14 August 2020

Professor Graeme Samuel AC
Chair of the EPBC Act Review Expert Panel
Department of Agriculture, Water and the Environment
Canberra ACT 2601

Sent via email: EPBC.ActReview2@awe.gov.au

Dear Professor Samuel,

INDEPENDENT REVIEW OF THE *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999* – INTERIM REPORT

The Chamber of Minerals and Energy of Western Australia (CME) appreciate the opportunity to comment on the Interim Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and looks forward to further opportunities to engage in the Expert Panel's Act review process.

CME is the peak resources sector representative body in Western Australia. CME is funded by member companies responsible for more than 85 per cent of the State's mineral and energy production and workforce employment. In 2018-19, the Western Australia's (WA) mineral and petroleum industry reported a record value of $145 billion.[1] Iron ore is currently the State's most valuable commodity at $78 billion. Petroleum products (including crude oil, condensate, liquefied natural gas, liquefied petroleum gas and natural gas) followed at $38 billion, with gold third at $12 billion.

The value of royalties received from the sector totalled $6.8 billion in 2018-19, accounting for 21 per cent of general government revenue.[2,3] In addition to contributing 40 per cent of the State's total industry Gross Value Added,[4] the sector is a significant contributor to growth of the local, State and Australian economies.

The mineral and petroleum industry are key stakeholders of the EPBC Act, accounting for 32 per cent of total decisions made and 37 per cent of EPBC Act approvals required in 2018-19.[5]

CME welcomes the opportunity to provide a submission to the Independent Review of the EPBC Act Interim Report (the Interim Report), released 20 July 2020. This submission is structured around the key problems identified by the Reviewer, as outlined in the Interim Report. Responses to proposed key reform directions are detailed in Table 1 below.

In preparing this submission, CME has sought feedback from member companies. CME has also contributed to the submissions made by the Minerals Council of Australia to the EPBC Review Consultative Committee, along with other State Chambers.

Should you have questions regarding this submission, please contact Kira Sorensen, Senior Policy Adviser – Environment.

Yours sincerely,

Paul Everingham
Chief Executive

[1] Government of Western Australia, *Latest statistics release: Mineral sector highlights*, Department of Mines, Industry Regulation and Safety, September 2019: http://dmp.wa.gov.au/About-Us-Careers/Latest-Statistics-Release-4081.aspx

[2] Government of Western Australia, *Annual report 2018-19*, Department of Mines, Industry Regulation and Safety, 2019, p. 77.

[3] Government of Western Australia, *2018-19 Annual report on State finances*, Department of Treasury, 2019, p. 8.

[4] Duncan, A. and Kiely, D., *BCEC Briefing note: WA Economic update*, Bankwest Curtin Economics Centre, 2019, p. 4.

[5] Commonwealth of Australia, *Annual Report 2018-19*, Department of the Environment and Energy, 2019, p. 252.

Table 1: Responses to proposed key reform directions.

Proposed Reform Direction		Position	Response
Chapter 1 - National level protection and conservation of the environment and iconic places			
1.4.1 The EPBC Act should focus on Commonwealth responsibilities			
1	There is merit it mandating proposals required to be assessed and approved under the EPBC Act to transparently disclose the full emissions profile of the development.	Do not support	CME do not support expansion of the remit of the EPBC Act to include assessment of greenhouse gas emissions. Specific policy and reporting mechanisms already exist under the *Offshore Petroleum Greenhouse Gas Storage Act 2006* and *National Greenhouse and Energy Reporting Act 2007* and remain the most appropriate vehicle for addressing greenhouse gas emissions and should not be duplicated under the EPBC Act. The provision of project emissions information is therefore not relevant to the assessment and should not be required to be provided. Projects assessed under the EPBC Act account for a minute portion of development projects. There is no benefit to be gained from project-by-project assessment of emissions for such a narrow set of point sources.
2	The EPBC Act should require that development proposals explicitly consider the effectiveness of their actions to avoid or mitigate impacts on nationally protected matters under specified climate change scenarios.		
1.4.2 The EPBC Act should apply and deliver ecologically sustainable development (ESD)			
3	Amend the Act to require the Environment Minister to apply and deliver ESD, rather than just consider it.	Do not support	ESD is currently defined under the objects of the EPBC Act (section 3). Achievement of the objects of the Act should be facilitated through supporting decision-making processes and procedures to affirm the principles of ESD. However, demonstrating the satisfactory application and delivery of ESD to environmental assessments and approvals is highly complex and introduces opportunity for legal challenges to approval decisions. CME do not support the introduction of a requirement for the Environment Minister to "apply and deliver" ESD.
4	Amend the Act to require decisions to be based on a comprehensive assessment of ESD, including transparent environmental, social, economic and cultural information.		
1.4.3 Legally enforceable National Environmental Standards should be the foundation for effective regulation			
5	Develop legally enforceable National Environmental Standards which focus on outcomes for matters of national environmental significance.	Conditionally support	CME support the Commonwealth taking a more strategic role through administration of the EPBC Act and in so doing, support the development of National Environmental Standards (Standards) for matters of National Environmental Significance (MNES), where appropriate, to address relevant gaps in State and Territory legislation.
6	Amend the EPBC Act to require the application of National Environmental Standards (unless the		

