

24 March 2021

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Sent via email: ec.sen@aph.gov.au

Dear Secretary,

RE: ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (STANDARDS AND ASSURANCE) BILL 2021

The Chamber of Minerals and Energy of Western Australia (CME) welcomes the opportunity to provide a submission to the Senate Committee inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021* (the Bill).

CME is the peak resources sector representative body in Western Australia (WA). CME is funded by member companies responsible for more than 86 per cent of the State's mineral and energy workforce employment.¹

The mineral and petroleum industry are key stakeholders of the *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act), accounting for 32 per cent of total decisions made and 37 per cent of EPBC Act approvals required in 2018-19.²

National Environmental Standards

CME supports the intent of National Environmental Standards as a tool for achieving the objects of the EPBC Act, as recommended by the independent statutory review led by Professor Graeme Samuel.

The Government's proposed Interim Standards, and corresponding EPBC Act amendments, present an immediate opportunity to establish an effective and robust reform. Devolution to the States under a 'single touch' approvals system will streamline environmental assessments whilst maintaining environmental protections. There is currently more than \$100 billion in project pipeline across the Western Australia resources sector alone which could be brought forward up to 6-12 months under the proposed streamlining reforms.³

CME supports the Government's Interim National Environmental Standards (the Interim Standards) as an accurate reflection of the current settings of the EPBC Act and associated policies.

In the Final Report on the Independent Review of the EPBC Act, Professor Samuel recommends, as part of immediate priority reforms, that National Environmental Standards should:

- "initially reflect current legal settings and should be applied through new bilateral agreements";⁴

¹ Full-time employees and contractors onsite in 2019-20, excludes non-operating sites. Government of Western Australia, *2019-20 Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

² Commonwealth of Australia, *Annual Report 2018-19*, Department of the Environment and Energy, 2019, p. 252.

³ Department of Mines, Industry Regulation and Safety, <http://dmp.wa.gov.au/About-Us-Careers/Latest-Resources-Investment-4083.aspx>, accessed 8 March 2021.

⁴ Samuel, G., 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October, p193.

- “set clear requirements for those that interact with the EPBC Act and clear bounds for decision-makers”;⁵ and
- “be refined based on early implementation results”.⁶

The Government’s Interim Standards and proposed EPBC Act amendments deliver on these recommendations.

It is appropriate for the Interim Standards to accurately reflect the current settings of the EPBC Act under which projects are assessed. Establishment of a head power to set National Environmental Standards and implementation of the Interim Standards will set a framework for future improvement in environmental regulation while providing continuity and clarity to industry in this interim phase.

Once the first tranche of reforms (including implementation of Standards) to the EPBC Act are embedded, a process for enabling, future enhancement of these Standards should be developed. This process should include detailed consultation in line with considered reforms to the Act, to ensure the enhancements deliver on their intent and avoid creating unintended and unworkable conditions or legal uncertainty.

CME do not support use of Professor Samuel's Recommended National Environmental Standards (the Recommended Standards) proposed in the Final Report on the Independent Review of the EPBC Act as the initial (first tranche) standards.

The Recommended Standards do not reflect the current requirements or practical applications of the EPBC Act, rather they fundamentally raise the bar with regards to environmental assessment and introduce uncertainty for all stakeholders including through the use of new terms, concepts and requirements not defined or contemplated by the Act. No development project which intersects with a Matter of National Environmental Significance is approvable under a devolved decision-making model if using the Recommended Standards.

Following the establishment of a framework for National Environmental Standards and their initial settings, together with the other immediate reforms noted above, a formal process for review of the Standards including a public consultation process, should be developed and undertaken. This will allow consideration of changes to National Environment Standards, including potential development of new Standards. This staged reform pathway is critical to facilitating progress towards improved environmental outcomes and building community trust, whilst maintaining business certainty, and ensuring a legally robust framework.

CME supports the introduction of a head power to set National Environmental Standards and ensure that Standards are legally enforceable.

Independent assurance

CME supports the introduction of an independent assurer responsible for oversight of compliance with the National Environmental Standards.

Under a devolved decision-making model, the role and function of an independent assurer must complement (not duplicate) the compliance, enforcement, and assurance activities of accredited States and Territories. Duplication of compliance and enforcement effort at the Commonwealth level would reduce administrative efficiency and impose additional unnecessary regulatory burden and costs.

⁵ Samuel, G., 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October, p2.

⁶ Samuel, G., 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October, p194.

CME strongly supports 'single touch' approvals under a devolved decision-making model supported by the above checks and balances.

CME supports the passage of the *EPBC Amendment (Standards and Assurance) Bill 2021*. In conjunction with the *EPBC Amendment (Streamlining Environmental Approvals) Bill 2020*, these proposed amendments are important first steps to enabling streamlining of environmental approvals whilst maintaining a high level of environmental protection.

The Government's phased approach to reform is supported and is consistent with Professor Samuel's recommended staged reform pathway, outlined in the Final Report on the Independent Review of the EPBC Act.⁷

The current duplication of State and Commonwealth approval processes delays job-creating projects and unnecessarily impedes economic activity, without providing added environmental protection. Removing this duplication would enable Commonwealth resources to be more appropriately applied to landscape-scale conservation initiatives and strategic environmental outcomes, which could be further supported by the proposed second tranche of reforms.

Delivering substantial reform through logical, manageable tranches (as recommended by Professor Samuel) provides the best opportunity for progressive implementation of practical reforms to the Commonwealth's environmental regulatory framework. Cross-party and broad stakeholder support for the necessity of reform and its substance is critical for each tranche of reform to ensure the delivery of meaningful and sustained improvement in environmental regulation.

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

Yours sincerely,

Paul Everingham
Chief Executive Officer

Attachment:

Samuel's Recommended National Environmental Standards (v3.0): Western Australian Analysis and Case Study

⁷ Samuel, G., 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October, p192.