

Preventing ‘Death by a Thousand Cuts’

Addressing cumulative impacts to matters of national environmental significance (MNES) through reforms to the EPBC Act

Recommendations to the Commonwealth Government | August 2023

WENTWORTH GROUP OF CONCERNED SCIENTISTS

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Preventing 'Death by a Thousand Cuts'

The recommendations contained within this report have been developed in collaboration with subject matter experts from the disciplines of science, law and policy, and those with a practical knowledge of cumulative impact assessment and proposed EPBC Act reforms. These recommendations were the subject of discussion at an expert workshop on cumulative impacts, convened by the Wentworth Group of Concerned Scientists, held in Sydney on 13 July 2023.

Purpose of this report:

The purpose of this report is to provide recommendations to Government on the practical solutions needed to address cumulative impacts to matters of national environmental significance (MNES), within the context of reforms to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The recommendations focus explicitly on the Commonwealth's constitutional role and responsibilities in relation to the environment, specifically enhancing the protection of existing matters under the EPBC Act and improving implementation of the significance test, the measure of whether an action is likely to cause significant harm to a matter protected under national environment law. The recommendations are designed to prevent 'death by a thousand cuts' to nationally protected matters while minimising additional burden on project proponents, landholders and Government, particularly in relation to routine land management.

The problem:

Australia's main national environmental legislation, the EPBC Act and associated regulations, is intended to provide the framework for the protection of the environment, conservation of biological diversity and promotion of ecologically sustainable development, with respect to MNES (the plants, animals, habitats and places that have been identified as being of national and international importance). Yet the EPBC Act is failing in its duty. As the Independent Review of the EPBC Act (Samuel Review)¹ and the State of the Environment 2021² report indicate, the EPBC Act is not adequately protecting the environment or conserving biodiversity. Instead, it is allowing death by a thousand cuts to cause significant, often irreparable damage to those matters upon which we place so much value.

This is of particular concern for the >2000 species and ecological communities which have received threatened listing status as they are already vulnerable and on a pathway to extinction. It is our responsibility to protect and recover these species and ecological communities to a state of greater resilience, not contribute to their further decline. Similarly, we must protect our Ramsar Wetlands, World Heritage properties and National Heritage places from adverse impacts, not allow their continued aggregated loss and degradation. If we are serious about being nature positive, ensuring there are no new extinctions and delivering on our commitments under the Kunming-Montreal Global Biodiversity Framework, we need to address the myriad of smaller impacts (the cumulative impacts) that threaten the viability of the matters we cherish, not just the impacts that reach a significance threshold when considered individually. We also need to address the complex ways in which larger developments interact and aggregate to cause impacts that are more significant than when they are considered in isolation.

Currently, the EPBC Act requires the consideration of whether an action will have or is likely to have a significant impact on an MNES, however this significance test is limited to the impacts that can be directly attributed to the individual action (development) under assessment. The EPBC Act fails to account for the

¹ Samuel, G 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October. CC BY 4.0.

² Australia State of the Environment 2021, Department of Climate Change, Energy, the Environment and Water, Canberra, viewed 16 February 2021, < <https://soe.dcceew.gov.au/#0>>.

cumulative effects of actions in the real-world context of other actions and environmental conditions. The Samuel Review found that cumulative impacts are currently not well managed under the EPBC Act, stating “Individually, developments may have minimal impact on the national environment, but their combined impact can result in significant long-term damage....project-level decisions fail to fully factor in other pressures on the environment, resulting in an underestimation of the broadscale cumulative impacts on a species, ecosystem or region.”

The opportunity:

The Labor Government’s commitment to reforming the EPBC Act provides an opportunity to ensure that cumulative impacts are clearly identified and accounted for in the new legislation and associated standards, policies and subordinate regulations.

Recommendation 25 of the Samuel Review proposed a number of amendments to the EPBC Act “to support more effective planning that accounts for cumulative impacts and past and future key threats” The Government’s response to this recommendation, as outlined in the Nature Positive Plan³, focuses heavily on regional planning. The Government has also committed to being ‘nature positive’, ensuring there are no new extinctions and implementing the Kunming-Montreal Global Biodiversity Framework⁴.

We recognise that the Commonwealth cannot achieve these goals alone, and there are roles and responsibilities for different levels of government, the private sector and communities. However, in order to progress their commitments, the Commonwealth must act where they can, thus it is critical that national environmental law reforms meaningfully and effectively consider and respond to adverse cumulative impacts to MNES.

