

c/o: Committee Secretary
Inquiry into Nature Positive Bills 2024
Environment and Communications Legislation Committee
By email: ec.sen@aph.gov.au

18 July 2024

Dear Legislation Committee,

RE: Submission to the *Inquiry into Nature Positive (Environment Protection Australia) Bill 2024 [Provisions] and related bills*

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Committee's Inquiry into Nature Positive Bills 2024 to support the compelling need for reform of the *Environment Protection and Biodiversity Conservation Act 1999* ('EPBC Act').

ALCA is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

ALCA is happy for this submission to be published in full.

The need for reform

Australia's nature is in crisis. Our unique nature, so core to our social and cultural values as a nation and a cornerstone of our prosperity – **with half of Australia's GDP being moderately to highly dependent on nature**¹ – is in accelerating decline. As per the Federal Government's 2021 State of the Environment Report:

*“Overall, **the state and trend of the environment of Australia are poor and deteriorating** as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction... Multiple pressures create cumulative impacts that amplify threats to our environment, and abrupt changes in ecological systems have been recorded in the past 5 years...*

*Our inability to adequately manage pressures will continue to result in species extinctions and deteriorating ecosystem condition, which **are reducing the environmental capital on which current and future economies depend. Social, environmental and economic impacts are already apparent.**”¹*

Environmental law reform is one of a several necessary pathways to halt and reverse Australia's nature crisis.

In his foreword to the Final Report of the Independent Review of the EPBC Act in October 2020, Professor Graeme Samuel AC made the compelling case for the wholesale reform of Australia's Federal environmental law:

¹ Australian Conservation Foundation, *The nature-based economy: How Australia's prosperity depends on nature*, Sep 2022; <https://www.acf.org.au/the-nature-based-economy-how-australias-prosperity-depends-on-nature>

“The EPBC Act is out dated and requires fundamental reform. It does not enable the Commonwealth to effectively fulfil its environmental management responsibilities to protect nationally important matters... The resounding message that I heard throughout the Review is that Australians do not trust that the EPBC Act is delivering for the environment, for business or for the community.”²

Broadly speaking, the need for reform is not contested by sectors with a keen interest in the EPBC Act, yet delivering that necessary reform has thus far escaped successive Federal Governments. Whilst welcoming the *Nature Positive (Environment Information Australia) Bill 2024*, *Nature Positive (Environment Protection Australia) Bill 2024*, and transitional bill, ALCA strongly supports the need for holistic EPBC Act reforms that deliver for Australian nature and for the Australian community that relies upon it for their social, cultural and economic prosperity.

However, like many organisations from the environment sector, we are deeply concerned that the urgency for holistic reform may be set aside and forgotten with the passage of these Bills.

Recommendation 1: That the EPBC Act is in compelling need of holistic reform which should be progressed as a matter of urgency commensurate to the seriousness and urgency of Australia’s nature crisis. We urge our Parliamentary representatives to publicly commit to pursuing this holistic reform, including as part of their election commitments.

Funding – an inescapable pillar of reform

In the current development of EPBC Act reforms, the focus to date has understandably been upon their technical and legislative detail. Getting this detail right is of course critical to the effective operation of any eventual legislative package.

However, this focus has appeared to distract the public debate from the need for legislative reform to be accompanied by serious Federal investment into nature. Currently the Federal Government spends less than 0.1% of the Federal budget on Australia’s biodiversity³ – an amount that is desperately inadequate to address the urgency and scale of Australia’s nature crisis.

When the EPBC Act was introduced by the Howard Government, it was but one pillar of a two-pillar approach – **meaningful legislative reform and serious investment in Australia’s nature:**

“The loss of biodiversity represents the greatest environmental challenge facing Australia. The Howard government has demonstrated its commitment to addressing this challenge by establishing the largest environmental program in Australia’s history—the Natural Heritage Trust. The bill now provides a substantially improved legal framework for the conservation and sustainable use of Australia’s biodiversity to complement the Natural Heritage Trust.”⁴

² Prof. Graeme Samuel AC, Foreword, *Independent Review of the EPBC Act*, <https://epbcactreview.environment.gov.au/resources/final-report/foreword>

³ Best estimate based on the methodology used in the 2021 State of Environment report, see Fig. 53, <https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-biodiversity.pdf>

⁴ 2nd Reading, *Environment Protection and Biodiversity Conservation Bill 1998 (No. 2)*, p211, Senate Hansard, 12 November 1998; <https://www.aph.gov.au/binaries/hansard/senate/dailys/ds121198.pdf>

The Howard Government recognised that the need for investment is inescapable for any Australian Government that is serious about the conservation of Australia's nature. ALCA calls upon all successive Governments to recognise and pursue this same approach.

