

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 December 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

- The planning and approval processes for clean energy projects should adopt a comprehensive approach that amalgamates infrastructure development with environmental preservation and energy planning.
- CEIG advocates for approval processes that minimise the environmental impacts of projects.
- CEIG urges the consideration of:
 - 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.

Landscape-scale approaches

- CEIG advocates for proactive planning to balance the need for investor certainty by outlining suitable areas for investment, while retaining the flexibility to revise plans in response to evolving conditions.

Regional Planning & Strategic Assessment

- CEIG endorses the introduction of the Regional Planning and Strategic Assessment processes.

Regional Planning

- CEIG endorses the proposed mapping process and believes the mapping phase provides valuable new insights into suitable locations for renewable energy development and signals areas with higher probabilities for securing environmental approval.
- CEIG strongly supports the delineation of Conservation and Development zones, recognising their effectiveness in streamlining the process and providing clear guidance to stakeholders, including local communities, regarding preferred development areas.
- CEIG emphasises that the success of these zones hinges on the government's proactive facilitation of social licence within Development Zones.

Strategic Assessment

- CEIG believes the introduction of Strategic Assessments is a valuable process.
- CEIG suggests defining a specific timeframe as part of the endorsement criteria for the Strategic Plan.
- Additionally, CEIG recommends establishing a process wherein a Strategic Assessment can be escalated to a Regional Plan, transferring responsibility to the Government.

National Environmental Standards (NES) for Regional Planning

- There is conflicting information in the document regarding the impact of Regional Plan changes on projects already registered with the EPA, and CEIG seeks clarification on whether changes apply, other than for conditions on priority development.
- CEIG signals the importance of clearly defined timelines after which changes do not affect registered projects.
 - CEIG suggests that the proposed five-year period may be too long, especially considering the relatively shorter duration required for projects like wind farms to be built and operational.

EPA governance

- CEIG endorses the proposed EPA governance and recognises the value of the CEO's independence and the utility of transparency through regular reporting to Parliament.

National environmental standards (NES) for community consultation

- CEIG supports the definition of a NES for community engagement, including the additional proposed consultation periods, recognising its value in garnering public input.
- While ‘relevant information’ has been outlined, CEIG would also support a clear definition in legislation of mandatory information that must be provided.

Other comments

- CEIG believes that the Act should specify consequences should the EPA exceed the 60-day decision-making timeframe outlined in the standard approval pathway.
- CEIG notes the requirement for the Minister, when calling on a project, to consider social and economic matters alongside other factors. Social and economic matters can be framed and used both in the positive or the negative.
 - The scope of these considerations should be more explicitly defined to prevent the inclusion of unreasonable matters.

General comments

Australia, rich in renewable resources, stands at the forefront of global energy transformation. As we endeavour to tap into the vast potential of solar and wind energy, it is crucial to approach this endeavour with care, mindful of the interconnected challenges posed by both biodiversity loss and climate change. This transition carries significant implications for Australia’s nature and its economy, warranting careful planning.

The planning and approval processes for clean energy projects should adopt a comprehensive approach that amalgamates infrastructure development with environmental preservation and energy planning. This will ensure Australia’s pathway toward decarbonisation is in line with achieving Australia’s commitments under the Paris Agreement to aim for a 1.5°C outcome.

CEIG advocates for approval processes that minimise the environmental impacts of projects. Nevertheless, within the Commonwealth’s environmental legislation reform, CEIG urges the consideration of:

- 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 of 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.

Consultation process

During the Environmental Law Reform consultation, the Commonwealth Government exhibited an exposure draft of the proposed revised legislation, encompassing policy sections shared in October 2023 and drafting instructions for new topics, including Regional Planning and Strategic Assessments.

CEIG supports this sequential approach of presenting the draft documents first, followed by the release of the associated draft legislation in the subsequent session. CEIG also welcomes the ability for stakeholders to be consulted via the lockup process, ahead of broader and more formal public consultation.

Landscape-scale approaches

The new legislation will facilitate the implementation of new tools to support mapping, identifying values, Regional Planning and Strategic Assessment. These nationwide tools will encompass regional-level information and various data layers (as shown in Figure 1) encompassing:

- Existing Protected Areas
- Critical Protected Areas
- Environmental values and data collected in collaboration with States, Territories, and other organisations.



