

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Nature Positive (Environment Protection Australia) Bill 2024

(Dr Scamps)

- (1) Clause 2, page 2 (table item 1), omit the table item, substitute:

1. Sections 1 to 11F and anything in this Act not elsewhere covered by this table	1 July 2025.	1 July 2025
2. Section 11G	The day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of the offices of Board members.	
3. Sections 11H to 62	1 July 2025.	1 July 2025

[Board of EPA]

- (2) Clause 4, page 2 (line 20), after “Australia,”, insert “establishes the Board of EPA”.

[Board of EPA]

- (3) Clause 4, page 2 (after line 20), after “the CEO of EPA.”, insert:

The Board’s functions include appointing the CEO, determining policies and long-term strategic plans for the CEO, advising the CEO and assessing and reporting on the CEO’s performance of the CEO’s functions.

[Board of EPA]

- (4) Clause 4, page 3 (line 2), omit “the CEO and”.

[Board of EPA]

- (5) Clause 4, page 3 (lines 3 to 5), omit “the CEO’s independence by directing the CEO in the performance or exercise of the CEO’s functions or powers”, substitute “the Board’s or the CEO’s independence by directing them in the performance or exercise of their functions or powers”.

[Board of EPA]

(6) Clause 5, page 3 (after line 17), after the definition of *advisory group*, insert:

Board: see section 11A.

Board member means a member of the Board and includes the Chair.

[Board of EPA]

(7) Clause 5, page 3 (after line 18), after the definition of *CEO*, insert:

Chair: see subsection 11D(5).

Deputy Chair: see subsection 11D(5).

[Board of EPA]

(8) Clause 5, page 3 (before line 29), before paragraph (a) of the definition of *entrusted person*, insert:

(aa) a Board member; or

[Board of EPA]

(9) Clause 5, page 4 (lines 4 to 7), omit paragraph (d) of the definition of *entrusted person*, substitute:

(d) a person engaged under section 23 of the *Public Governance, Performance and Accountability Act 2013* by the Board under a written agreement to assist in, or advise in relation to, the performance of the Board's functions or the CEO's functions; or

[Board of EPA]

(10) Clause 5, page 4 (after line 14), after the definition of *EPA*, insert:

former judge means:

- (a) a former Justice of the High Court; or
- (b) a former judge of the Federal Court of Australia; or
- (c) a former judge of the Supreme Court of a State or Territory.

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

[Board of EPA]

(11) Clause 8, page 6 (lines 3 to 7), omit the clause, substitute:

8 Simplified outline of this Part

This Part establishes the Board of EPA and the office of the CEO of EPA. It also establishes EPA for the purposes of assisting the Board and the CEO in the performance of their functions. The Board is the accountable authority of EPA.

[Board of EPA]

(12) Clause 9, page 7 (line 8), omit "CEO", substitute "Board".

[Board of EPA]

(13) Clause 9, page 7 (before line 10), before subparagraph (2)(c)(i), insert:

(ia) the Board members;

[Board of EPA]

(14) Clause 9, page 7 (after line 15), after subparagraph (2)(d)(i), insert:

(ia) the functions of the Board referred to in section 11B; and

[Board of EPA]

(15) Clause 10, page 7 (before line 19), before paragraph (a), insert:

(aa) the Board; and

[Board of EPA]

(16) Clause 11, page 7 (lines 23 to 25), omit the clause, substitute:

11 Function of EPA

The function of EPA is to assist the Board and the CEO in the performance of their functions.

[Board of EPA]

(17) Page 7 (after line 25), after Division 2, insert:

Division 2A—The Board

Subdivision A—Establishment and functions

11A Establishment

The EPA Board is established by this section.

11B Functions of the Board

- (1) The Board has the following functions:
 - (a) to appoint the CEO;
 - (b) to monitor, assess and report on the CEO's performance of the CEO's functions;
 - (c) to ensure that the CEO performs the CEO's functions consistently with the object of this Act;
 - (d) to determine the policies and long-term strategic plans of EPA, and of the CEO in relation to the performance of the CEO's functions, including policies and plans relating to organisational governance and risk management;
 - (e) to determine what proportion of EPA's budget should be spent on monitoring, compliance, enforcement and assurance;
 - (f) to advise the CEO on any matter relating to the protection of the environment or relating to the object of this Act (at the CEO's request or on the Board's own initiative).
- (2) The Board must, as soon as practicable after the end of each financial year, give the Minister a written report that:
 - (a) assesses the success of the CEO in performing the CEO's functions during the financial year in an accountable, efficient, outcomes-focused and transparent manner; and

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- (b) assesses the success of the CEO in facilitating the achievement of nature positive (within the meaning of the *Nature Positive (Environment Information Australia) Act 2024*) during the financial year; and
 - (c) includes any recommendations made under or in relation to paragraphs (1)(b) to (e) or paragraphs (a) and (b) of this subsection; and
 - (d) addresses any other matters prescribed by the rules.
- (3) The Minister must cause a copy of each report given under subsection (2) to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives it.
- (4) The Board has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Subdivision B—Membership and appointment

11C Membership of the Board

- (1) The Board consists of the following members:
- (a) the Chair;
 - (b) the Deputy Chair;
 - (c) not fewer than 5, and not more than 7, other members.
- (2) The performance of the functions, or the exercise of the powers, of the Board is not affected by reason only of paragraph (1)(c) not being complied with for a period of not more than 6 months.

11D Appointment

- (1) The Board members are to be appointed by the Minister by written instrument.
- (2) A person must not be appointed as a Board member unless the Minister is satisfied that:
- (a) the person has substantial experience or knowledge, and significant standing, in one or more of the following:
 - (i) environmental regulation;
 - (ii) conservation of biodiversity;
 - (iii) ecological sustainable development;
 - (iv) heritage;
 - (v) Indigenous affairs;
 - (vi) law;
 - (vii) natural resource management;
 - (viii) any other field prescribed by the rules; and
 - (b) the person does not have any interests, pecuniary or otherwise, that conflict or could conflict with the proper performance of the Board's functions; and
 - (c) at least 1 Board member is an Indigenous person.
- (3) A person must not be appointed as a Board member under this section unless:
- (a) the selection of the person for the appointment is the result of a process that includes:
 - (i) public advertising of the selection criteria for the position for at least 10 consecutive days; and

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- (ii) assessment of applications against the selection criteria by an independent panel consisting of at least 3 members and chaired by a former judge; and
 - (iii) shortlisting of at least 3 persons for the appointment that are certified, in writing, by the panel to meet all of the selection criteria; and
 - (b) the person is one of the shortlisted candidates.
- (4) Within 7 days after a person is appointed as a Board member, the Minister must cause a copy of the written certification for the person (referred to in subparagraph (3)(a)(iii)) to be:
- (a) tabled in each House of the Parliament; or
 - (b) if a House is not sitting—presented to the Presiding Officer of that House for circulation to the members of that House.
- (5) The Minister must, by written instrument, appoint:
- (a) one of the Board members to be the Chair; and
 - (b) another of the Board members to be the Deputy Chair.
- (6) An appointment of the person as the Chair or Deputy Chair ceases if the person's appointment as a Board member ceases.

11E Term of appointment

- (1) A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 6 years.
- Note: A Board member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.
- (2) However, the period of appointment for 4 of the first set of Board members must not exceed 3 years.
- Note: This ensures staggered appointments.
- (3) A Board member holds office on a part-time basis.

11F Acting appointments

Acting by operation of law

- (1) The Deputy Chair is to act as the Chair:
- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Acting appointments

- (2) The Minister may, by written instrument, appoint a Board member to act as the Deputy Chair:
- (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair:
 - (i) is acting as the Chair; or
 - (ii) is absent from duty; or

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- (iii) is, for any reason, unable to perform the duties of the office.
- (3) The Minister may, by written instrument, appoint a person to act as a Board member (other than the Chair or the Deputy Chair):
- (a) during a vacancy in the office of a Board member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a Board member:
 - (i) is acting as the Deputy Chair; or
 - (ii) is absent from duty; or
 - (iii) is, for any reason, unable to perform the duties of the office.

Qualifications etc. of acting Board members

- (4) Subsections 11D(2) to (4) apply to an appointment under subsection (3) of this section in the same way as they apply to an appointment under section 11D.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

11G Remuneration

- (1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.
- (2) A Board member is to be paid the allowances that are prescribed by the rules.
- (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of a Board member.

Note: The effect of this subsection is that remuneration or allowances of a Board member will be paid out of money appropriated by an Act other than the *Remuneration Tribunal Act 1973*.

- (4) This section has effect subject to the *Remuneration Tribunal Act 1973* (except as provided by subsection (3)).

11H Leave

- (1) The Minister may grant the Chair leave of absence on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other Board member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants a Board member leave of absence for a period that exceeds 6 months.

11J Resignation

- (1) A Board member may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

11K Termination

- (1) The Minister may terminate the appointment of a Board member:
 - (a) for misconduct; or
 - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister must terminate the appointment of a Board member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Board.

Note: The appointment of a Board member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

11L Other terms and conditions

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Subdivision C—Procedures of the Board

11M Convening meetings

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene at least 4 meetings each calendar year; and
 - (c) must convene a meeting within 30 days after receiving a written request to do so from:
 - (i) a majority of the Board members; or
 - (ii) the Minister.

11N Quorum

- (1) At a meeting of the Board, a quorum is constituted by a majority of the Board members.
- (2) However, if:
 - (a) a Board member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and

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- (b) when the Board member leaves the meeting concerned there is no longer a quorum present;
the remaining Board members constitute a quorum for the purposes of any deliberation or decision at that meeting with respect to that matter.

11P Presiding at meetings

- (1) The Chair must preside at all meetings of the Board at which the Chair is present.
- (2) If the Chair is not present at a meeting of the Board, the Deputy Chair, if present, must preside at the meeting.
- (3) If neither the Chair nor the Deputy Chair is present at a meeting of the Board, the other Board members present must appoint one of themselves to preside.

11Q Voting at meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.
- (2) The person presiding at the meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.

11R Minutes

The Board must keep minutes of its meetings.

11S Conduct of meetings

The Board may, subject to this Subdivision, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the Acts *Interpretation Act 1901* contains further information about the ways in which Board members may participate in meetings.

11T Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the Board members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

[Board of EPA]

(18) Clause 14, page 9 (line 13), at the end of the clause, add:

Note: The CEO's discretion is subject to the policies, plans, determinations, advice and recommendations of the Board: see section 11B.

[Board of EPA]

(19) Clause 15, page 10 (line 5), omit "the CEO and".