EBPC reform context:

We have prepared the below integrated set of recommendations under the assumption that many elements of the EPBC Act will be carried across (ideally in an improved form) into new national environmental laws. We have also sought to build on specific elements of the Government’s proposed reform agenda⁵, where known, including but not limited to:

- The development of National Environmental Standards
- The establishment of Environment Information Australia
- The establishment of Environment Protection Australia
- The continuation of individual assessment and approval processes
- The establishment of a regional planning framework under the EPBC Act.

³ DCCEEW 2022, *Nature Positive Plan: better for the environment, better for business*, Department of Climate Change, Energy, the Environment and Water, Canberra, December. CC BY 4.0.

⁴ Conference of the Parties to the Convention on Biological Diversity 2022. ‘[Decision adopted by the Conference of the Parties to the Convention on Biological Diversity 15/4. Kunming-Montreal Global Biodiversity Framework](#)’, *Montreal, Canada, 7-19 December 2022*.

⁵ As derived from the Nature Positive Plan and May 2023 Federal Budget papers.

What are adverse cumulative impacts?

Adverse cumulative impacts should be taken to include impacts accumulating from past, present and reasonably foreseeable future (anthropogenic) impacts, as well as current and reasonably foreseeable future environmental conditions. The inclusion of a concept of 'reasonableness' allows for the setting of cumulative impact assessment requirements that vary in different contexts. What is reasonable for an individual project assessment may differ from what is reasonable for a regional plan, for example:

- For the purpose of **assessing and approving individual actions**, it may be unreasonable to expect a proponent to have access to detailed information relating to reasonably foreseeable future environmental conditions (such as future climate scenarios). Therefore, in this context cumulative impact assessment should include consideration of the *predicted impacts of the action* under assessment on any *identified MNES*, in combination with other confirmed or predicted impacts on the same MNES resulting from changes brought about by other past, present and reasonably foreseeable future [anthropogenic] actions, in addition to current and reasonably foreseeable future environmental conditions as included in the relevant regional plan or as required by regulations.
- For the purpose of **regional planning**, it is critical that detailed consideration of current and reasonably foreseeable future environmental conditions (including future climate scenarios) also be factored into decision-making processes, and efforts made to fill any significant knowledge gaps during the development of the plan. In this context, cumulative impact assessment should include consideration of *all cumulative effects of impacts* resulting from past, present and reasonably foreseeable future actions, *in addition to current and reasonably foreseeable future environmental conditions*, on MNES or any other matters protected under the [EPBC] Act or any other areas identified within the region as being of high environmental or cultural value. This information in regional plans must then be included in assessments for individual actions.

Note: What is reasonable in relation to the requirements of cumulative impact assessment will also change over time with better Government collection and dissemination of information, and best available science of the day. For example, what is expected of regulated parties may vary before and after regional plans are available, and before and after Environment Information Australia has made aggregated information available. This approach is similar to the operation of the 'state of knowledge' under Victoria's environment protection legislation, whereby as the state of knowledge changes with time and information availability improves, it becomes reasonable to expect people to use that information.

Objective of the recommendations:

To ensure that new national environmental laws are equipped to better protect and contribute to the recovery of MNES by creating and implementing mechanisms that enable adverse cumulative impacts to MNES to be effectively considered, assessed and addressed (i.e., avoided, mitigated or fully offset).

To provide practical and efficient mechanisms for addressing cumulative impacts at a range of different scales and within different legislative contexts, including by linking mechanisms to maximise benefits.

Recommendations for addressing adverse cumulative impacts to MNES:

Caveat: These recommendations focus specifically on addressing adverse cumulative impacts to MNES through EPBC reforms. However, it is important to acknowledge that adverse cumulative impacts affect a range of other values that we may hold dear, including broader environmental values, cultural and social values, ecosystem functioning, non-listed native flora and fauna, and future climate conditions. Given the EPBC Act focusses on the protection and restoration of narrowly defined MNES, adverse cumulative impacts to other values are not within the scope of these recommendations. Similarly, other national legislation is out of scope. The recommendations focus on existing matters under the EPBC Act and improved implementation of the significance test. Nevertheless, many recommendations are also of relevance to the Water Act.

