



Property Council of Australia ABN 13 00847 4422
A Level 7, 50 Carrington Street, Sydney NSW 2000
T +61 2 9033 1900
E info@propertycouncil.com.au
W propertycouncil.com.au
in Property Council of Australia

15 July 2024

Senate Standing Committees on Environment and Communications

PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Committee Secretariat

RE: Property Council of Australia submission to Senate Committee Inquiry into Nature Positive (Environment Information Australia) Bill 2024 [Provisions] and related bills

The Property Council of Australia welcomes the opportunity to provide comments on the Australian Government's Second Stage of implementing its Nature Positive Plan. We are pleased to provide comments on the Nature Positive (Environment Information Australia) Bill 2024; Nature Positive (Environment Protection Australia) Bill 2024; and Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024 to support the committee's current line of inquiry.

The Property Council has been an active participant in a several consultations hosted by the Department of Climate Change, Energy, Environment and Water since late 2023 to consider and provide early feedback on the extensive proposed reforms to our national environmental laws. We have also recently engaged in additional meetings with Departmental staff members on the role and methodologies to be applied to the new Environment Information Australia.

Our members welcome the Australian Government's commitment to respond to findings of the Professor Samuels 2020 review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). Delays and duplication between State and Federal processes have created poor outcomes for the environment and business over the past two decades. In particular our members are strongly support the development of a consistent, national approach to regional planning and National Environmental Standards to maximise investment certainty, reduce costs and boost environmental outcomes.

As acknowledged in recent communications from the Government, we welcome a commitment to fully deliver the third stage of environment law reform by continuing to consult closely with environment groups, business, states and territories, and others, on further updates to national environment laws, as outlined in the Nature Positive Plan.

We look forward to providing further comments during the third stage of this plan, in response to a comprehensive exposure draft of the new laws released for public consultation, prior to their introduction to Parliament.

About us

The Property Council of Australia is the leading advocate for Australia's largest industry – property. Our industry represents 13% of Australia's GDP, employs 1.4 million Australians and generates \$72 billion in tax revenues. Property Council members invest in, design, build and manage places that matter to Australians across all major built environment asset classes.

Our members pursue ecologically sustainable development to build Australia's cities and provide the vital pipeline of housing supply needed by our growing population. They include Australia's largest greenfield residential and commercial developers. Australia's property industry leaders are world leaders in sustainability. They have a demonstrated commitment to ESG, topping indices like the Global Real Estate Sustainability Benchmark and the Dow Jones Sustainability Index for thirteen consecutive years.

General comments

We understand the Australian Government is continuing a larger piece of work to overhaul the EPBC Act. However, we are concerned that standing up two new agencies – Environment Protection Australia (EPA) and Environment Information Australia (EIA) along with transitional arrangements to transfer existing EPBC Act functions across these new agencies is not optimal. While we understand EPA and EIA will be central to the delivery of the proposed new National Environmental Law, creating these new agencies now, only to shoehorn existing EPBC Act functions for a limited but undefined period creates uncertainty for business.

We note that in the absence of exposure draft legislation for the new National Environment Law it is challenging to anticipate if the functions and powers of the new EPA and EIA will be fit for purpose into the future. It is not clear to us that a temporary transition of EPBC Act functions, in advance of forthcoming wholesale reforms to the EPBC Act will deliver improved outcomes for the environment and business and note that should this package of legislation progress, the government must prioritise support for the orderly transition of departmental staff with experience and expertise administering the current laws.

Our Priorities

1. Transitional arrangements

Historically, resourcing within the Commonwealth Department administering the EPBC Act has had a significant impact on the experience of proponents who have referred a controlled action for assessment. Inconsistent interpretations of the EPBC Act, bottlenecking due to insufficient resources, exacerbated staff turnover and, at times, lack of adequate experience in frontline Department staff has extended the time frame for assessment of projects, adding significant costs to developers and housing supply. This is not a universal experience, nor a reflection on the great many experts working in the Department, but it remains an occurrence frequently raised with us. The Property Council has politely advocated for better resources for the administration of the EPBC Act for more than a decade.

The Commonwealth should first have delivered and funded an overarching national policy to establish a clear vision for the protection, rehabilitation, and sustainable management of

Australia's environment to the year 2050. This plan should be supported by strong evidence-based policies, a harmonised regulatory framework across all levels of government and been used to inform the organisational structure of departments and agencies appropriately resourced to administer it, knowing the projects at stake are some of the largest job creating opportunities across the economy. Introducing new national environmental laws creates an unparalleled opportunity to establish fit-for-purpose organisational structures to administer the scheme in line with strategic objectives. Ultimately, form should follow function.

This opportunity is missed when two new independent agencies, designed to administer new and improved laws and processes are initially tasked with the continued administration of the existing scheme, replete with existing problems and the subject of significant reform and change. If reforms to the EPBC Act are indeed intended to be introduced in the near term, the creation of structures, only to dismantle them is not an efficient use of government resources. Additionally, in the short term, we are concerned that such upheaval it is likely to contribute to, rather than alleviate the issues reported by our members associated with insufficient resourcing of frontline staff.

Recommendation: We strongly recommend the Australian Government expedites Stage 3 of the Nature Positive Law reforms including the publication of an exposure draft.

While the establishment of an EPA and EIA will likely be important to give effect to new laws, it is the substance of Stage 3 that is critical to delivering improved environmental outcomes. We anticipate establishing these new agencies, even with enhanced enforcement powers, will not materially improve environmental outcomes until these agencies are tasked with administering an improved regulatory scheme.

Recommendation: Transitional arrangements do not currently specify an end date in relation to the conferral of EPBC Act functions to the new agencies. This creates uncertainty and may impact/defer investment in relevant resourcing and systems until Stage 3 reforms are delivered.

In the absence of an end date within the transitional arrangements, we strongly recommend the Australian Government provide a clear roadmap and timeline to describe the production, consultation and implementation of Stage 3 reforms. This would support informed decision making on the part of agencies.

2. Environment Protection Australia

For the reasons outlined above, it is challenging to provide meaningful commentary on whether the structural elements underpinning the new EPA are suitable, without reference to the relevant legislation the EPA will be called to administer.

Recommendation: We strongly recommend that the passage of a new National Environmental Law and/or significant reforms to the EPBC Act which result from the Stage 3 reforms should

trigger a review of the administration of the EPA to ensure the EPA organisational structure is fit for purpose.

3. Environment Information Australia

We support the establishment of a new independent agency to support transparent and evidence-based decision making. Based on consultation to date, we welcome the future role of the EIA to improve the spatial information and environmental data available to departmental staff for decision making purposes. Additionally, collection and maintenance of data to underpin new Regional Plans has the potential to significantly improve both environmental outcomes and business certainty.

We also support an independent agency completing State of the Environment Reports.

The Property Council looks forward to further engagement on this important issue.

Please reach out to Eleanor Sondergeld, National Policy Manager – Sustainability and Regulatory Affairs at esondergeld@propertycouncil.com.au should you wish to discuss this submission in further detail.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Matt Kandelaars', followed by a period.

Matt Kandelaars

Group Executive, Policy and Advocacy