

28 March 2024

Hon. Tanya Plibersek MP
Federal Minister for the Environment and Water
Commonwealth Government
Lodged by email: environmentlawEPATaskforce@dcceew.gov.au

Dear Minister,

Response to Commonwealth Government's consultation on environmental law reforms

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on the Commonwealth Government Department of Climate Change, Energy, the Environment and Water's consultation session organised in late October 2023 on environmental law reform.

CEIG represents domestic and global renewable energy developers and investors, with more than 16GW of installed renewable energy capacity across more than 76 power stations and a combined portfolio value of around \$38 billion. CEIG members' project pipeline is estimated to be more than 46GW across Australia. CEIG strongly advocates for an efficient transition to clean energy with a focus on the stakeholders who can provide the cost-effective capital required for this transition.

KEY POINTS

- CEIG supports the development of assessment processes that include measures to ensure that the environmental impacts of projects are minimised.
- CEIG suggests that, through its environmental legislation reform process, the Commonwealth government should also take into consideration:
 - the positive climate mitigation impacts to be delivered by clean energy development;
 - the need for timely delivery of clean energy development to meet climate outcomes and deliver more affordable electricity to consumers.

Environmental approval process

- CEIG supports the proposed two-step process, with first a phase that checks an application's eligibility and second, the application's assessment period.
 - CEIG would support greater clarity being provided around the timelines that

the EPA must meet during the eligibility check phase (e.g. within 10 or 15 business days), as is prescribed for the application assessment phase.

- CEIG supports the proposed stopping the clock provisions, and notes that the EPA can only stop the clock if more information is needed and both the EPA and the proponent agree to stop the clock.
- CEIG supports the proposal that the time for making a decision may be extended by the EPA only with the agreement of the proponent.

Low impact pathway

- CEIG seeks clarification around the rationale for the proposal that the EPA must not consider beneficial impact on the protecting matter and asks that the Commonwealth government considers amending the proposal so that those beneficial impacts are considered when making a decision.

Reconsideration of decisions by person other than State or Territory Minister

- CEIG strongly suggests that such opportunity to reconsider a decision already made should not be incorporated in the updated legislative framework to avoid unnecessary and unreasonable delays.

Attaching conditions to an approval

- CEIG supports the proposal that conditions can only be attached to an approval with consent from the approval holder where a condition requires specified activities to be undertaken and specified activities are not reasonably related to the action.

NES for matters of national environmental significance (MNES)

- CEIG strongly suggests that the accompanying regulations related to MNES be drafted in ways that do not impose requirements that are too stringent or unreasonable, particularly for projects such as clean energy developments that support the mitigation of climate impacts.

NES for data and information

- CEIG supports in-principle the proposed 3 tiers of data quality described in the drafting instructions and supports that only tier 1 and 2 be accepted for making a decision as per the drafting instructions, however would like to see more clarity around the uses of tier 3 information.

Ministerial call-in power

- CEIG requests further clarity be incorporated in the legislation around the scope of the Ministerial call-in power.
- CEIG supports the proposal that the Minister be unable to remake a decision already made by the EPA or an accredited decision maker. This will provide certainty to approval holders.

Restoration actions and contributions

- CEIG suggests that the Commonwealth government:
 - considers the introduction of a Commonwealth-level fund that coordinates the purchase of suitable land to be used for restoration actions that project proponents could procure land from when required for their projects; and
 - ensures that there is alignment with State-level offset policies, including

considering whether 'State offsets' could be available for Commonwealth environmental law purposes.

Coordination between State and Commonwealth governments' processes

- CEIG strongly suggests that the Commonwealth should ensure that efforts around environmental approvals should be aligned and coordinated with State government requirements.

Setting application fees

- CEIG seeks clarification around which entity will set the quantum for the application fees (e.g. set by the EPA) and through what mechanism (e.g. in regulations).

Implementation

- CEIG seeks clarification of the transitional arrangements, if any, between the EPBC Act 1999 and the updated legislation (for example, for projects being assessed under the EPBC Act 1999 when the new legislation comes into effect).

Transition between Acts

- CEIG supports the provision that projects currently subject to the EPBC Act will be able to elect to be subject to the new Act if a decision has not yet been made on the project as it will provide developers with flexibility to transition to the new process.