Foundational recommendations

Recommendation 1: Insert a new ‘object of the Act’, to require that cumulative impacts be considered and addressed in environmental assessment and approval processes and the development of federal policies, plans or programs AND reflect this new object in the National Environmental Standards for MNES, regional planning and environmental offsets.

Note: This recommendation is based on international examples of best practice regulation of cumulative impacts and would give prominence to the need to meaningfully consider cumulative impacts throughout the various functions of the Act.

Recommendation 2: Insert a definition of **impacts** into the new Act(s) that is inclusive of cumulative impacts. This definition should recognise that adverse impacts can be the result of both the individual impacts of an action and the cumulative impacts of that action in the context of other actions (whether or not they require assessment under the EPBC Act) and environmental conditions. This definition should explicitly require that judgements of significance be informed by the assessment of both the individual and cumulative impact pathways associated with an action. The definition would be applicable to the following sections of the Act(s):

- a. all sections dealing with the requirements for environmental approvals applicable to each MNES (i.e., s12, 15B, 18, 20, 21, 23, 24B and 24D of Div. 1, Part 3 of the EPBC Act)
- b. all sections dealing with the requirements for environmental approvals applicable to other Commonwealth matters (i.e., s26, 27B and 28 of Div. 2, Part 3 of the EPBC Act)
- c. sections of the Act that outline the requirements relating to the variation of conditions, suspension of approvals and revocation of approvals (i.e., s143-145 of Div. 3, Part 9)
- d. section(s) dealing with the relevant impacts of an action, e.g., the impacts that will be subject to assessment and potential regulation (i.e., s82, Div. 2, Part 8).

Note: this recommendation builds on Government’s draft definition for significant impacts, which is inclusive of cumulative impacts, but embeds it in the broader definition of ‘impact’ making it applicable to both ‘significant impacts’ and ‘relevant impacts’. It seeks to make the intent of impact assessment explicit. It is similar to approaches in environmental impact assessment laws in Sweden (defines effect).

Recommendation 3: Amend provisions relating to the mandatory content of recovery plans (i.e., s270, Div. 5, Part 13 of the EPBC Act) to require that the identification of threats to the species or community (c) be inclusive of both threats that may cause individually significant impacts and threats that may cause cumulatively significant impacts, and specify that these threat categories must be clearly differentiated.

Note: this recommendation supports the Government’s proposed replacement of recovery plans and conversation advices with a single recovery strategy that, among other things, sets out the relevant threats and key threatening processes to a listed species or ecological community. We caveat that any such move to a singular conservation planning document must be accompanied by the higher legislative bar of the Minister ‘must not act inconsistently with’ a recovery strategy. This threat identification process should be applied to management plans for World Heritage properties, National Heritage places and Ramsar wetlands.

Recommendation for individual assessment and approval processes

Recommendation 4: Include new provisions in the Act to ensure that the multitude of cumulatively significant adverse impacts to MNES are accounted for through individual assessment and approval processes (i.e., Parts 7-9 of the EPBC Act). This can be achieved through the following steps (visual representation at Attachment A), the implementation of which would be informed by higher-level mechanisms (e.g., regional plans, recovery plans/strategies, and State of the Environment reports):

