

# HESTA consultation submission

Environmental Protection and Biodiversity  
Conservation (EPBC) Act Reform Consultation

May 2024



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## Introduction

HESTA welcomes the opportunity to make a submission to the EPBC Act reform consultation, which seeks views on Australia's environmental law reform as part of the government's Nature Positive Plan.

HESTA is an industry superannuation fund dedicated to meeting the specific needs of employees working in the health and community services sector. HESTA manages \$82 billion of assets and has more than one million members.

As a large, diversified asset owner, the financial performance of HESTA's portfolio is supported by a growing, sustainable and inclusive economy and is affected by systemic risks and opportunities. Natural capital is a key pillar supporting the strength and stability of the economy, with more than half the world's economic output - \$44 trillion of economic value - moderately or highly dependent on nature.<sup>1</sup> Australia's economy is no exception with approximately half of Australia's GDP estimated to have a moderate to very high direct dependence on ecosystem services.<sup>2</sup> Therefore, we firmly believe that safeguarding biodiversity is in the best financial interests of our members. One of the most effective and efficient ways to achieve this is through fit-for-purpose environmental and biodiversity protection legislation.

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## HESTA recommends:

### Support for EPBC Reform

1. Proceed with EPBC reform as promptly as possible.

### Objectives and Ambition of Nature Positive Plan

2. Focus on halting nature loss in Australia as the initial primary objective of the reform.
3. Align Australia's environmental and biodiversity protection ambitions with international frameworks.

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<sup>1</sup> The World Economic Forum, Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy (In collaboration with PWC), Jan 2020

<sup>2</sup> <https://www.acf.org.au/the-nature-based-economy-how-australias-prosperity-depends-on-nature>

4. Build in 5-year review mechanisms into the legislation that allow for ambition to be ratcheted over time in response to updated scientific knowledge about the state of Australia's environment.
5. Ensure that aggregate, in addition to project level, environmental impact of activity is considered in environmental evaluations to comprehensively capture the impact of projects on nature.
6. Link nature loss and climate change in the legislation and ensure that consideration of climate change impacts is captured within the environmental evaluation of projects.

### **Cultural Heritage Protection and First Nations Peoples Rights**

7. Embed the principles articulated in the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) in decision-making processes.
  8. Ensure co-design process for cultural heritage law reform proceeds promptly alongside the EPBC reform.
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## **Support for EPBC Reform**

### **Recommendation 1: EPBC reform proceeds as promptly as possible**

It is widely accepted by a range of stakeholders that Australia's EPBC Act, a 25-year old legislation, requires significant reform. The urgency of this reform is exacerbated by Australia's recent State of the Environment report, which shows that Australia's environment is under extreme pressure. In addition, the World Economic Forum has identified biodiversity loss and ecosystem collapse as a significant global risk over the next ten years<sup>3</sup>. Given the interconnection between a healthy environment and a strong and stable economy, this context is concerning for long-term investors, like HESTA. As such, HESTA is very supportive of the intent to significantly reform Australia's EPBC Act.

The State of the Environment report indicates that Australia's environment cannot wait and, therefore, HESTA recommends that EPBC reform proceeds as promptly as possible.

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<sup>3</sup> <https://www.weforum.org/publications/global-risks-report-2024/>

## Objectives and Ambition of Nature Positive Plan

### **Recommendation 2: Halting nature loss as the initial primary objective**

Australia's State of the Environment report indicates the need to urgently halt nature loss. Although halting and then reversing nature loss is needed to mitigate the investment risk, halting further losses is the first step. Therefore, HESTA recommends that the initial primary objective of the legislation be to halt nature loss.

### **Recommendation 3: Australia's environmental and biodiversity protection ambitions align with international frameworks**

In ensuring the right level ambition of any new environmental laws in Australia, we encourage the ambition of the laws to align with the Kunming-Montreal Global Biodiversity Framework. This would provide domestic and overseas capital allocators policy clarity within Australia about what is needed in capital markets to mitigate the risk of nature loss.

To ensure clarity for investors, we encourage the development of an outcomes-oriented, science-based, time-bound definition of the term 'Nature Positive' in line with the Global Biodiversity Framework. Defining 'Nature Positive' offers an opportunity for the government to set high-level ambition for the wider economy to align themselves to.