General comments

Australia, rich in renewable resources, is at the nexus of the global energy transformation. As we seek to harness the vast potential of solar and wind, it is vital to do so thoughtfully, considering the intertwined challenges of biodiversity loss and climate change. This shift has profound implications for both nature and the Australian economy, necessitating careful planning.

Planning and environmental approval processes for clean energy projects should take a holistic approach to infrastructure development and environmental conservation (and energy planning).

This will ensure that Australia's pathway towards decarbonisation can be aligned with achieving Australia's commitments under the Paris Agreement to aim for a 1.5°C outcome.

CEIG supports the development of approval processes that include measures to ensure that the environmental impacts of projects are minimised.

However, CEIG suggests that, through its environmental legislation reform process, the Commonwealth government should also take into consideration:

- the positive climate mitigation impacts to be delivered by clean energy development;
- the need for timely delivery of clean energy development to meet climate outcomes and deliver more affordable electricity to consumers.

The urgency of the climate crisis requires that clean energy projects be developed and deployed at an accelerated pace. Delays in bringing these projects online not only hinder

our ability mitigate the impacts of climate change through the reduction greenhouse gas emissions but also delays the economic and social benefits that come with the transition to clean energy, including more affordable electricity for consumers.

Environmental approval process

CEIG supports in-principle the definition of a well-structured, well-defined environmental approval process as outlined in the drafting instructions exhibited on 30 and 31 October 2023.

CEIG supports the requirement for the independent Environment Protection Agency (EPA) to publish information throughout the environmental approval process.

CEIG supports the proposed two-step process, with first a phase that checks an application's eligibility and second, the application's assessment period. CEIG would support greater clarity being provided around the timelines that the EPA must meet during the eligibility check phase (e.g. within 10 or 15 business days), as is prescribed for the application assessment phase.

CEIG supports the rules specifying what documents must be lodged, and to what quality standards. This will provide clarity to proponents and the public around what documents need to be prepared and reviewed by the EPA and will minimise delays that may occur from the lodgement of applications that use insufficient quality information; it will also minimise opportunities for the EPA to continuously request new information to be provided (a current issue in some jurisdictions).

CEIG supports the proposed stopping the clock provisions, and notes that the EPA can only stop the clock if more information is needed and both the EPA and the proponent agree to stop the clock. This will ensure that unreasonable and open-ended requests for information do not occur and unnecessarily slow down the assessment process.

For similar reasons, CEIG supports the proposal that the time for making a decision may be extended by the EPA only with the agreement of the proponent.

Low impact pathway

CEIG notes that under the low impact pathway, the EPA must not consider beneficial impacts on the protecting matter.

CEIG seeks clarification around the rationale for this proposal and asks that the Commonwealth government considers amending the proposal so that those beneficial impacts are considered when making a decision.

Reconsideration of decisions by person other than State or Territory Minister

Through clause 78A Request for reconsideration of decision by person other than State or Territory Minister, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) currently enables any citizen to present new evidence which the Minister must

consider, after a decision has been made.

CEIG finds that this process has been used by project opponents to cause delays and effectively start a second assessment process, often with poor quality information which would now be qualified as Tier 3 and therefore not acceptable for the purpose of making a decision (e.g. single picture taken by a non-expert). CEIG strongly suggests that such opportunity to reconsider a decision already made should not be incorporated in the updated legislative framework to avoid unnecessary and unreasonable delays.

Attaching conditions to an approval

CEIG supports the proposal that conditions can only be attached to an approval with consent from the approval holder where a condition requires specified activities to be undertaken and specified activities are not reasonably related to the action. This appears to strike a reasonable balance for cases where the activity is not reasonably related to the action.

Definition of National Environmental Standards (NES)

CEIG supports the definition of National Environmental Standards. This will set benchmarks, increase clarity and increase transparency over the quality of the decision-making process.