[Board of EPA]

(20) Clause 16, page 11 (line 6), omit "the CEO and".

[Board of EPA]

(21) Clause 16, page 11 (lines 7 and 8), omit subclause (2), substitute:

(2) A statement of expectations cannot direct the Board or the CEO in the performance or exercise of their functions or powers.

[Board of EPA]

(22) Clause 44, page 23 (lines 3 to 25), omit subclauses (1) and (2), substitute:

Appointment by the Board

(1) The CEO is to be appointed by the Board by written instrument.

Qualifications for appointment

(2) A person must not be appointed as the CEO unless the Board is satisfied that:

- (a) the person has substantial experience or knowledge, and significant standing, in one or more of the following:
 - (i) environmental regulation;
 - (ii) conservation of biodiversity;
 - (iii) ecological sustainable development;
 - (iv) any other field prescribed by the rules; and
- (b) the person does not have any interests, pecuniary or otherwise, that conflict or could conflict with the proper performance of the CEO's functions.

(2A) A person must not be appointed as the CEO under this section unless:

- (a) the selection of the person for the appointment is the result of a process that includes:
 - (i) public advertising of the selection criteria for the position for at least 10 consecutive days; and
 - (ii) shortlisting of at least 3 persons for the appointment that are certified, in writing, by the Board to meet all of the selection criteria; and
- (b) the person is one of the shortlisted candidates.

(2B) Within 7 days after a person is appointed as the CEO, the Board must cause a copy of the written certification for the person (referred to in subparagraph (2A)(a)(iii)) to be published on EPA's website.

[Board of EPA]

(23) Clause 45, page 24 (line 4), omit "Minister", substitute "Board".

[Board of EPA]

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- (24) Clause 46, page 24 (line 19), omit “Minister”, substitute “Board”.
[Board of EPA]
- (25) Clause 48, page 25 (line 5), omit “Minister”, substitute “Board”.
[Board of EPA]
- (26) Clause 48, page 25 (line 7), omit “Minister”, substitute “Board”.
[Board of EPA]
- (27) Clause 49, page 25 (line 10), omit “Minister’s”, substitute “Board’s”.
[Board of EPA]
- (28) Clause 50, page 25 (line 13), omit “Governor-General”, substitute “Board”.
[Board of EPA]
- (29) Clause 50, page 25 (line 15), omit “Governor-General”, substitute “Board”.
[Board of EPA]
- (30) Clause 51, page 25 (line 18), omit “Governor-General”, substitute “Board”.
[Board of EPA]
- (31) Clause 51, page 26 (line 3), omit “Minister’s”, substitute “Board’s”.
[Board of EPA]
- (32) Page 30 (after line 4), after clause 57, insert:

57A Delegation by the Board

- (1) The Board may, in writing, delegate any of the Board’s functions or powers (other than a function or power in Part 5) to:
- (a) a member of the staff referred to in section 52; or
 - (b) a person whose services are made available to EPA under section 53; or
 - (c) an individual engaged, or an individual employed or engaged by a person engaged, under section 23 of the *Public Governance, Performance and Accountability Act 2013* by the Board under a written agreement to assist in, or advise in relation to, the performance of the Board’s functions.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) However, the Board must not delegate a function or power under subsection (1) to a person unless the person:
- (a) is an SES employee or acting SES employee; or
 - (b) holds, or is acting in, a position that is equivalent to a position occupied by an SES employee; or
 - (c) holds, or is acting in, an Executive Level 1 or 2, or equivalent, position.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Board.

[Board of EPA]

(33) Clause 58, page 30 (line 15), omit “CEO”, substitute “Board”.

[Board of EPA]

(34) Clause 60, page 32 (line 4), omit “the CEO and EPA have”, substitute “EPA has”.

[Board of EPA]

(35) Clause 60, page 32 (line 21), before “the CEO”, insert “the Board and”.

[Board of EPA]

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Nature Positive (Environment Protection Australia) Bill 2024

(Ms Daniel)

- (1) Clause 4, page 3 (line 13), at the end of the clause, add:

The Joint Parliamentary Committee on the Environment is established to monitor the CEO's performance of the CEO's functions, and for related matters.

[joint committee on the environment]

- (2) Clause 5, page 4 (after line 14), after the definition of *EPA*, insert:

joint committee means the Parliamentary Joint Committee on the Environment established under Part 5A.

joint committee member means a member of the joint committee.

[joint committee on the environment]

- (3) Clause 44, page 23 (after line 25), after subclause (2), insert:

(2A) A person must not be appointed as the CEO unless:

- (a) the Minister has referred the proposed appointment to the joint committee for approval; and
(b) the joint committee has approved the proposed appointment.

[joint committee on the environment]

- (4) Page 29 (after line 17), after Part 5, insert:

Part 5A—Parliamentary Joint Committee on the Environment

56A Simplified outline of this Part

This Part establishes the Joint Parliamentary Committee on the Environment to monitor the CEO's performance of the CEO's functions, and for related matters.

56B Parliamentary Joint Committee on the Environment

- (1) A Committee to be known as the Parliamentary Joint Committee on the Environment is to be established as soon as practicable after the commencement of each Parliament.
- (2) The joint committee is to consist of 12 members:
 - (a) 6 of whom must be members of the Senate appointed by the Senate, and 6 of whom must be members of the House of Representatives appointed by that House; and
 - (b) 5 of whom must be members of the Government; and
 - (c) 5 of whom must be members of the Opposition; and
 - (d) 2 of whom must be members of the Parliament other than members of the Government or Opposition.
- (3) The co-Chairs of the joint committee are to be:
 - (a) the joint committee member nominated as co-Chair by the Prime Minister; and
 - (b) the joint committee member nominated as co-Chair by the leader of the Opposition.
- (4) A member of the Parliament is not eligible for appointment as a joint committee member if the member is:
 - (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives; or
 - (d) the Deputy President and Chair of Committees of the Senate or the Deputy Speaker of the House of Representatives.
- (5) A joint committee member ceases to hold office:
 - (a) when the House of Representatives expires by the passing of time or is dissolved; or
 - (b) if the joint committee member becomes the holder of an office specified in any of the paragraphs of subsection (4); or
 - (c) if the joint committee member ceases to be a member of the House of the Parliament by which the joint committee member was appointed; or
 - (d) if the joint committee member resigns the member's office as provided by subsection (6) or (7).
- (6) A joint committee member appointed by the Senate may resign the member's office by giving a signed notice to that effect to the President of the Senate.
- (7) A joint committee member appointed by the House of Representatives may resign the member's office by giving a signed notice to that effect to the Speaker of that House.
- (8) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the joint committee appointed by that House.

56C Powers and proceedings of the joint committee

All matters relating to the powers and proceedings of the joint committee are to be determined by resolution of both Houses of the Parliament.

56D Functions of the joint committee

- (1) The functions of the joint committee are as follows:
 - (a) to monitor the CEO's performance of the CEO's functions;

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- (b) to report to both Houses of the Parliament, with such comments as it thinks fit, on any matter connected with the performance of the CEO's functions that the joint committee considers should be directed to the attention of the Parliament;
 - (c) to examine each annual report prepared by the CEO under the *Public Governance, Performance and Accountability Act 2013* and report to both Houses of the Parliament on any matter appearing in, or arising out of, any such annual report;
 - (d) to inquire into any question in connection with the joint committee's functions that is referred to it by either House of the Parliament, and to report to that House on that question;
 - (e) to consider proposed appointments to the office of CEO (see subsection 44(2A));
 - (f) to make recommendations to both Houses of the Parliament, the Minister and the CEO on:
 - (i) draft estimates referred to in section 56E; and
 - (ii) what proportion of the EPA's budget should be spent on monitoring, compliance, enforcement and assurance;
 - (g) to conduct reviews and make recommendations under section 56F;
 - (h) to do anything incidental or conducive to the performance of the above functions.
- (2) Subsection (1) does not authorise the joint committee to reconsider the CEO's decisions or recommendations in relation to a particular decision under a Commonwealth environmental law.

56E Estimates

- (1) Without limiting section 56D, the joint committee may request the CEO to submit to the joint committee draft estimates for the EPA for a financial year before the Federal Budget for that financial year.
- (2) The CEO must comply with the request in time to allow the joint committee to consider the draft estimates and make recommendations on them before the Budget.

56F Review of Commonwealth environmental laws

The joint committee must:

- (a) regularly review Commonwealth environmental laws; and
- (b) if the joint committee reasonably believes that the purposes of those laws would be better achieved if any functions under those laws were transferred to the CEO— recommend to both Houses of the Parliament and the Minister that the functions be transferred to the CEO.

[joint committee on the environment]

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Nature Positive (Environment Protection Australia) Bill 2024

(Ms Steggall)

- (1) Clause 3, page 2 (lines 13 to 17), omit the clause, substitute:

3 Object

- (1) The object of this Act is to establish a national environmental regulator, the Chief Executive Officer of Environment Protection Australia, in order to:
- (a) enhance the protection of Australia's environment; and
 - (b) prevent the degradation of Australia's environment and reduce risks to human health; and
 - (c) deliver accountable, efficient, outcome-focused, transparent and informed environmental regulatory decision-making, and as a result promote public trust in that decision-making; and
 - (d) deliver proportionate and effective risk-based compliance and enforcement responses, using data and information, including providing assurance that environmental outcomes are being met.
- (2) Paragraph (1)(c) includes decision-making informed by persons who are:
- (a) members of the Aboriginal race of Australia; or
 - (b) descendants of Indigenous inhabitants of the Torres Strait Islands.

[object]

- (2) Clause 13, page 9 (line 4), after “by”, insert “or under”.

[functions of the CEO]

- (3) Clause 13, page 9 (after line 8), at the end of the subclause (2), add:

Note: Subparagraph (c)(ii) ensures that the CEO's functions include a function delegated to the CEO under another law of the Commonwealth.

[functions of the CEO]

- (4) Page 9 (after line 8), after clause 13, insert:

13A Duties of the CEO

The CEO has the following duties when performing the CEO's functions:

- (a) to act consistently with the object of this Act (see paragraphs 3(1)(a) to (d));

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- (b) to follow principles of ecologically sustainable development;
 - (c) to act consistently with the human right to a healthy environment for all.