1. Identify whether the proposed action is likely to have an adverse impact on MNES (e.g., is the action being undertaken in MNES habitat and does it involve a listed threat to the MNES).
2. Ensure that comprehensive efforts have been made to avoid or minimise impacts to MNES, taking into consideration their likely effectiveness under specified climate change scenarios.
3. Determine whether there will be or is likely to be residual adverse impacts to MNES.
4. Develop a new screening process to separate actions with residual adverse impacts to MNES into two categories based on their expected impacts:
 - a. **Actions that are likely to result in individually significant impacts:** This includes actions that will have or are likely to have significant impacts to a MNES on their own as a result of the action being referred. (Note: these are the actions that would be referred per current arrangements. These actions are also likely to contribute to additional cumulatively significant impacts to MNES.)
 - b. **Actions that are likely to result in cumulatively significant impacts:** This includes all actions that will result in or are likely to result in any adverse impacts to a MNES, but which do not meet the significance threshold when considered in isolation. (Note: this would incorporate actions deemed to be a 'not controlled action' per current arrangements, as well as actions that are not currently referred that result in adverse impacts to MNES. These actions have the potential to contribute to cumulatively significant adverse impacts to MNES and need to be captured within the regulatory framework. Recovery strategies and management plans could help identify adverse impacts to MNES that may be cumulatively significant, see recommendation 3.)
5. Develop a subsequent screening process to identify whether the individually or cumulatively significant impacts are likely to be compensatable:
 - a. **Non-compensatable impacts:** are all impacts that are not able to be counterbalanced with absolute gains either in totality or in an ecologically meaningful timeframe. In other words, the value that would be impacted is irreplaceable – e.g., the habitat values lost cannot be re-created within timeframes relevant to the MNES. When avoidance or mitigation cannot effectively remove these irreversible impacts, the proposed action must be refused, because otherwise impacts on the MNES will unavoidably continue to accumulate.
 - b. **Compensatable impacts:** are all impacts for which there is sound evidence that they can be counterbalanced with absolute, like-for-like gains within ecologically meaningful timeframes. These impacts should first be subject to full exploration of all avoidance and mitigation options, and only when options have been exhausted should offsetting be considered.
6. Develop separate assessment and approval pathways for the different action categories to create a streamlined process for lower risk categories while maintaining more rigorous assessment requirements for the higher risk categories:
 - a. **Cumulatively significant impacts (compensatable):** actions that fall into this category should quickly progress to a conservation payment pathway, with liable costs calculated based on the relevant contribution of the action to the cumulatively significant impact.
 - b. **Cumulatively significant impacts (non-compensatable):** actions that fall into this category should quickly progress to refusal of the proposed action (a quick no), unless carefully defined reasonable grounds can be established for allowing the action (e.g., the action is necessary in the interest of public safety **and** there are no feasible options for avoidance or mitigation of the impact).

- c. **Individually significant impacts (compensatable):** actions that fall into this category should be subject to a rigorous assessment and approvals process that identifies both the individually significant and (additional) cumulatively significant impacts associated with the action. These actions should be subject to the strict and meaningful application of the mitigation hierarchy, and any progression to an offset pathway should only be considered following the full exploration of options for avoidance and mitigation. The use of a robust offset calculator that factored in both the individually and cumulatively significant residual impacts of the action would be required, and approval of the action should only occur after a like-for-like offset had been identified and a reasonable pathway for securing it identified.
- d. **Individually significant impacts (non-compensatable):** actions that fall into this category are clearly unacceptable and should quickly progress to refusal of the proposed action (a quick no). The potential use of ministerial discretion to allow for the approval of actions within this category should be strictly limited and subject to rigorous guidelines that carefully specify the circumstances in which these powers may be reasonably utilised (e.g., the action is necessary for x, y, z reasons **and** there are no feasible options for avoidance or mitigation of the impact). Any use of discretionary powers must be accompanied by a published statement of reasons.

Note: this recommendation corresponds with the Government's proposed development of a conservation payment pathway linked to individual assessment and approval processes, and the role of Environment Information Australia in providing robust data to inform project referrals. Importantly, it restricts the use of the conservation payment pathway to actions that fall into the cumulatively significant compensatable impacts category. We do not endorse the use of conservation payments for individually significant impacts. This recommendation captures a range of impacts to MNES that aren't currently assessed under the EPBC Act, due to sub-regulation and poor implementation of the significance test. However, the use of streamlined processes for lower-risk impacts creates efficiencies for implementation. Recommendations 7 and 9 ensure proponents have access to data on the predicted or confirmed impacts of past, present and reasonably foreseeable future actions, and knowledge of their responsibilities under national environmental legislation.

Recommendation for regional planning

Recommendation 5: Ensure that the National Environmental Standard for Regional Planning and associated legislative provisions:

