



# POLICY SUBMISSION

## EIANZ feedback on Environmental Protection Reform Consultation Paper 1: A smooth transition to the National EPA

21 May 2026

### 1.1 About EIANZ

The Environment Institute of Australia and New Zealand (EIANZ) is the not-for-profit, multidisciplinary association of environmental practitioners across Australia and New Zealand. Our members include scientists, ecologists, planners, engineers, lawyers, economists, and policy specialists, many with direct experience in designing, assessing, approving, delivering, monitoring, and enforcing environmental offsets under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

This submission reflects practitioner experience and draws on consultation across EIANZ specialist groups, including biodiversity offsets, heritage, ecology and impact assessment.

### 1.2 Executive Summary

EIANZ supports the establishment of the National Environmental Protection Agency (EPA) as an independent national regulator and supports the intent of Consultation Paper 1. The transition to the National EPA is an important opportunity to strengthen compliance, enforcement, transparency and public confidence in national environmental law administration.

EIANZ notes that the *Environment Protection Reform Act 2025* has already been enacted, and that this consultation focuses on supporting rules, regulations, and commencement arrangements rather than feedback on the primary Acts. DCCEEW states that the National EPA will commence on 1 July 2026 as an independent regulator for some of Australia's national environmental laws, with a clear focus on better compliance and stronger enforcement.

The credibility of the new regulator will depend not only on the powers available to it, but on whether those powers are used consistently, transparently and with sufficient resourcing. The Samuel Review identified shortcomings in compliance, enforcement, and administration under the EPBC Act, and EIANZ has previously supported the establishment of a stronger independent regulator, subject to adequate resourcing, clear functions, and ongoing practitioner consultation.

## 2.1 National EPA powers and penalties

EIANZ supports the early commencement of National EPA powers and penalties from 1 July 2026. The National EPA should commence with the tools needed to prevent harm, respond to non-compliance and provide certainty to proponents, practitioners and the community.

Consultation Paper 1 identifies new tools that will support the National EPA's compliance focus, including environment protection orders, increased maximum penalties, a new civil penalty formula and the power to make Rulings under the EPBC Act.

Environmental protection orders are a necessary rapid-response tool where serious environmental harm is imminent, has occurred or needs to be addressed. Under section 474A(1) of the EPBC Act, as amended by the *Environment Protection Reform Act 2025*, an environment protection order may be issued where the statutory criteria are met, and the order is necessary either to ensure future compliance with environment law provisions or to prevent, mitigate, eliminate or reduce damage or the risk of damage.

Guidance should clarify the thresholds for “imminent risk”, “serious damage”, and when an order is necessary to prevent, mitigate, eliminate, or reduce damage or the risk of damage, particularly for threatened species habitat, threatened ecological communities, wetlands, marine areas, and other sensitive environmental values.

Ecological harm can be cumulative and difficult or impossible to reverse once it occurs. The National EPA should therefore be able to act preventatively where evidence indicates a risk of serious or irreversible harm.

EIANZ supports stronger civil and criminal penalties, including penalties linked to the benefit gained from non-compliance. Consultation Paper 1 states that the reforms increase potential civil penalties for the most serious breaches, including through a new civil penalty formula and “benefit derived” calculations. It also states that maximum criminal penalties for an individual will increase to 1,000 penalty units, equivalent to \$330,000 at the current penalty unit value of \$330, with a body corporate liable for five times this amount. Penalty units are subject to indexation under section 4AA of the *Crimes Act 1914*, with the next indexation date scheduled for 1 July 2026, coinciding with the commencement of the National EPA. National EPA public communications,

guidance and infringement notice templates should be ready to reflect the indexed penalty unit value from commencement.

However, the proposed penalty settings for serious breaches still appear relatively low when considered against the scale of potential environmental harm and the commercial value that may be gained from non-compliance. There remains a risk that some corporations may treat penalties as a manageable cost of doing business, particularly where the financial benefit of breaching environmental obligations exceeds the likely penalty imposed. To avoid this outcome, penalties should be set at a level that provides a genuine deterrent, removes any financial advantage obtained through non-compliance, and reinforces the seriousness of environmental offending.

The transition to the National EPA requires clear public guidance on how the new regulator will operate within the broader Commonwealth environmental law framework. Consultation Paper 1 includes consequential amendments to legislation relating to sea dumping, hazardous waste, ozone-depleting substances and synthetic greenhouse gases, product emissions standards, recycling and waste reduction, and underwater cultural heritage.

The Department should explain which powers will transfer to the National EPA CEO, which powers will remain with the Minister, and how compliance, enforcement and transparency arrangements will operate across each Act. This clarification is particularly important where projects or regulated activities interact with more than one legislative framework, including activities that may require both EPBC Act assessment and consideration under other Commonwealth environmental legislation.

