

Department of Climate Change,
Energy, the Environment and Water
Australia's new Nature Positive Laws
submission

March 2024





Department of Climate Change, Energy, the Environment and Water: Australia's new Nature Positive Laws

submission

The Carbon Market Institute (**CMI**) welcomes this opportunity to respond to the Department of Climate Change, Energy, the Environment and Water's (**DCCEEW**) consultation on Australia's new Nature Positive Laws (**Public Consultation**).

CMI is an independent, member-based institute that promotes the use of market-based solutions and supports best practice in decarbonisation to limit warming to 1.5°C. Our membership includes 150+ primary producers, carbon service providers, First Nations organisations, legal and financial institutions, technology firms and emissions-intensive companies in Australia and Asia Pacific. The CMI Board updates CMI's Policy Positions annually, which draw on practical insights from—but are ultimately independent of—members.¹

CMI also administers the Australian Carbon Industry Code of Conduct (**ACI Code**), which was established in 2018 to steward consumer protection and market integrity.²

Strategic outlook

CMI welcomes the Albanese Government's Nature Positive Plan and supports its efforts to respond to the Samuel Review and reform the Environment Protection and Biodiversity Conservation Act 1999 (**EPBC Act**).³

As demonstrated by the 2021 State of the Environment Report, Australia's natural environment is degraded and in dire need of repair.⁴ Strong environmental regulation and policies that incentivise nature repair are required to ensure a healthy environment that supports the Australian economy, communities and livelihoods.

The twin climate and biodiversity crises are closely interconnected.⁵ CMI notes that reform of Australia's environmental laws is an opportunity to ensure holistic regulations and policies that protect and repair Australia's natural environment, while at the same time complementing climate mitigation and adaptation efforts. This will require not only cooperation between federal departments and agencies, but coordination with state and territory legislation and governments to harness synergies and safeguard against perverse outcomes.

Finally, CMI notes the importance of transparency, and community confidence in ensuring the Nature Positive reforms are successful and enduring, and encourages adequate public consultation on the key approaches.

¹ Carbon Market Institute (2023), [CMI Policy Positions](#).

² Carbon Market Institute (2024), [Australian Carbon Industry Code of Conduct](#).

³ Graeme Samuel (2020), [Independent Review of the EPBC Act](#); Department of Climate Change, Energy, the Environment and Water (2022), [Nature Positive Plan: Better for the Environment, Better for Business](#).

⁴ Department of Climate Change, Energy, the Environment and Water (2021), [State of the Environment Report: Key Findings](#).

⁵ Shin et al. (2022), [Actions to Halt Biodiversity Loss Generally Benefit the Climate](#). *Global Change Biology*, Volume 28, issue 9, pp. 2846–2874.



This submission puts forward 7 recommendations that correspond to areas of the Public Consultation where CMI has existing positions, or where there is an intersection with the Australian Carbon Credit Unit (ACCU) Scheme, net zero outcomes, or market-based solutions. These recommendations are signposted and listed below. Further detail is provided in the **Attachment** that follows.

Key Recommendations

To ensure the reform of Australia's environmental laws supports the objectives of the Nature Positive Plan, CMI makes the following recommendations:

National Environmental Standards

1. The Government should clarify how the proposed Standard for Restoration Actions and Contributions addresses issues with the pre-existing EPBC Act Environmental Offsets Policy to ensure that, going forward, new project approvals will not lead to environmental degradation—including by considering providing additional time for public consultation.
2. The Government should ensure that the Standard for Restoration Actions and Contributions does not compromise the broader nature positive agenda by reviewing whether allowing 'restoration contributions' in cases where 'like for like' actions are unfeasible could adversely impact threatened species and ecosystems.

Climate Change

3. The Government should ensure alignment between the Nature Positive reforms and forthcoming work on the National Adaptation Plan, noting that a healthy environment is key to climate change resilience.
4. The Government should consider embedding climate change considerations more directly in Australia's new environmental laws—including considering a climate trigger that would require project approval processes to have regard to the environmental impacts of upstream and downstream greenhouse gas emissions associated with new developments.