Figure 1: Diagram of the proposed landscape-scale approach (CEIG impression)

CEIG supports the tools and their underlying purpose, acknowledging the significance of proactive planning and the Government's key role in initiating such strategies. CEIG advocates for proactive planning to balance the need for investor certainty by outlining suitable areas for investment, while retaining the flexibility to revise plans in response to evolving conditions.

Regional Planning & Strategic Assessment

CEIG endorses the introduction of the Regional Planning and Strategic Assessment processes. CEIG notes that Queensland and South Australia have already initiated this process within existing Memorandum of Understandings in place and urges more State Governments to follow suit in fostering similar agreements.

Regional Planning

Regional Planning involves government leadership at either the Commonwealth or State level. In cases concerning Matters of National Environmental Significance (MNES), Regional Planning is proposed to exist as a tool to support net nature positive outcomes amid conflicting development priorities and environmental or heritage values. This tool aims to address cumulative impacts and threats while facilitating priority development activities and net positive outcomes at the landscape and seascape level. Regional Planning also delineates regulatory zones, limiting development in high-value environmental and heritage areas while permitting priority development, under specified conditions, in areas of lower environmental value.

CEIG supports the introduction of this tool and these conditions, but also urges proactive measures by the Government to secure social licence in areas of lower environmental value as CEIG anticipates that farming and degraded land will be classified as areas of lower environmental value, but which can encounter resistance to renewable energy development.

CEIG understands that Regional Planning will unfold in two phases: mapping and planning.

Mapping

Environmental values are proposed be classified into a small number of tiers: high, moderate and low, or potentially represented through a scale such as a percentage or heatmap. Additionally, heritage and cultural values, along with Protected Areas, will be incorporated into the mapping process.

CEIG endorses the proposed mapping process, however we seek clarity on who will be responsible for performing the mapping. Although not constituting a formal Regional Plan yet, CEIG believes the mapping phase provides valuable new insights into suitable locations for renewable energy development and signals areas with higher probabilities for securing environmental approval.

Additionally, CEIG emphasises the need for further detail on the consideration of areas that have already been subject to extensive project activity.

Finally, a specified timeframe for deliverability of the Regional Planning process, and clarification on the interim processes to be followed by projects requiring environmental approval before the Regional Planning process is underway are also necessary.

Planning

The planning stage sets priorities, objectives and strategies to achieve net nature positive outcomes. It also determines whether Regional Planning approval will be sought under legislation. Restoration measures for the region will be identified based on cumulative environmental impacts. Once enacted, Regional Planning will encompass two regulatory zones:

1. Conservation Zone: This area prohibits certain actions, such as renewable energy development, to support environmental conservation, protection and restoration values.
2. Development Zone: Certain actions, including renewable energy development, can proceed here with specific conditions. Projects within the Development Zone will be able to proceed under specified conditions, bypassing the standard approval pathway process stipulated by the Act.
3. CEIG understands that projects in areas with low environmental value, but outside the Development Zone, will still need to undergo the Act's standard approval pathway process.

CEIG strongly supports the delineation of these two regulatory zones, recognising their effectiveness in streamlining the process and providing clear guidance to stakeholders, including local communities, regarding preferred development areas. While CEIG acknowledges it might take time before full implementation, we anticipate its high effectiveness upon completion. However, as noted above, CEIG emphasises that the success of these zones hinges on the government's proactive facilitation of social licence within Development Zones.

Additionally, CEIG seeks clarity on the extent of detail and resources to be allocated to the Regional Planning process. Understanding this would help set policy expectations concerning the scope and timeline of zone assessment.

Finally, CEIG underscores the need for a balanced approach in Regional Planning to prevent:

1. potential limitations on development opportunities if the Regional Planning process is calibrated to generate excessive detail, therefore delaying processes because of the lengthy process and/or ruling out most locations as unsuitable for development; or
2. risking to overlook biodiversity areas if the Regional Planning process relies solely on desktop research; this could open the process to future dispute or litigation should groups contest that an area should be deemed as suitable for development. In this regard, CEIG would appreciate further clarification from the Government regarding the acceptability of tier 3 information (e.g. a citizen taking a photo of a plant or animal as proof of the environmental value of an area) for mapping and planning purposes.

Review of Regional Plan

The Regional Plan review process will commence a minimum of 5 years after the previous completion or last review of the Regional Plan. CEIG seeks clarification regarding the review's scope, and whether the Minister can specify its extent or whether it will encompass a comprehensive or restricted assessment (e.g., solely examining applied conditions to a Development Zone).