Clear guidance should be available before commencement so that approval holders, proponents, consultants, auditors, Traditional Owners and community stakeholders understand how the National EPA will exercise its functions across the full range of Commonwealth environmental responsibilities.

## 2.2 New audit arrangements

EIANZ supports stronger audit arrangements, including auditor registration, expanded directed audits and new compliance audits. These arrangements have the potential to improve professional accountability, audit quality and confidence in compliance outcomes.

Consultation Paper 1 states that the reforms establish a modernised audit framework, including directed environmental audits and new compliance audits. Schedule 1 of the *Environment Protection Reform Act 2025* inserts a new audit framework into the EPBC Act covering who may conduct audits, the conduct of audits, the register of auditors, auditor guidelines and conditions of registration.

Auditor registration should be based on demonstrated competency, relevant experience, ethical conduct, continuing professional development and independence, not qualifications alone. Auditors should not audit work they have designed, assessed, implemented or previously advised on.

Professional certification may assist in demonstrating competency and ethical accountability. EIANZ's Certified Environmental Practitioner scheme (CEnvP) provides a recognised professional certification framework for environmental practitioners, including specialist areas relevant to the implementation of the EPBC Act.

The audit framework must also be circular, not linear. It is not enough for proponents or auditors to generate audit material if the regulator lacks the capacity to review that material and act on it. Audit arrangements should therefore include clear expectations for how the National EPA will review audit findings, identify systemic issues, respond to non-compliance and report publicly on outcomes.

This reflects a key implementation issue raised through EIANZ's member consultation: audit systems must build confidence that approval holders are doing what they said they would do, and that the regulator can verify and respond where they are not.

EIANZ supports unannounced audits where appropriate, particularly for high-risk activities or where non-compliance is suspected. Consultation Paper 1 notes that the CEO does not need to give notice of a compliance audit, and that the Regulations may make provision for the conduct of compliance audits and post-audit processes. Audit guidance should address site access, safety, evidence handling, cultural heritage, Traditional Owner engagement and minimising ecological disturbance.

Consultation Paper 1 states that the auditor must prepare a written report and give a copy to the National EPA CEO and the audited person within 10 business days of completing the compliance audit. The proposed 10-business-day timeframe for audit reporting may be appropriate for simple compliance matters. However, many ecological audits require technical analysis, specialist input, Geographic Information System review or seasonal interpretation.

A single reporting timeframe may therefore be too rigid for complex ecological matters. A tiered approach would allow urgent issues to be reported quickly while permitting more detailed technical reporting for more complex compliance matters. A tiered audit reporting approach would better balance timely regulatory response with technical accuracy. Preliminary findings could be required within 10 business days, particularly where urgent non-compliance or environmental harm is identified, with supplementary technical reports permitted for complex matters requiring further analysis.

The National EPA should also publish information about its own audit performance, including the number and type of audits conducted, the number reviewed, key

compliance outcomes and follow-up. Performance metrics should be designed carefully so that they provide meaningful accountability and do not obscure delayed, complex or unresolved matters.

Recent peer-reviewed analysis has shown that poor compliance and exemptions can facilitate substantial environmental loss even within mature legal frameworks. This supports the case for audit arrangements that are transparent, independent and backed by regulator capability.

**Recommendation:** The audit framework should include robust auditor registration requirements, clear independence standards, capacity for unannounced audits, tiered reporting timeframes for complex ecological matters, and public reporting on audit outcomes and regulator follow-up.

### 2.3 National EPA rules for transparency

EIANZ strongly supports the proposed transparency registers. Public access to regulatory decisions, compliance outcomes, and enforcement actions is essential to accountability, trust, and informed participation.

Consultation Paper 1 states that the National EPA will publish certain regulatory decisions and compliance outcomes on public electronic registers, and that the proposed Rules will set out what information appears on those registers. It identifies two registers: the Register of Registrable Decisions and the Register of Prescribed Matters.

Consultation Paper 1 states that the Register of Registrable Decisions will capture key statutory decisions made by the CEO, including decisions to issue, vary or revoke permit conditions, issue, vary or revoke an environment protection order, issue a notice directing an environmental audit, and issue an infringement notice under *the Recycling and Waste Reduction Act 2020*.

The Register of Prescribed Matters will provide information on significant compliance, enforcement and court-related outcomes under Acts administered by the National EPA. The paper states that the proposed prescribed matters include convictions, injunctions, remediation orders, civil penalty orders, orders relating to breaches of enforceable undertakings, permit applications under the *Environment Protection (Sea Dumping) Act 1981*, and infringement notices under specified Commonwealth environmental laws.

