

AMEC SUBMISSION

To: Senate Standing Committees on Environment and Communications

Re: Nature Positive (Environment Protection Australia) Bill 2024 [Provisions]

12 July 2024

Introduction

AMEC appreciates the opportunity to provide a submission to the Senate Standing Committees on Environment and Communications regarding the Nature Positive (Environment Protection Australia) Bill 2024 [Provisions] and related bills.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 570 member companies across Australia. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,000 people. In 2021/22 Industry generated a record high \$413 billion in resources exports, invested \$3.86 billion in exploration expenditure to discover the mines of the future, and collectively paid over \$63 billion in royalties and taxes.

General Remarks

The consistent theme of the feedback received from industry regarding the proposed reforms has been focussed on the process of consultation, or the lack thereof, rather than the content of the reform.

The ongoing conversation around the challenges of the consultation process has obscured the substantial concerns from across industry of what is being proposed in the Nature Positive Plan reforms.

The content of the reforms will have severe implications for current and future project developments. The Australian economy is facing falling productivity and rising inflation. The reforms do not appear to address the long timeframes faced by all projects in Australia, nor do they reduce the cost of doing business. The mining and exploration industry have cited concerns for the investment profile of Australia in the face of the Nature Positive Plan reforms.

The decision to move ahead with the legislative framework for the two agencies charged with delivering the Nature Positive reforms is premature. The Nature Positive Act, which will transform the fundamental underpinnings of the Environmental Protection Biodiversity Conservation Act 1999, should have been addressed first.

The following comments are addressed at the legislation before the Senate. We note our commentary reflects fundamental changes to the basic principles that underpin each of these Acts that will demand a full rewrite.

This reflects the outcomes of the Government's choice to only conduct closed door consultations prior to its entry into Parliament. Industry has noted such an approach to consultation would not meet the expectations of DCCEEW when administering the Environmental Protection Biodiversity Conservation Act 1999.

Federal Environment Protection Australia

AMEC's primary concern with the Federal Environment Protection Australia (EPA) is the concentration of final environmental decision making in its remit. The establishment of an independent agency to regulate Australian environmental legislation is opposed and is seen by industry as an overreach.

Best-Practice Model

The review undertaken by Professor Graeme Samuel of the EBPC Act did not recommend the establishment of a Federal EPA. Professor Samuel recommended that instead of a Federal EPA the Act should be amended to recast the statutory committees to create the Ecological Sustainable Development Committee, along with a number of subcommittees. This committee would be an overarching committee with responsibility for providing advice on National Environmental Standards, planning and implementation, and coordination across all the committees.

In conjunction with this the currently proposed Federal EPA does not appear to adopt a best-practice model, in line with WA's Environmental Protection Authority. The WA EPA is independent and makes recommendations to the Minister, but the Minister ultimately makes the decision. It is unclear why this model was not adopted, and no rationale has been supplied.

The Federal EPA will be framed as an independent environment regulator as it currently stands. However unless there is a substantial rework they will not be equipped to appropriately determine economic, social and environmental priorities – all of which fall under its broad definition of environment.

The Australian National Audit Office (ANAO) report of Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999 found that in addition to a lack of staffing and resources, the staff were not being adequately trained to undertake their roles effectively.



Of the 252 individual registrations since 2016-17, training records show that only 16 staff have completed all six core modules, indicating that the target of delivering mandatory training for all staff in the division has not been achieved.¹

The Minister and Department needs to ensure that the Federal EPA staff are adequately funded and trained to deliver on the outcomes set out by the Nature Positive Plan, to ensure projects that are beneficial for the country are not negatively affected or delayed.

Industry Consultation

As stated there was a lack of consultation and industry engagement in particular to the structure and purpose of the Federal EPA. If industry was given the opportunity to provide feedback through a draft exposure Bill, concerns could have been conveyed to the Department. Moving forward AMEC would ask for genuine consideration of a wide range of views when the legislation is being formulated, rather than being presented a fait accompli.

In saying that consultation with key stakeholders should be continuous and should start as early as possible. It should continue through all stages of the policy development cycle, including when detailed design features are being finalised.²

Role of Minister for Environment

The Federal EPA's role should be limited to make recommendations to the Minister, and the Minister should have the final decision on whether every project proceeds. Similarly, it would the Minister *must* issue a Statement of Expectation to the Federal EPA under section 16 rather than the current provisions of "may".

The ability for the Minister to delegate decision making for controlled actions under the EPBC Act to the EPA CEO should be removed from the legislation and reversed. The CEO would sit outside of the core concept of parliament sovereignty and therefore report to no one. It is for the reason also that AMEC believes that all final decisions should be handled by the Minister for Environment.

Federal EPA Chief Executive Officer

The Federal EPA CEO should be held accountable for any mismanagement, similar to any other executive position. The sustainable development and national interest expectations that are decided upon should drive the subject of the CEO's performance.

Through section 14 of the Nature Positive Plan the EPA CEO has the discretion to perform functions or powers without the direction by any person in relation to the performance or exercise of those functions or powers. This will grant the EPA significant decision-making authority. This is a concentration of a key determinant of Australia's future – what projects get granted environmental approval and how, into the hands of an un-elected person.

¹ <https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act>

² <https://oia.pmc.gov.au/sites/default/files/2023-08/best-practice-consultation.pdf>

While it may not be imperative that the CEO has previous experience in the areas of social and economic factors, it should be included that the CEO has previously worked in the area of sustainable development. To hold Australia's economic future in their hands, they must understand how development occurs.

