



Friday, 5 April 2024

Environment Law Taskforce
Department of Climate Change, Energy, Environment and Water
By email: environmentlawEPATaskforce@dcceew.gov.au

Dear Environment Law EPA Taskforce

The Clean Energy Council (CEC) appreciates the invitation DCCEEW has extended to us to participate in the federal environmental law reform process and welcomes the opportunity to provide this submission.

This submission focusses on the tranche of documents we reviewed in February 2024 and made in addition to our December 2023 submission. We have included that submission as an Appendix to this submission and request that the two be read together as an integrated representation of CEC and our member's views, noting that our members have not had a meaningful chance to review the February documents.

These reforms must aid a rapid renewable energy transition.

CEC members do not expect a free pass on environmental impact assessment. In fact it is quite the contrary: by choosing to work in the renewable energy generation sector our members are driven by values to ensure our climate and environment are as healthy and robust as possible.

The new laws need to achieve a balance to achieve two fundamental things:

1. Integration with other federal laws to drive down greenhouse gas emissions and achieve federal renewable energy targets by explicitly anticipating and embedding climate change considerations, and
2. Facilitate a rapid energy transition which in and of itself is a significantly important nature positive action.

As currently drafted it is impossible for us to see how these two things will be achieved by the reform.

It would be an absurd result to stymie renewable energy generation investment or threaten the achievement of federal renewable energy targets by imposing an inflexible environmental assessment process that does not explicitly require the decision-maker to

consider the adverse or beneficial climate impact of a proposed action on protected matters. Climate and nature are not separate phenomena and treating them separately is leaning into a false dichotomy.

We urge DCCEEW to consider means by which climate change, as a driver or adverse environmental impacts on protected matters, can be fulsomely integrated into federal environmental law.

There are still many uncertainties about the operation of the new laws not least because no guidance material has been provided to help renewable energy developers understand the practicalities of satisfying new criteria in order to front-load their applications with requisite material for assessment within a 3 month timeframe. We further urge DCCEEW to engage with CEC and our members on what this guidance material will be to ensure that it embeds an evidence-based understanding of the mitigation and curtailment capabilities of renewable energy technologies and the practical constraints of delivering the renewable energy transition.

Finally, given the overhaul of federal environmental impact assessment, the objects of the new Act and the significant departure in approach environmental management we urge DCCEEW to take its time to develop this framework and to work with the renewable energy industry to understand the practical outcome of what the new law is proposing to achieve and impose. The reforms are too significant to rush.

Kind regards,

Bronya Lipski
Senior Policy Officer (Planning and Environment)

Introduction

The Clean Energy Council (CEC) generally supports the new federal environmental law intention to achieve better environmental outcomes. Our strategic pillar – Doing Renewables Right – includes the necessity of a responsible renewable energy transition that achieves a healthy climate and environment as an integral to the future of electricity generation.

Our overarching concern is that as currently drafted the new laws are unlikely to facilitate, and may potentially obstruct, a rapid energy transition.

CEC appreciates the considerable complexities in assessing the impact of individual projects on a particular species or ecological community. We note the irony that in having done very little to curb Australia's extinction or climate crises through federal law for many decades, significant legislative burdens may be imposed on the industry that will deliver a fundamental nature positive benefit to Australia by replacing greenhouse gas emissions caused by fossil fuel electricity generation.

CEC and our members acknowledge that in some areas of Australia some renewable energy projects do or may cause impacts to the environment. Throughout Australia our members spend significant amounts of resources, including substantial financial resources, on surveying, analysing, and seeking ways to avoid, minimise and mitigate impacts to biodiversity. Our hope for the federal environmental law reforms is that a balance is struck between those processes and the overarching and fundamental nature positive benefit of a rapid renewable energy transition.