Environment Information Australia

5. The Government should, in its upfront establishment of Environment Information Australia, explore opportunities to streamline and integrate datasets related to the Nature Positive Plan, ACCU Scheme, sectoral plans and the broader net zero transition.

Environment Protection Australia and Environmental Assessments and Approvals

6. The Government should clarify how the proposed ministerial call-in powers and national interest exemptions would function in practice to assure the statutory independence of the new Environment Protection Australia—including by limiting the scope of ministerial call-in powers to a list of reasons stipulated and defined in primary legislation.

Regional Planning & Strategic Assessments

7. The Government should facilitate a whole-of-government approach to regional planning and leverage existing work in the not-for-profit sector when developing the relevant mapping and visualisation tools.



Should you wish to discuss this submission in more detail, please contact Gabriella Warden (Manager, Research and Government Relations) at gabriella.warden@carbonmarketinstitute.org.

Yours sincerely,

Janet Hallows

Janet Hallows

Director, Climate Programs and Nature-based Climate Solutions



ATTACHMENT

National Environmental Standards

1. The Government should clarify how the proposed Standard for Restoration Actions and Contributions addresses issues with the pre-existing EPBC Act Environmental Offsets Policy to ensure that, going forward, new project approvals will not lead to environmental degradation—including by considering providing additional time for public consultation.

CMI welcomes the introduction of new National Environmental Standards and recognises their importance in improving environmental protection and guiding decision making.

The Standard for First Nations Engagement, for instance, will help to ensure early engagement with First Nations peoples and draw on their knowledge of Australia's landscapes and ecosystems. A Standard for Community Engagement and Consultation, moreover, will hold proponents and developers accountable to the local communities, ensuring local voices are heard throughout the project design process.

CMI notes the Government's intention to reform the EPBC Act's Environmental Offsets Policy by introducing a new Standard for Restoration Actions and Restoration Contributions (**Restoration Standard**). We note and welcome the Government's prior commitment to reforming environmental offsetting arrangements to ensure that new project approvals deliver net 'gains for the environment'—that is, 'nature positive' outcomes.⁶

CMI recognises that a robust and 'nature positive' offsetting policy will be critical to the net zero transition, mitigating the environmental impact of new renewable energy and critical mineral projects, as well as essential infrastructure such as transmission lines. However, the Government should provide more clarity around and information on how the Restoration Standard approach will lead to 'nature positive' outcomes and ensure new projects do not lead to environmental degradation. To support transparency and public confidence in the broader Nature Positive reforms, CMI would therefore welcome additional consultation on the draft Restoration Standard before it is operationalised through the Nature Positive reforms.

Further public consultation would provide an opportunity to demonstrate how baselines and 'projected gains' will be calculated under this new approach, and how the Restoration Standard will effectively enforce a mitigation hierarchy to ensure offsetting is designated a last resort measure—one of the key failures of the EPBC Act's Environmental Offsets Policy highlighted in the Samuel Review.⁷

2. The Government should ensure that the Standard for Restoration Actions and Contributions does not compromise the broader nature positive agenda by reviewing whether allowing 'restoration contributions' in cases where 'like for like' actions are unfeasible could adversely impact threatened species and ecosystems.

CMI welcomes the proposed Restoration Standard's emphasis on the mitigation hierarchy and prioritisation of 'like for like' ecosystem restoration actions. We furthermore recognise that the proposal for 'restoration contributions' to be administered by an Independent Conservation Trust guided by expert advisory committees will ensure that contributions are invested in high-integrity, relevant restoration actions.⁸

⁶ Department of Climate Change, Energy, the Environment and Water (2024), [EPBC Act Reform](#): 'Nature positive' outcomes are those where a measurable overall net gain in biodiversity can be demonstrated. See: E.J. Milner-Gulland (2022), [Don't Dilute the Term Nature Positive](#), p. 1243.

⁷ Department of Climate Change, Energy, the Environment and Water (2023), [Consultation on National Environmental Laws 13-14 December 2023](#), p. 102; Graeme Samuel (2020), [Government-Driven Investment in Restoration](#), Section 8.3.1.