Proposed Reform Direction		Position	Response
	decision-maker can demonstrate that the public interest and the national interest is best served otherwise) and set out the process for their development. The Environment Minister should set the Standards.		Standards should: • Be focused on landscape-scale outcomes, be risk-based and non-prescriptive; • Be underpinned by consistent and robust environmental data; • Address matters of national interest; and • Not duplicate State-based regulation. CME support legislating *the process* for setting Standards, including mandatory public consultation for initial development and substantive amendments. CME support, in principle, the responsibility of the Commonwealth Minister for the Environment (Environment Minister) to set Standards. CME does not support a rush to legislate the Standards until further clarity is obtained regarding the scope and application of given Standards. CME support mechanisms, such as National Standards, which help increase transparency of decision-making processes and improve consistency between assessing officers. *Development process* CME strongly recommend the development of Standards be transparent, driven by clear process, phased where relevant within reasonable timeframes and include comprehensive stakeholder consultation (including with State Governments). *Terminology* The language and terminology within the Standards must be clear, concise and consistent with existing terminology within the EPBC Act and supporting guidance, policies and procedures to ensure consistent interpretation and application. CME do not support the introduction of new terminology on the basis that the existing terminology within the EPBC Act is: • Consistent with the international conventions which provide for the head of power on which the Act is established. • Supported by an established body of case law, and consequently the introduction of new terminology presents an opportunity for new legal challenge. • Not the root cause of the key problems identified within the Interim Report.
7	Develop Interim Standards which set out environmental outcomes in terms of clear limits that define acceptable impacts on nationally important environmental matters.		

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Proposed Reform Direction		Position	Response
			The regulatory net of the EPBC Act is limited to those projects assessed and approved. Sitting outside of this EPBC regulatory net are many projects and industries, either exempt, unregulated and/or regulated under State legislation, which cumulatively contribute the largest proportion of net loss. Consequently, introducing the requirement for 'no net loss' presents significant impediments to stakeholders' ability to track and demonstrate compliance with the Standard. From members' lived experience, it is highly impracticable to monitor and demonstrate compliance with a 'no net loss' target due to the high degree of complexity (including externalities and natural levels of change) and interpretive subjectivity. Currently under the EPBC Act, impacts are broadly permissible so long as they are not significant, and subject to Ministerial discretion, may still be acceptable if they do have significant impact. A target of 'no net loss' may disincentivise proponents to avoid significant impacts as in some instances the economic value of development could make offsetting financially preferable to avoidance. 'No net loss' does not address historic impacts. In order to address environmental decline, it is important to look at the holistic environment. This can be achieved through a flexible offsets framework which enables offsets for threat abatement and research. For example, feral cats are an existing issue which like-for-like restoration offsets are not capable of addressing. Financial-based offsets can fund landscape-scale programs to address such issues and deliver biodiversity benefits. CME do not support the use of the terminology 'no net loss'. Terms within the Standards must be clear and measurable. It is not clear what impacts are considered to be 'unacceptable' or 'unsustainable'. For this to be known, a threshold or carrying capacity must be known, supported by robust scientific data (as acknowledged on page 103 of the Interim Report). CME do not support the use of ambiguous terms, such as 'unacceptable' impacts. *Scope and application* The scope of the Standards is unclear. Clarity is required regarding the level at which the Standards are to apply, be it at the project, regional, State or National level. Due to the bioregional nature of threatened species and ecological communities, Standards for MNES may be most appropriately applied at the regional / bioregional level. The scale of the requirements within the Standards must be clearly defined and quantified, spatially and temporally, to ensure they are relative and measurable. They should look to