Our experience in other Australian jurisdictions is that there is typically insufficient inter-governmental or inter- and intra-Departmental work to determine a process in which that balance between two apparently competing priority areas is resolved. The failure of the draft laws to explicitly incorporate consideration of a proposed activity's greenhouse gas emissions or net climate benefit, or to adequately contemplate how integrated laws could achieve a rapid energy transition, indicates that there is also a communication failure at the federal level.

Climate and environment are not competing phenomena: they are inextricably linked. It therefore unhelpful to treat climate and environmental laws as separate processes.

The new laws seek to enable a rapid energy transition through the creation of regional plans that would, when established, remove the necessity for individual renewable energy

developers to undertake environmental impact assessments. Whilst there is still a lot of work to be done to ensure regional plans are fit-for-purpose we note that the urgency of the renewable energy transition, successful achievement of renewable energy targets, and Australia's commitment to achieve the Paris Agreement cannot wait for regional plans to be developed and in force. Around 6 GW of new generation capacity needs to be connected to the grid each year from now until 2030, the achievement of which is largely delayed by environmental impact assessments.

Despite providing CEC and other stakeholders with an opportunity to review draft legislation, we are concerned at the lack of clarity and certainty from DCCEE on how renewable energy generation projects can demonstrate how and when they comply with achieving a 'nature positive' outcome and are consistent with the new national environmental standards. It is still very unclear how the application and assessment process will operate in practice, with an apparent requirement for developers to submit most assessment materials on application. The timeline from application to decision is also opaque. The assessment clock can stop for a range of reasons for discretionary time periods without accountability measures imposed on how long the clock can stop.

Finally, we note that the timeframe in which the reforms are being developed and introduced are not appropriate for the significance of the shift to 'nature positive' environmental law. Significant reforms to other laws, such as the shift to a duties-based framework for the Victorian *Environment Protection Act 2017*, were undertaken over years with considerable industry and community engagement. We strongly encourage the federal government takes the time to make the considerable changes present in the draft laws and continue to engage with the wide range of stakeholders who have been involved in this process to date.

Nature positive law reforms must anticipate and embed consideration of climate change.

The separation of climate and nature or climate and environment is a false dichotomy. The two are inextricably linked.

The Kunming-Montreal Global Biodiversity Framework that inspired the federal government's approach to these reforms recognises climate change as one of five overwhelmingly significant drivers of biodiversity loss. Target 8 of the Framework states:

Minimise the impact of climate change and ocean acidification on biodiversity and increase its resilience through mitigation, adaptation and disaster risk reduction

actions, including through nature-based solution and/or ecosystem-based approaches, while minimising negative and fostering positive impacts of climate action on biodiversity.

At this point in human history it is difficult to conceive of a stronger positive climate action than rapidly phasing out fossil fuel electricity generation and replacing it with renewable energy. The role of the clean energy industry in delivering net positive climate benefits cannot be overstated.

We, and others concerned about climate change who are involved in EPBC consultations, have been consistently told that emissions reductions will be dealt with through the Safeguard Mechanism and that there is no need for federal environmental law to either take account of climate impacts or anticipate and afford for emissions reductions.

The separation of ‘climate’ and ‘environment’ apparent in the draft laws undermines the inherent nature positive benefit of replaced fossil fuel electricity generation with renewable energy.

As currently drafted, the new laws do not make the climate impact of a project – either positive or negative climate impact – a mandatory consideration in decision making. This is a notable weakness for the renewable energy transition: by subjecting renewable energy projects to a significant assessment process without positive consideration of the significant role renewable energy generation plays in curbing biodiversity decline by replacing fossil fuel generated electricity, the new laws prohibit consideration of the overarching role of renewable energy generation as a nature positive action for the direct role it plays in greenhouse gas emissions reduction.

Restoration actions and contributions.

Clarity is required to assist renewable energy developers to understand the operation of restoration actions and contributions, including the extent to which these will satisfy a ‘nature positive’ standard.

Whilst the requirements for restoration actions are outlined in the draft National Environmental Standard for Restoration Actions and Restoration Contributions, the benchmarks for achieving those requirements have not been provided by DCCEEW. Further, given the failure to provide insight into how and when these benchmarks are

satisfied it is unclear how the renewable energy transition can be achieved in a timely manner.

