



# POLICY SUBMISSION

## EIANZ feedback on Environmental Protection Reform Consultation Paper 3: Reducing duplication

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 intent of Consultation Paper 3 and the early commencement of subordinate legislation and associated arrangements designed to reduce duplication while maintaining or strengthening environmental protections. The paper covers bilateral agreements, Commonwealth accreditation, National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) declarations and greenhouse gas emissions reporting.

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 on feedback on the primary Acts. Streamlining is important for proponents, regulators, practitioners, and the community, but streamlined processes must not reduce environmental standards, transparency, or accountability.

EIANZ supports the direction of the proposed reforms, provided the Regulations and supporting guidance ensure accredited arrangements are subject to clear standards, strong assurance, transparent performance reporting and effective audit.

## 2.1 Bilateral agreements

EIANZ supports the general approach to reducing duplication through bilateral agreements in which state and territory frameworks meet the EPBC Act requirements and deliver equivalent or stronger environmental protection.

Consultation Paper 3 states that bilateral agreements can remove the need for projects to go through an assessment and/or approval process under the EPBC Act if they are already subject to a state or territory process. The reforms introduce new requirements for bilateral agreements, plus greater assurance and flexibility, with proposed early commencement from 1 July 2026.

The proposed requirements are important. New section 46 of the EPBC Act adds requirements that bilateral agreements must meet, including consistency with prescribed National Environmental Standards, no unacceptable impacts, passing the net gain test and appropriate disclosure of greenhouse gas emissions.

EIANZ supports these requirements in principle. In particular, the net gain test is a significant step forward because it shifts the frame from avoiding or minimising loss toward delivering environmental improvement. EIANZ has previously supported net gain as superior to the current no net loss position, while calling for clarity on how net gain is calculated and how offsetability is distinguished from irreplaceability. The importance of net gain legislation is also supported by recent peer-reviewed work on nature-positive law reform.

Bilateral agreements under the current EPBC Act have had limited uptake, in part reflecting the diversity of state and territory regulatory frameworks. EIANZ supports the reforms but emphasises that the success of the new framework will depend on consistent application of National Environmental Standards across jurisdictions, supported by transparent assurance and audit.

The practical success of bilateral agreements will also depend on whether accredited state and territory frameworks collect sufficient information to verify compliance with the National Environmental Standards and other relevant legislative instruments, and to allow the National EPA to audit performance effectively. Without reliable data and assurance, it will be difficult to demonstrate that reduced duplication is also delivering better environmental outcomes.

EIANZ supports the proposed assurance arrangements, including the National EPA's ability to monitor and audit bilateral agreements, as outlined in Consultation paper 3. EIANZ supports the proposed assurance arrangements, including the National EPA's

ability to monitor and audit bilateral agreements. Consultation Paper 3 states that new section 65C requires the CEO of the National EPA to arrange a review of each bilateral agreement within three years of the agreement commencing, and then within five years of each previous review report being given to the Minister. The Minister must publish each review report. Consultation Paper 3 also states that new section 65D allows the National EPA to conduct assurance reviews of a bilateral agreement as needed.

These review and assurance powers should be supported by public reporting on agreement performance, including whether accredited frameworks continue to meet the relevant standards, whether required information is being collected, and whether net gain requirements are being achieved in practice.

Minimum information requirements should be published for states and territories operating under bilateral agreements, particularly for net gain, offsets, compliance and cumulative impact data.

EIANZ also notes the open question of how Rulings made under Part 19C of the EPBC Act, which are not legislative instruments under section 514YM(8), interact with the application of National Environmental Standards under bilateral agreements. Implementation guidance should clarify whether and how Rulings inform decision-making by accredited state and territory frameworks.

EIANZ supports the proposal that the Minister should have regard to relevant bioregional plans and bioregional guidance plans when accrediting a management or authorisation framework for the purposes of a bilateral agreement. Consultation Paper 3 proposes prescribing this consideration under section 46(3)(d), which empowers regulations to set additional criteria that the framework must meet.

Bioregional plans have the potential to improve decision-making by providing landscape-scale context, but they must be robust, up to date, and sufficiently detailed to support practical regulatory decisions. EIANZ has previously encouraged stronger statutory foundations for regional planning and strategic environmental assessment, including cumulative impact assessment, consultation, implementation frameworks and qualified practitioner involvement.

## 2.2 Commonwealth accreditation

EIANZ supports the intent of Commonwealth accreditation, where it removes unnecessary duplication between Commonwealth regulatory processes while maintaining EPBC-equivalent environmental protection.

Consultation Paper 3 states that Commonwealth accreditation removes the need for projects to go through two separate Commonwealth approval processes and proposes the early commencement of new requirements, assurance, and flexibility arrangements from 1 July 2026.

The amended section 33 of the EPBC Act adds requirements that Commonwealth frameworks must meet in order to be accredited, including consistency with prescribed National Environmental Standards, no unacceptable impacts, passing the net gain test and appropriate disclosure of greenhouse gas emissions. (However, note the further comments relating to the net gain test under the amended section 33 and section 527K.)

The proposed policy is to prescribe the same National Environmental Standards for Commonwealth accreditation as will be prescribed for the normal single project approval pathway, including standards for MNES, offsets, community engagement, First Nations engagement, and data and information. EIANZ supports this consistency.

