



## **Briefing Note: Environment Information Australia - EIA**

On 16 April 2024, Environment Minister Tanya Plibersek announced that rather than introducing the full package of legislation implementing the Nature Positive Plan, the Federal Government will implement reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) in stages, with the new Environment Information Australia (**EIA**) established by stand-alone legislation in 'stage two'. It is proposed EIA will be created within the Environment Department, under a new statutory head, and have responsibility for setting a baseline for, and recording achievement against, the goal of 'nature positive.'

Alone, the new EIA is not sufficient to protect more of our precious species going extinct - having a State of the Environment Report every 2 years rather than 5 will simply document the decline and demise of these threatened species more regularly, rather than prevent the harm occurring in the first place. It's clear that the staged reforms fall far short of the comprehensive legislative reform we urgently need to see passing this Parliament to turn around Australia's extinction trajectory.

However, EIA itself is a welcome reform which establishes for the first time a single national source of environmental data and statutory requirements to holistically report on national environmental data. This will include more frequent environmental reporting and building an information base to feed into decision-making. **An EIA with clear functions that improves the collection, dissemination and use of environmental data will be critically important for tracking and understanding our changing environment, and is a useful and significant new institution.** This Briefing Note sets out EDO recommendations for establishing EIA, including that EIA must:

- capture and manage data that will be most effective to enable nature protection and recovery;
- ensure environmental data is transparent and publicly accessible;
- support First Nations data protocols to be developed by First Nations for First Nations;
- be supported by urgent amendments to the EPBC Act.

### **KEY RECOMMENDATIONS**

#### **EIA must capture and manage data that will be most effective to enable nature protection and recovery:**

##### **1. The definition of nature positive must include a clear baseline for measuring progress.**

Nature positive is an important concept for the whole of the EPBC Act reforms, including stage 3, and will be defined in the EIA legislation. It's crucial this definition is meaningful both for our international reporting obligations, but also can be used to galvanize policy change and identify priorities. In line with the goals agreed under the Global Biodiversity Framework, the definition of 'nature positive' must recognise the need to increase in the natural diversity, abundance, resilience and integrity (meaning the completeness, functionality and health) of species, populations and ecosystems with a goal of halting and reversing nature loss by 2030 and achieving full recovery by 2050, measured against a 2020 baseline. A measurable and defined baseline is crucially important. Rather than requiring the Head of EIA to establish a baseline, the baseline should be built into the legislative definition of nature positive in this way.

## **2. EIA should report on recovery objectives and conservation plans.**

While EIA will have reporting functions relating to Australia's environment, including through the State of the Environment report and against environmental goals more generally, more specific information about threatened species should also be tracked. A notable gap in reporting obligations is an explicit requirement to monitor and evaluate the development and implementation of conservation planning documents (referring collectively to Recovery Plans, Conservation Advices, Threat Abatement Plans and Wildlife Conservation Plans). EIA should have additional functions relating to collection of data and reporting in relation to these conservation planning documents, including on threatened species recovery trajectories and progress against recovery actions. These additional functions will ensure EIA data is meaningful, granular, and can be used on the ground to make a difference to the species and ecosystems the EPBC Act aims to protect and restore. Reporting on these functions should be required, including through two-yearly reports to Parliament.

## **3. EIA should enable better understanding of climate change impacts on MNES.**

Climate change is the biggest threat to nature, and impacts all aspects of our environment the EPBC Act aims to protect. There is currently no specific requirement for EIA to capture relevant data about climate change and EPBC Act approvals, or to assess climate change impacts on the matters of national environmental significance (**MNES**). EIA should have a specific role in understanding how climate change is impacting our environment, and how EPBC Act decisions have a material effect on our climate. EIA should collect information on how climate change is impacting on MNES, such as the contribution of new approvals under the EPBC Act to the climate impacts, including through the direct and downstream emissions projections from new actions.

## **4. EIA should be responsible for State of the Forest reporting.**

The State of the Forests Report is an important source of information about Australia's forests, and is used both domestically and for international reporting. Published every five years, it is used to track progress under the National Forest Policy Statement and fulfil reporting commitments of the Regional Forest Agreement (**RFA**) legislation (and the Agreements themselves). Given RFAs will eventually be brought under the national environmental law through the application of National Environmental Standards to RFA areas, it's important the main database for EPBC Act information and approvals takes account of this information. EIA should have a role in collating forests data and publishing the State of the Forests Report. It should be required to do so more frequently than the current five yearly requirement, given the at-risk health of our native forests. In conjunction with State of the Forest reporting, EIA should monitor and report on woody vegetation extent and changes to that extent due to clearing and regrowth (similar to and drawing on the Statewide Landcover and Tree Study (SLATS) in Queensland and New South Wales).

