

What the proposed Nature Positive Laws will mean for you?

Regulatory processes will be simplified and streamlined to better protect, restore, and manage nature and de-risk projects for business.

Developers will be required to:

- Provide an upfront estimate of the domestic greenhouse gas emissions associated with their projects (estimates must be provided prior to project approval),
- Outline how project emissions will be managed in line with any relevant state and Commonwealth legislation, including the baseline set by the Australian Government's Safeguard Mechanism under the National Greenhouse and Energy Reporting Act; &
- Build in adaptation and resilience measures to address future climate change impacts through strategic assessments.

This information will be made publicly available for accountability purposes.

For projects covered under the safeguard mechanism, relevant information from the projects will be sent to the Minister for Climate Change to ensure protection of the climate through accounting and reporting measures.

Further changes include:

- **Community engagement:** this will be front-loaded, and developers will be encouraged to undertake engagement early on in project development so that the views of community members and their feedback can be reflected in project designs.
- **Conservation planning:** A better data management system will be implemented so that projects can better assess what impact they will have. This will enable organisations, developers, communities, and governments to target protection, threat management, and recovery actions at any scale (regional, habitat, or ecosystem type, threat, or species-specific scale).
- **Unacceptable impacts:** Projects will not be approved if they are considered to significantly reduce the viability of an ecological species, or a heritage site, or a wetland.

How the proposed changes compare to existing laws?

The EPBC Act makes sure that nationally significant animals, plants, habitats, and places are identified, and any potential significant impacts on them are carefully considered before changes in land use or new developments are approved.

The existing EPBC Act protects nine Matters of National Environmental Significance (MNES). These are:

- Nationally threatened species and ecological communities
- Migratory species
- Wetlands of international importance (often called Ramsar wetlands after the international treaty under which these wetlands are listed)
- World Heritage Properties
- National Heritage places
- Commonwealth marine areas
- Great Barrier Reef Marine Park
- Protection of the environment from nuclear actions; &
- Water resources (in relation to impacts from coal seam gas development and large coal mining development).

The **new environmental law** will continue to protect these same nine matters, with two new proposed changes which include:

- Nuclear actions will now be known as Radiological exposure actions to align with and reflect the standards of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA); &

- The management and protection of national water resources will expand to include all forms of unconventional gas including, coal seam, shale, and tight gas developments.

What are the key features of the new legislation?

There are **six** National Environmental Standards being proposed, to guide decision-making and regulations, which include:

1. **Matters of National Environmental Significance:** this sets clear protections for our nationally important matters.
2. **Restoration Actions and Restoration Contributions:** it's a requirement for developers to compensate, where significant impacts on protected matters are permitted, either through a direct restoration activity or by making a payment to the Australian Government.
3. **First Nations Engagement and Participation in Decision-making:** this ensures early engagement with First Nations peoples to bring in their views and knowledge in project design and regulatory decision-making.
4. **Community Engagement and Consultation:** this ensures effective community contribution to environmental decision-making.
5. **Regional Planning:** will establish requirements for new regional plans to be made under the new laws.
6. **Data and Information:** this sets requirements for information used in environmental decision-making. Better data will support our ability to prioritise actions that will protect and restore our environment.

These National Environmental Standards will be overseen by the Minister for the Environment and will be subject to review every five years. They cannot be changed to reduce environmental protection, only to increase environmental protection.

How will the new laws be regulated?

An independent agency by the name of Environment Protection Australia (EPA) will be set up to enforce the new national environmental laws. The EPA will be led by its own chief executive officer (CEO), and be responsible for:

- Making transparent decisions on environmental permits
- Approvals under national environmental laws based on high-quality data
- Conducting compliance
- Accountability in regulated activities affecting nationally protected matters; &
- Providing independent oversight of decisions made under accredited arrangements.

Under this arrangement, unacceptable impacts will not be approved by the new regulator.

Meantime, development of legislation and policy will remain the responsibility of the Department of Climate Change, Energy, the Environment and Water (DCCEEW). And the Minister for the Environment will retain responsibility for direction setting, providing a statement of expectations, but not otherwise be able to direct the EPA. Under certain circumstances, the Minister can make approval decisions, however, these reasons must be published.

Alongside the EPA, Environment Information Australia (EIA) will operate to ensure environmental data is used to support decision-making. The EIA sits within the Department of Climate Change, Energy, the Environment and Water and is responsible for ensuring environmental data is accessible and searchable. Under the new laws, the head of EIA will be an independent statutory officer with powers to provide regular

reporting and progress updates on national environmental goals, including emissions reduction and the circular economy.

What will EPA's assessment process look like?

There will be a single streamlined assessment process that supports developers like you by:

- Providing better upfront guidance
- Access to better data to support decision-making
- Requiring developers to demonstrate upfront that they have made reasonable efforts to avoid and mitigate impacts to protected matters.

There are three core steps in the new assessment pathway, which include:

- **Step 1: Self-assessment:** Like existing processes, as a developer you'll design your project in conjunction with early community consultation and refine that design to ensure consistency with the National Environmental Standards. Following this, you can lodge a self-assessment with the EPA's application gateway. The EPA will then have up to 60 business days to assess your application. If the application is approved, this can be with or without conditions.
- **Step 2: Low Impact Assessment:** As a developer if you decide that you're not going to have a significant impact on a nationally protected matter, but still want legal certainty, you can submit a proposal through the low impact assessment pathway. Under this pathway, you will still undertake a self-assessment, but once you're satisfied that there are no significant impacts to protected matters, you can lodge your application through the EPA application gateway.

In this case, EPA have 20 business days to assess your application and determine whether the proposed action requires approval. If EPA determine the action does not have any significant impacts on protected matters, no further action is required. If, however, EPA decide an approval is still required, you will then need to move into the standard assessment pathway, ensuring you meet the associated requirements for an approval.

- **Step 3: Ministerial call-in power:** Where there is an urgent need to conduct an activity that would ordinarily require environmental approval, and this is in the national interest, a national interest exemption can allow it to proceed without environmental assessment. In this instance, the Minister for the Environment would make approval decisions that would otherwise be made by the EPA.

When are the changes expected to be rolled out?

Following the consultation period which ends in March 2024.

Need help unpacking the proposed laws?

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