[duties of the CEO]

- (5) Clause 15, page 10 (line 9), after “registrable decisions”, insert “, offsets relating to approvals under the *Environment Protection and Biodiversity Conservation Act 1999*”.
[transparency register]
- (6) Clause 16, page 11 (before line 10), before paragraph (3)(a), insert:
 - (aa) ensure that the statement is consistent with the object of this Act (see paragraphs 3(1)(a) to (d)) and with the CEO’s duties set out in section 13A; and
[object and duties of the CEO]
- (7) Clause 17, page 11 (before line 24), before paragraph (2)(a), insert:
 - (aa) ensure that the statement is consistent with the object of this Act (see paragraphs 3(1)(a) to (d)) and with the CEO’s duties set out in section 13A; and
[object and duties of the CEO]
- (8) Clause 18, page 13 (after line 3), after paragraph (1)(b), insert:
 - (aa) a register of offsets relating to approvals under the *Environment Protection and Biodiversity Conservation Act 1999*, including details of the following for each offset:
 - (i) the species affected by the offset;
 - (ii) the agreements relating to the offset;
 - (iii) the specific offset project, including its geographical location.
[transparency register]
- (9) Page 13 (after line 23), after clause 20, insert:

20A Register of offsets

The rules may make provision in relation to the register of offsets mentioned in paragraph 18(1)(aa), including (without limitation) the information in relation to each offset that the CEO must publish on the register.

Note 1: The rules may, for example, prescribe that the CEO must publish the name of a person with a particular connection to the offset.

Note 2: The CEO is not required to publish certain sensitive information: see section 23.

[transparency register]

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

(Ms Spender)

- (1) Schedule 2, item 170, page 30 (before line 7), before subsection 515AAA(1), insert:

Delegations

[delegations]

- (2) Schedule 2, item 170, page 30 (after line 25), at the end of section 515AAA, add:

Publication requirements

- (4) An instrument of delegation under subsection (1) or (2) must be published on the Department's website as soon as practicable after it is made.

Quarterly reporting requirements

- (5) If a delegation under subsection (1) of a power or function of the Minister under subsection 74B(1), 75(1) or 133(1) (a **reportable provision**) is in force in a reporting quarter, the Minister must prepare a report containing information on each decision made in the reporting quarter under the reportable provision either personally by the Minister or by the delegate.
- (6) The report must be prepared as soon as practicable after the end of the reporting quarter.
- (7) The Minister must arrange for the report to be published on the Department's website.

Definitions

- (8) In this section:

reporting quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

[delegations]

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Nature Positive (Environment Protection Australia) Bill 2024

(Mr Wilkie)

(1) Clause 2, page 2 (table item 1), omit the table item, substitute:

1. Sections 1 to 10E and anything in this Act not elsewhere covered by this table	1 July 2025.	1 July 2025
2. Section 10F	The day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of the office of the CEO of EPA.	
3. Sections 10G to 11B	1 July 2025.	1 July 2025
4. Section 11C	The day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of the office of a Deputy CEO of EPA.	
5. Sections 11D to 62	1 July 2025.	1 July 2025

[commencement]

(2) Clauses 4 and 5, page 2 (line 18) to page 5 (line 19), omit the clauses, substitute:

4 Simplified outline of this Act

This Act establishes EPA, short for Environment Protection Australia, and provides for the appointment of the CEO of EPA.

The CEO has functions conferred on the CEO by this Act and a number of other laws (including Commonwealth environmental laws) referred to in section 10A. The CEO also has functions of advising and assisting the Minister in relation to any of the Minister's functions and powers under those laws.

The Parliamentary Joint Committee on Environment and Energy is established to monitor the CEO's performance of the CEO's functions, and for related matters.

This Act also contains a regime for the use and disclosure of information obtained under any Act conferring functions on the CEO. There are civil penalties for the use or disclosure of protected information in certain circumstances.

5 Definitions

In this Act:

CEO: see section 10.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth environmental law means any of the following:

- (a) an environmental law (within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*);
- (b) the *Water Act 2007*;
- (c) an Act or legislative instrument (other than an Act or instrument specified by the rules for the purposes for this paragraph) that has, as its purpose or one of its purposes, the purpose of protecting the environment;
- (d) an Act specified by the rules for the purposes of this paragraph;
- (e) a legislative instrument (other than a legislative instrument specified by the rules for the purposes of this paragraph) made under another Commonwealth environmental law.

Commonwealth reserve has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

conservation zone has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

Deputy CEO: see section 11.

enforcement body: see subsection 28(2).

entrusted person means:

- (a) the CEO; or
- (b) a Deputy CEO; or
- (c) a member of the staff of EPA; or
- (d) a person engaged under section 23 of the *Public Governance, Performance and Accountability Act 2013* by the CEO under a written agreement to assist in, or advise in relation to, the performance of the CEO's functions; or
- (e) a person employed or engaged by a person mentioned in paragraph (d) of this definition to assist in, or advise in relation to, the performance of the CEO's functions; or
- (f) any other person prescribed by the rules.

environment has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

environmental justice means justice and accountability in environmental matters, focusing on the respect, protection and fulfilment of environmental rights, including:

- (a) the right to a clean, healthy and sustainable environment; and
- (b) the promotion of the environmental rule of law.

EPA: see subsection 9(1).

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

joint committee means the Parliamentary Joint Committee on Environment and Energy (see Part 5).

joint committee member means a member of the joint committee.

matter protected by a provision of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* has the same meaning as in that Act.

official has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

OMCEA: see subsection 12(1).

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

protected information means information of any of the following kinds obtained by an entrusted person:

- (a) information the disclosure of which by the entrusted person could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence;
- (b) information the disclosure of which could reasonably be expected to prejudice the effective working of government;
- (c) information the disclosure of which could reasonably be expected to prejudice the prevention, detection, investigation, prosecution or punishment of one or more offences;
- (d) information the disclosure of which could reasonably be expected to endanger a person's life or physical safety;
- (e) information the disclosure of which could reasonably be expected to prejudice the protection of public safety or the environment.

registrable decision: see section 19.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

relevant information means information obtained by an entrusted person under, or in accordance with:

- (a) this Act; or
- (b) an Act that confers functions on the CEO; or
- (c) the Regulatory Powers Act to the extent that it applies in relation to an Act mentioned in paragraph (a) or (b).

rules means rules made under section 62.

senior Deputy CEO: see subsection 10D(2).

staff of EPA means the staff referred to in section 13.

State or Territory government body means:

- (a) a Department of State of a State or Territory; or
- (b) an agency of a State or Territory; or
- (c) an authority of a State or Territory.

[preliminary provisions]

- (3) Part 2, clauses 8 to 14, page 6 (line 1) to page 9 (line 13), omit the Part, substitute:

Part 2—Environment Protection Australia

Division 1—Introduction

8 Simplified outline of this Part

This Part establishes the office of the CEO of EPA. It also establishes EPA for the purposes of assisting the CEO in the performance of the CEO's functions. The CEO is the accountable authority of EPA.

Division 2—Environment Protection Australia

Subdivision A—Establishment

9 Environment Protection Authority

- (1) Environment Protection Australia (*EPA*) is established by this section.
- (2) EPA consists of the following:
 - (a) the CEO;
 - (b) the Deputy CEOs;
 - (c) the staff of EPA;
 - (d) consultants engaged under section 13A.
- (2) The function of EPA is to assist the CEO in the performance of the CEO's functions.
- (3) The CEO has the control of the operations of EPA.
- (4) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) EPA is a listed entity; and
 - (b) the CEO is the accountable authority of EPA; and
 - (c) the following persons are officials of EPA:
 - (i) the CEO;
 - (ii) the Deputy CEOs;
 - (iii) the staff of EPA;
 - (iv) consultants engaged under section 13A;
 - (d) the purposes of EPA include:

-
- (i) the function of EPA referred to in subsection (2) of this section; and
 - (ii) the functions of the CEO referred to in section 10A; and
 - (iii) the functions of the OMCEA referred to in section 12.

Subdivision B—Chief Executive Officer

10 Chief Executive Officer

There is to be a Chief Executive Officer (*CEO*) of EPA.

10A Functions and powers of the CEO

- (1) The CEO has the following functions:
 - (a) the functions conferred on the CEO by this Act or by or under other laws of the Commonwealth;

Note: Other provisions of this Act give the CEO functions involving exercising the routine administrative environmental regulatory functions of the Commonwealth, monitoring compliance with this Act and enforcing this Act.
 - (b) the following functions relating to communities:
 - (i) educating communities about the administration of Commonwealth environmental laws;
 - (ii) to the extent that Commonwealth environmental laws allow for community involvement in the administration of those laws—promoting the take-up of those opportunities;
 - (iii) increasing public confidence in the administration of Commonwealth environmental laws;
 - (c) to advise and assist the Minister in relation to the exercise of any powers, or the performance of any functions, of the Minister under laws that confer functions on the CEO;
 - (d) to make recommendations to the Minister in relation to opportunities to improve regulation under laws that confer functions on the CEO;
 - (e) any functions conferred on the CEO by rules made for the purposes of this paragraph;
 - (f) to do anything incidental or conducive to the performance of the above functions.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of the CEO's functions.

Note: The CEO may delegate these functions and powers (see section 58).
- (3) In performing the CEO's functions, the CEO must act effectively, efficiently, equitably and transparently.

CEO solely responsible for performing the CEO's functions
- (4) The Minister must not give directions to the CEO about the performance of the CEO's functions.
- (5) If the Minister gives a direction (whether express or implied) to the CEO contrary to subsection (4), the CEO must disregard the direction.

10B Duties of the CEO

In performing the CEO's functions, the CEO has the following duties:

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- (a) a duty to protect and improve the state of the environment and human health from the harmful effects of pollution, destruction and waste through assessment, enforcement, monitoring, reporting and standard setting;
 - (b) a duty to promote environmental justice;
 - (c) a duty to act consistently with the human right to a healthy environment for all;
 - (d) a duty to implement legislation in accordance with principles of ecologically sustainable development;
 - (e) a duty to take action to prevent and mitigate greenhouse gas pollution and take all actions necessary to reduce the impacts of climate change.

10C Appointment

- (1) The CEO is to be appointed by the Governor-General by written instrument.
Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.
- (2) The CEO holds office for the period specified in the instrument of appointment. The period must be 5 years.
- (3) The Governor-General must not appoint a person as the CEO unless:
 - (a) the Minister is satisfied that the person qualifies for the appointment because of the person's knowledge of, or experience in, any of the following:
 - (i) conservation of biodiversity;
 - (ii) ecologically sustainable development;
 - (iii) heritage;
 - (iv) Indigenous affairs;
 - (v) law;
 - (vi) law enforcement;
 - (vii) natural resource management; and
 - (b) the Minister has referred the proposed appointment to the joint committee for approval; and
 - (c) the joint committee has approved the proposed appointment.
- (4) The first person appointed as CEO must have knowledge of, or experience in, law enforcement.
- (5) The CEO, or at least one of the Deputy CEOs, must be an Indigenous person. This subsection has effect despite Part II of the *Racial Discrimination Act 1975*.
- (6) A person is not eligible to be appointed as CEO if, at any time during the 5 years before the start of the appointment, the person was any of the following:
 - (a) a member of the Parliament of the Commonwealth, of a State Parliament or of a Legislative Assembly of a Territory;
 - (b) a person registered under the *Commonwealth Electoral Act 1918* as political campaigner;
 - (c) a person registered as a lobbyist (however described) under a law of a State or Territory or a foreign country;
 - (d) a senior executive of:
 - (i) an industry association (however described) in Australia or a foreign country;
 - or

-
- (ii) an environmental organisation covered by section 30-55 of the *Income Tax Assessment Act 1997*, or a similar environmental organisation in a foreign country; or
 - (iii) a body corporate regulated by or under an Act referred to in section 10A of this Act.