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Proposed Reform Direction	Position	Response
		apply equitably across all users and uses, such that a common objective can be monitored and obtained. CME do not support project-level or sectoral Standards. *Exemptions* It is unclear how and under what circumstances a decision-maker would be able to demonstrate an exemption from National Standards is appropriate. Clarity is required regarding whether the onus would be on proponents to put forward the case for exemption and what appeals process would apply. Transparency of decision-making and Statement of Reasons will be important. *Transitional provisions and review* Clarification is required regarding the implications of Interim and Final Standards, with transitional and grandfathering provisions implemented, for: • Existing bilateral agreements; • Assessments already commenced and approvals granted under existing bilateral agreements and accredited assessment processes. The introduction of Standards should not invalidate existing approvals or alter assessments already commenced, nor should existing approvals be reviewed retrospectively against Standards where they are revised or amended following the introduction of Standards. CME strongly recommend transitional and grandfathering provisions are defined, ensuring existing approvals and assessments already commenced are maintained and not subject to revision following the introduction and amendment of Standards. Underpinning the proposed framework for the devolution of decision-making, Standards should be drafted such that they do not require frequent review and update to maintain relevance. Standards must provide certainty for Government and proponents regarding the required outcomes, and set firm 'goal posts' upon which accreditation of State regulatory systems and bilateral agreements can be securely established. CME do not support a framework in which the revision of Standards necessitates the revision of, and re-application for, accreditation and bilateral agreements. *Regulatory instruments*

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	Proposed Reform Direction	Position	Response
			Standards should be regulatory instruments, with the process for their development, review / amendment and implementation legislated under the EPBC Act. CME do not support the Standards themselves being legislated.
1.4.4 Greater focus on adaptive planning required to deliver environmental outcomes			
8	Develop regional plans that support the management of cumulative threats and set clear rules to manage competing land uses. Three regional planning tools are proposed: 1) Regional recovery plans – developed by the Commonwealth for MNES. 2) Bioregional plans – developed collaboratively between the Commonwealth and state and territory governments. 3) Strategic assessments – developed at the request of a proponent, in partnership with the Commonwealth and the relevant state or territory government. 4) Strategic national plans – developed by the Commonwealth for nationally pervasive issues.	Conditionally support	CME agree that a landscape-scale approach to biodiversity conservation and threat abatement, a flexible offsets framework, improved data informing decision-making, and an effective monitoring and evaluation framework are necessary to address environmental decline. CME support the development of strategic, multi-species, regional recovery plans for threatened species and ecological communities which address proactive conservation and threat abatement measures. Regional planning tools must be: • Developed in consultation with States to ensure they are aligned and practicable. • Developed based on robust scientific data which is routinely reviewed and updated to ensure accuracy. • Supported by systematic and transparent monitoring, evaluation and reporting framework to enable an adaptive management approach and ensure plans are effective and sustainable.
Chapter 2 - Indigenous culture and heritage			
2.2.1 Reforms should be pursued through co-designed policy making and implementation			
9	The role and membership of the Indigenous Advisory Committee (IAC) should be substantially recast, to form the Indigenous Knowledge and Engagement Committee.	Further information required	Further information is required as to the objective, scope and function of the proposed Indigenous Knowledge and Engagement Committee, and the framework under which this Committee interacts with the proposed Information and Knowledge Committee and ESD Committee. CME strongly recommend State legislation retains primacy on regulation of cultural heritage, without introduction of duplication through expansion of jurisdiction at a Federal level.

