

**NELA Submission on the draft
*National Roadmap for protecting and conserving 30 % of Australia's
land by 2030***

About NELA and its interest in this consultation

NELA is the national peak body for advancing Australian environmental law and policy. It is an independent, multidisciplinary, member-based association focused on environmental law and sustainability. NELA is managed by a national board that includes directors with expertise in international and domestic legal frameworks for biodiversity conservation, ecological restoration, environmental and carbon markets, environmental regulation and regulatory theory, and natural resource management.

One of NELA's core objectives is to provide a forum for, and to otherwise assist in, the discussion, consideration, and advancement of environmental law across the legal profession and the wider community. As a body with expertise and interest in environmental laws, NELA and its members recognise the importance of clear, strong, transparent and ambitious laws for safeguarding Australian environments, and we bring that recognition to bear in this submission.

We are grateful for the opportunity to make a submission on this consultation paper.

Summary of this submission

The Australian Government has committed to comprehensive, meaningful reform of Australia's environmental laws, including by committing in its Nature Positive Plan to 'protect and conserve 30% of Australia's land and oceans by 2030' to align with Target 3 of the Global Biodiversity Framework (**GBF**) under the Convention on Biological Diversity (**CBD**). In this short submission, NELA highlights some important considerations for the Australian Government as it develops its national roadmap to meet this target.

NELA's submission focuses on:

1. How Commonwealth Government could play a greater leadership role in meeting its international environmental obligations; and
2. The fundamental components for what we expect to see in a roadmap for protecting and conserving 30% of Australia's land by 2030, which are missing from the draft. They include:

- a. A dedicated investment stream for the National Reserve System that seeks to leverage investment from States and Territories, philanthropies and business
- b. Explicit strategies that outline the specific actions that are needed to meet Target 3
- c. The inclusion of marine protected areas in the National roadmap and Australia's efforts to meet Target 3

A potential role for the Commonwealth in meeting Target 3 of the GBF

The question of where the responsibility for environmental regulation should rest is often the subject of debate within federations. Australia is no exception to this.¹

The Commonwealth Government has played a strategic leadership role in several important environmental law and policy initiatives specially relating to its protected area estate. These include establishing the National Reserve System (NRS), developing the scientifically robust 2009 NRS Strategy, funding and overseeing the ongoing Indigenous Protected Areas (IPA) program, and funding the NRS Program between 1996 – 2012.

The Commonwealth's NRS Program was instrumental in supporting State and Territory acquisitions of land for protection and later successfully leveraged philanthropic investment in acquisition of Privately Protected Areas (PPAs). Notwithstanding that under the NRS Program the overall Commonwealth investment fell short of meeting protected area targets of the time, the NRS Program was deemed to be a 'cost effective' program.² As a result, the NRS Program is 'widely regarded as one of Australia's most successful biodiversity conservation programs'.³

Most recently, Commonwealth leadership was displayed on the international stage in negotiations for the Global Biodiversity Framework ('GBF'). The GBF has set ambitious targets for signatory countries and offers Australia the opportunity to continue its leadership role in this arena through strong action to implement targets, including Target 3.

¹ For further discussion on these matters, see: Robert Fowler, 'The Australian experience with environmental federalism: constitutional and political perspectives', *The Law and Policy of Environmental Federalism* (Edward Elgar Publishing, 2015) 271-303.

² Australian National Audit Office, 2008b. Review of the Administration of the National Reserve System. 28 Feb 2008, Australian Government, Canberra.

³Taylor MFJ, Fitzsimons J, Sattler P (2014), Building Nature's Safety Net 2014: A decade of protected area achievements in Australia, WWF-Australia: <https://conservationgeography.org/wp-content/uploads/2019/03/pub-building-natures-safety-net-2014-18nov14.pdf>

NELA submits that now is the time to demonstrate Commonwealth leadership with respect to expanding and enhancing Australia's world class protected area estate and meeting Target 3. Recent research from the Biodiversity Council also indicates that the Australian public expects significant Commonwealth investment into, and leadership on, biodiversity conservation laws and policies.⁴ This submission is consistent with the Australian Panel of Experts on Environmental Law (APEEL) work of 2017 which recommends the Commonwealth perform a well-defined national strategic leadership role under the next generation of Commonwealth environmental laws and policies.⁵

The fundamental components for a 30 x 30 Roadmap, which are missing from the draft National Roadmap

a. Investment

Australia will not meet Target 3 (or indeed any of the GBF Targets) without a dedicated Commonwealth environment fund that also seeks to generate increased private, public and philanthropic sector funding.

Leading ecology and conservation scientists in Australia have called for the federal government to commit significant federal funding to enable 30 x 30 to be met.⁶ A report released by ALCA, The Nature Conservancy, WWF-Australia, and Pew Charitable Trusts, *'Protecting Australia's Nature: Pathways to protecting 30 percent of land by 2030'*, (30 x 30 Pathways Report) provides some recommendations as to what Commonwealth investment could look like.⁷ These options included: (1) a dedicated \$5billion fund for conservation land acquisitions which could be leveraged with funding from the state and territory governments, philanthropy and corporate investment; (2) continued investment in the IPA program including rebuilding government capacity to create long term funding security for IPAs; and (3) both providing direct investment support to State and Territory conservation covenanting programs contribute to meeting Target 3, and initiating a review of the available tax incentives to increase participation from private landowners.