Objects of the Act and ecological sustainable development.

The objects of the new Act are a significant departure from the EPBC Act in that they explicitly include an overarching purpose to protect, repair and regenerate the environment.

These new objects set a significantly higher standard and a much higher bar for approval. This is significant from a decision-making perspective because it shapes the decision-making lens. The success or failure of the new legislation to achieve its objects – and what this means for the renewable energy transition – will depend on the resourcing available to and the rigor applied by the EPA who is primarily responsible for administering the new Act and decision-making.

Currently there are significant unknown and potentially problematic issues with what the draft legislation and the environmental instruments established by it mean for project assessment and approval. There is currently no guidance material available to provide developers and community with an understanding of when consistency with the Act and national environmental standards, avoidance of risk of impact etc is achieved. We have raised this with DCCEEW in previous submissions on the reforms and will continue to do so until this vital guidance material is provided.

Ministerial call-in powers.

The time limit on when a Minister can call-in a project as 'up to a day before a decision is made' is problematic for a number of reasons including the additional delays and potential costs associated with Ministerial intervention.

We are concerned about the reach of Ministerial intervention given the discretionary nature of the power and how it may be wielded, not least because historically renewable energy projects have been subject to more political barriers than coal mines or coal seam gas development than any other proposed action in federal environmental law assessment. Additional specificity is required to put guardrails on the use of this power. Those guardrails could include limiting the power to a preliminary EPA decision that approval under the Act is not required (i.e. to query whether in fact it is), and/or when statutory committee advice about the existence of significant impact is inconsistent.

Regional planning.

The overarching potential benefit of a Regional Plan (RP) is that individual developers will not have to undertake federal environmental impact assessment which would be done through the RP development process. Rather, developers will be required to register their activity and comply with the conditions which will likely include a Regional Restoration Payment.

Whilst this process seems initially like a process to facilitate a rapid energy transition we query whether the federal government will obtain consent from state governments who themselves are undertaking planning and assessment reforms. Regional plans would need to be prepared and implemented in a timeframe that satisfies Australia's obligations under the Paris Agreement and achieves both state and federal renewable energy targets.

Our current understanding is that a RP will impose conditions on 'priority actions' which will likely include the breadth of matters attributable to a class of action. What is not clear however is what articulation of 'significant impact' for a class of action could include. As an example many renewable energy generation development actions require construction of transmission infrastructure, road widening or construction etc, as well as operational conditions that will need to satisfy RP criteria.

It is also unclear how approval of a RP prevents duplication of application requirements and/or obligations imposed by state/territory processes because RPs are prepared in the context of impact to protected matters identified in federal law (noting that there is a lot of overlap of state and federal impacted matters). There is considerable uncertainty of what, if any, assessment processes will achieve accreditation and what the interaction between an accredited assessment process and a RP is or could be.

Finally we assume that RPs could also be developed for offshore projects such as Offshore Wind Zones, but clarity on this is required. We strongly encourage DCCEEW to ensure that offshore wind application and assessment processes are not complicated by multi-Agency involvement and are articulated to this nascent industry in a timely manner.

Transitional arrangements, including for accreditation of assessment processes, must be made available.

As noted above the new environmental laws are a significant departure from how actions that may cause significant impact to protected matters are assessed and controlled. It is not hyperbolic to say that these reforms are a radical overhaul of how federal environmental law will operate from application to information collection to assessment and decision-making.

CEC members are not averse to change. In fact the renewable energy industry itself is the face of sweeping reforms to how electricity is generated. What our members need to embrace the changes this law reform proposes is certainty on what is required and when in order to get the best possible outcome for their application. Significant changes to the process and standard by which environmental impacts are assessed causes anxiety for developers and financiers alike who need to understand what needs to be done to get the first shovel of dirt turned over.