Note: Under section 29 of the *Public Governance, Performance and Accountability Act 2013*, and the rules made under that Act, the CEO must, in writing, disclose material personal interests that relate to the affairs of EPA to the Minister.

10D Acting CEO

- (1) The senior Deputy CEO acts as the CEO:
 - (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The *senior Deputy CEO* is the Deputy CEO who, out of the Deputy CEOs who are:
 - (a) not absent from duty or from Australia; and
 - (b) able to perform the duties of their offices;was appointed first.

10E Other paid work

The CEO must not engage in paid work outside the duties of the CEO's office without the Minister's approval.

10F Remuneration

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.
- (2) The CEO is to be paid the allowances that are prescribed by the rules.
- (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of CEO.

Note: The effect of this subsection is that remuneration or allowances of the CEO will be paid out of money appropriated by an Act other than the *Remuneration Tribunal Act 1973*.

- (4) This section has effect subject to the *Remuneration Tribunal Act 1973* (except as provided by subsection (3)).

10G Leave of absence

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

10H Resignation

- (1) The CEO may resign the CEO's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

10J Termination of appointment

- (1) The Governor-General may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the CEO's creditors; or
 - (iv) makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or
 - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the CEO engages, except with the Minister's approval, in paid work outside the duties of the CEO's office (see section 10E).

Note: The appointment of the CEO may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

10K Disclosure of interests to the Minister

The CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's functions.

10L Terms and conditions of appointment

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Subdivision C—Deputy Chief Executive Officers

11 Deputy Chief Executive Officers

- (1) There are to be 4 Deputy Chief Executive Officers (*Deputy CEOs*) of EPA.
- (2) A Deputy CEO is to be appointed by the Governor-General by written instrument.

Note: A Deputy CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.
- (3) A Deputy CEO holds office for the period specified in the instrument of appointment. The period must be 5 years.

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- (4) The Governor-General must not appoint a person as a Deputy CEO unless:
- (a) the Minister is satisfied that the person qualifies for the appointment because of the person's knowledge of, or experience in, any of the following:
 - (i) conservation of biodiversity;
 - (ii) ecologically sustainable development;
 - (iii) heritage;
 - (iv) Indigenous affairs;
 - (v) law;
 - (vi) law enforcement;
 - (vii) natural resource management; and
 - (b) the Minister has referred the proposed appointment to the joint committee for approval; and
 - (c) the joint committee has approved the proposed appointment.
- (5) At least one of the first 4 Deputy CEOs must have knowledge of, or experience in, law enforcement.

Note: Under subsection 10C(5), the CEO, or at least one of the Deputy CEOs, must be an Indigenous person.

- (6) A person is not eligible to be appointed as a Deputy CEO if, at any time during the 5 years before the start of the appointment, the person was any of the following:
- (a) a member of the Parliament of the Commonwealth, of a State Parliament or of a Legislative Assembly of a Territory;
 - (b) a person registered under the *Commonwealth Electoral Act 1918* as political campaigner;
 - (c) a person registered as a lobbyist (however described) under a law of a State or Territory or a foreign country;
 - (d) a senior executive of:
 - (i) an industry association (however described) in Australia or a foreign country; or
 - (ii) an environmental organisation covered by section 30-55 of the *Income Tax Assessment Act 1997*, or a similar environmental organisation in a foreign country; or
 - (iii) a body corporate regulated by or under an Act referred to in section 10A of this Act.

11A Acting appointments

The CEO may, by written instrument, appoint an SES employee or acting SES employee in EPA to act as a Deputy CEO:

- (a) during a vacancy in the office of a Deputy CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when a Deputy CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

11B Other paid work

A Deputy CEO must not engage in paid work outside the duties of the Deputy CEO's office without the Minister's approval.

11C Remuneration

- (1) A Deputy CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.
- (2) A Deputy CEO is to be paid the allowances that are prescribed by the rules.
- (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of Deputy CEO.

Note: The effect of this subsection is that remuneration or allowances of a Deputy CEO will be paid out of money appropriated by an Act other than the *Remuneration Tribunal Act 1973*.

- (4) This section has effect subject to the *Remuneration Tribunal Act 1973* (except as provided by subsection (3)).

11D Leave of absence

- (1) A Deputy CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a Deputy CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

11E Resignation

- (1) A Deputy CEO may resign the Deputy CEO's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

11F Termination of appointment

- (1) The Governor-General may terminate the appointment of a Deputy CEO:
 - (a) for misbehaviour; or
 - (b) if the Deputy CEO is unable to perform the duties of the Deputy CEO's office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of a Deputy CEO if:
 - (a) the Deputy CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Deputy CEO's creditors; or
 - (iv) makes an assignment of the Deputy CEO's remuneration for the benefit of the Deputy CEO's creditors; or
 - (b) the Deputy CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

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- (c) the Deputy CEO engages, except with the Minister's approval, in paid work outside the duties of the Deputy CEO's office (see section 11B);
 - (d) the Deputy CEO fails, without reasonable excuse, to comply with section 11G.

11G Disclosure of interests to the Minister

A Deputy CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the Deputy CEO has or acquires and that conflict or could conflict with the proper performance of the Deputy CEO's functions.

11H Terms and conditions of appointment

A Deputy CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

11J Delegation by Deputy CEO

- (1) If a Deputy CEO is delegated any of the CEO's functions or powers under section 58, the Deputy CEO may, in writing, sub-delegate that function or power to an SES employee, or acting SES employee, in EPA.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing a sub-delegated function or exercising a sub-delegated power, the sub-delegate must comply with any written directions of the Deputy CEO.

Subdivision D—Monitoring, compliance, enforcement and assurance

12 Office of Monitoring, Compliance, Enforcement and Assurance

- (1) There is to be within EPA an Office of Monitoring, Compliance, Enforcement and Assurance (*OMCEA*) of EPA.
- (2) The OMCEA must include a Deputy CEO.
- (3) The OMCEA has the function of assisting the CEO in performing the CEO's functions, to the extent those functions relate to monitoring compliance with, and enforcing, Commonwealth environmental laws.

12A CEO must consult Auditor General

- (1) The CEO must consult the Auditor-General in establishing EPA's monitoring, compliance, enforcement and assurance systems.
- (2) The Auditor-General must conduct performance audits of EPA's monitoring, compliance, enforcement and assurance systems:
 - (a) 3 years after the commencement of this section; and
 - (b) at such times occurring:
 - (i) after the first audit; and
 - (ii) before 1 January 2036;as the Auditor-General considers appropriate, such that no more than 5 years occurs between audits.

12B Monitoring plans

Before the CEO, under a Commonwealth environmental law:

- (a) grants an approval, permit, licence or other permission (however described) subject to conditions; or
- (b) imposes new conditions on such an approval etc.;

the CEO must develop a plan to monitor compliance with the conditions.

Subdivision E—Staff and consultants

13 Staff

- (1) The staff of EPA must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the APS employees assisting the CEO together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

13A Consultants

The CEO may, on behalf of the Commonwealth, engage consultants to assist in the performance of the CEO's functions.

Subdivision F—Miscellaneous

14 Fees

- (1) The CEO may charge a fee for the performance of any of the CEO's or EPA's functions.
- (2) Subsection (1) does not apply to performing a function:
 - (a) on the CEO's own initiative; or
 - (b) if a Commonwealth law other than this Division deals with the charging of fees for the performance of that function.

14A Annual report

The annual report prepared by the CEO and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include details about the action the CEO took during the year to establish and maintain EPA's monitoring, compliance, enforcement and assurance systems, including the following:

- (a) any advice the Auditor-General gave to the CEO under subsection 12A(1) during the year;
- (b) any action the CEO has taken during the year in response to advice given by the Auditor-General under subsection 12A(1);
- (c) if the Auditor-General conducted an audit under subsection 12A(2) during the year—a copy of the Auditor-General's report of the audit.

14B Vacancies to be filled as soon as practicable

If a vacancy occurs in the office of CEO or in an office of Deputy CEO, the Minister and the joint committee must take all reasonable steps to ensure that the vacancy is filled as soon as practicable.

- (4) Heading to Part 3, page 10 (line 1), omit the heading, substitute:

Part 3—Registers

[registers]

- (5) Clause 15, page 10 (lines 4 to 6), omit:

The Minister may give the CEO a statement of the Minister’s expectations for the CEO and EPA. The CEO must respond to any such statement of expectations with a statement of intent.
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[registers]

- (6) Clause 15, page 10 (line 10), omit “law mentioned in section 13”, substitute “law referred to in subsection 10A(1)”.

[registers]

- (7) Division 2, clauses 16 and 17, page 11 (line 1) to page 12 (line 1), omit the Division.

[registers]

- (8) Heading to Division 3, page 13 (line 1), omit “**Division 3**”, substitute “**Division 2**”.

[registers]

- (9) Clause 18, page 13 (line 6), omit “law mentioned in section 13”, substitute “law referred to in subsection 10A(1)”.

