts associated with these historic 'deaths by a thousand cuts' have collectively had significant impacts on Matters of National Environmental Significance (MNES)? For further rationale, please see this paper by the Wentworth Group of Concerned Scientists: [Preventing Death by a Thousand Cuts](#).

Further on the scope of regional plans, we note the policy is not clear about whether net positive outcomes are required for some or all MNES. A key consideration in regional scale assessments must be trade-offs, whereby the most 'important' values are protected, but this may come at the expense of other values which may be more robust to disturbance. We recommend this is clarified in the new Act.

We note the requirement for regional plans to include 'restoration measures that *more than* compensate for the impacts on MNES of priority development actions in the development zone'. We recommend that careful thought is given to how this is defined, achieved and measured. For example, what is 'more than' and how does this relate to the MNES national environmental standard requirement around net positive. Additionally, and as noted above, impact assessment will be required during plan making in order to quantify impacts and then determine appropriate compensation and its magnitude.

We look forward to continuing to be part of the consultation process, with the view to providing constructive feedback aimed towards achieving better outcomes for both the environment and those that interact with our national environmental laws.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Vicki Brady".

Vicki Brady
President
Environment Institute of Australia and New Zealand Inc.