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	Proposed Reform Direction	Position	Response
2.2.2 Best practice engagement to embed Indigenous knowledge and views in regulatory processes			
10	Develop a National Environmental Standard for best-practice Indigenous engagement, to be applied to all aspects of decision-making under the EPBC Act, including development of regional plans and environmental impact assessment and approval decisions.	Do not oppose	CME do not oppose the inclusion of consultation with Indigenous peoples to consider cultural knowledge, where relevant, in environmental impact assessment (EIA) and regional planning processes. However, CME's position is that the states should retain regulation of cultural heritage management. In addition, the following key considerations must be incorporated: • The Standard must define the scope of application and provide clarity on how to implement / apply the Standard, so as to not duplicate or conflict with existing regulatory requirements (ie at a state level). • Implementation of the Standards should not increase approvals / regulatory burden. • The Standard must be reasonable and practicable with clear and measurable outcomes to ensure consistency of assessment. • The Standard must have a purpose and outcome - consultation for consultations sake is meaningless.
2.2.4 Combine Indigenous knowledge and western science in statutory advisory committees			
11	Establish an Information and Knowledge Committee. - The remit of this committee should include the culturally appropriate use of Indigenous knowledge in decision-making. - The composition of this committee should be such that the scientific, economic, social and traditional knowledge required to underpin the operation of the EPBC Act are balanced.	Further information required	Further information is required as to the objective, scope and function of the proposed Information and Knowledge Committee, and the framework under which this Committee interacts with the proposed Indigenous Knowledge and Engagement Committee and ESD Committee.
Chapter 3 - Legislative complexity			
3.4.1 Make known improvements to the EPBC Act in its current form			
12	In the short-term, amend the EPBC Act to address known inconsistencies, gaps and conflicts: - Reduce the number of statutory tests; - Clarify the information that must be before the decision-maker as part of a briefing;	Conditionally support	*Minor or preliminary works* In addition to the amendments proposed to be implemented in the near-term, CME recommend the EPBC Act be amended to allow proponents to undertake minor or preliminary works.

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Proposed Reform Direction	Position	Response
- Remove requirements for publication of notices in newspapers; - Resolve issues relating to the connection between approvals (Part 9) and strategic assessments (Part 10); - Include a complete set of compliance and enforcement tools to harmonise monitoring, investigation and enforcement powers; - Align the EPBC Act with international obligations relating to protection of migratory species under the Bonn Convention, and permits for wildlife trade to meet obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).		Under section 41A(3) of the *Environmental Protection Act 1986* (WA) (EP Act), proponents are able to undertake minor or preliminary work with consent of the WA Environmental Protection Authority (EPA). Examples of minor or preliminary works include; • Lay down areas • Access roads • Topsoil stockpiles Works such as the above are necessary to support early project development. Without the ability to progress these works delays in project delivery are unavoidable. This ultimately results in additional costs to the proponent, the State and Commonwealth governments and all contractors associated with the project. *Effective variations process* The variation process does not support projects to adapt to evolving operations and changing operational conditions. The variation process takes too long (up to 18 months) with no differentiation between minor and major variations. Minor and major variations are subject to the same process, same timeframes, and are assessed with the same rigour. As an example, a member company is currently seeking to transfer port facility-related project approval conditions to the Port Authority as the Port Authority now owns and controls the port-related facilities. The activities previously approved (and hence the key associated environmental impacts) are not being altered (i.e. non-significant change). While there is a process under the EP Act by which this transfer can be facilitated, the EPBC Act does not provide a mechanism for transfer of particular conditions of an approval to another party. There is a need to allow for changes to controlled actions, rather than becoming a 'new action', with assessment and public consultation requirements commensurate to the risk. Where activities approved previously (and hence the key associated environmental and biodiversity impacts) are not being altered (i.e. minor variation), the variation should not be subject to public consultation. Conversely, where activities approved previously are being altered (i.e. major variation) and were subject to public consultation as part of the original approval, the change to activities should also be subject to public consultation as part of the variation process.

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Proposed Reform Direction		Position	Response
			CME recommend the EPBC Act be amended to include a variation approval process which allows for amendments to approved controlled actions, similar to section 45C of the EP Act. CME support the differentiation of variation approval processes for major and minor changes to controlled actions.
3.4.2 Simplify the law			
13	In the long-term, comprehensively redraft the EPBC Act to simply and publish accompanying plain English guidance.	Support	CME support amendments to the EPBC Act which result in streamlining and modernisation of the Act to reduce complexity and better enable compliance. CME support the publication of plain English guidance and consider it essential to the effective functioning and consistent application of the Act.
3.4.3 Split the EPBC Act into logical categories			
14	Divide the Act along functional or operational lines by creating legislation for some or all of the Act's functions: - Biodiversity and ecosystem management, - Environment and heritage protection, - Wildlife trade restrictions, - Protected areas management, - Environmental data and reporting, - Institutional arrangements, - National biodiversity markets.	Conditionally support	CME supports amendments to the EPBC Act which reduce complexity and improve the legibility to better enable compliance. Our industry welcomes further consultation to discuss opportunities for redrafting of the Act, while remaining mindful of the fundamental principle of streamlining approvals processes.
Chapter 4 - Efficiency			
4.1.1 There have been efforts to streamline with the states and territories			
15	Develop a single list of nationally protected matters, to be maintained by the Commonwealth on behalf of all jurisdictions.	Support	CME strongly support alignment of National and State threatened species and ecological communities lists, either via the establishment of a single list or by accreditation of State listing processes.