[registers]

- (10) Part 5, clauses 43 to 56, page 22 (line 1) to page 29 (line 17), omit the Part, substitute:

Part 5—Parliamentary Joint committee on Environment and Energy

Division 1—Introduction

43 Simplified outline of this Part

The Parliamentary Joint Committee on Environment and Energy is established to monitor the CEO’s performance of the CEO’s functions, and for related matters.
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Division 2—Parliamentary Joint committee on Environment and Energy

44 Parliamentary Joint Committee on Environment and Energy

- (1) A Committee to be known as the Parliamentary Joint Committee on Environment and Energy is to be established as soon as practicable after the commencement of each Parliament.
- (2) The joint committee is to consist of 12 members:

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- (a) 6 of whom must be members of the Senate appointed by the Senate, and 6 of whom must be members of the House of Representatives appointed by that House; and
 - (b) 5 of whom must be members of the Government; and
 - (c) 5 of whom must be members of the Opposition; and
 - (d) 2 of whom must be members of the Parliament other than members of the Government or Opposition.
- (3) The co-Chairs of the joint committee are to be:
- (a) the joint committee member nominated as co-Chair by the Prime Minister; and
 - (b) the joint committee member nominated as co-Chair by the leader of the Opposition.
- (4) A member of the Parliament is not eligible for appointment as a joint committee member if the member is:
- (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives; or
 - (d) the Deputy President and Chair of Committees of the Senate or the Deputy Speaker of the House of Representatives.
- (5) A joint committee member ceases to hold office:
- (a) when the House of Representatives expires by the passing of time or is dissolved; or
 - (b) if the joint committee member becomes the holder of an office specified in any of the paragraphs of subsection (4); or
 - (c) if the joint committee member ceases to be a member of the House of the Parliament by which the joint committee member was appointed; or
 - (d) if the joint committee member resigns the member's office as provided by subsection (6) or (7).
- (6) A joint committee member appointed by the Senate may resign the member's office by giving a signed notice to that effect to the President of the Senate.
- (7) A joint committee member appointed by the House of Representatives may resign the member's office by giving a signed notice to that effect to the Speaker of that House.
- (8) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the joint committee appointed by that House.

45 Powers and proceedings of the joint committee

All matters relating to the powers and proceedings of the joint committee are to be determined by resolution of both Houses of the Parliament.

46 Functions of the joint committee

- (1) The functions of the joint committee are as follows:
- (a) to monitor the CEO's performance of the CEO's functions and duties;
 - (b) to report to both Houses of the Parliament, with such comments as it thinks fit, on any matter connected with the performance of the CEO's functions and duties that the joint committee considers should be directed to the attention of the Parliament;
 - (c) to examine each annual report prepared by the CEO under the *Public Governance, Performance and Accountability Act 2013* and report to both Houses of the Parliament on any matter appearing in, or arising out of, any such annual report;

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- (d) to inquire into any question in connection with the joint committee’s functions that is referred to it by either House of the Parliament, and to report to that House on that question;
 - (e) to consider proposed appointments to the office of CEO (see subsection 10C(3)) or Deputy CEO (see subsection 11(4));
 - (f) to make recommendations to both Houses of the Parliament, the Minister and the CEO on:
 - (i) draft estimates referred to in section 47; and
 - (ii) what proportion of EPA’s budget should be spent on monitoring, compliance, enforcement and assurance;
 - (g) to conduct reviews and make recommendations under section 48;
 - (h) to do anything incidental or conducive to the performance of the above functions.
- (2) Subsection (1) does not authorise the joint committee to reconsider the CEO’s decisions or recommendations in relation to a particular decision under a Commonwealth environmental law.

47 Estimates

- (1) Without limiting section 46, the joint committee may request the CEO to submit to the joint committee draft estimates for EPA for a financial year before the Federal Budget for that financial year.
- (2) The CEO must comply with the request in time to allow the joint committee to consider the draft estimates and make recommendations on them before the Budget.

48 Review of Commonwealth environmental laws

The joint committee must:

- (a) regularly review Commonwealth environmental laws; and
- (b) if the joint committee reasonably believes that the purposes of those laws would be better achieved if any functions under those laws were transferred to the CEO— recommend to both Houses of the Parliament and the Minister that the functions be transferred to the CEO.

[Parliamentary Joint Committee on Environment and Energy]

- (11) Clause 58, page 30 (lines 7 and 8), omit “laws mentioned in section 13”, substitute “laws referred to in subsection 10A(1)”.

[delegation]
- (12) Clause 58, page 30 (before line 9), before paragraph (1)(a), insert:
 - (aa) a Deputy CEO; or

[delegation]
- (13) Clause 58, page 30 (line 9), omit “referred to in section 52”, substitute “of EPA”.

[delegation]
- (14) Clause 58, page 30 (lines 10 and 11), omit paragraph (1)(b).

[delegation]
- (15) Clause 60, page 32 (lines 4 to 6), omit paragraph (2)(b).

[reviews]

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Nature Positive (Environment Protection Australia) Bill 2024

(Ms Tink)

- (1) Clause 3, page 2 (lines 13 to 17), omit the clause, substitute:

3 Objects

The objects of this Act are as follows:

- (a) to establish Environment Protection Australia to support the delivery of accountable, efficient, outcomes-focused and transparent environmental regulatory decision-making;
- (b) to promote public trust in environmental regulatory decision-making through:
 - (i) publication of comprehensive information within reasonable timeframes in relation to the decisions of the CEO of Environment Protection Australia; and
 - (ii) requiring transparency for those decisions; and
 - (iii) ensuring opportunities for the public to inform those decisions.

[objects]

- (2) Clause 5, page 3 (after line 18), after the definition of *CEO*, insert:

Charter of Consultation means an instrument made under subsection 23B(1).

[transparency and accountability in decision making]

- (3) Clause 13, page 9 (line 4), after “by”, insert “or under”.

[functions of the CEO]

- (4) Clause 13, page 9 (after line 8), at the end of the subclause (2), add:

Note: Subparagraph (c)(ii) ensures that the CEO’s functions include a function delegated to the CEO under another law of the Commonwealth.

[functions of the CEO]

- (5) Clause 15, page 10 (lines 3 to 10), omit the clause, substitute:

The Minister may give the CEO a statement of the Minister’s expectations for the CEO and EPA. The CEO must respond to any such statement of expectations with a statement of intent.

The CEO must establish and maintain on EPA’s website registers containing information in relation to certain decisions of the CEO (called registrable decisions), certain approvals and other actions by the CEO, and any other matters prescribed by the rules that relate to a law mentioned in section 13. These registers are to contain information to inform public participation in environmental decision making.

The CEO must make a Charter of Consultation for the CEO’s decision-making when performing the CEO’s functions. The CEO must have regard to that Charter, and take certain additional steps, to ensure meaningful public participation in that decision-making.

[simplified outline to Part 3]

(6) Clause 18, page 13 (after line 4), after paragraph (1)(a), insert:

(aa) a register of the following:

- (i) audits, compliance reports and plans of management relating to approvals under the *Environment Protection and Biodiversity Conservation Act 1999*;
- (ii) documents relating to compliance and enforcement of approvals under that Act;
- (iii) any other documents prescribed by the rules that relate to approvals, or post-approval actions, under that Act;

[registers]

(7) Clause 18, page 13 (after line 6), after subclause (1), insert:

- (1A) A registrable decision is to be included on the register of registrable decisions within 28 days after the day the decision is made.

[registers]

(8) Clauses 19 to 21, page 13 (line 10) to page 14 (line 4), omit the clauses, substitute:

19 Definition of *registrable decision*

A decision of the CEO is a ***registrable decision*** if the decision:

- (a) is a decision of the CEO under the *Environment Protection and Biodiversity Conservation Act 1999*; or
- (b) is a decision of the CEO referred to in Schedule 1 to the *Nature Positive (Environment Law Amendments and Transitional Provisions) Act 2024*; or
- (c) for a decision under another Act—is prescribed as a registrable decision by that Act or the rules; or
- (d) for a decision under a legislative instrument—is prescribed as a registrable decision by the rules.

20 Register of registrable decisions

The register of registrable decisions must include the following for each registrable decision:

- (a) information about the person in relation to whom the decision was made;
- (b) information about what that person was seeking from the decision;
- (c) information about any environment impact assessment (however described) relating to the decision;

-
- (d) any advice from the advisory group, or from one or more of the advisory group's members, relating to the decision;
 - (e) any other information of a kind prescribed by the rules.

Note: The CEO is not required to publish certain sensitive information: see section 23.

21 Other registers

The rules may make provision in relation to a register referred to in paragraph 18(1)(aa) or (b), including (without limitation) the information that the CEO must publish on the register.

Note: The CEO is not required to publish certain sensitive information: see section 23.

[registers]

- (9) Clause 23, page 14 (lines 29 and 30), omit “, defence or international relations”, substitute “or defence”.

[registers]

- (10) Page 14 (after line 30), at the end of Part 3, add:

Division 4—Transparency and accountability in decision making

23A Community rights

In making decisions when performing the CEO's functions, the CEO must:

- (a) comply with the Charter of Consultation; and
- (b) for a decision of a kind prescribed by the rules—provide members of the public with a reasonable opportunity to comment directly to the CEO on the decision; and
- (c) for a decision of a kind prescribed by the rules:
 - (i) include in the CEO's statement of reasons for the decision, an explanation of how the CEO considered submissions received in relation to the decision; and
 - (ii) publish that statement of reasons on EPA's website within 28 days of the making of the decision.

Note: The CEO's functions are referred to in section 13 and include functions delegated to the CEO under another law of the Commonwealth (see subparagraph 13(2)(c)(ii)).

23B Charter of consultation

- (1) The CEO must, in writing, make a Charter of Consultation.
- (2) The Charter of Consultation must include guidelines for:
 - (a) how the CEO is to ensure meaningful public participation in the CEO's decision-making when performing the CEO's functions; and
 - (b) how submissions received as part of that public participation are to be taken into account when making those decisions.

The Charter of Consultation may include guidelines on any other matters that the CEO considers appropriate.

- (3) The CEO must publish the Charter of Consultation on EPA's website.
- (4) The Charter of Consultation is not a legislative instrument.

[transparency and accountability in decision making]

(11) Page 17 (before line 3), before clause 26, insert:

25A Disclosure of relevant information for the purposes of transparency and accountability in decision-making

The CEO may disclose relevant information by publishing it on EPA’s website if:

- (a) the information is not protected information; and
- (b) the CEO is satisfied the disclosure is required for the purposes of Division 4 of Part 3 (about transparency and accountability in decision-making).

[authorisation to disclose relevant information]

(12) Clause 54, page 28 (after line 21), after subclause (5), insert:

- (5A) The CEO must publish the name of a person appointed under subsection (3) on EPA’s website as soon as practicable after the appointment.

[members of advisory group]

(13) Clause 54, page 28 (after line 24), after subclause (6), insert:

- (6A) Without limiting subsection (6), the terms and conditions of appointment of a member of the group must require the member:
 - (a) to disclose to the CEO any material personal interest, pecuniary or otherwise, that is relevant to the affairs of the CEO, EPA or the group; and
 - (b) to not participate in the affairs of the group in relation to a matter if the member has a material personal interest, pecuniary or otherwise, that is relevant to the matter.