We cannot therefore overstate the need for DCCEEW to provide insight, if not detail, into how transitional arrangements between the laws will operate. Renewable energy proponents require clarity of process to confidently progress projects in the development pipeline and know that the process or standard they will be held to will not change. Or if it will change, what that will mean from a financial and human resource perspective.

This includes transparency on the transitional arrangements from bilateral agreements to accredited assessment processes. Most actions that require referral for controlled action determination under the EPBC Act progress through a process outlined in a bilateral agreement. Inevitably there will be projects at various stages of the extant process if and when the new laws come into force. It is crucial that insight into those transitional arrangements is provided.

APPENDIX ONE

Clean Energy Council submission to DCCEEW
(December 2023)

SUBMISSION TO DCCEEW – DECEMBER 2023

Feedback on draft drafting instructions for EPBC reforms

Introduction

A significant transition in energy generation is occurring, both nationally and internationally, from coal and gas-fired electricity generation to renewable energy generation like wind and solar. The Commonwealth has targeted 82% of renewable energy in the grid by 2030. This means many more renewable energy projects need to be built over the next decade, particularly along the east coast of Australia close to existing and newly planned transmission lines and in proximity to where electricity is being consumed. It is estimated that, by 2030, upwards of 30 GW of *new* renewable energy capacity will be required, consisting of mainly wind farms and utility-scale solar farms, to meet renewable energy targets.

Currently the renewable energy industry is facing a range of challenges including grid connection and network capacity, delays in the development of new transmission lines, as well as significant planning delays and supply-chain issues. As a result, few projects are reaching financial close, as shown in the CEC's quarterly reporting. At present, the transition to renewable energy is significantly behind where it needs to be and will need to speed-up over the next decade.

This is important context.

The approach needs to EPBC reforms needs to be risk-based and pragmatic. For example, to meet emission reduction targets and achieve the renewable energy transition, there will be a significant increase in the number of utility-scale renewable energy developments. While it is acknowledged that these need to be developed in a way that avoids or minimises potential impacts, there also needs to be a degree of pragmatism and balance. Developing large pieces of infrastructure (including renewable energy) do impact the environment, and avoiding all impacts is not possible. What is critical is that the new legislation drives the dual desired policy objectives: avoiding or minimising impacts to Matters of National Environmental Significance (MNES) to an appropriate level and then providing a compensatory pathway to offset any residual impacts, but also enables the renewable energy transition to proceed in a timely fashion.

It is also important to note that improving the environmental condition of many MNES relies on action to combat climate change.

In terms of the content of the drafting instructions and how this ultimately becomes legislation, industry needs clear, consistent and transparent guidance with the opportunity for input and feedback. Of particular importance is the detailed guidance and regulations that are required to implement the new legislation.

Assessment and approvals process

Decision pathways

- The draft drafting instructions indicate that all projects, even those that are relatively certain that the action is not likely to have a significant impact, are now subject to a period of assessment under the new EPA. It is assumed that this will also include pre-project activities such as geophysical surveys. This is likely to cause significant delays in approvals with many more projects under review in the system when considering the volume of actions proposed both onshore and offshore. If the 20 day period is strictly adhered to with a clear format for submission under the low impact pathway, this could provide certainty to proponents that their project will not be 'called in' for full assessment. However, DCCEEW could also consider making the low impact pathway an optional determination to assist a proponent with risk management, rather than a requirement.
- The EPA should provide broad guidance on activity types that would generally be considered for the 'low impact' pathway for both onshore and offshore activities. This would negate the risk to proponents of submitting under the wrong pathway and reduce pressure and delays during the referral process. There is a significant difference between a 'low impact' and a 'standard' pathway, and it may not be clear where the line is.
- Will there be an appeal mechanism if a proponent determines that an action is unlikely have a significant impact and subject to the low impact pathway, however the CEO determines it requires assessment?
- What is the threshold for being "relatively certain" that an action is "not likely" to have significant impacts?
- Not all renewable energy companies are currently tracking their Scope 1 and 2 emissions to the level of detail of individual projects. There has been no information provided on the framework that will be used to consider these from a climate change mitigation perspective across international jurisdictions – a clear methodology is required so proponents are assessing emissions in a consistent manner.
- For emissions reporting to be included as part of assessment material, the Commonwealth should explicitly state that these will be considered in a whole of

life-cycle context, including emission reductions, and the associated beneficial impacts should be considered.