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	Proposed Reform Direction	Position	Response
16	Modify the water trigger and Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC): - Limit the trigger to consideration of any project that risks irreversible depletion or contamination of cross-border water resources only; - Enable accreditation of State / Territory assessments of the water trigger; - If the water trigger is changed, the name and remit of the IESC should be adjusted to reflect any altered focus.	Do not support	CME support the Commonwealth taking a more strategic approach through administration of the EPBC Act. The proposal to change the scope of the water trigger to cross-border water resources only appears to align with a strategic approach by the Commonwealth. CME do not support changes to the water trigger which have the effect of broadening its scope and/or result in duplication of State-based regulation of water resources. Clarity is required regarding what would be defined as a cross-border water resource. If these were to be defined by aquifer boundaries, those aquifers which exist entirely within a State boundary should not be captured under a revised water trigger. The environmental assessment, approval and management of aquifers which exist entirely within State boundaries should be the sole responsibility of the State, recognising the State is best positioned to understand and manage the water resource and relevant pressures. CME support accreditation of State assessments of the water trigger.
17	No change to the nuclear trigger. National Environmental Standard should be developed for nuclear actions which reflects relevant regulatory guidelines and protocols. Accreditation of State / Territory assessments of the nuclear trigger, where not accredited, Commonwealth to assess in accordance with the Standard.	Do not support	The nuclear trigger is duplicative and inconsistent with State and Federal Government deregulation and streamlining objectives. Under sections 22(1)(e), (f) and (g) of the EPBC Act, mineral sands and rare earths extraction projects (amongst others) are being inadvertently captured, requiring a whole-of-environment assessment due to, for example, the presence of naturally occurring radioactive material (NORM) in legacy dams to be remediated, product stockpiles and process waste. Projects involving NORM should not be required to be referred under the nuclear trigger. Such referrals are inconsistent with the intent of the nuclear trigger as described in the EPBC Bill 1998 Explanatory Memorandum.[6] Furthermore, radiation safety is already heavily regulated under existing Commonwealth and State-based radiation legislation, both of which are based on the same national and international standards. CME recommend section 22(1)(e), (f) and (g) be removed or otherwise amended to exclude projects involving NORM. The assessment of uranium mining and milling activities, as captured under section 22(1)(d) of the EPBC Act, further duplicates State-based assessment and approval processes specific to uranium projects.

[6] The Parliament of the Commonwealth of Australia, *Environment Protection and Biodiversity Conservation Bill Explanatory Memorandum*, Senate, 1998, p. 31.

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	Proposed Reform Direction	Position	Response
			CME recommend section 22(1)(d) be removed to eliminate unnecessary duplication of State-based environmental regulation of uranium mining and milling activities. CME support accreditation of State assessments of the nuclear trigger.
4.2 Proposed key reform directions			
18	Devolution of decision-making model with 5 key elements: 1) National Environmental Standards. 2) State / Territory systems demonstrate compliance with Standards. 3) Formal accreditation by Environment Minister. 4) Transparent assurance framework. 5) Regular review and adaptive management.	Strongly support	CME strongly support devolution of decision-making to States, supported by an efficient and effective assurance framework and adaptive management approach. See above comments regarding National Standards.
4.3.2 Systems that support environment impact assessment are inefficient			
19	Improve Department of Agriculture, Water and the Environment (DAWE) business and information systems to improve efficiency of assessments and support consistent assessment and decision-making.	Strongly support	CME strongly support improvements to the DAWE business and information systems to facilitate faster, more consistent and streamlined assessments, approvals, monitoring and evaluation.
4.3.4 Efforts to recognise other environmental management frameworks have led to complexity and overlap			
20	Clarify the legal ambiguities in the relationship between the EPBC Act and *Regional Forestry Agreement Act 2002*.	Do not oppose	
4.4.1 Streamline environmental impact assessments conducted by the Commonwealth			
21	Rationalise assessment pathways to establish separate pathways for high and lower-impact developments to enable assessment proportionate to the level of impact on MNES.	Strongly support	CME strongly support the implementation of a risk-based assessment approach, enabling streamlined approvals for low-risk actions without any associated expansion of jurisdiction. However, the addition of this assessment step should not have the effect of further extending assessment timeframes and delaying approvals.