With the Natural Heritage Trust now a mere shadow of its size at its inception, **the need for any serious environmental law reform to be complemented by serious investment has never been greater.**

Further, whilst there is a role for private sector investment in Australian nature – the private land conservation sector that ALCA represents is evidence of the potential – this does not obviate the need for sizeable cornerstone investment. In short, private sector mechanisms like the Nature Repair Market may well be valuable, but are insufficient in isolation to address the nature crisis.

Recommendation 2: For any meaningful environmental legislative reform package to succeed, it must be accompanied by serious Federal Government investment in protecting, managing, and restoring Australian nature.

In the absence of serious additional Government investment in nature to accompany the Bills, there are two key legislative measures relating to private investment in nature that should be incorporated into the Bills.

The private sector is looking at how to protect their supply chains from the accelerating nature crisis and manage their increasing exposure to risk. This has been well-recognised in the Australian Government's *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024*, which would grant powers for future regulation on nature and sustainability related risks. However, what is missing is leadership from Government on what, how and where investment in nature is most needed, and where it will have the most impact in mitigating both company-level and macroeconomic-level risk.

The Federal Government is uniquely placed to help address this market failure of information gaps on Australian nature. The expected role of Environment Information Australia as a reservoir of technical knowledge for Australia's private sector and our communities is an important piece of this puzzle.

However, what is missing from the emerging architecture is a **Biodiversity Investment Strategy** to send clear signals and guidance from the Government to the private sector, outlining the national priorities for investing in nature. It would provide a means with which to clearly articulate policy into Australia's environmental markets, including the Nature Repair Market, without necessarily binding the Government's approach to environmental grants procurement.

This is not a novel legislative approach – it is exactly the approach successfully legislated in New South Wales through its *Biodiversity Conservation Act 2016*. In a broad sense, it is also a similar approach to how Australia sets its national science and research priorities⁵.

ALCA has edited down the relevant NSW Biodiversity Conservation Act provisions (Part 5, Division 1⁶) below for consideration by the Federal Parliament as amendments to be inserted into the *Nature Positive (Environment Information Australia) Bill 2024* as new section 17:

⁵ See: <https://consult.industry.gov.au/sciencepriorities2>

⁶ See: <https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063#pt.5-div.1>

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Making of Strategy

- (1) The Minister is to make a Biodiversity Investment Strategy (the Strategy) as soon as practicable after the commencement of this Act.
- (2) Public consultation is required in relation to the making of the Strategy.
- (3) The purpose of the Strategy is to guide investment in biodiversity conservation, and to guide the Government in prioritising investment in biodiversity conservation.
- (4) The Minister is to publish the Strategy on an appropriate government website.

Content of Strategy

- (5) The Strategy is to comprise—
 - (a) principles that guide the identification of priority investments for biodiversity conservation,
 - (b) principles that may guide investment in those priority investments, and
 - (c) any other matter prescribed by the regulations.
- (6) The Minister may include maps of identified priority investments.

Review and amendment of Strategy

- (7) The Minister is to review the Strategy every 5 years and may amend the Strategy at any time.

Recommendation 3: That the Federal Parliament adopt amendments to introduce a Biodiversity Investment Strategy into the *Nature Positive (Environment Information Australia) Bill 2024*, based on those outlined in the box above.

Secondly, unfavourable tax treatment of conservation activities continues to be a critical barrier to private investment in nature. This was recognised by Professor Graeme Samuel AC in Recommendation 28 (d) of the Independent Review of the EPBC Act:

Recommendation 28 To foster private sector participation in restoration, the Commonwealth should formally investigate and consider:

...

d) changes to the tax code that can deliver environmental restoration.⁷

The Commonwealth has yet to act on this recommendation and unlock the considerable potential of private landholders to contribute to the restoration and stewardship of nature on private land.