## **5. EIA must be able to obtain and use relevant data, including through mandatory data sharing provisions.**

In order to do its job effectively, EIA must be able to obtain and use relevant data, including data collected and owned by others. While access to data may be able to be negotiated by EIA, it would be prudent for EIA to have legislative powers to compel access to data if needed. For example, there should be a legal requirement for proponents to provide to EIA and waive copyright on any environmental data submitted as part of an application, or collected to information an application that is submitted, thereby allowing the EIA to incorporate that data into its datasets. There should also be similar provisions that would provide for the Commonwealth to compel states and territories to provide relevant data in order for EIA to carry out its functions.

## **EIA must ensure environmental data is transparent and publicly accessible:**

### **6. Information held by EIA should be publicly available**

In order to promote transparency, support community engagement and encourage improved decision-making, information held by EIA should be publicly accessible and in a form that is easy to understand and use. We note that draft National Environmental Standards propose to restrict the publication of sensitive data, including commercial-in-confidence data. In our experience, the concept of commercial-in-confidence has been misused to withhold information that is highly relevant to informing public engagement in decisions. Any provisions aimed at restricting the publication of data must be limited.

### **7. EIA functions, including data and information handling practices, must be consistent with relevant National Environmental Standards.**

EIA will be responsible for managing data from a myriad of different sources, including ‘sensitive data and information’. As proposed under the Nature Positive Plan, how EIA deals with data must be consistent with the National Environmental Standard on Data and Information. It is therefore important that stage two reforms establish the power for the Minister to create National Environmental Standards. This will enable an EIA specific standard to be developed in relation to its data and information assessment activities, and corresponding amendments to the EIA legislation must ensure that all EIA functions must be exercised consistent with relevant National Environmental Standards.

## **First Nations data protocols must be developed by First Nations for First Nations**

### **8. A First Nations Participation and Engagement Standard must deal with how First Nations knowledge and information is shared and used.**

EIA will need to deal with sensitive data and information, in line with the Data and Information Standard (see recommendation 7 above). At present, it is not clear how culturally important or sensitive data will be managed by EIA as it relates to First Nations. It is integral that any Indigenous Knowledge provided by First Nations peoples is respected and acknowledged as the intellectual property of those knowledge holders. Indigenous Knowledge includes both Traditional Knowledge and Traditional Cultural Expressions.<sup>1</sup> Further, all data that is recorded as part of an assessment and approval (or other process) under the EPBC Act must remain the property of First Nations people. First Nations people must retain ownership of their Traditional Knowledge and Traditional Cultural Expressions and must have the right to control how their Indigenous Knowledge is collected, curated, integrated, analysed, used, shared and published, in accordance with Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples. As such, EDO supports the development and implementation of the First Nations Engagement and Participation in Decision-making Standard (First Nations Standard) in stage 2, to guide the management of sensitive data, including Indigenous Knowledge. The First Nations Standard must be designed by First Nations people for First Nations people, and should be created as a priority.

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<sup>1</sup> See Terri Janke and Company, [Indigenous Knowledge: Issues for protection and management](#) (2017).

## **The EIA must be supported by urgent amendments to the EPBC Act:**

### **9. Wholescale reform of the EPBC Act is needed urgently to address the biodiversity and climate crisis.**

It is widely accepted that the EPBC Act as currently implemented is not fit for purpose, and is failing communities and the environment. Better data collection and use of environmental information is an important component of a better environmental regulatory regime, but knowing about environmental decline is not the same as reversing it. To support EIA's functions and the stage 2 reforms, set the foundations for stage 3, and to urgently protect nature, EDO recommends the following urgent amendments to the EPBC Act:

- Provide the Minister with the power to create National Environmental Standards, safeguarded by a non-regression clause that means environmental protection can't be reduced in subsequent standards.
- Strengthen existing provisions to ensure that unacceptable impacts (including impacts on critical habitat) are identified upfront and not permitted to proceed.
- Put restrictions on the use of biodiversity offsets.
- Uphold community rights, including by implementing full merits review for approval and assessment decisions.
- Legislate to ensure destructive and illegal deforestation is properly assessed under our nature laws, including by removing loopholes and exemptions.
- Ensure our national environmental laws properly address the biggest threat to nature – climate change.

*For more information, see EDO briefing notes: [Stage 2 of the Nature Positive Reforms \(May 2024\)](#), and [Environment Protection Australia \(May 2024\)](#).*