⁸ Department of Climate Change, Energy, the Environment and Water (2023), [Consultation on National Environmental Laws 13-14 December 2023](#), pp. 102-3



However, we would not support the use of restoration contributions in cases where the Independent Conservation Trust deems funding a 'like for like' action is unfeasible.

Although the proposed option in these cases for contributions to be invested in 'other direct restoration actions' within the same bioregion gives priority to impacted species and requires due diligence, this would not guarantee a 'like for like' nature positive outcome. Ensuring that contributions are invested in direct 'restoration actions' that deliver projected, targeted gains is critical to preventing environmental decline.

CMI is concerned that allowing 'restoration contributions' in cases where environmental impacts cannot be offset by a 'like for like' action could lead to environmental decline and/or adverse impacts to threatened species and ecosystems. To ensure that the Restoration Standard does not compromise the broader nature positive agenda by permitting such outcomes, we would encourage the Government to reconsider whether restoration contribution arrangements are appropriate in cases where funding 'like for like' actions is unfeasible.

Climate Change (including Climate Trigger)

3. The Government should ensure alignment between the Nature Positive reforms and forthcoming work on the National Adaptation Plan, noting that a healthy environment is key to climate change resilience.

CMI highlights the importance of a healthy environment in mitigating the ongoing risks posed by climate change as well as in supporting urgently needed resilience and adaptation outcomes across Australia.⁹ As such, we reiterate our call to balance mitigation and adaptation measures within the national climate policy suite.¹⁰ To maximise outcomes, harness synergies and avoid perverse or unintended outcomes, actions that drive greenhouse gas abatement, carbon sequestration and nature repair should not be siloed but treated as interlinked and complementary.

In the context of EPBC Act reforms and the Nature Positive Plan, the Government should consider where the environmental law reform can support climate change resilience by aligning implementation of the Nature Positive Plan with adjacent climate programs, including forthcoming work on the National Adaptation Plan.¹¹

4. The Government should consider embedding climate change considerations more directly in Australia's new environmental laws—including considering a climate trigger that would require project approval processes to have regard to the environmental impacts of upstream and downstream greenhouse gas emissions associated with new developments.

CMI reiterates our support for a more rigorous project assessment and approval framework for emissions-intensive developments to accelerate corporate and industrial transition while guiding deeper structural transition across Australia's economy. Australia's development assessment framework should be designed to support a broadening and deepening of national climate ambitions. It should accommodate investment frameworks that incentivise R&D for innovation and commercialisation of net zero aligned industries alongside a regulated, planned approach to transitioning away from fossil fuels in partnership with key trading partners.

The Nature Positive reforms present an opportunity to integrate climate considerations into Australia's environmental laws.¹ This could be achieved by introducing a climate trigger into the EPBC Act that would

⁹ Mackey et al. (2022), [New IPCC report shows Australia is at real risk from climate change, with impacts worsening, future risks high, and wide-ranging adaptation needed](#).

¹⁰ Carbon Market Institute (2023), [Setting, Tracking and Achieving Australia's Emissions Reduction Targets: Submission](#), p. 3.

¹¹ Department of Climate Change, Energy, the Environment and Water (2023), [National Climate Risk Assessment and National Adaptation Plan](#).



require new developments to demonstrate their climate impact. While a climate trigger would not necessarily have to result in an automatic ban on large-emitting projects, it could facilitate assessments of the impact of individual projects on the climate and on Australia's carbon budget. As well as reinforcing the integrity of the Safeguard Mechanism framework and its treatment of new entrants, a climate trigger could facilitate stronger national ambition in the context of Australia's NDC commitments.

Climate considerations should also be integrated into environmental laws to ensure Australia's assessment and approval framework reinforces and contributes toward national climate ambitions,¹² including by:

- requiring mandatory disclosure of upstream and downstream greenhouse gas emissions as part of project proposals;
- adding 'the impact of climate change on Matters of National Environmental Significance' as a factor decision-makers must consider under the Act;
- including Australia's obligations under the Paris Agreement and the Climate Change Act 2022 in the list of legislation that decisions made under environmental laws must 'not be inconsistent with';
- defining significant and unacceptable impacts with a broad enough scope to encompass harm from climate change impacts, including regard to upstream and downstream emissions; and
- ensuring Australia's environmental laws and the Safeguard Mechanism mutually reinforce Australia's climate targets by requiring information provision on individual developments to the Minister for Climate Change, and that this information should inform any amendments to the Safeguard Mechanism design.