Timeframe for decisions

Low impact

- There should be clear parameters around “stop the clock” and other RFI type interventions available to the EPA during the 20-day decision timeframe for the low Impact pathway.
- If a proponent is to enter the Low Impact pathway and the EPA decides the action is not low impact (likely to have significant impacts), there should be an accelerated triage into the standard pathway, rather than proponents having to start another application from scratch.

Starting the clock in the standard pathway

- It appears that the assessment period starts on accepting the application. However, it is assumed that there may be criteria by which DCCEEW accept the submission and there may be a significant period of time prior to acceptance while a proponent attempts to meet those criteria that would add to the overall assessment timeframe in addition to the several other triggers to stop the clock. Under the current EPBC Act approval process, it can take up to six months for a referral to be validated and commence assessment under statutory timeframes. Clear expectations and consistently applied standards are essential for ensuring that the predictable 60-day assessment does not come at the expense of drawn out and unpredictable pre-lodgment timeframes.
- Will there be a team within EPA dedicated to working with proponents at scoping stage (prior to the official timeframe)? This function may help streamline the process, ensuring EPA are receiving adequate applications and proponents are not enduring unexpected lengthy delays to decision (missing seasonal survey windows etc).

Application of the 60-day clock

- The industry will need to understand the expectations of the EPA to avoid ‘stop the clock’ outcomes during the 60-day assessment. Clear parameters are needed around ‘stop the clock’ and other request-for-information type interventions available to the EPA. We suggest that all communications relating to ‘stopping the clock’ be made in writing.

- The 'stop the clock' for a request for further information should have its own statutory timeframe, to prevent indefinite delays.
- We see a clear limitation to having a target timeframe for decision-making that has no recourse. The lack of consequences for the EPA in failing to comply with assessment timeframes raises questions about the enforceability of the timeframe and may facilitate the current pattern of delays due to under-resourcing and high turnover within the EPA. This is in the context of DCCEEW's already-stretched resources and the consequent delays to the assessment process, as well as the need for re-allocation of resources to implement these reforms. To address this risk, DCCEEW should consider options such as deemed approval after 60 days, appeal mechanisms or consequences of significance.
- The CEO of the EPA's 'proposed decision' period could be reduced or comments from other Ministers could be front-loaded into the process to provide greater ability for the EPA to meet their statutory timeframes. The current proposed changes are risk being unachievable without 'stopping the clock' or extending timeframes.

Ministerial feedback

- Will the proponent have the opportunity to review the feedback from other Ministers and negotiate outcomes?
- What happens if Minister's comments are not provided in 10 days? Is there a presumption of 'no comments'? Will comments be sought from relevant State Ministers as well as Commonwealth Ministers?

Decisions

- What is the avenue for appeal if a proponent does not agree with the CEO of the EPA's decision?

Assessment and approvals considerations

Approval requirements

- "Reduce viability" is a new term not currently defined in the EPBC Act so careful consideration would need to be given to defining it so that it finds an appropriate

balance. The EPA should provide clear guidance on how this should be measured and reported against for threatened and migratory species and 'ecological communities' (also not currently defined).