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	Proposed Reform Direction	Position	Response
Chapter 5 - Trust in the EPBC Act			
5.3.1 Improve community participation in decision-making and transparency of information			
22	Implement better information management systems that are interactive and digitally connected to improve community access to information about decisions, including greater transparency of the stage of the decision-making process, opportunities for community participation, and information that is being considered in the decision-making process.	Conditionally support	CME support greater transparency and information sharing to support community understanding and foster trust through the publication of plain English guidance, access to national environmental data, and establishment of an online platform to track project approvals and clarify opportunities for community engagement. The WA EPA online proposals tracking system[7] is a good example of a transparent, online system for tracking project approvals. In establishing an online project approvals tracking system, it is important to consider the confidentiality requirements for publication of information considered in the decision-making process.
23	Implement a limited merits review model for EIA decisions, but only: - Limited to specific decisions in the EIA process; - Time limited in terms of when an action can be brought; - If its application is demonstrated to be in the interest of the desired outcomes.	Oppose	Further information is required. It remains unclear at what stage action can be brought, how a limited merits review model would work with devolution of decision-making to States, and the implications for appeals against approval decisions for controlled actions assessed in accordance with National Environmental Standards. CME oppose the introduction of a limited merits review model which introduces risk regarding the validity of approvals.
5.3.2 Strengthen independent advice to provide confidence that decision-makers are using best available information			
24	Establish an ESD Committee to provide transparent advice to the Minister to inform decisions on the making of National Environmental Standards, regional plans, and accreditation of arrangements for devolving decision-making.	Do not support	Further information is required. It remains unclear who is intended to sit on the proposed ESD Committee, whether they are to be internal (Government) or external stakeholders, and how the Committee is intended to function (for example, whether they are effectively to function similar to the WA EPA, responsible for providing advice on referrals to the Minister). CME do not support the introduction of additional assessment and decision-making points where these could have the effect of delaying assessments and approval timeframes and adding bureaucracy.

[7] Refer https://www.epa.wa.gov.au/proposal-search.

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Proposed Reform Direction		Position	Response
25	Limit legal challenges to matters of outcome, not process, to reduce litigation that does not have a material impact on the outcome.	Strongly support	Appeals and legal challenges resulting from administrative issues do not add value or result in better environmental outcomes. Such appeals simply drain Government and Court resources and create uncertainty and delay for industry. CME strongly support limitation of appeals to aspects of the referral / approval likely to have a material effect. CME strongly support amendments to the EPBC Act to require appellants relying on extended standing provisions to demonstrate they have an arguable case or that the case raises matters of exceptional public importance, before proceeding. CME recommend the EPBC Act be revised to reduce the level of administrative prescription in order to reduce vulnerability to appeals on administrative technicalities.
26	Amend the Act to require an applicant seeking to rely on the extended standing provisions to demonstrate that they have an arguable case, or that the case raises matters of exceptional public importance before the matter can proceed.		
Chapter 6 - Data, information and systems			
6.4.1 A national environmental information supply chain, roadmap and custodian			
27	Establish a national environmental information supply chain with a comprehensive development roadmap and designated national custodian.	Support	CME support the development and implementation of a national environmental database to facilitate use of best available data to inform environmental assessments and decision making. Any environmental information systems should complement State systems already in place or under development. CME welcomes and supports priority progress of the partnership between the Commonwealth and WA State Governments to develop a single digital environmental approvals process and biodiversity database, to be expanded to capture environmental survey data from across the country. The Index of Biodiversity Surveys for Assessments and the Biodiversity Information Office (BIO), developed by the Western Australian Biodiversity Science Institute, respectively aggregate and analyse biodiversity data from across WA. Analytical data from BIO will enable best available data to inform project environmental assessment and approvals in WA. Extending the WA framework to develop a national environmental database can: • Provide better access to consistent environmental data for proponents; • Assist decision-makers; • Inform effective planning and policy development; • Support self-assessment of proposed actions; • Support an automated process for non-referrals via an online system; and

