

15 July 2024

Hon. Tanya Plibersek MP
Minister for the Environment and Water
Commonwealth Government
Lodged via [online survey](#)

Dear Minister,

Response to Commonwealth Government's consultation on Nature Positive Law Reform

The Clean Energy Investor Group (CEIG) welcomes the opportunity to provide feedback on Stage 3 of the Commonwealth Government's consultation on Nature Positive 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 a clean energy future on behalf of the investors who will provide the low-cost capital required for this transition.

Key Points

- **CEIG advocates for efficient planning and environmental assessment processes for clean energy projects that can be delivered without major harm**, taking into account infrastructure development, environmental preservation, and energy planning to align Australia's decarbonisation efforts with its Paris Agreement commitments and 1.5-degree outcome.
- **CEIG is concerned over the extended timeframe for completing the EPBC Act reforms** and requests transparency on the new proposed timeline to maintain investor confidence.
- CEIG acknowledges the recent positive announcements but highlights the **need for further updates to the EPBC assessment process.**

- **CEIG advocates for alignment between Commonwealth and State environmental assessment requirements to reduce delays.**
- **Clear rules on document requirements will minimise inefficiencies and improve transparency in the assessment and approval process.**
- CEIG supports the Regional Planning initiative but **urges the Government to take proactive measures for securing social licence in less environmentally sensitive areas.**
- CEIG welcomes the establishment of the EPA and EIA and **supports the proposed governance framework.**
- CEIG requests a **clear definition of the scope of Ministerial call-in power.**
- CEIG emphasises the **need to balance detailed planning with development opportunities and biodiversity considerations.**
- **CEIG supports the introduction of the proposed arrangements for restoration actions and contributions.**
- CEIG proposes the **establishment of a Commonwealth-level fund to centrally purchase land for restoration actions.**
- **CEIG advocates for alignment between Commonwealth and State offset policies** and suggests the consideration of State offsets for Commonwealth environmental law purposes to enhance consistency and efficiency.
- **CEIG supports a climate trigger** provided it does not lead to longer project assessment timelines.
- CEIG advises that the Commonwealth Government clearly **communicate, through policy and decision-making criteria, that it is accepted that clean energy projects will have some impacts in light of broader policy objectives.**
- **CEIG emphasises the critical role of climate change mitigation in biodiversity outcomes and urges the consideration of the positive climate impacts of clean energy developments** and the need for the efficient delivery of such projects to achieve climate goals and provide affordable electricity to consumers.
- CEIG supports expanding disclosure requirements for projects to **include not only scope 1 and 2 emissions but also scope 3 emissions** to help differentiate projects from those with negative impacts on emissions.

GENERAL COMMENTS

CEIG appreciates the opportunity to provide input for Stage 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) reforms, as part of the Nature Positive Plan.

CEIG has actively participated in earlier departmental consultations and has been a strong supporter of the EPBC Act reforms^{1,2}. We advocate for efficient planning and environmental assessment processes for clean energy projects that can be delivered without major harm, taking into account infrastructure development, environmental

¹ CEIG (Mar-24) [Response to Commonwealth Government's consultation on environmental law reforms](#)

² CEIG (Mar-24) [Response to Commonwealth Government's consultation on environmental law reforms](#)

preservation, and energy planning to align Australia's decarbonisation efforts with its Paris Agreement commitments and 1.5-degree outcome.

CEIG acknowledges the original intent to complete all three stages of reform by the end of 2023 but notes the significant extension of this timeframe and requests transparency on the new proposed timeline. This transparency and certainty is critical to maintain investor confidence.

While CEIG supports the ongoing major reforms to the EPBC Act, we recognise that the Nature Positive Plan and related reforms will take several years to realise efficiencies for renewable energy projects. In the interim, there is a critical need to strengthen the assessment of renewable energy projects.

Many clean energy investors are concerned about the current administration of the EPBC Act, citing significant inefficiencies and uncertainty that could hinder Australia's clean energy transition.