Strategic Assessment

CEIG understands that a Strategic Assessment is to be proposed as a tool for proponents to conduct landscape-scale assessments of the impacts of multiple actions on protected matters. This approach, led by the proponent, is aimed at comprehensively assessing cumulative impacts rather than assessing individual projects. CEIG believes the introduction of Strategic Assessments is a valuable process.

The primary goal of a Strategic Assessment is to sanction a category of actions, such as renewable energy development, within a specified area. This assessment is to be prepared by the proponent, collaborating with the Environmental Protection Authority (EPA) to develop its content. CEIG understands that the EPA's CEO holds the authority to endorse a Strategic Plan, grant approvals for actions covered by the plan, or set conditions for approval. Once endorsed, the CEO must decide on the approval of an action or class of actions in accordance with the Strategic plan.

CEIG suggests defining a specific timeframe as part of the endorsement criteria for the Strategic Plan.

Additionally, CEIG recommends establishing a process wherein a Strategic Assessment can be escalated to a Regional Plan, transferring responsibility to the Government. This could be useful for example in areas where a small number of proponents could start with a Strategic Assessment, but as the area generates more interest from other proponents and/or from government as a sensible area to develop renewable energy (e.g. if recommended by the Australian Energy Market Operator in its Integrated System Plan), the government could 'take over' the Strategic Assessment process and 'upgrade' it to a broader Regional Plan.

National Environmental Standards (NES) for Regional Planning

When drafting a Regional Plan, the Minister is required to consider principles of ecological sustainable development, relevant economic and social factors, and relevant recovery strategies. The Minister also holds the authority to modify a Regional Plan, with safeguards provided for activities and projects that commenced or were registered with the EPA before the modification. CEIG understands that this approach aims to strike a balance between industry certainty and adaptability of the plan.

CEIG asks that the Government provide clarity on the protection offered to projects already registered with the EPA. There is conflicting information in the document regarding the impact of Regional Plan changes on these projects, and CEIG seeks clarification on whether changes apply, other than for conditions on priority development.

Additionally, CEIG notes that activities registered within five years before a variation may be subject to Regional Plan variation. CEIG signals the importance of clearly defined timelines after which changes do not affect registered projects. Moreover, CEIG suggests that the proposed five-year period may be too long, especially considering the relatively shorter duration required for projects like wind farms to be built and operational.

EPA governance

CEIG notes that the governance framework for the EPA will be established in a standalone legislative framework and that its purpose is proposed to be to enhance environmental protection, prevent environmental degradation, mitigate risks to human health, and ensure compliance in a manner that is both proportional and effective based on risk assessment.

CEIG understands that the EPA will function as a statutory body, with the CEO operating independently, being required to produce an Annual Report to be presented annually in Parliament and with a provision for them to potentially form an Advisory Group.

CEIG endorses the proposed EPA governance and recognises the value of the CEO's independence and the utility of transparency through regular reporting to Parliament.

National environmental standards (NES) for community consultation

The NES introduces a new requirement for the low-impact approval pathway for the EPA to initiate a 10-day consultation period. For the standard impact approval pathway, CEIG notes the proposal to introduce a discretionary EPA-led consultation in addition to the mandatory proponent-led consultation. CEIG supports the definition of a NES for community engagement, including the additional proposed consultation periods, recognising its value in garnering public input.

Under the NES, projects must engage in a 30-business day consultation once the proponent publishes relevant project information. While 'relevant information' has been outlined, CEIG would also support a clear definition in legislation of mandatory information that must be provided.

Exposure draft - Environmental assessment and approvals

CEIG acknowledges that Division 6 - Time limits (including Section AA490) outlines the time limits that apply for making decisions, however, we also recommend incorporating a distinct timeline within which the EPA must conduct its earlier 'administrative check'.

Other comments

CEIG has identified certain omissions in the Act that merit consideration. Firstly, CEIG believes that the Act should specify consequences should the EPA exceed the 60-day decision-making timeframe outlined in the standard approval pathway.

Secondly, CEIG notes the requirement for the Minister, when calling on a project, to consider social and economic matters alongside other factors. Social and economic matters can be framed and used both in the positive or the negative. The scope of these considerations should be more explicitly defined to prevent the inclusion of unreasonable matters. Additional information and clarity is needed from the government in this regard.

CEIG thanks the Department of Climate Change, Energy, the Environment and Water for the opportunity to provide feedback on the consultation papers 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,



Marilyne Crestias
Policy Director
Clean Energy Investor Group Ltd
w: www.ceig.org.au