Again, in the absence of serious additional investment into nature to accompany the Bills, this is a critical issue to address if we are at least to help unlock support for private sector investment into Australia's nature.

Some specific concerns and recommendations on potential changes to Australia's tax code to reduce tax discrimination against conservation activities and organisations includes:

- The addition of a business and personal income tax deduction for onground conservation management and restoration activities;

⁷ p32, <https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>

- Reform of Section 31-5 of *Income Tax Assessment Act 1997* (Cth) ('Deduction for entering into conservation covenant') to clarify that material benefit does not include incidental benefits, nor Government grant or other support where a covenant has been entered into voluntarily; and
- Reform of Fringe Benefit Tax (FBT) such that conservation charities are entitled to the same FBT concessions as other charities (such as Public Benevolent Institutions).

Recommendation 4: As flagged by recommendation 28(d) of the Samuel Review, that the Federal Parliament adopt amendments to address the taxation barriers to conservation (as outlined above), or, at minimum, negotiate with the Federal Government to instigate a Treasury or Productivity Commission review into taxes, financial incentives and barriers to conservation on private land.

A strong and independent EPA

ALCA strongly supports the creation of statutory Environment Protection Agency (EPA). **However, an independent EPA must also be strong, transparent, and accountable to be effective.** Some of this strength must be legislative in character (see recommendations below), but a sustained increase of funding for the EPBC functions being adopted by the EPA is also crucial.

Of the current deficiencies to the integrity of the proposed EPA, ALCA has the following recommendations on the most salient:

Recommendation 5: That the following legislative measures be adopted to strengthen the integrity of the EPA:

- a. That the EPA be governed by an independent board with relevant skills and expertise;
- b. That this independent EPA board be responsible for appointing and managing a CEO with relevant skills and expertise;
- c. That the instrument for delegating any powers and functions under the EPBC Act to the EPA by the Minister must be published;
- d. That the EPA be granted assurance and compliance audit functions for accredited arrangements, including those relating to the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

Ministerial decisions

The balance between Ministerial decision-making powers vis-à-vis the EPA's decision-making powers have rightfully been the subject of much scrutiny and discussion in the lead up to the Bills.

ALCA supports the embedding of democratic accountability in our Federal environmental laws and supports the retention of Ministerial powers to help provide that direct avenue of democratic Ministerial responsibility.

However, **the Minister's decision-making powers do need to be fettered in order that the Government be required to make decisions in the genuine public interest and be appropriately accountable.** Whilst it is welcome that there intends to be a requirement for the Minister to provide reasons for decisions is not sufficient – there should also be clear criteria under which Ministerial decision-making powers can be activated, even if those criteria are broad in nature.

This is essentially the same conclusion as made by Prof. Samuel:

*“The activities of government should be consistent with the [National Environmental] Standards, noting that an elected government should always retain the ability to exercise discretion in individual cases. **Such discretion should be a rare exception, demonstrably justified in the public interest, with reasons and environmental implications transparently communicated.**”⁸ [ALCA's highlight]*

Recommendation 6: Ministerial decision-making powers that are not being delegated to the EPA should only be utilised in extraordinary circumstances. When they are used, they must be fettered by a set of legislated public interest criteria. The reasons for the Minister's decision must then be published and structured against each of the public interest criterions upon which the Minister seeks to rely.

The definition of 'nature positive'

It is unclear why the Government has adopted a definition for 'nature positive' in section 6 (1) of the *Nature Positive (Environment Information Australia) Bill 2024* than the definition that enjoys international consensus⁹, nor what benefit a different definition would bring in practice.

Recommendation 7: The definition given to 'nature positive' within section 6 (1) of the *Nature Positive (Environment Information Australia) Bill 2024* should be amended to align – if not just outright copy – the definition under international consensus.

Thank you again for the opportunity to provide a submission to the Committee's Inquiry into the Nature Positive Bills 2024. ALCA and its member organisations look forward to continuing to engage with the Committee to enhance Australia's environmental law reform agenda.

Australian Land Conservation Alliance

⁸ Prof. Graeme Samuel AC, Foreword, *Independent Review of the EPBC Act*, <https://epbcactreview.environment.gov.au/resources/final-report/foreword>

⁹ See: <https://www.naturepositive.org/app/uploads/2024/02/The-Definition-of-Nature-Positive.pdf>