In collaboration with Hebert Smith Freehills (HSF), CEIG has reviewed the statutory planning assessment processes in NSW, Victoria, and Queensland, producing two reports that outline the challenges and propose recommendations for planning and environmental assessments^{3,4}. Many of our recommendations stem from these reports.

ASSESSMENT AND APPROVALS SYSTEM

CEIG welcomes the Commonwealth Government's plan to take a coordinated approach to the environmental assessment process. CEIG also acknowledges the recent 2024-25 Budget commitment of \$134.2 million to improve assessment processes and make them more efficient, including support for:

- Research on threatened species
- Regional planning to improve environmental decision making
- Strengthen environmental assessments
- Assessments for priority renewable energy projects
- Administration of complex applications and progress on the reform of Australia's cultural heritage laws.

While we acknowledge this positive announcement, further actions are necessary to improve assessment processes. Engaging with industry stakeholders, such as CEIG, will provide valuable insights into projects' experiences and concerns.

The environmental assessment process is becoming increasingly challenging, particularly for wind projects. CEIG is aware of numerous projects owned by its members that have been delayed in the EPBC process for several years. Additionally, the broad and ongoing use of requests for information (RFIs) is highly burdensome, and frequently add years to the process.

³ CEIG & HSF (Apr-24) [Delivering Major Clean Energy Projects in Queensland and Victoria](#)

⁴ CEIG & HSF (Dec-23) [Delivering Major Clean Energy Projects in NSW](#)

While CEIG supports robust EPBC assessments, the current administration of EPBC Act remains a large issue for the energy sector. An updated environmental assessment process is key to maintaining investor confidence in the renewable energy sector.

CEIG supports 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. It will increase efficiency by minimising delays that may occur from the lodgement of applications using insufficient quality information and reduce the opportunities for the EPA to continuously request new information (a current issue in some jurisdictions).

In addition, CEIG strongly suggests that the Commonwealth ensures efforts around planning and environmental assessments are aligned and coordinated with State government requirements. For example, the requirements for bird and bat surveys should be consistent across State and Commonwealth governments to minimise time delays and avoid commissioning additional surveys when suitable data already exist.

CEIG appreciates the Government's commitment to updating the environmental assessment process based on stakeholder feedback and looks forward to engagement on the revised approach.

EPA

CEIG welcomes the recent announcement of the establishment of Environment Protection Australia (EPA) and Environment Information Australia (EIA). CEIG notes that the governance framework for the EPA will be established through standalone legislation, with the proposed purpose of enhancing environmental protection, preventing environmental degradation, mitigating risks to human health, and ensuring compliance in a proportional and effective manner based on risk assessment.

CEIG previously provided input supporting these policies, including the requirement for the EPA to publish information throughout the assessment process, stopping the clock provisions, and preventing the Minister from remaking a decision already made by the EPA^{5,6}. CEIG has also endorsed the proposed EPA governance, recognising the value of the CEO's independence and the benefits of transparency through regular reporting to Parliament.

Regional planning

CEIG endorses the Regional Planning Initiative and its proposed activities, including the mapping and planning processes, which delineate two regulatory zones: a Conservation Zone and a Development Zone. CEIG believes this delineation will facilitate the assessment process and provide clear guidance to stakeholders, including local communities, regarding preferred development areas.

However, CEIG urges the Government to take proactive measures to secure social licence in areas of lower environmental value, as CEIG anticipates that farming and degraded land will be classified as such but may still encounter resistance to renewable energy development.

⁵ CEIG (Mar-24) [Response to Commonwealth Government's consultation on environmental law reforms](#)

⁶ CEIG (Mar-24) [Response to Commonwealth Government's consultation on environmental law reforms](#)

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

A specified timeframe for deliverability of the Regional Planning process and clarification on the interim processes for projects requiring environmental assessment before the Regional Planning process is underway are also necessary.

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, leading to delays because of the inefficient process and/or ruling out most locations as unsuitable for development; or
2. risking overlooking 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.

Ministerial call-in power

CEIG requests that the legislation clearly define the scope of the Ministerial call-in power. CEIG notes that if the Minister calls in a project, they would need to consider social, economic, and other relevant matters. These matters should be more clearly defined to prevent unreasonable issues from being considered.