- Consideration would also need to be given to application of this requirement to species that occur across large geographical ranges and international jurisdictions which are exposed to multiple different industry and other pressures within and outside Australia.
- There are a lot of instances where there are moderate or high levels of uncertainty with respect to threatened species or threatened ecological community lifecycles, whereby determination of meeting/failing this test in any reasonable timeframe or development budget could be very difficult. There needs to be consideration of the balance of understanding of the sites, species and the project, and for the CEO to make a reasonable, risk-based decision.
- As currently proposed, the wording may lead to extreme conservatism from the EPA decision-makers, but the precautionary principle also needs to apply to err on the side of allowing actions that reduce greenhouse gas emissions.
- It isn't clear in the documents, but presumably a proponent can make the case for why viability has not been reduced.
- Other new concepts requiring careful definition include:
 - 'Not inconsistent with any NES' – this as a precondition to valid application is a high bar, and it appears in a range of contexts through the assessment
 - How will 'substantially the same' be defined?
 - How will 'all reasonable steps' be defined?
 - Will ambiguous terms be defined, e.g. 'relatively-certain', 'not likely'?
 - We suggest the NES provide detailed (and peer reviewed) technical guidance on acceptance thresholds
- If the principles of ESD will feature in the objects of the new Act, there needs to be clarity on how the principles need to be considered by proponents and decision makers. This is a significant problem with the EPBC Act.

Critical Protected Areas

- Critical Protected Areas (CPAs) have the potential to provide certainty to proponents whilst protecting our most vulnerable ecological values. Defining and mapping of CPAs will be very important – our interpretation of language provided

is that these should be small and precisely targeted areas, rather than broad-brush classifications of large areas.

- If CPAs occupy more than small, focused areas, then their overlap with Renewable Energy Zones could become a significant issue.
- It is recommended that the department provide clear guidance material including publicly available mapping identifying 'Critical Protected Areas' to ensure applicants can identify these areas up-front before investing considerable time and effort in an area in which they are unlikely to obtain project approval.
- It is recommended that this approach is applied to new referrals from commencement and not retrospectively to projects still being assessed for approval which have invested several years in feasibility studies without the opportunity to factor new Critical Protected Areas into the site selection process.
- CPAs are only going to be as robust as the data that underpins them. Given that much of Australia's ecology is under-surveyed, will there be opportunity for project-specific data to be used to update or challenge the boundary of a mapped CPA? What would the process be to do so? Would this sit outside of the standard project assessment process?

Climate considerations

- We consider it a significant short-coming of the proposed legislation that it does not allow the CEO of the EPA to consider "any beneficial impacts" of an action/project. This seems at odds with the concept of net positive outcomes included in the National Environmental Standards section. We strongly support climate impacts – both positive and negative – being considered in EPBC assessments.
- The exclusion of Scope 3 emissions from assessments is similarly a gap in the assessment framework.
- Adjustments to the framework that allow for the recognition of positive environmental contributions, particularly related to emissions benefits, could enhance the effectiveness and coherence of environmental decision-making.
- The scope of environmental damage caused by, and going to be caused by, climate change will dwarf the potential impacts of the required renewable energy build. Renewable energy is the only option to meaningfully mitigate climate change in any reasonable timeframe – to not consider this is to not see the forest for the trees.
- By not considering the positive climate impacts, the government appears to be swimming against the tide of planning law evolution in Europe, where the Renewable Energy Directive now incorporates a principle that the expansion of renewables is in the overriding public interest.

- While the Minister may consider the climate benefits in making a decision, we submit that this should also be an element of the decisions by the CEO of the EPA.
- For the vast majority of MNES, climate change represents a key threatening process and therefore addressing carbon emissions is a critical measure. Direct impacts to MNES from a new fossil fuel would be considered equally to those for a wind farm development. This is inconsistent with the principle of threat abatement from human induced climate change.

Imposing conditions

- We may have missed this in the documents, but any proposed conditions should be included in the 'proposed decision' that is provided by the CEO of the EPA after 50 days. This would be consistent with DCCEE's current arrangement of providing the proponent with pre-approval visibility of draft conditions.
- We assume that post-approval management plans will still be used/required – the documents did not provide any detail on post-approval processes. We would welcome statutory timeframes for the review and approval of these plans, which currently can take upwards of 12 months to be approved.
- Regarding cost-effectiveness of conditions, we suggest further consultation and sharing between industry and EPA will be important, to discuss feasibility and practicality of mitigation and management measures commonly imposed in conditions.
- The 'cost-effectiveness' of conditions appears to be a poor way of describing the concept of reducing environmental risk to as low as reasonably practicable which considers a cost-benefit analysis.