[members of advisory group]

(14) Clause 55, page 29 (lines 6 to 11), omit the clause, substitute:

55 CEO must publish advice

If the advisory group or any one or more of its members provides advice to the CEO in relation to the performance of the CEO’s functions or the exercise of the CEO’s powers, the CEO must publish the advice on EPA’s website as soon as practicable afterwards unless the CEO considers that doing so:

- (a) would, or could be reasonably expected to, result in an outcome set out in paragraph 23(a), (b) or (c); or
- (b) is not in the public interest.

[publishing advice of advisory group]

(15) Clause 56, page 29 (line 13), before “If the”, insert “(1)”.

[acknowledging advice of advisory group]

(16) Clause 56, page 29 (after line 17), at the end of the clause, add:

- (2) The CEO must refer to that advice in the statement of reasons for that decision.

[acknowledging advice of advisory group]

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The Parliament of the
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HOUSE OF REPRESENTATIVES

Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

(Dr Scamps)

(1) Clause 2, page 2 (table item 2), omit “Schedules 1 and 2”, substitute “Schedules 1, 2 and 2A”.
[forestry operations]

(2) Schedule 2, page 13 (before line 7), before item 1, insert:

1A Section 11

Omit “it is taken in accordance with Regional Forest Agreements or”.

[forestry operations]

(3) Schedule 2, page 13 (after line 22), after item 8, insert:

8A Division 4 of Part 4

Repeal the Division.

[forestry operations]

(4) Schedule 2, page 13 (before line 23), before item 9, insert:

8B Section 43B

Repeal the section.

8C After subsection 68(1)

Insert:

Note: See also section 68B if the proposal involves clearing native vegetation.

8D Subsection 68A(5)

After “subsection 68(1) or (2)”, insert “, or subsection 68B(2).”.

8E After section 68A

Insert:

68B Clearing native vegetation in certain areas requires referral

(1) This section applies to a proposal to take any of the following actions:

-
- (a) an action that includes clearing one or more areas of native vegetation that total 20 hectares or more;
 - (b) an action that, together with one or more other actions, includes clearing one or more areas of native vegetation that:
 - (i) total 20 hectares or more; and
 - (ii) are on the same property;
 - (c) an action, that together with one or more other actions over a period of up to 2 years, includes clearing one or more areas of native vegetation that:
 - (i) total 20 hectares or more; and
 - (ii) are on the same property or on adjoining properties.

Note 1: For the meaning of *action*, see section 523.

Note 2: For paragraphs (b) and (c), the actions need not all be carried out by the same person.

- (2) A person proposing to take the action for an area of native vegetation must refer the proposal to the Minister for the Minister's decision under subsection 75(1), whether or not the action is a controlled action, if:
 - (a) a listed threatened species is known, or likely, to occur within the area; or
 - (b) a listed threatened species' habitat is known, or likely, to occur within the area; or
 - (c) a listed migratory species is known, or likely, to occur within the area; or
 - (d) a listed migratory species' habitat is known, or likely, to occur within the area; or
 - (e) a listed threatened ecological community is known, or likely, to occur within the area; or
 - (f) the area is wholly or partly within a Great Barrier Reef catchment area.

The referral must comply with subsection (3).

Civil penalty:

- (a) for an individual-1,000 penalty units; or
 - (b) for a body corporate-10,000 penalty units.
- (3) The referral complies with this subsection if the referral specifies each provision of Part 3 that the person reasonably considers is, or may be, a controlling provision for the action.

Note: A controlling provision for the action may be:

- (a) if paragraph (2)(a), (b) or (e) applies for the action-section 18 or 18A; or
- (b) if paragraph (2)(c) or (d) applies for the action-section 20 or 20A; or
- (c) if paragraph (2)(f) applies for the action-section 24B or 24C.

- (4) Nothing in this section limits the operation of any other provision of this Act or prevents clearing of native vegetation from being a controlled action under any other provision of this Act.

Note: Clearing native vegetation may be a controlled action (see section 67) even if subsection (2) does not apply. Similarly, a proposal to clear native vegetation may need to be referred to the Minister (see section 68) even if subsection (2) does not apply.

[lawful continuations and clearing native vegetation]

- (5) Schedule 2, page 13 (after line 24), after item 9, insert:

9A Subsection 75(2B)

Repeal the subsection.

[forestry operations]

- (6) Schedule 2, page 14 (before line 1), before item 10, insert:

9B After Subsection 75(2B)

Insert:

- (2C) In deciding whether a proposed action that includes clearing of native vegetation is a controlled action, the Minister must consider the cumulative impacts of native vegetation clearing on each relevant matter protected by a provision of Part 3 as impacts of the action.

9C After Subsection 87(3)

Insert:

- (3B) In deciding which assessment approach must be used for a proposed action that includes clearing of native vegetation, the Minister must consider the cumulative impacts of native vegetation clearing on each relevant matter protected by a provision of Part 3 as impacts of the action.

9D After paragraph 136(2)(g)

Insert:

- ; and (h) if the action includes clearing of native vegetation, the Minister must consider the cumulative impacts of native vegetation clearing on each relevant matter protected by a provision of Part 3 as impacts of the action.

[clearing native vegetation]

- (7) Schedule 2, item 143, page 26 (lines 11 to 20), omit the item, substitute:

143 Subsection 481(1)

Repeal the subsection, substitute:

Application for order

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, any of the following persons may apply to the Federal Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty:
- (a) the CEO;
 - (b) a person covered by subsection (1A);
 - (c) if the contravention relates to a Commonwealth reserve or a conservation zone—the Director.
- (1A) This subsection covers a person who would be an interested person (see section 475) if:
- (a) the application for the order were an application for an injunction; and
 - (b) the conduct (consisting of an act or omission) relating to the application for the order were conduct relating to an application for an injunction.

Note: Paragraph (b) is not changing the conduct that can give rise to an application for an order under subsection (1). Paragraph (b) merely ensures that this conduct is the conduct that is relevant for working out which persons are interested persons for the purposes of making such applications.

[applying for civil penalties]

- (8) Schedule 2, item 181, page 32 (after line 5), after the definition of *CEO*, insert:

clearing, of native vegetation, means one or more of the following:

- (a) cutting down, felling, thinning, logging or removing native vegetation;
- (b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation;

-
- (c) severing, topping or lopping branches, limbs, stems or trunks of native vegetation;
 - (d) substantially damaging or injuring native vegetation in any other way.

[clearing native vegetation]

- (9) Schedule 2, item 181, page 32 (after line 8), after the definition of *EPA*, insert:

native vegetation means one or more native plants, including native plants that are:

- (a) trees (including saplings, shrubs or scrubs); or
- (b) understorey plants; or
- (c) groundcovers; or
- (d) found in a wetland; or
- (e) lichens.

[clearing native vegetation]

- (10) Schedule 2, page 32 (after line 10), after item 181, insert:

181A Section 528 (definition of *continuation*)

Repeal the definition.

[lawful continuations]

- (11) Page 34 (after line 11), after Schedule 2, insert:

**Schedule 2A-Repeal of the Regional Forest Agreements Act
2002**

Regional Forest Agreements Act 2002

1 The whole of the Act

Repeal the Act.

[forestry operations]

2022-2023-2024

The Parliament of the
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HOUSE OF REPRESENTATIVES

Nature Positive (Environment Information Australia) Bill 2024

(Ms Daniel)

(1) Clause 6, page 6 (lines 19 to 22), omit subclause (1), substitute:

(1) ***Nature positive*** is halting and reversing the decline in diversity, abundance, resilience and integrity of ecosystems and native species populations by 2030 (measured against a 2021 baseline), and achieving recovery by 2050.

[meaning of nature positive]

(2) Clause 13, page 10 (line 2), omit “(1)”.

[meaning of nature positive]

(3) Clause 13, page 10 (lines 7 and 8), omit subclause (2).

[meaning of nature positive]

Amendments for strengthening reporting on progress on achieving threatened species and ecological community recovery

Nature Positive (Environment Information Australia) Bill 2024

The *Nature Positive (Environment Information Australia) Bill 2024* should be amended as outlined below (proposed amendments to the Bill are underlined).

1. Insert additional definition:

5 Definitions

Conservation planning reports: see section 16A.

2. Insert additional description of key function:

Part 2—Establishment, functions and powers

9 Simplified outline of this Part

This Part sets out the functions of the Head of Environment Information Australia.

The Head is responsible for providing the Minister, the CEO and the public with access to high quality information and data relating to the environment, the Minister’s functions under certain laws and the functions of the CEO.

Other key functions of the Head include:

- (a) developing and implementing a monitoring, evaluation and reporting framework in relation to whether and to what extent nature positive is being achieved in the Australian jurisdiction; and
- (b) preparing and publishing reports on the state of the environment; and
- (c) establishing and maintaining environmental economic accounts; and
- (d) preparing and publishing reports on the status of conservation planning.

3. Insert additional function:

Part 2—Establishment, functions and powers

11 Functions

(gg) to prepare and publish reports on conservation planning in accordance with section 16A;

4. Insert additional requirement for independence under section 12(a):

Part 2—Establishment, functions and powers

12 Independence

(iv) paragraph 11(gg) (prepare and publish reports on conservation planning); or

5. Insert additional section:

16A Reports on conservation planning

Conservation planning reports

(1) The Head of Environment Information Australia must, on or before 30 September every second year, prepare and publish a report on the status of **conservation planning** in the Australian jurisdiction on a website maintained by the Department.

(2) **Conservation planning** involves the development and implementation of statutory conservation planning documents that support the recovery of entities listed as threatened. **Conservation planning** documents include:

- (a) Recovery Plans;
- (b) Conservation Advices;
- (c) Threat Abatement Plans;
- (d) Wildlife Conservation Plans; and
- (e) any other documents prescribed by the rules for the purposes of this paragraph.

(3) A report on the status of **conservation planning** must:

- (a) contain information about, and analysis relating to, the trajectory of recovery for each listed threatened species and ecological community;
- (b) contain information about, and analysis relating to, the status and impacts of key threatening processes;
- (c) contain information about, and analysis relating to, the implementation of actions listed under each adopted **conservation planning** document; and
- (d) contain information about, and analysis relating to, progress towards each listed threatened species and ecological community and key threatening process having an adopted **conservation planning** document;
- (f) deal with any other matters prescribed by the rules for the purposes of this paragraph.

This subsection does not limit the content of the report.

(4) The Head of Environment Information Australia may, in preparing a report on **conservation planning**, seek assistance, input or information from such persons as the Head determines.

6. Insert additional Ministerial responsibility:

19A Minister's responsibilities in relation to reports on conservation planning

The Minister must arrange for any report on conservation planning prepared by the Head of Environment Information Australia under section 16A to be tabled in each

House of the Parliament, within 15 sitting days of that House after the Minister receives the report.