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

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

RESTORATION ACTIONS AND RESTORATION CONTRIBUTIONS REFORM

CEIG recognises that offsets have become a routine condition of approval rather than an exception, without fully exploring options to avoid or mitigate impacts. Therefore, CEIG supports the introduction of the proposed arrangements for restoration actions and contributions, which include more stringent rules on their use and the benefits they must deliver.

To ensure that restoration actions are effective (including cost-effective), CEIG suggests that the Commonwealth Government:

- Introduces a Commonwealth-level fund to coordinate the purchase of suitable land for restoration actions. Project proponents could then procure land from this fund when required for their projects, rather than multiple proponents competing for similar parcels and driving up prices). This approach could leverage economies of scale and prevent price increases that would ultimately be passed on to electricity consumers.
- Aligns with State-level offset policies, including considering whether 'State offsets' could be available for Commonwealth environmental law purposes.

CEIG looks forward to reviewing the draft updated calculator and revised Standard for Restoration Actions and Restoration Contributions.

CLIMATE CHANGE

Climate trigger

CEIG understands that in this stage of the consultation, the Government is seeking feedback on the interaction between environment and climate laws and potential additional analysis that may be required to support government decision-making.

CEIG believes that in principle, a climate trigger, independent of the EPBC Act, would be beneficial in ensuring that business projects align with Australia's emission reduction commitments under the Paris Agreement. However, while CEIG is supportive of placing limits on greenhouse gas emissions, there is a concern that including a climate trigger may result in a larger number of projects being required to undergo EPBC Act assessment, further delaying the process.

We are already seeing substantial numbers of project being referred to the EPBC Act, consequently delaying their assessment. Referral to the EPBC Act is already an extremely time-consuming step for new projects. If a climate trigger is introduced, CEIG is concerned that the number of projects referred to the EPBC Act will increase, creating greater administrative burdens and extending the assessment processes for these projects even more.

Therefore, CEIG supports a climate trigger provided it does not lead to longer project assessment timelines. If it is determined that introducing a climate trigger would extend assessment processes, then the EPBC Act may not be the appropriate place for this and limits on greenhouse gas emissions should be incorporated into specific policy mechanisms designed to implement emission reduction commitments.

Balancing environmental concerns with positive climate mitigation

CEIG is supportive of robust, efficient, environmental assessments that are based on good data, sound analysis and genuine community engagement. However, the EPBC Act reforms must also be practical to ensure the Commonwealth Government meets its commitment to a net zero future, including the ambitious target of achieving 82% renewables by 2030.

Climate change mitigation is critically important for biodiversity outcomes. Therefore, CEIG urges the consideration of:

- the positive climate mitigation impacts to be delivered by clean energy developments;
- 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 necessitates the efficient assessment, development and deployment of clean energy projects. 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 these delays also postpone the economic and social benefits of transitioning to clean energy, including more affordable electricity for consumers.

The EPBC Act should address both environmental preservation and industry needs. Consistent and transparent criteria for RFI triggers, which define the scope of RFI requests and set limits on the number of RFIs per project assessment (subject to change if new issues arise), would enhance the robustness of the assessment process. The EPBC Act should efficiently facilitate the development of renewable energy projects while ensuring environmental standards are upheld.

Scope 3 emissions

CEIG notes that it has been proposed to request that projects disclose their anticipated scope 1 & 2 emissions. CEIG advocates for extending these requirements to include scope 3 emissions. Although CEIG notes the difficulties around calculating these emissions, this additional information would future proof environmental assessment processes. In addition, it could help illustrate how renewable energy developments contribute positively to climate mitigation and differentiate projects that have negative impacts on emissions (such as coal or gas mining).

CEIG thanks the Commonwealth Government for the opportunity to provide feedback on its proposed Nature Positive Reform and looks forward to continued engagement on those issues. Our Acting Policy Director can be contacted at daniel.zelcer@ceig.org.au if you would like to further discuss any elements of this submission.

Yours sincerely,



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