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Less than positive about Nature Positive

Appearing before the Environment and Communications Legislation Committee today, the Law Council of Australia has reiterated concerns outlined in its recent submission to the inquiry into the Nature Positive (Environment Protection Australia) Bill 2024 and related Bills.

“From the watered-down definition of Nature Positive, through to the contracted consultation timeframes, we believe these Bills could do more to help protect the environment for future generations,” Law Council of Australia President, Mr Greg McIntyre SC said.

“While we welcome the introduction into the Parliament of this set of Bills, each has scope for significant improvement.

“These deficiencies are disappointing as the Nature Positive reforms are a once-in-a-generation opportunity to correct serious shortcomings in Australia’s environmental protection framework.

“A significant concern we have raised with the Committee is the fact that a suite of decision-making powers and functions can be transferred to a single person - the CEO of Environment Protection Australia (EPA) – without appropriate oversight.

“What this means is that the Minister’s decision-making can be delegated to the EPA CEO in relation to, among other things, designation of controlled actions, assessment processes and approval of controlled actions under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).”

In its submission, the Law Council pointed out that while the Minister currently delegates these decisions under the EPBC Act, this delegated authority is to a senior member of the Department. In contrast, if the Minister was to delegate the same functions to the EPA CEO, the delegation is to an independent entity who is not subject to direction by the Minister or any other accountability mechanism.

“We have recommended the Committee consider appropriate governance controls, including establishing a statutory, independent skills-based board to advise the CEO on the exercise of statutory functions, advise the Minister on the appointment of the CEO, determine when to pursue prosecutions, and determine the policies and long-term strategies of the EPA.

“This will strengthen accountability and help ensure decisions made are in the best interests of the environment and all Australians, regardless of what will certainly be significant stakeholder pressure and interest,” Mr McIntyre said.

“Another issue we raised is the fact that the Nature Positive (Environment Protection Australia) Bill 2024, does not provide for a limited merits review process for development assessment and approval decisions, despite this being recommended in the Samuel Review.

“A merits review process will improve transparency and public confidence in the process.”

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