7. Subsequent amendments to section 28 and section 38 in light of proposed new section 11(gg):

28 Use and disclosure for the purposes of the Head's functions and powers

(1) An entrusted person may use or disclose EIA information if the use or disclosure is for the purposes of performing functions or exercising powers of the Head of Environment Information Australia.

(2) Subsection (1) does not authorise:

- (a) the disclosure of protected information for the purposes of the Head's function under paragraph 11(c) to provide the public with access to high quality information and data relating to the environment; or
- (b) the publication of protected information for the purposes of the Head's function under paragraph 11(d) or (e) or (gg).

38 Use and disclosure for the purposes of the Head's functions and powers

(1) An entrusted person may use or disclose departmental information if the use or disclosure is for the purposes of performing functions or exercising powers of the Head of Environment Information Australia.

(2) Subsection (1) does not authorise:

- (a) the disclosure of protected information for the purposes of the Head's function under paragraph 11(c) to provide the public with access to high quality information and data relating to the environment; or
- (b) the publication of protected information for the purposes of the Head's function under paragraph 11(d) or (e) or (gg).

(3) To avoid doubt, subsection (1) does not affect an authorisation to use or disclose departmental information under:

- (a) any other law of the Commonwealth; or
- (b) the executive power of the Commonwealth.

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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

(Mr Wilkie)

- (1) Schedule 2, page 13 (before line 7), before item 1, insert:

1A After Subdivision FC of Division 1 of Part 3

Insert:

Subdivision FC—Protection of the environment from significant emissions

24F Purpose of this Subdivision

The purpose of this Subdivision is:

- (a) to contribute to meeting Australia's obligations under the Climate Change Conventions; and
- (b) to provide for the protection of the environment from climate change, including from the impacts of climate change on matters of national environmental significance.

24G Requirement for approval of activities with significant emissions

- (1) A person who is a constitutional corporation must not take an action that has, will have or is likely to have a significant impact on emissions.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

- (2) Subsection (1) does not apply to an action if:

- (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- (b) section 43A or 43B lets the person take the action without an approval under Part 9 for the purposes of this section; or
- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action:

-
- (i) is not an action that has, will have or is likely to have a prohibited impact on emissions; and
 - (ii) is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: If the Minister decides under Division 2 of Part 7 that this section is not a controlling provision for the action, the Minister may revoke and substitute the decision if satisfied that it is warranted by the availability of substantial new information about the impacts of the action, or by a substantial change in circumstances that relates to the impacts of the action: see section 78. This may include, for example, where the total amount of greenhouse gases emitted in relation to the action is higher than was predicted at the time the proposal to take the action was referred.

24H What is a *significant impact on emissions*?

For the purposes of this Act, an action has a *significant impact on emissions* if the total amount of emissions of greenhouse gases in relation to the action in any 12 month period has a carbon dioxide equivalence of 80 kilotonnes or more.

24J Offence relating to significant emissions

- (1) A person commits an offence if:
 - (a) the person is a constitutional corporation; and
 - (b) the person takes an action; and
 - (c) the action:
 - (i) has or will have a significant impact on emissions; or
 - (ii) is likely to have a significant impact on emissions.

Note 1: An executive officer of a corporation convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a corporation takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

- (2) Subsection (1) does not apply to an action if:
 - (a) an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - (b) section 43A or 43B lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - (d) the action:
 - (i) is not an action that has, will have or is likely to have a prohibited impact on emissions; and
 - (ii) is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note 1: If the Minister decides under Division 2 of Part 7 that this section is not a controlling provision for the action, the Minister may revoke and substitute the decision if satisfied that it is warranted by the availability of substantial new information about the impacts of the action, or by a substantial change in circumstances that relates to the impacts of the action: see section 78. This may include, for example, where the total amount of greenhouse gases emitted in relation to the action is higher than was predicted at the time the proposal to take the action was referred.

Note 2: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

1B After paragraph 25AA(2)(i)

Insert:

; (j) subsection 24J(1);

1C After paragraph 25AA(3)(gb)

Insert:

(gc) subsection 24G(1);

[climate trigger]

(2) Schedule 2, page 13 (after line 22), after item 8, insert:

8A Subsection 29(1)

Omit “24D or 24E”, substitute “24D, 24E, 24G or 24J”.

8B Subsection 33(1)

After “Part 3”, insert “, other than section 24G or 24J”.

8C Section 34 (after table item 13J)

Insert:

13K	section 24G	the environment
13L	section 24J	the environment

8D Section 37

After “Part 3”, insert “, other than section 24G or 24J,”.

8E Section 37A

After “Part 3”, insert “, other than section 24G or 24J”.

8F Section 37M

After “Part 3”, insert “, other than section 24G or 24J,”.

8G After paragraph 42(b)

Insert:

(ba) actions that have, will have or are likely to have a significant impact on emissions;
or

8H Section 43

After “Part 3”, insert “, other than section 24G or 24J,”.

8J Subsections 46(1), (2) and (2A)

Omit “24D or 24E”, substitute “24D, 24E, 24G or 24J”.

[climate trigger]

(3) Schedule 2, page 13 (after line 24), after item 9, insert:

9A At the end of Subdivision B of Division 1 of Part 9

Add:

141 Requirements for decisions about significant emissions

In deciding whether or not to approve for the purposes of section 24G or 24J the taking of an action, and what conditions to attach to such an approval, the Minister must consider whether, if the approval were granted, the action would be consistent with:

- (a) the achievement of Australia's greenhouse gas emissions reduction targets (within the meaning of the *Climate Change Act 2022*); and
- (b) the achievement of the greenhouse gas emissions reduction targets included in Australia's nationally determined contribution; and
- (c) Australia's international legal obligations relating to climate change.

141A No approval for actions with prohibited impact on emissions

The Minister must not approve an action that has, will have or is likely to have a prohibited impact on emissions.

9B At the end of Subdivision C of Division 1 of Part 10

Add:

146N Approvals relating to significant emissions

If the approval relates to section 24G or 24J, the Minister must consider whether, if the approval were granted, the action or actions in the class of actions would be consistent with:

- (a) the achievement of Australia's greenhouse gas emissions reduction targets (within the meaning of the *Climate Change Act 2022*); and
- (b) the achievement of the greenhouse gas emissions reduction targets included in Australia's nationally determined contribution; and
- (c) Australia's international legal obligations relating to climate change.

146P No approvals relating to actions with prohibited impact on emissions

The Minister must not approve the taking of an action or a class of actions in accordance with an endorsed policy, plan or program if the action, or an action in the class of actions, has, will have or is likely to have a prohibited impact on emissions.

9C After subsection 163(1)

Insert:

- (1A) If the Minister is satisfied that the action has, will have or is likely to have a prohibited impact on emissions, the advice must state that:
 - (a) the person who takes the action may commit an offence or be liable to a civil penalty under this Act; and
 - (b) the agency or employee should not give the authorisation.

9D After paragraph 176(4)(d)

Insert:

-
- (da) priorities and strategies to ensure that any action taken in accordance with the plan is consistent with:
- (i) the achievement of Australia’s greenhouse gas emissions reduction targets (within the meaning of the *Climate Change Act 2022*); and
 - (ii) the achievement of the greenhouse gas emissions reduction targets included in Australia’s nationally determined contribution; and
 - (iii) Australia’s international legal obligations relating to climate change;
- (db) mechanisms for monitoring the impacts of emissions of greenhouse gases on biodiversity, heritage values and other values;

[climate trigger]

- (4) Schedule 2, page 20 (after line 11), after item 82, insert:

82A After subsection 305(3A)

Insert:

- (3B) In deciding whether to enter into a proposed conservation agreement, the Minister must consider whether the agreement is consistent with:
- (a) the achievement of Australia’s greenhouse gas emissions reduction targets (within the meaning of the *Climate Change Act 2022*); and
 - (b) the achievement of the greenhouse gas emissions reduction targets included in Australia’s nationally determined contribution; and
 - (c) Australia’s international legal obligations relating to climate change.

82B Subsection 306A(1)

After “Part 3”, insert “, other than section 24G or 24J”.

[climate trigger]

- (5) Schedule 2, item 146, page 27 (line 1), omit paragraph 486E(2)(b), substitute:

- (b) a Deputy CEO (within the meaning of the *Nature Positive (Environment Protection Australia) Act 2024*);
- (ba) a member of the staff of EPA;

[consequential-changes to EPA]

- (6) Schedule 2, item 151, page 27 (lines 13 to 16), omit subparagraphs 491(1)(b)(vi) and (vii), substitute:

- (vi) a Deputy CEO (within the meaning of the *Nature Positive (Environment Protection Australia) Act 2024*); or
- (vii) a member of the staff of EPA;

[consequential-changes to EPA]

- (7) Schedule 2, page 27 (after line 16), after item 151, insert:

151A After subparagraph 495(2)(a)(via)

Insert:

- (via) section 24J (offence relating to significant emissions); or

151B After subparagraph 496C(1)(a)(viia)

Insert:

- (viib) section 24J (offence relating to significant emissions); or

- (8) Schedule 2, item 165, page 29 (line 20), after “CEO”, insert “or a Deputy CEO (within the meaning of the *Nature Positive (Environment Protection Australia) Act 2024*)”.
- [consequential-changes to EPA]**
- (9) Schedule 2, item 170, page 30 (line 6), after “CEO”, insert “, Deputy CEO”.
- [consequential-changes to EPA]**
- (10) Schedule 2, item 170, page 30 (line 9), after “CEO”, insert “or a Deputy CEO (within the meaning of the *Nature Positive (Environment Protection Australia) Act 2024*)”.
- [consequential-changes to EPA]**
- (11) Schedule 2, item 170, page 30 (lines 11 and 12), omit the note, substitute:
- Note: A power or function delegated to the CEO, Deputy CEO or a member of staff cannot be subdelegated by the CEO, Deputy CEO or staff member.
- [consequential-changes to EPA]**
- (12) Schedule 2, item 170, page 30 (line 15), after “CEO”, insert “or a Deputy CEO (within the meaning of the *Nature Positive (Environment Protection Australia) Act 2024*)”.
- [consequential-changes to EPA]**
- (13) Schedule 2, item 170, page 30 (lines 17 and 18), omit the note, substitute:
- Note: A power or function delegated to the CEO, Deputy CEO or a member of staff cannot be subdelegated by the CEO, Deputy CEO or staff member.
- [consequential-changes to EPA]**
- (14) Schedule 2, page 31 (after line 29), after item 180, insert:

180A At the end of Division 1 of Part 23

Add:

Subdivision G—Emissions

527F Emissions

- (1) For the purposes of this Act, an *emission* of greenhouse gas, in relation to an action, means the release of greenhouse gas into the atmosphere as a direct or indirect result of the action, including as a result of:
- (a) any activities (such as land clearing) preparatory to the action; and
 - (b) any activities ancillary to the action, irrespective of:
 - (i) who owns or controls any facility from which the greenhouse gas is released; and
 - (ii) whether the greenhouse gas is released within or outside of Australia.