Ministerial call-in power

- Does the Minister not acting "inconsistently with Australia's international obligations" include our need to increase uptake of renewable energy technologies in order to meet emissions reduction obligations?
- The Ministerial call-in power can be used to ensure consistency with Australia's international obligations – this is a potential work-around to include climate considerations but would be much better if it was considered in standard process by CEO of the EPA (and would therefore apply to all projects, not just those called-in by the Minister).

Conservation planning documents

- Replacing Conservation Advices and Recovery Plans with Recovery Strategies for all threatened species and TECs will be a huge undertaking and take many years (Will this be expedited and if so, how? Are there enough academics, species/habitat experts to do this?). However, it should eventually lead to a solid outcome as many Conservation Advices and Recovery Plans are outdated and very light on detail and/or guidance.
- With that in mind, the approvals requirements in the new Act will rely very heavily on the content included in new documents prepared under that Act such as National Environmental Standards, Recovery Strategies, Threat Abatement Strategies and Regional Plans. These will need to include specific requirements, quantified limits and clearly assigned responsibility for delivery to avoid confusion and difficulty in complying with them.
- This will rely on large data sets which in many cases don't exist in Australia. We have some concerns that a paucity of evidence may lead to overly conservative outcomes.
- We suggest that Recovery Strategies align with (or at least consider) State Government plans that are active for the same species. This will work toward ensuring proponent survey effort, monitoring and impact assessments are streamlined, and management measures and conservation outcomes are consistent.
- We suggest a standalone strategy (informed through ecological expert and industry consultation) is developed for the delivery of the Recovery Strategies, to address questions such as: Who will manage the delivery of the Recovery Strategies? Who will be involved in contributing? What will be the method for selecting which threatened species and TECs have Recovery Strategies developed first? How will these consider cumulative impacts? Will there be transparency around the development and publication of Recovery Strategies for specific species (to allow proponents time to prepare appropriately)?

National Environmental Standards

Matters of National Environmental Significance

- The threshold for an acceptable level of impact needs to be clearly defined to remove ambiguity, uncertainty and delays from the current approach.

- Suggest the MNES NES provide technical guidance on cumulative impacts and the associated acceptance thresholds. Phrases like “detrimental cumulative impacts” will need to be defined.
- REZ-wide assessments are probably required at a Federal level, particularly for wind projects. This will lead to better environmental and investment outcomes, by providing better information and more certainty to proponents. The Federal government is in a unique position to action this.
- In the current list of threatening processes, this concept does not include a prediction on future pressures and therefore does not allow proactive management and prevention of problems from occurring.
- The new Act could use the term ‘novel biota’ in place of ‘marine pest’ for consistency with existing description of the existing EPBC Act key threatening process ‘Novel biota and their impact on biodiversity’.

Restoration actions and contributions

Questions/comments about the mechanics

- Does the EPA / Minister define the restoration action / contribution or can the proponent propose actions for approval?
- Will there be criteria to define what is appropriate for a project?
- Will climate change and ecological modelling inform EPA’s decision on whether proposed restoration actions and restoration contributions are feasible (and consequently acceptable)?
- Does the proponent decide which conservation trust a restoration contribution would go to? How aligned to the conservation of the specific MNES does the trust need to be, or can it be a generic conservation trust? Can the contribution be split between multiple trusts?
- More guidance would need to be provided as to how contributions are calculated in the event that a restoration action cannot be undertaken, particularly in the marine environment. Proponents would need some visibility as to approximate costs and how to factor these into project planning and financing.
- It may be worth considering a role for industry-wide, regional-scale offsets programs (restorative actions) if this concept is adopted.