Environment Information Australia

5. The Government should, in its upfront establishment of Environment Information Australia, explore opportunities to streamline and integrate datasets related to the Nature Positive Plan, ACCU Scheme, sectoral plans and the broader net zero transition.

CMI reiterates our support for the establishment of Environment Information Australia, noting the crucial need for an integrated national environmental data platform. This platform should align the data and digital requirements of business to support the Australian Government's net zero ambitions and associated policy architecture, the Nature Positive Plan, the National Greenhouse and Energy Reporting scheme (NGERs), the Safeguard Mechanism and the ACCU Scheme. CMI believes such a platform must complement existing and emerging reporting frameworks and address data challenges facing businesses and government, while building confidence in the emerging Nature Repair Market.

In establishing Environment Information Australia, CMI welcomes the Government's focus on ensuring data is contemporary, accessible, searchable, high quality and interoperable.¹³ To support interoperability and realise efficiencies, CMI urges the Government to explore opportunities to streamline and integrate datasets related to the Nature Positive Plan, ACCU Scheme, sectoral plans and the broader net zero transition where possible. We reiterate that the Government should:

- Ensure the national data platform called for in Recommendation 4.2 of the ACCU Review to 'share information and data about the ACCU scheme' is interoperable with datasets managed by

¹² Climate Council of Australia (2024), [Seize the Decade. How We Empower Australian Communities and Cut Climate Pollution 75% by 2030](#), pp. 46, 59.

¹³ As noted in the consultation webinar – see: Department of Climate Change, Energy, the Environment and Water (2023), [Australia's new Nature Positive laws: Webinar 23 November 2023](#).



Environment Information Australia.¹⁴ For example, the national data platform that displays ACCU Scheme project-level information could be hosted on or integrated with Environment Information Australia as to improve data accessibility.

- Expedite the development of the national data platform called for under the ACCU Review (Recommendation 4.2) and begin consultation on this as soon as possible.¹⁵ This will allow ACCU scheme data to be integrated into Environment Information Australia early on.
- Fund a national plan to support digitally enabled emissions data capture and management.¹⁶ This will provide businesses a more accurate, real-time understanding of their emissions portfolio and support their strategic decision making as they work to decarbonise.
- Establish a government-supported, national industry-led secretariat to coordinate, convene and connect activities across industry, academia and policy (federal, state and territory), linking the elements of data for net zero.¹⁷

Environment Protection Australia

CMI welcomes the establishment of Environment Protection Australia (EPA) and strongly supports the move to bring Australia's national environmental laws under the auspices of this independent statutory authority.¹⁸ The proposed arrangements constitute an important step towards 'restoring public trust' in national environmental law.¹⁹ However, CMI would welcome further detail on how the proposed ministerial call-in powers and national interest exemptions would function in practice to assure the independence of the agency. We elaborate on potential concerns in the section on Environmental Assessments and Approvals below.

Environmental Assessments and Approvals

6. The Government should clarify how the proposed ministerial call-in powers and national interest exemptions would function in practice to assure the statutory independence of the new Environment Protection Australia—including by limiting the scope of ministerial call-in powers to a list of reasons stipulated and defined in primary legislation.

CMI welcomes the proposal that the Minister for the Environment will not be able to direct the EPA beyond the issuance of a public statement of expectations.²⁰ However, we note that the proposed Ministerial call-in power may contradict this provision and undermine the independent, statutory authority of the EPA. The rationale behind the ministerial call-in power is, moreover, unclear given that in exercising this power the Minister would be required to follow the same assessment process as the EPA.²¹ To clarify its intent and ensure public confidence in the independence of the EPA, CMI considers that the reasons qualifying the Minister to use the call-in power should be limited to a list of clearly defined circumstances that should be stipulated and clearly defined in primary legislation.