We encourage aspects of the new environmental reforms to meaningfully set objectives that tie back to the definition and ambition set by 'Nature Positive'. Embedding objectives of 'Nature Positive' within the legislation will make environmental reform outcomes-oriented.

### **Recommendation 4: 5-year review mechanisms are built into the legislation that allow for ambition to be ratcheted over time in response to updated scientific knowledge about the state of the environment**

Although halting nature loss is the first step to improve the State of Australia's environment and mitigate the investment risk associated with nature loss, reversing nature loss in a socially and economically just manner should be the ultimate long-term objective.

We recognise that halting nature loss will require significant work from government, industry, investors, and civil society. It is imperative however, to acknowledge that reversing nature loss is what is ultimately required to fully mitigate the investment risk associated with nature loss, ensuring it is done in a

socially and economically just manner. Therefore, we recommend that the legislation be designed in such a way as to ensure that ambition can be ratcheted over time as the primary objective shifts from halting nature loss to reversing it. To ensure that objectives are reviewed in a timely manner, we recommend 5-year review mechanisms are built into the legislation.

**Recommendation 5: Legislation ensures that the aggregate environmental impact of activity is considered in environmental evaluations to comprehensively capture the impact of projects on nature**

Large, diversified asset owners that rely on a strong and stable economy to underpin returns, increasingly recognise that the wellbeing of the core pillars of an economy – the environment and people – is paramount.

Systemic risk of nature loss for investors is heightened by its 'double materiality'. Double materiality of nature loss is the consideration of not only the nature-related impacts on a company's operations but also the impacts of a company's operations on nature. These risks are exacerbated when nature loss is accelerated due to the increasing cumulative impact of projects.

Therefore, to comprehensively capture and assess the financial risk of nature loss for investors, Australia needs legislation that ensures that the aggregate environmental impacts of economic activity are taken into consideration rather than simply the project-by-project impacts. This approach would allow for a more accurate assessment of how a project contributes or detracts from Australia's high-level ambition to halt and eventually reverse nature loss.

**Recommendation 6: Explicitly link nature loss and climate change in the legislation and ensure that consideration of climate change impacts is captured within the environmental evaluation of projects.**

Climate change is one of the main drivers of nature loss. It is expected that by the end of the century, climate change will become one of the most significant drivers of biodiversity loss.<sup>4</sup> Nature loss also exacerbates the impacts of climate change. Therefore, it is recommended that reforms explicitly link nature loss and climate change in the legislation and ensure that consideration of climate change impacts is captured within the environmental evaluation of projects.

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<sup>4</sup> <https://pubmed.ncbi.nlm.nih.gov/29925617/>

## **Cultural Heritage Protection and First Nations Peoples Rights**

### **Recommendation 7: Where relevant, EPBC reforms embed the principles articulated in the UN Declaration of the Rights of Indigenous Peoples (UNDRIP)**

As a long-term investor, we believe that strong and respectful stakeholder relationships are essential to realising sustainable value creation. The destruction of significant cultural heritage at Juukan Gorge by Rio Tinto, among other high-profile examples, showcased the risks and potential value implications for investors when First Peoples rights are not upheld.

Although we expect companies to invest in strong and respectful stakeholder relationships to safeguard and enhance the value of the company over the long term, setting a high legislative bar is the most efficient way to ensure high standards sector-wide.

Our understanding of the reform process is that a draft Standard on First Nations Engagement will form a key part of the process. We are supportive of this approach and recommend that this draft standard embed the principles articulated in UNDRIP. This will support strong and respectful relationships between companies and First Peoples and provide certainty for project proponents and investors on what is required to obtain approvals.

### **Recommendation 8: Co-design process for cultural heritage law reform proceeds promptly alongside the EPBC reform**

We recognise the interconnected nature of environmental protection legislation with broader cultural heritage legislation. Therefore, for EPBC reform to deliver on the ambition required to protect Australia's environment, biodiversity and heritage, the co-design process for cultural heritage law reform announced in November 2022 by Minister Plibersek should proceed promptly alongside this review.



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