Assessing effectiveness

- Will EPA track or audit restoration actions and restoration contributions to ensure proponents are achieving (or trying to achieve) the restoration outcomes as proposed/approved?
- The proposed structure for contributions is through an independent body, which potentially means proponents have little control over how the contributions are managed. This leaves proponents open to criticism/penalty if the actions of the independent body do not achieve the requirements of those contributions. It is unclear how this process would be managed and controlled to ensure appropriate outcomes are achieved to truly offset damage caused by actions.

Community engagement

- We agree with the intent of this NES and the requirements are generally reasonable.
- Ideally, there is alignment (or at least not overt conflict or duplication) between the requirements of different authorities, including state planning agencies and NOPSEMA.
- It wasn't clear whether these requirements apply to both standard and low impact pathways.
- We suggest removing the requirement to include "all written comments" and instead allowing proponents to respond to comments thematically.
- DCCEEW should consider what constitutes 'the community' for any given project/action. Obviously information on a website can be accessed by anyone, but the community engagement professionals who conduct the on-ground activities will be best placed to determine an appropriate geographic boundary for who needs to be engaged in the process.

Data and information

- Need more detail on the timing of when proponents are required to make their data publicly available.
- Accurate data and mapping will likely be an issue – will there be mechanisms for proponents to demonstrate that ground-truthed information contradicts the EPA's critical protected area mapping, for example (to both add to these areas and also remove them)? Will the EPA use ground-truthed data from submitted actions to update their data? Will there be relationships established with research entities and state databases that feed into the EPA's data?

Other matters

- **Resourcing**
 - The success of any reform will be linked to provided adequate resourcing to both DCCEEW and the EPA to ensure they are able to deliver on their workload and to make good decisions in legislated timeframes.
 - We note that DCCEEW resources are already stretched and unable to meet current assessment timeframes, and that there is likely to be an increase in applications from the renewable energy industry.

- **Review/challenge of decisions**
 - There are a few challenge points in the approvals process now – it will be important to understand what decisions a proponent can challenge, and what decisions an objector can challenge, and under what circumstances.

- **States**
 - It is unclear how these reforms to the EPBC Act will affect the Bilateral Agreements between Commonwealth and State Governments.
 - Will existing bilateral arrangements need to be re-accredited? Eg. the biodiversity offset scheme (BOS) in NSW? Is there any risk of the BOS substantially changing as a result of the EPBC Act reforms?
 - Will there be efforts to ensure every State enters into a Bilateral Agreement?
 - What will the mechanism be for the EPA to contribute on a project-specific basis under the Bilateral framework? i.e., currently DCCEEW contribute to terms of reference/Secretary's Environmental Assessment Requirements.

- **Regional planning**
 - The renewable energy industry is keen to see how thinking is evolving for the NES for regional planning – this has clear potential for addressing issues in Renewable Energy Zones, but the details will be important.
 - EPBC reforms should consider the relationship between generation projects and associated third party transmission projects, and give more thought toward facilitating linked and/or streamlined assessment and approvals pathways.

- **Transitional provisions**
 - With an overhaul in the federal environmental legislation there needs to be a period of transition to enable both regulators and proponents to work through the changes.

- These will be critical to many projects and DCCEEW should provide more transparency on this in the near future. This includes how proponents will be expected to comply with conditions of existing approvals, ie the standards that will be applied to satisfy existing offset and management requirements. It also includes how a 'no approval required' decision can be transferred or relied on by others, eg when a project or proponent is sold.
- Given that Regional Plans will roll out progressively, will there be statutory certainty that such plans, as well as recovery/threat abatement strategies/restoration actions will not be applied retrospectively, i.e. for actions undergoing assessment and subject to information requests, however not determined?

Thank you for the opportunity to provide feedback on the draft drafting instructions for a reformed EPBC Act. We look forward to continuing to participate and contribute to the ongoing development of this important framework.

Regards,

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