1. Set out nationally consistent rules for the allocation of areas within a region into the different traffic light zone categories, ensuring that:
 - a. Rules are robust, evidence-based, scientifically defensible, clear and easy to implement, and take into account the principles of cumulative impact assessment.
 - b. The precautionary principle is utilised in the zoning of data deficient areas (and reasonable timeframes for filling knowledge gaps in those areas are identified).
 - c. Areas that contain non-compensatable values (e.g., irreplaceable heritage values or ecological values which could not be counterbalanced with absolute, like-for-like gains within ecologically meaningful timeframes) are allocated as priority protection areas.
 - d. Actions to be taken in amber zones are subject to individual assessment and approval processes under the [EPBC] Act (as per Recommendation 4).
 - e. Adaptive management mechanisms allow zoning to be rapidly updated in response to new information (including information derived from individual assessment processes) and catastrophic events.
2. Include a robust process for the consideration and mitigation of adverse cumulative impacts to MNES, any other matters protected under the [EPBC] Act and any other areas identified as being of high environmental or cultural value to the region. For example, this may include:
 - a. The development of precautionary thresholds or trigger points for each identified MNES, other matter or value in the region that, when met, trigger a halt of actions within, or actions that would impact on, areas in the region mapped as containing that MNES, matter or value.
 - b. The identification of carefully defined desirable future states for the MNES (e.g., targets), other protected matters and areas of high environmental and cultural value within the region, which guide the consideration of zoning, permissible activities within zones and thresholds or trigger points.
 - c. The development of a plan for monitoring and evaluating cumulative impacts to MNES (including by using monitoring data from approved actions in the region), other protected matters and areas of high environmental or cultural value within the region, and adaptively managing any unforeseen adverse cumulative impacts that may arise.
3. Specify that plans are developed on the basis of positive, meaningful engagement with First Nations people and regional communities, based on a principle of free, prior, informed consent.
4. Incorporate appropriate enforceability mechanisms in relation to any potential delegation of Commonwealth powers to other accredited bodies such as states and territories (i.e., delegated decision-making powers must be easy to revoke if responsibilities are not upheld and penalty provisions should be available for failure to consider relevant matters and uphold delegated responsibilities).

Note: this recommendation builds on the Government's proposed development of a regional planning framework. Recommendations 7 and 9 outline the steps that could be taken to establish a repository of reliable data to inform regional planning and maximise effectiveness of this repository, including by efficient incorporation of existing data with additional data available through regulatory processes at multiple levels.

Supporting recommendations critical to effective implementation of recommendations 1-5

Recommendation 6: Develop policy guidance (in the form of subordinate legislation) on how to undertake cumulative impact assessment, including but not limited to:

- A clear description of what adequate/reasonably practicable assessment looks like, including in the context of project assessments in the absence of a relevant regional plan
- Identification of how far into the past and future the assessment should apply
- Guidance on determining the appropriate spatial scale within which cumulative impact assessment should be undertaken
- Guidance on the baselines to be used to assess the significance of the impact
- Guidance on the design of post-approval monitoring requirements that are tailored to be useful to cumulative impacts assessment for other projects, and regional plans
- Guidance on how adaptive management could be embedded into post-approval processes to deal with actual significant impacts that exceed the predicted impacts of the approved action.

Recommendation 7: Specify clear functions for Environment Information Australia (EIA) relating to the collection, analysis and sharing of data, including but not limited to:

- Establishing a Commonwealth register of cumulative impacts, that comprises:
 - The location and nature of past, present and reasonably foreseeable future actions
 - The predicted impacts assessed for all registered actions
 - The actual impacts of those actions once identified, drawing from ongoing monitoring data produced under conditions of approval for individual actions.
- Ensuring that the register is publicly accessible and searchable in relation to spatial boundaries and by the MNES affected.
- Undertaking research to:
 - Identify the actions and environmental conditions that pose the greatest risk of adverse cumulative impacts to MNES
 - Bring together data and information relevant to cumulative impacts assessment within given regions (with the help of expert-elicitation where needed) to inform the development of regional planning in those regions.
- Taking on a coordination role in relation to the ongoing monitoring and evaluation of:
 - The location and conservation status of all MNES
 - Activities that pose the highest cumulative impacts risks to MNES.

Note: this recommendation builds on the proposed role of EIA in providing trusted environmental data and information, developing guidance to aid decision making for projects and environmental assessments, and monitoring and reporting on the status, trend and outlook for Australia's environment. To reduce the burden on EIA, data collection could be aided through the provision of funding to Natural Resource Management organisations, or other appropriate bodies, for the collection of data on MNES, and to the National Environmental Science Program for research into the activities that pose the greatest risk of adverse cumulative impacts to MNES.

Recommendation 8: Specify clear functions for Environment Protection Australia (the national EPA), including but not limited to:

- The assessment of cumulative impacts at both a project and strategic level.
- Ensuring positive, meaningful consultation and engagement, including with regional communities and First Nations people, based on a principle of free, prior, informed consent.
- Rigorous implementation of the mitigation hierarchy.
- The setting, monitoring and enforcement of robust post-approval monitoring, including:
 - Requirements for proponents to collect and share interoperable data on actual impacts
 - The development of adaptive management mechanisms for addressing unanticipated adverse impacts.