¹⁴ Carbon Market Institute (2023), [Agriculture and Land Sectoral Decarbonisation Plan Consultation: Submission](#), p. 11; Chubb et al. (2022), [Independent Review of Australian Carbon Credit Units](#), p. 13.

¹⁵ Carbon Market Institute (2023), [ACCU Review Discussion Paper: Submission](#), p. 6.

¹⁶ Carbon Market Institute (2024), [2024-25 Pre-Budget Consultation: Submission](#), p. 5.

¹⁷ IoT Alliance Australia & Carbon Market Institute (2024), [GreenData: A National Plan for Digitally Enabled Emissions Data Capture and Management](#), p. 6.

¹⁸ Department of Climate Change, Energy, the Environment and Water (2022), [Nature Positive Plan: Better for the Environment, Better for Business](#), p. 28.

¹⁹ Department of Climate Change, Energy, the Environment and Water (2024), [EPBC Act Reform](#).

²⁰ Department of Climate Change, Energy, the Environment and Water (2023), [Australia's New Nature Positive Laws: Webinar 28 November 2023](#), pp. 7-8.

²¹ Department of Climate Change, Energy, the Environment and Water (2023), [Australia's New Nature Positive Laws: Webinar 28 November 2023](#), pp. 9-10.



CMI would also welcome more detail on the national interest exemption. In particular, the Government should define the 'other circumstances...prescribed in the rules' that will qualify a Minister to invoke the national interest exemption.²² This will improve transparency and provide assurance the exemption would only be used under urgent and exceptional circumstances.

Regional Planning & Strategic Assessments

7. The Government should facilitate a whole-of-government approach to regional planning and leverage existing work in the not-for-profit sector when developing the relevant mapping and visualisation tools.

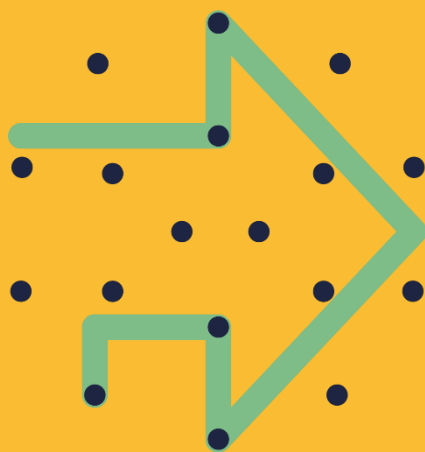
CMI welcomes a coordinated approach to regional planning and emphasises the need for integrated planning to manage and prioritise competing land use. Regional planning is a national challenge requiring collaboration between states and the federal government. We therefore consider it crucial that climate, agriculture and environment ministers work together to operationalise the Standard for Regional Planning. This will help ensure Australia's land use allows the country to balance its future needs—whether conservation, renewable energy, farming or carbon crediting.

Furthermore, in developing the mapping and visualisation tools to support regional planning, we encourage the Government to leverage existing work in this space. The work being undertaken by Climateworks Centre and Deakin University as part of Land Use Futures, for example, could be drawn upon.²³ Regional plans should also leverage and be compatible with NRM regional plans as well as with Healthy Country Plans, both of which map out natural resources and seek to optimise their use.²⁴

²² Department of Climate Change, Energy, the Environment and Water (2023), Consultation on National Environmental Laws Canberra, 30-31 October 2023, p. 25.

²³ Climateworks (2022), [Land Use Futures](#).

²⁴ For example, see Wunambal Gaambera Aboriginal Corporation (2010), [Wunambal Gaambera Healthy Country Plan – Looking after Wunambal Gaambera Country 2010 – 2020](#).



for more information please contact

Gabriella Warden

Manager, Research and Government Relations

gabriella.warden@carbonmarketinstitute.org

+61 (0) 418 263 296

The Carbon Market Institute is at the centre of climate change policy and business in Australia. Independent and non-partisan, we bring business, policy makers and thought leaders together to drive the evolution of carbon markets towards a significant and positive impact on climate change.

Engaging leaders, shaping policy and driving action, we're helping business to seize opportunities in the transition to a low carbon economy.