AMEC believes that it would be beneficial to include a mandatory board as a part of the Federal EPA. At the moment, the CEO has a discretion to draw together a group of advisors. A mandatory board would better align with other State and Territory EPAs. Also, the CEO would benefit from a group to consult in their decision making.

Stop the Clock

Five business days is an unrealistic timeframe to allow proponents to respond to *stop the clock* requests. This should be extended to a minimum of 14 days, which is common in other legislative frameworks. It should be made very clear to the Federal EPA that the *stop the clock* provisions should be an option of last resort.

The WA EPA if it decides it doesn't have enough information then it will issue a requisition seeking that additional information and set a deadline (compliance period) for its supply.³ The lack of a set timeframe allows for discretionary timeframes to be set to allow the proponent to adequately acquire the additional information.

Penalties

The implementation of arbitrary penalties applied are not justified and the number of penalty units applied should be decreased. The new penalty regime vastly increases fines and penalties, up to 2.5 million penalty units (\$782.5 million). This is substantially larger than other jurisdictions penalty rates for environmental breaches. For example, in Canada for the most serious offences, fines up-to \$1 million a day for each day an offence continues.⁴

The Government has made its intentions clear that these penalties would only be used in the most extreme intentional breaches, however this is not stated in the legislation. These allows for the penalty regime to be used potentially for unintentional breaches, technicalities in conditions and administrative breaches.

The new penalties come into effect as soon as the Bill receives royal assent, allowing for no transitional period for proponents to undertake audits of their activities. AMEC would recommend a period in which the Minister, Department and Federal EPA take an educative approach in dealing with such matters.

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https://www.epa.wa.gov.au/sites/default/files/Policies_and_Guidance/EIA%20%28Part%20IV%20Divisions%201%20and%20%29%20Procedures%20Manual_0.pdf

⁴ <https://www.legalline.ca/legal-answers/environmental-offences-and-penalties/>



Environment Protection Orders

The introduction of Environment Protection Orders gives the Minister for Environment the ability to stop work on any project that they believe will cause environmental damage. These powers can be used with no need for evidence, consultation with a proponent, or any court or other oversight specified in the legislation. Additionally, there is no set timeframe for the length of such an order.

Where the Federal EPA CEO finds it necessary to issue an Environment Protection Order (EPO), they should ask the State or Territory EPAs to issue them in writing. If an environmental breach was to be occurring of the scale that demands an EPO, the State or Territory EPA would surely have a view. The Commonwealth does not regulate the Australian environment in a vacuum: each State and Territory has an environmental regulator.

Environment Information Australia

The role of Environment Information Australia (EIA) will be crucial for the success of the Nature Positive Plan concept. Such an agency has an enormous task, collating, standardising and curating Australia's diverse data sets. The management of sensitive commercial intellectual property and its curation will be vital to delivering catchment scaled approach.

Independent Body

Currently, the EIA would sit within the Department of Climate Change, Energy, the Environment and Water and therefore is not an independent entity, leaving it open to the effects of internal biases from the Department.

AMEC would recommend that the EIA be established as a separate agency, as a purely source of information, similar to Geoscience Australia. With the role of the Chief Scientist, to set a baseline for nature positive using the knowledge and information gathered under Environment Information Australia.

To be effective, independent advisory bodies must have an appropriate status, this means having a clear statutory mandate, strong leadership and adequate resources.

Intellectual Property

Concerns have been raised from industry around the security of proponent's intellectual property, for example water modelling, which are bound by intellectual property and confidentiality. To alleviate these concerns AMEC would recommend that a privacy framework needs to be legislated which ensures the rights of proponents to protect their information.

Otherwise make clear that information collected under the Environment Information Australia is protected under Division 2 of Part IV of the *Freedom of Information Act 1982*.

- Documents containing material obtained in confidence (s 45)
- Documents disclosing trade secrets or commercially valuable information (s 47)

Climate Trigger

While not directly addressed in this senate inquiry, industry remains concerned regarding the inclusion of a climate trigger. A climate trigger would mean that a number of new projects that previously wouldn't come under EPBC Act assessment will be dragged into the process, adding years to their approvals by putting them through the EPBC process.

Australia has comprehensive climate legislation and policy architecture to adhere to its commitments under the Paris Agreement and help transition the Australian economy to net zero by 2050. For example, the Safeguard Mechanism that requires Australia's largest emitters to reduce their emissions.

AMEC is supportive of these current process and approach to achieve net zero, while not injecting a climate trigger into nature focused Nature Positive Plan. AMEC is therefore against the inclusion of a climate trigger in the Nature Positive Bill.

The Graeme Samuel Review opposed the use of the EPBC Act for the regulation of emissions, stating "successive Australian governments have elected to adopt specific policy mechanisms to implement their commitments to reduce emissions. The Review agrees that these specific mechanisms, not the EPBC Act, are the appropriate way to place limits on greenhouse gas emissions."

Final Remarks

AMEC appreciates the opportunity to provide continued industry feedback to the Senate Standing Committees on Environment and Communications regarding the Nature Positive (Environment Protection Australia) Bill 2024 [Provisions] and related bills. These reforms will have a substantial affect in the mining and mineral exploration industry; therefore it is imperative that consultation is done correctly.

AMEC would welcome the opportunity to present to the Senate views from our members and industry.

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