EIANZ supports these registers but recommends that they provide meaningful information rather than simply confirm that a decision or outcome occurred. Registers should be searchable and include reasons for decisions, relevant conditions, audit outcomes, enforcement status, remediation outcomes and spatial information where appropriate.

Including self-assessment records in the transparency framework would not need to create an unnecessarily onerous burden. However, it would create a public record of decisions that may otherwise remain invisible, unmonitored or untested. One option would be to include self-assessment records as a prescribed matter under the Register of Prescribed Matters.

This would not need to impose an unnecessarily onerous burden, but it would create a transparent record of decisions that currently may not be visible, monitored or tested.

The registers should also support public reporting on regulatory performance. Regular reporting should show whether the National EPA is meeting statutory functions and timeframes, how many compliance audits and audit reviews it has undertaken, how many enforcement actions have followed, and whether remediation or corrective actions have been completed.

Care will be needed in designing performance measures. Public reporting should not rely only on simple volume or timeliness metrics, as those can obscure complex or delayed matters. Reporting should include enough context to show whether the regulatory system is functioning effectively and whether environmental outcomes and compliance confidence are improving.

**Recommendation:** The National EPA transparency registers should provide searchable, decision-useful information, including reasons for decisions, conditions, audit outcomes, enforcement status, remediation progress and spatial information where appropriate. The transparency framework should also capture self-assessment records to improve visibility of non-referred actions.

## 2.4 Transitional guidance and workforce capacity

Clear transitional guidance will be essential before commencement on 1 July 2026. Approval holders, proponents, consultants, auditors, Traditional Owners and community stakeholders will need to understand how existing approvals, permits, exemptions, audits and enforcement matters will be managed.

There is also a risk that suitably qualified and independent auditors may not be available in all regions or specialist fields from the commencement. The National EPA should work with professional bodies to support workforce capability, competency standards and practitioner education. EIANZ is well placed to provide support in this through its certification program.

The compressed commencement timeframe makes implementation readiness particularly important. EIANZ supports timely implementation, but bringing forward complex regulatory settings increases the need for clear guidance, adequate resourcing, workforce planning and early review mechanisms.

**Recommendation:** The Department and National EPA should publish clear transitional guidance before commencement and work with professional bodies to support auditor capability, workforce readiness and consistent implementation across regions and specialist fields.

## Contact Details

**For further information, please contact:**

Environment Institute of Australia and New Zealand

Email: [office@eianz.org](mailto:office@eianz.org)

Phone: +61 3 8593 4140

Web: [www.eianz.org](http://www.eianz.org)

## Reference list

Department of Climate Change, Energy, the Environment and Water. (2026a). Environment Protection Reforms: Setting up for success, Consultation Paper 1: A smooth transition to the National EPA.

URL: [https://storage.googleapis.com/files-au-climate/climate-au/p/prj3c7859db1c01a875b0436/page/Paper\\_1\\_Transition\\_to\\_National\\_EPA.pdf](https://storage.googleapis.com/files-au-climate/climate-au/p/prj3c7859db1c01a875b0436/page/Paper_1_Transition_to_National_EPA.pdf)

Department of Climate Change, Energy, the Environment and Water. (2026b). Environment Protection Reform Consultation: subordinate legislation.

URL: <https://consult.dcceew.gov.au/environment-protection-reform-consultation-subordinate-legislation>

Environment Protection Reform Act 2025 (Cth), No. 68, 2025.

URL: <https://www.legislation.gov.au/C2025A00068>

Environment Protection and Biodiversity Conservation Act 1999 (Cth), Compilation No. 68, compilation date 28 March 2026.

URL: <https://www.legislation.gov.au/C2026C00116>

Crimes Act 1914 (Cth), s 4AA Penalty units.

URL: <https://www.legislation.gov.au/C1914A00012>

Samuel, G. (2020). Independent Review of the Environment Protection and Biodiversity Conservation Act 1999: Final Report. Department of Agriculture, Water and the Environment.

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

Thomas, H. et al. (2025). Poor compliance and exemptions facilitate ongoing deforestation. *Conservation Biology*, 39, e14354.

URL: <https://doi.org/10.1111/cobi.14354>

Environment Institute of Australia and New Zealand. (2025). Submission to the Senate Environment and Communications Legislation Committee: Inquiry into the Environment Protection Reform Bill 2025 and related bills.

URL: <https://www.eianz.org/document/item/8474>

Environment Institute of Australia and New Zealand. Certified Environmental Practitioner Scheme.

URL: <https://www.eianz.org/cenvp>