Further, the 2017 APEEL work recommended establishment of an Environment Futures Fund and a *'Commonwealth environmental investment commission that would be responsible for addressing fundamental challenges to the effective resourcing of environmental management*

⁴See here: <https://biodiversitycouncil.org.au/resources/2024-biodiversity-concerns-report-a-survey-of-community-attitudes-to-nature-conservation>

⁵ The Australian Panel of Experts on Environmental Law, 'Environmental Governance (Technical Paper 2, 2017) ', <https://www.edo.org.au/publication/australian-panel-of-experts-in-environmental-blueprint-and-technical-reports/>

⁶See here: <https://30by30.org.au/blog/2024/07/17/top-scientists-call-on-australian-government-to-allocate-federal-funding-towards-nature-protection-and-management/>

⁷ https://30by30.org.au/wp-content/uploads/2023/11/Report3030_FINAL_web.pdf

*in Australia by identifying strategies to generate increased private and public sector funding and to maximise community investment.*⁸

NELA submits that any 30 x 30 Roadmap needs to include a plan to generate investment – from Commonwealth, State and Territory governments, philanthropic organisations, and business – to meet this target.

NELA notes that the Nature Repair Market is referred to in the draft Roadmap and agrees that the development of the Nature Repair Market is an important opportunity to support nature related investment. However, the Nature Repair Market is not directly set up for the purposes of 30 x 30 and will not, on its own, be sufficient to fund 30 x 30 in accordance with the principles of a comprehensive, adequate and representative protected area estate, and to meet the standards required under Target 3 (including recognising and respecting the rights of Indigenous peoples).⁹

A broad suite of investment opportunities and measures needs to be considered by the Australian governments, with leadership from the Commonwealth, to meet Target 3, and these need to be explored within the 30 x 30 Roadmap.

b. The steps or milestones that are needed to meet Target 3

A key aspect of developing a framework to meet GBF Targets (here Target 3, 30 x 30) include explicit strategies that outline the specific actions that will move us directly to achieving this target.

Section 7 of the draft Roadmap sets out the current ‘activities’ being undertaken by Commonwealth, State and Territory governments that may support 30 x 30. However, there is no reference to new or enhanced strategies, steps or milestones, which have been driven by the new Target.

NELA submits that it is not clear from the draft Roadmap how maintaining the current level of investment and conservation activities within Australian law and policy is expected to deliver 30 x 30. We would like to see further strategic development in the ‘how’ aspect of meeting 30x30, as well as more clarity on the allocation of roles and responsibilities amongst the Commonwealth, State and Territory governments, local Councils, public authorities, businesses, philanthropies and local communities to deliver Target 3 of the Global Biodiversity Framework.

⁸ Ibid.

⁹ For ongoing debates about the prospects of the Nature Repair Market to be able to attract private investment and deliver effective conservation outcomes, see here: <https://theconversation.com/can-a-nature-repair-market-really-save-australias-environment-its-not-perfect-but-its-worth-a-shot-203126>; <https://theconversation.com/would-a-nature-repair-market-really-work-evidence-suggests-its-highly-unlikely-199975>; <https://theconversation.com/can-the-governments-new-market-mechanism-help-save-nature-yes-if-we-get-the-devil-out-of-the-detail-218713>

c. Marine protected areas

Target 3 specifically refers to protection across land, inland waters and marine and coastal areas, yet the draft Roadmap only addresses land and inland waters. Given this Roadmap has been prepared to specifically ensure Australia has a credible plan to meet Target 3, it is important that steps are taken to include coastal and marine areas. This includes mechanisms to ensure that Australia's marine protected areas are 'enhanced' and that new protected areas are selected based on 'areas of particular importance for biodiversity and ecosystem functions and services' as per Target 3, and also underpinned by the NRS principles of a 'Comprehensive, Adequate, and Representative' reserve system across the Australian continent.

NELA supports the recommendation from the aforementioned '30 x 30 Pathways Report' that, as a first step, Australian governments should commit to reviewing Australia's current network of marine protected areas to understand how they comply with Target 3 and Australia's policy commitment to establish a Comprehensive, Adequate, and Representative system of marine protected areas.¹⁰

The Sustainable Ocean Plan and regular reviews of Australian Marine Park Management, which are referred to in the executive summary of the draft Roadmap, could be used to assist implementation of Target 3 and Australia's NRS policy commitment for marine protected areas, but they should not be used as an alternative for targeted and direct legal and policy action to meet Target 3 with respect to marine protected areas.

NELA would be pleased to discuss this submission further with the NRS Team.

¹⁰See here: https://30by30.org.au/wp-content/uploads/2023/11/Report3030_FINAL_web.pdf and also here: Guidelines for Establishing the National Representative System of Marine Protected Areas (1998), Australian and New Zealand Environment and Conservation Council Task Force on Marine Protected Areas.