- Note: This definition covers upstream emissions, downstream emissions, end-use consumption emissions as well as exported emissions occurring outside of Australia. For example:
- (a) the release of greenhouse gas resulting from the action of extracting or producing materials at a facility;
 - (b) the release of greenhouse gas from the transportation of fuels purchased by the facility;
 - (c) the release of greenhouse gas from the use of products and services sold by the facility.

-
- (2) The Minister may determine, by legislative instrument, methods, or criteria for methods, by which the amounts of emissions of greenhouse gases are to be measured for the purposes of this Act and may specify:
- (a) different methods or criteria for emissions from different sources; and
 - (b) different methods or criteria depending on the circumstances in which the emissions occurred; and
 - (c) conditions relating to the use of methods determined by the Minister or of methods which meet criteria determined by the Minister; and
 - (d) rating systems for those methods (including different rating systems for different circumstances); and
 - (e) the particular rating given to each of those methods.

527G Prohibited impact on emissions

For the purposes of this Act, an action has a *prohibited impact on emissions* if the total amount of emissions of greenhouse gases in relation to the action in any 12 month period has a carbon dioxide equivalence of 100 kilotonnes or more.

[climate trigger]

- (15) Schedule 2, item 181, page 32 (before line 3), before the definition of *CEO*, insert:

Australia's nationally determined contribution means:

- (a) Australia's current nationally determined contribution communicated in accordance with Article 4 of the Paris Agreement; or
- (b) if that nationally determined contribution has been adjusted in accordance with paragraph 11 of Article 4 of the Paris Agreement—that nationally determined contribution, as adjusted and in force from time to time.

carbon dioxide equivalence of an amount of greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

[climate trigger]

- (16) Schedule 2, item 181, page 32 (after line 5), after the definition of *CEO*, insert:

Climate Change Conventions has the same meaning as in the *Product Emissions Standards Act 2017*.

emission of greenhouse gas, in relation to an action, has the meaning given by subsection 527F(1).

[climate trigger]

- (17) Schedule 2, item 181, page 32 (after line 8), after the definition of *EPA*, insert:

greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

Paris Agreement means the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

prohibited impact on emissions has the meaning given by section 527G.

significant impact on emissions has the meaning given by section 24H.

[climate trigger]

(18) Schedule 2, item 181, page 32 (lines 9 and 10), omit the definition of *staff of EPA*, substitute:

staff of EPA has the same meaning as in the *Nature Positive (Environment Protection Australia) Act 2024*.

[consequential-changes to EPA]

(19) Schedule 2, page 32 (after line 10), after item 181, insert:

181A Application provision—climate trigger

The amendments made by items 1A to 1C, 8A to 8J, 9A to 9D, 82A, 82B, 151A, 151B and 180A of this Schedule apply in relation to actions that begin on or after the day this item commences.

[climate trigger]

(20) Schedule 9, item 203, page 79 (lines 21 to 23), omit paragraph 180(3)(f), substitute:

(f) a Deputy CEO (within the meaning of the *Nature Positive (Environment Protection Australia) Act 2024*);

(g) a member of the staff of EPA (within the meaning of that Act).

[consequential-changes to EPA]

2022-2023-2024

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

(Ms Steggall)

- (1) Schedule 2, page 13 (after line 24), after item 9, insert:

9A Before section 74B

Insert:

74AAA Meaning of *unacceptable impact* on a matter of national environmental significance

- (1) An action would have an *unacceptable impact* on a matter described in column 1 of an item of this table if the action would have an impact described in column 2 of that item.

Unacceptable impacts on matters protected by a provision of Part 3		
Item	Column 1	Column 2
	For this matter protected by a provision of Part 3:	An impact on the matter would be unacceptable if the impact would have:
1	the world heritage values of a declared World Heritage property	(a) a significant impact within the boundary of the property; or (b) a significant direct or indirect impact on the world heritage values of the property.
2	the National Heritage values of a National Heritage place	a significant direct or indirect impact on the National Heritage values of the place.
3	the ecological character of a declared Ramsar wetland	(a) a significant impact within the boundary of the wetland; or (b) a significant direct or indirect impact on the ecological character, or on individual attributes of the ecological character, of the wetland.
4	a listed threatened species	(a) a significant impact on a relevant area listed on the register of critical habitat; or (b) a significant impact on habitat that is critical to the survival of the species; or (c) a significant impact on the viability of the species; or

Unacceptable impacts on matters protected by a provision of Part 3

Item	Column 1 For this matter protected by a provision of Part 3:	Column 2 An impact on the matter would be unacceptable if the impact would have:
		(d) a significant impact that is likely to result in the species becoming eligible to be listed in a more threatened listing category.
5	a listed threatened ecological community	(a) for a critically endangered ecological community—a significant impact; or (b) for an endangered ecological community—a significant impact; or (c) for a vulnerable ecological community: (i) a significant impact on a relevant area listed on the register of critical habitat; or (ii) a significant impact on habitat that is critical to the survival of the ecological community; or (iii) a significant impact on the viability of the ecological community; or (iv) a significant impact that is likely to result in the species becoming eligible to be listed in a more threatened listing category.
6	a listed migratory species	(a) an impact on a relevant area listed on the register of critical habitat; or (b) a significant impact on habitat critical to the survival of the species; or (c) a significant impact to the lifecycle (breeding, feeding, migratory pathways or resting behaviour) of an ecologically significant proportion of the population of the species; or (d) a significant impact on the viability of the species.
7	the environment in a Commonwealth marine area	(a) a significant impact on the viability of an ecological community in the area; or (b) a significant impact on the heritage values of the area.
8	the environment in the Great Barrier Reef Marine Park	a significant impact that is inconsistent with the maintenance of the environment, biodiversity or heritage values of the Park, or of any of the Park's individual components.
9	a water resource resulting from: (a) an unconventional gas development; or (b) a large coal mining development	a significant impact on the integrity of hydrological or hydrogeological connections associated with the water resource
10	a matter not covered by any of the above items	a result prescribed by the regulations.

Note 1: The matters in column 1 are matters protected by a provision of Part 3 (see section 34).

Note 2: For item 2, the National Heritage values could be Indigenous values or non-Indigenous values. The National Heritage place could be an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

(2) In this section:

critical to the survival: a habitat is ***critical to the survival*** of a species or ecological community if the habitat is necessary:

- (a) for activities such as foraging, breeding, roosting or dispersal; or
- (b) for the long-term maintenance of the species or ecological community (including the maintenance of species essential to the survival of the species or ecological community, such as pollinators); or
- (c) to maintain genetic diversity and long-term evolutionary development; or
- (d) in the case of a species—for the reintroduction of populations, or for the recovery, of the species; or
- (e) in the case of an ecological community—for the recovery of the ecological community.

register of critical habitat means the register kept under section 207A.

viability: a species or ecological community is ***viable*** if the species or community:

- (a) is sufficiently abundant and diverse to sustain the full range of biological and ecological functions necessary for their long-term persistence and adaptability, including the ability to respond, recover or adapt to fluctuations or perturbations in the environment; and
- (b) is not declining in the wild.

Determining viability includes considering cumulative impacts and impacts arising as a consequence of climate change.

[unacceptable impacts]

(2) Schedule 2, page 14 (before line 1), before item 10, insert:

9B Division 3 of Part 9

Omit “Minister” (wherever occurring), substitute “CEO”.

[responsibilities of CEO]

(3) Schedule 2, item 181, page 32 (after line 10), after the definition of ***staff of EPA***, insert:

unacceptable impact has the meaning given by subsection 74AAA(1).

[unacceptable impacts]

Amendments for third party referral of proposals

Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

The *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024* should be amended as outlined below.

Insert additional provisions:

71A Request for referral

- (1) Any person may request the Minister to request referral of a proposal under section 70 or of a larger action under section 74A.
- (2) A request under subsection(1) must:
 - (a) be in writing;
 - (b) set out the basis on which the person thinks the proposal or larger action should be referred;
 - (c) identify the person believed to be the proponent of the proposal or larger action; and
 - (d) if the regulations specify other requirements for requests under subsection (1)—comply with those requirements.

71B Minister must inform proponent of request and invite comments

- (1) The Minister must comply with this section if he or she receives a request under section 71A.

Informing proponent of request and inviting comments

- (2) If the request under section 71A is made by a person other than the proponent of the action, the Minister must:
 - (a) inform the person believed to be the proponent of the action identified under subsection 71A(2)(c) of the request in accordance with subsection (3); and
 - (b) invite the person believed to be the proponent of the action to give the Minister, within 10 business days, comments on the request.
- (3) For the purpose of subsection(2)(a), the Minister must inform the person believed to be the proponent of the action of the request by giving that person such information relating to the request as the Minister considers appropriate. The Minister need not (for example) reveal the identity of the person who made the request.

71C Minister must consider whether to request referral and give notice of outcome

Consideration of whether to request referral

- (1) As soon as practicable after the end of the time (and no more than 15 days) within which information or comments may be given under section 71B, the Minister must:
 - (a) consider whether to request referral of an action under section 70 or request referral of a larger action under section 74A; and
 - (b) either:

- (i) request referral of the action under section 70 or request referral of a larger action under section 74A; or
- (ii) decline to request referral of the action under section 70 or to request referral of a larger action under section 74A.

Notice of outcome of request for consideration of referral

- (2) The Minister must give written notice of the outcome of the consideration to:
- (a) the person who made the request under s71A;
 - (b) the person informed of the referral under section 71B(2); and
 - (c) the person proposing to take the action or the larger action (if that person is not the person referred to in subsection (a) or (b)).
- (3) After giving notice as described in subsection (2), the Minister must publish notice of the outcome of the consideration. The regulations may specify how the publication is to be made. Subject to any such regulations, the publication must be made in a way the Minister considers appropriate.

Reasons for outcome of consideration

- (4) The Minister must give reasons for the outcome of the consideration to a person who:
- (a) has been given notice of the outcome of the consideration under subsection (2); and
 - (b) within 28 days after being given the notice, has requested the Minister to provide reasons.
- (5) The Minister must do so as soon as practicable, and in any case within 28 days after receiving the request.