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Proposed Reform Direction		Position	Response
			• Improve community confidence through transparency of environmental information. In the development of a national environmental database, protections regarding commercially sensitive information, privacy and intellectual property must be considered, and appropriate controls and security put in place to ensure these matters are not infringed.
6.4.2 A national environmental standard for information and data			
28	Develop a National Environmental Standard for information and data.	Do not oppose	Further information is required. It remains unclear what this Standards is intended to achieve, the scope and application, and whether States would need to be accredited under an information and data Standard as proposed for Standards for MNES. As previously iterated, CME strongly recommend the development of any Standards be transparent, driven by clear process, with reasonable timeframes and comprehensive stakeholder consultation (including with State Governments). The roll out of the WA Department of Water and Environmental Regulation's Index of Biodiversity Surveys for Assessment (IBSA) provides a good example of an effective method for ensuring consistent data capture and review for in EIA.[8]
29	Amend the Act to include powers that enable the Commonwealth to compel public institutions, researchers and other organisations funded by government grants and programs to provide environmental information they collect in a manner consistent with the National Environmental Standard for information and data.	Do not oppose	CME do not oppose amendments to the EPBC Act to enable the Commonwealth to compel government-funded public institutions, researchers and other organisations to provide environmental information consistent with a Standard for information and data. As previously mentioned, protections regarding commercially sensitive information, privacy and intellectual property would need to be considered, and appropriate controls and security put in place to ensure these matters are not infringed.
6.4.3 The Department's information management systems need a complete overhaul			
30	Overhaul DAWE's information management systems to a modern interface which includes: - Case-management system that support the full project lifecycle; - Capacity to link with others;	Conditionally support	CME support improved systems for faster, more consistent, streamlined assessments and approvals. Under a devolved decision-making framework, an EPBC Act approval tracking system should facilitate and link with State assessment and approval of proposals under the Act, and be administered by the responsible State.

[8] Refer https://www.dwer.wa.gov.au/ibsa.

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Proposed Reform Direction		Position	Response
	- Ability to record, share and search information related to decisions, accessible to public and proponents; - Ability to communicate decisions using modern channels.		CME support modernisation of communication methods.
6.4.4 Resourcing reforms			
31	Proponents should be required to pay for the efficient cost of the share of information, knowledge and systems required to underpin the regulation of their activities.	Do not support	With decision-making devolved to States, the requirement for proponents to pay for the implementation and maintenance of Commonwealth information and assessment systems would be redundant. Where, under the EIA process, proponents are required to provide a substantial amount of the data and knowledge required to support an information system, the Agency should be responsible for resourcing the maintenance of the system. CME do not support the requirement for the proponent to pay for the implementation and maintenance of Commonwealth information and assessment systems.
Chapter 7 - Monitoring, evaluation and reporting			
7.3.1 A specific monitoring and evaluation framework for the EPBC Act			
32	Develop a comprehensive and coherent framework to monitor and evaluate the effectiveness of the Act in achieving its outcomes and the efficiency of its implementation.	Support	CME support the implementation of an administratively efficient and effective monitoring and evaluation framework, to ensure accountability and support adaptive management approach.
7.3.2 Revamp national State of the Environment (SoE) reporting			
33	Revamp national SoE report - rooted in nationally agreed evaluation framework, examining trends, drivers and interventions, and current and emerging pressures.	Support	CME support improved reporting for transparency of monitoring and evaluation outcomes, enabling assessment of current state, progress towards objectives, and trends through consistent data sets.
34	Amend the Act to set formal objectives for the national SoE report, require the Commonwealth to respond, and better align timing with the statutory review.	Do not oppose	