- Minimum targets for auditing, compliance and enforcement activities, and an approach to prioritising these activities that is guided by Environment Information Australia’s assessment of activities that pose the highest cumulative impact risks to MNES (see recommendation 7).

Recommendation 9: Collaborate with counterparts in State and Territory and Local Government and Commonwealth agencies administering other legislation to increase knowledge of and compliance with assessment and approval requirements under the [EPBC] Act, and ensure that EPBC Act processes efficiently consider the cumulative impacts of activities regulated in other contexts, including by:

- Working with agencies including planning authorities at all levels to embed [EPBC] considerations into local, state and territory planning processes and improve public knowledge of relevant development assessment pathways, for example:
 - Updating existing development approval checklists to include clear reference to potential responsibilities under the [EPBC] Act.
 - Providing information for inclusion on local government, state and territory websites.
- Facilitating data exchange on the location and status of MNES, the location and nature of state and locally regulated actions affecting them and the associated impacts (predicted and realised).

Note: this recommendation builds on existing EPBC Act guidelines that require considering state water resource plans in assessing the impacts of an action.⁶ Linking with other government processes facilitates considering cumulative impacts most efficiently by using existing information where possible.

Recommendation 10: Insert a new part in the Act to require the Government to establish a Special Account for the expenditure of conservation payments:

- The purpose of the Special Account would be to facilitate appropriate Commonwealth expenditure of conservation payments, informed by an independent expert advisory committee, and ensure this expenditure counterbalances the impacts on MNES that triggered the payments.
- Funds in the Special Account must be used to compensate for cumulative impacts to affected MNES in a manner that maximises the protection, and provides the greatest opportunity for recovery, of those MNES.
- Expenditure from the Special Account should promote the full and effective participation of Aboriginal and Torres Strait Islander people and place a premium on in-perpetuity protection.

Recommendation 11: Amend legal review provisions of the [EPBC] Act to provide for limited merits review, as per recommendations of the Samuel Review⁷, to ensure decisions made under the Act are meeting the intent of the legislation (including with respect to cumulative impacts provisions).

⁶ Significant Impact Guidelines 1.3: Coal seam gas and large coal mining developments—impacts on water resources, p. 18.

⁷ Samuel, G 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October. CC BY 4.0.

Conclusion:

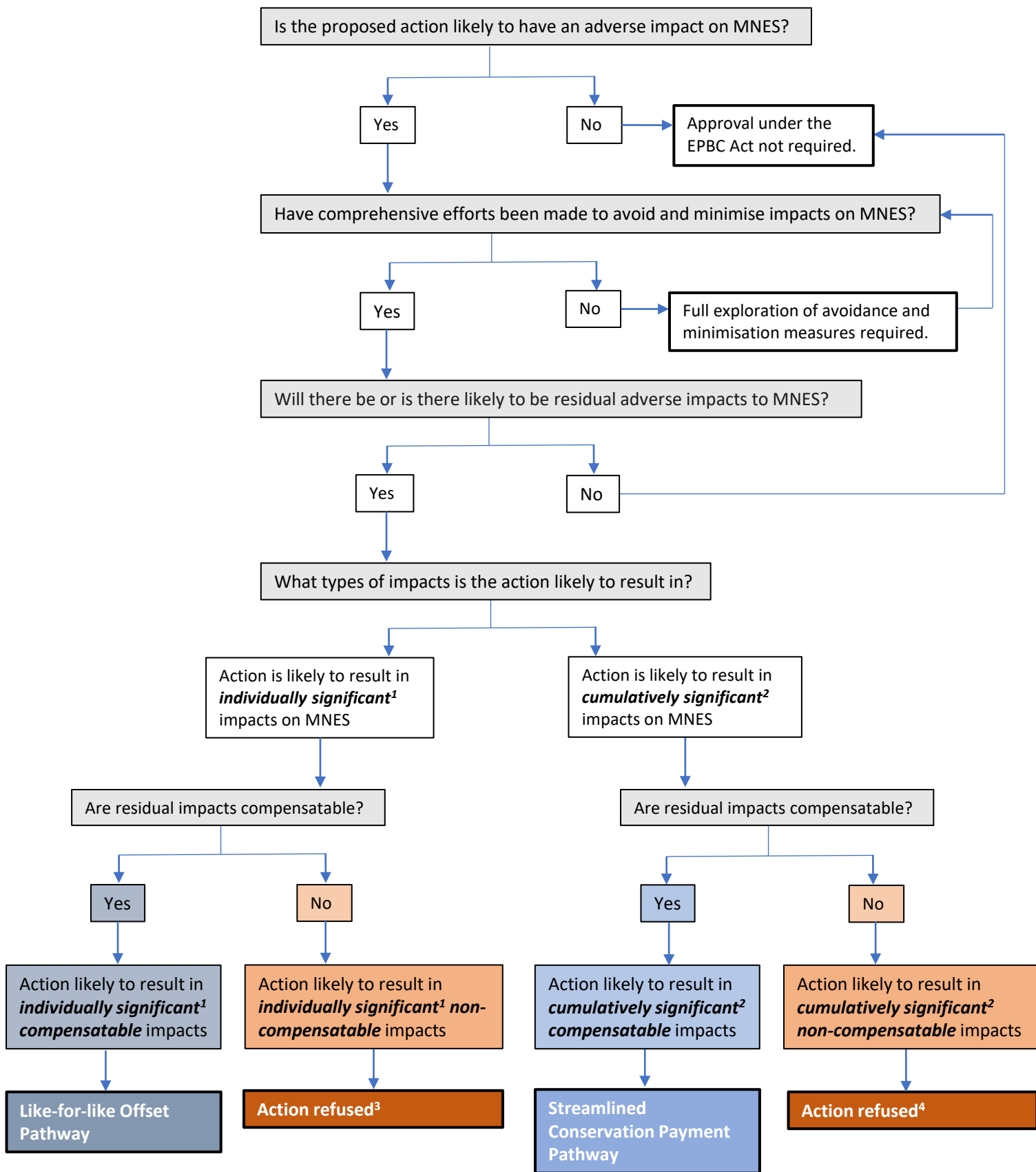
The recommendations outlined above should be implemented as a package, many of the individual recommendations will not function effectively if implemented in isolation of other recommendations.

Implementation of the recommendation for individual assessment and approval processes (#4), together with the foundational recommendations (#1-3), is of the greatest imperative. These recommendations provide a mechanism for starting to address cumulative impacts as soon as new legislation is brought into force.

While Government focus to date appears to have been on regional planning as the vehicle for addressing cumulative impacts, we strongly caution against relying exclusively on this mechanism. The regional planning recommendations in this report are important but should not be relied upon in isolation. There will be significant time lags between the enactment of new environment legislation and implementation of regional plans, and there is no guarantee that plans will be developed for all regions across Australia. Focussing efforts solely on this aspect of the reforms poses a considerable risk of failure and the possibility of locking in current trajectories of decline for MNES.

Making strong links between regional plans and project-level assessments maximises the benefits of the plans and improves regulatory efficiency by taking advantage of data produced in both contexts. Coordinating with local, state, and other Commonwealth agencies takes this further.

We strongly believe that properly accounting for and acting on the basis of effective cumulative impact assessment is a necessary part of any reform program that genuinely seeks to turn around Australia's environmental performance and deliver on the Government's nature positive and no new extinctions commitments.



¹ **Individually significant impacts** arise from actions that will have or are likely to have significant impacts to a MNES on their own as a result of the action being referred. (Note: these are the actions that would be referred per current arrangements. These actions are also likely to contribute to additional cumulatively significant impacts to MNES.)

² **Cumulatively significant impacts** arise from all actions that will or are likely to result in any adverse impacts to a MNES, but which do not meet the significance threshold when considered in isolation. (Note: this would incorporate actions deemed to be a 'not controlled action' per current arrangements, as well as actions that are not currently referred that result in impacts to MNES. These actions have the potential to contribute to cumulatively significant adverse impacts to MNES and need to be captured within the regulatory framework.)

³ If impacts cannot be avoided or mitigated, and are irreplaceable, the action must be refused unless carefully defined reasonable grounds can be established for allowing the action.

⁴ If impacts cannot be avoided or mitigated, and are irreplaceable, the action must be refused. Any provisions providing for Ministerial discretion to allow the approval of actions that fall into this category should be avoided. If the Government choose to include such provisions, they must be strictly limited and subject to rigorous guidelines that carefully specify the circumstances in which these powers may be reasonably utilised.