However, where a Commonwealth agency is both the proponent and administering agency, and the body responsible for assessment or authorisation, independence and perceived independence become critical. Accreditation decisions should include a published statement of reasons explaining how independence, conflicts and assurance have been addressed.

There is also a need to clarify how the section 33(3)(i) net gain requirement interacts with section 527K(4), which provides that an approval is deemed to pass the net gain test in relation to residual significant impacts on people or communities protected by certain Commonwealth-related provisions of Part 3, including section 28 about Commonwealth agencies. Section 527K(5) separately allows regulations to prescribe matters for which the net gain test does not apply at all. Implementation guidance should explain how these provisions operate together in the Commonwealth accreditation context, particularly when a Commonwealth agency is both the proponent and the decision-maker.

EIANZ supports the proposed oversight and assurance provisions for Commonwealth accreditation, including review after three years and every five years thereafter, and assurance reviews as needed<sup>13</sup>. These should be accompanied by public reporting that explains whether accredited frameworks continue to meet the relevant standards and whether environmental outcomes are being achieved.

### 2.3 NOPSEMA declaration

EIANZ supports the objective of reducing duplication for offshore petroleum and greenhouse gas activities, provided the NOPSEMA framework meets EPBC Act requirements and maintains environmental protections equivalent to, or stronger than, those under the EPBC Act.

Consultation Paper 3 states that the reforms give the Minister power to declare that certain activities do not need separate EPBC approval if they are covered by NOPSEMA's environmental regulation, and that the Minister can only make this declaration if

satisfied that NOPSEMA's environmental regulation meets requirements under the EPBC Act. The paper proposes bringing forward the start of this power to 1 July 2026.

The proposed approach recognises that NOPSEMA has regulated environmental management of offshore petroleum activities in Commonwealth waters since 2012, and that the existing Part 10 strategic assessment approval remains in force. Consultation Paper 3 also notes that the Samuel Review found that the current strategic assessment settings have significant limitations, including that the regulatory settings for NOPSEMA have effectively been frozen, stifling continuous improvement in environmental regulation and further streamlining.

EIANZ supports moving to an arrangement that allows continuous improvement while avoiding unnecessary duplication. However, the Minister should only make a NOPSEMA declaration where the framework has been assessed transparently against the EPBC Act requirements, relevant National Environmental Standards and appropriate assurance mechanisms.

The proposed policy is to prescribe all National Environmental Standards relevant from an environmental protection perspective in the NOPSEMA context, except the National Environmental Standard for Offsets. Consultation Paper 3 states that the Offsets Standard is not considered relevant because the Minister can only make a NOPSEMA declaration if satisfied that actions approved under the NOPSEMA framework will not have, or be likely to have, a residual significant impact on a matter of national environmental significance.

EIANZ supports this logic in principle, but the exclusion of the Offsets Standard should be explained clearly in guidance and reviewed if future NOPSEMA-related activities are found to create residual significant impacts. In the past, various offshore petroleum proposals have been deemed to have significant ongoing impacts.

The proposed Regulations would prescribe the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 for the purposes of subparagraph 36G(2)(b), so that the NOPSEMA management or authorisation framework includes the OPGGS Environment Regulations and their requirements for offshore project proposals and environment plans.

Any NOPSEMA declaration should be accompanied by a plain-English statement showing how the framework meets each relevant National Environmental Standard.

Oversight should include public reporting on whether the NOPSEMA framework continues to meet the relevant EPBC Act requirements over time. This is particularly important where the declaration is intended to replace separate EPBC Act approval requirements.

## 2.4 Greenhouse gas emissions reporting

EIANZ supports the proposed early commencement of greenhouse gas emissions reporting requirements for bilateral and accredited agreement negotiations.

Consultation Paper 3 states that new section 84A of the EPBC Act will require proponents over a prescribed threshold to disclose a reasonable estimate of the scope 1 and scope 2 greenhouse gas emissions from their proposal, along with strategies and measures to manage those emissions. Section 84A(2)(d) also requires information about how those strategies and measures are consistent with relevant Commonwealth laws and policies.

EIANZ supports the proposed 100,000 tonnes CO<sub>2</sub>-e per year reporting threshold because it aligns with the threshold in the National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015. Consultation Paper 3 states that DCCEEW proposes to align the threshold to the Safeguard Mechanism threshold, currently 100,000 tonnes of carbon dioxide equivalent per year.

Alignment with existing Commonwealth reporting settings should reduce unnecessary complexity for proponents and regulators while still requiring disclosure for projects with material scope 1 and scope 2 emissions. The alignment rationale is strongest for scope 1 emissions, noting that the Safeguard Mechanism directly applies to scope 1 covered emissions.

Clear guidance will be needed on how reasonable estimates are to be prepared, what information must be provided about management strategies and how emissions information will be published or considered in assessment and accreditation contexts.

EIANZ supports the proposed scope 1 and scope 2 reporting requirements as a sensible starting point aligned with existing Commonwealth settings. EIANZ has previously called for greater consideration of scope 3 embedded emissions in its November 2023 supplemental position statement on this topic. While scope 3 is outside the scope of the current consultation, future tranches of reform should revisit the case for scope 3 reporting where it is material to environmental decision-making, particularly for major emissions-intensive projects.

### 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)

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