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	Proposed Reform Direction	Position	Response
7.3.3 Accelerate efforts on national environmental economic accounts			
35	Accelerate efforts to finalise the development national environmental economic accounts to provide core input into SoE reporting.	Further information required	Further information is required. It is unclear whether national environmental economic accounts are the most effective mechanism to assess environmental condition and conservation outcomes, and what other mechanisms have been considered. It is also unclear who would be responsible for developing and maintaining these accounts, and the potential impact proponents' reporting requirements.
Chapter 8 - Restoration			
8.2 Proposed key reform directions			
36	Amend the Act to require offsets: - Only be considered when options to avoid and mitigate impacts have been demonstrably exhausted, - Deliver genuine restoration to offset impacts of the development, with requirements for restoration proportional to the risk to MNES.	Do not support	These are already required and delivered under the current Commonwealth Environmental Offsets Policy. CME do not support legislation of the current Commonwealth Environmental Offsets Policy. CME support accreditation of State offset policies under bilateral agreements.
37	Amend the Act to require a decision-maker to accept robust advanced offsets that are created before approval is granted.	Support	CME support formal recognition and acceptance of advanced offsets. CME recommend amendments to the Commonwealth Environmental Offsets Policy to ensure that the biodiversity gain achieved prior to assessment is recognised (i.e. acknowledge the status of the MNES at time of land acquisition, not at time of commencement of assessment).
38	Establish a market-based environmental offsets framework (biodiversity offsets market).	Support	CME support implementation of a flexible offsets framework. In WA, land-based offsets are restricted due to tenure-related land acquisition issues. Approximately 93 per cent of land in WA is Crown land and therefore unavailable for purchase. Furthermore, freehold land available for direct offsets is expected to be further constrained with 5 million hectares to be created as conservation estate under the WA State Government's Plans for Our Parks program. Financial-based offset models, such as the Pilbara Environmental Offsets Fund, can be effective and sustainable mechanisms for achieving better strategic environmental outcomes outside of the 'like-for-like' regime. Environmental offsets funds enable collaborative

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Proposed Reform Direction		Position	Response
			conservation action through strategic, large-scale approaches to researching, managing and improving biodiversity aspects. CME do not support strict like-for-like land-based offsets frameworks and associated offset markets which could result in land banking.
8.3 The carbon market could be leveraged to deliver environmental restoration			
39	Enhance the links between the carbon market and biodiversity markets to shift restoration efforts into areas of higher biodiversity.	Support	CME support enhancing links between the carbon market and biodiversity markets, however note it is important that the Commonwealth do not over-regulate or prescribe carbon-related offset projects.
Chapter 9 - Compliance, enforcement and assurance			
9.4.1 Independent monitoring, compliance, enforcement and assurance with improved transparency			
40	Establish an independent monitoring, compliance, enforcement and assurance regulator, which publishes online all actions taken, and publishes a clear set of compliance priorities and reports against an annual compliance plan.	Do not support	CME do not support the establishment of an additional 'independent' regulator. CME support devolution of monitoring, compliance, enforcement and assurance to States under assessment and approval bilateral agreements. Duplication of compliance and enforcement effort at the Commonwealth level would reduce administrative efficiency and impose additional regulatory burden.
9.4.2 Consolidate, strengthen and modernise monitoring, compliance, enforcement and assurance provisions within the EPBC Act			
41	Amend the monitoring, compliance, enforcement and assurance provisions of the Act to include: - Standardised powers to delegate authorised officers to undertake EPBC compliance, including States and Territories; - Incorporate modern information sharing provisions; - Improve coercive powers under the Act to facilitate greater intelligence capability.	Conditionally support	CME support amendments to the EPBC Act to include standardised powers to delegate authorised officers to undertake EPBC compliance, and incorporation of modern information sharing provisions under a devolution of decision-making model. CME do not support amendments to the EPBC Act to improve coercive powers as the Commonwealth already have powers to stop-the-clock on assessments if additional information is required. Furthermore, the Commonwealth should provide clear standards to the States clearly outlining the information required for assessments conducted under bilateral assessment agreements.
42	Review penalties and provisions under the Act to ensure:	Do not oppose	

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Proposed Reform Direction		Position	Response
	- Alignment of penalties with the potential harm or benefit, and provide reasonable deterrence, - Remediation orders that deliver restoration are used when monetary penalties are unlikely to provide adequate disincentive, - Appropriate use of criminal provisions in cases of serious damage.		
9.4.3 Shift focus on monitoring, compliance and enforcement towards assurance of standards			
43	Reporting on accredited arrangements should include reporting on all potential breaches, and the response taken.	Conditionally support	While CME supports transparency on compliance and enforcement action, CME do not support introduction of a requirement to report on potential breaches, only actual breaches should be reportable. CME do not support duplicative compliance reporting requirements whereby proponents are required to report to both State and Commonwealth for approvals granted under bilateral agreements.
44	The Commonwealth should retain the ability to intervene in project-level compliance and enforcement, where egregious breaches are not being effectively dealt with by the State regulator.	Do not support	CME do not support an ability for the Commonwealth to intervene in project-level compliance and enforcement, as the Commonwealth already has the ability to revoke an accreditation. It is important that under a devolution of decision-making model the responsibility for assessment, approval, compliance and enforcement is wholly devolved to States.

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