NES for matters of national environmental significance (MNES)

CEIG notes the intent listed in the drafting instructions that decisions should:

- maintain or improve conservation management and recovery for MNES, consistent with the principles of ecologically sustainable development, including:
 - minimising harm to MNES including employing all reasonably practicable measures to avoid and then mitigate impacts through project design, then lastly to address impacts through appropriate use of restoration action or contribution; and
 - addressing detrimental cumulative impacts;
- provide early opportunities to identify and protect First Nations cultural heritage.

CEIG further notes that for the majority of MNES (threatened species, World Heritage, National heritage, Ramsar wetlands, etc.), the stated intent is to protect habitat, support viability, not be inconsistent with conservation planning documents and deliver a net positive outcome.

Whilst this intent is suitable to be included in the legislation, CEIG strongly suggests that the accompanying regulations that will give them effect in practice be drafted in ways that do not impose requirements that are too stringent or unreasonable, particularly for projects such as clean energy developments that support the mitigation of climate impacts.

NES for data and information

CEIG supports the definition of NES for data and information as it will sets the benchmark for the type and quality of data and information expected for making a decision.

CEIG supports in-principle the proposed 3 tiers of data quality described in the drafting instructions and supports that only tier 1 and 2 be accepted for making a decision as per the drafting instructions. CEIG would like to see more clarity around the uses of tier 3 information. For example, the CEIG briefing noted that the EPA would still have to consider tier 3 information when considering an application.

Ministerial call-in power

CEIG requests further clarity be incorporated in the legislation around the scope of the Ministerial call-in power.

CEIG notes that if calling in a project, the Minister would need to have regard to social and economic matters as well as other matters. The scope of those matters should be more clearly defined to avoid unreasonable issues being considered.

The interactions with State powers should also be clarified. CEIG understands that the Heads of Agreement to separate Commonwealth and State powers is proposed to remain, however this should be clarified.

CEIG supports the proposal that the Minister be unable to remake a decision already made by the EPA or an accredited decision maker. This will provide certainty to approval holders.

Restoration actions and contributions

CEIG notes the proposed arrangements for restoration actions and contributions.

This should ensure that restoration actions are effective (including cost-effective), CEIG suggests that the Commonwealth government:

- considers the introduction of a Commonwealth-level fund that coordinates the purchase of suitable land to be used for restoration actions that project proponents could procure land from when required for their projects (as opposed to multiple proponents seeking to buy similar parcels of land, increasing prices as a result). This could leverage economies of scale through the Commonwealth purchasing larger parcels at once and would avoid increased prices (that proponents would ultimately need to recover through electricity consumers);
- ensures that there is alignment with State-level offset policies, including considering whether 'State offsets' could be available for Commonwealth environmental law purposes.

Coordination between State and Commonwealth governments' processes

CEIG strongly suggests that the Commonwealth should ensure that efforts around environmental approvals should be aligned and coordinated with State government requirements.

For example, the requirements for the bird and bat surveys across the State and Commonwealth governments should be consistent to minimise time delays and avoid commissioning additional surveys when suitable data already exist.

Setting application fees

CEIG seeks clarification around which entity will set the quantum for the application fees (e.g. set by the EPA) and through what mechanism (e.g. in regulations).

Implementation

CEIG seeks clarification of the transitional arrangements, if any, between the EPBC Act 1999 and the updated legislation (for example, for projects being assessed under the EPBC Act 1999 when the new legislation comes into effect).

Transition between Acts

CEIG understands that projects currently subject to the EPBC Act will be able to elect to be subject to the new Act if a decision has not yet been made on the project. CEIG supports this provision as it will provide developers with flexibility to transition to the new process.

Other comments

CEIG notes the proposal to request that projects publish their expected scope 1 & 2 emissions. CEIG would support increased requirements for projects to also publish their scope 3 emissions. Although CEIG notes the difficulties around calculating those emissions, this would be a valuable piece of information to future-proof environmental approval processes. In addition, this could help demonstrate how renewable energy developments can generate positive impacts on climate mitigation and help differentiate projects with negative impacts on emissions (e.g. coal or gas, mining).

CEIG thanks the Department of Climate Change, Energy, the Environment and Water for the opportunity to provide feedback on the consultation paper and looks forward to continued engagement on this issue. Our Policy Director can be contacted at marilyne.crestias@ceig.org.au if you would like to further discuss any elements of this submission.

Yours sincerely,



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