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Dear Mr Tregurtha

### **Nature Positive – Consultation December 2023**

The Chamber of Commerce and Industry of Western Australia (CCIWA) is the peak body advancing trade and commerce in Western Australia. We are fundamentally committed to using our insights to develop and advocate for public policies that will help realise our vision to make WA the best place to live and do business.

The Federal Government's Nature Positive reforms are intended to deliver better environmental and heritage outcomes across Australia, faster, better-decision making and clearer priorities, and improving accountability and trust. For a State with a strong focus on mining, agriculture, and supporting the decarbonisation efforts of our regional neighbours, it is critically important that Federal system is carefully designed in such a way that it delivers equally on these objectives.

CCIWA is pleased to participate in the Nature Positive reforms process so far, and we will continue to remain engaged in this process, noting the outcomes could have a fundamental impact on the future development outcomes of our State.

In this submission, we seek to draw attention to some of the key issues identified by members to date. At the outset, it is important to highlight that due to the absence of key materials – including, the rules, regulations and technical guidance – it is difficult for industry to consider the package and its operational impacts, as a collective whole.

Nevertheless, we have provided some overarching comments in what follows:

#### **Delivering reform that makes sense**

Western Australia's current environmental framework considers both benefits and impacts, from an environmental, social and economic context. However, the proposed language, new concepts and phrasing used in the National Environmental Standards (NES) raises various concerns, particularly in terms of the principle and application of ecological sustainable development.

To this end, industry has raised the following as issues seeking further clarification:

- The use of 'must' is a problematic term in the context of Matters of National Environmental Significance (MNES). This creates a situation where a proponent may be exposed to challenges if there is doubt that every proposed matter has not been addressed.
- The definitions of Critical Protection Area, Significant Impact, and Unacceptable Impact seem unworkable due to the absence of materiality thresholds. It is important to define the significance or magnitude of impact to prevent a blanket prohibition on all actions.
- The concept of 'perpetuity' sparks questions about its practical application, especially in regions with limited land availability for offsets and restoration actions, such as Western Australia's Pilbara region.
- There are concerns about interpretation of landscape / seascape scale, particularly in the context of strategic assessments. The concerns here relate to its inflexibility, and the failure to acknowledge the challenge of achieving projected outcomes when there are concurrent actions or activities within the region.
- The definition of 'any persons' under the NES for *Community Consultation and Engagement* is very broad, raising concerns about activist *pro forma* email campaigns used to frustrate project submissions. The requirement to permit anonymous comments will impede further engagement between the proponent and the author.
- Interpretation of NES *Restoration Actions and Restoration Contributions*, particularly for restoration in regions such as Western Australia's Wheatbelt is an area requiring further attention. The lack of specific criteria for defining "good" or effective restoration is highlighted as an area that requires further clarification. There is also a lack of clarity around offsets and interactions between the NES for *Restorations Actions and Restoration Contributions*.
- The rigidity of the 'like for like' benefits requirement, especially in cases of World Heritage Areas (WHA) or National Heritage Areas (NHA), where determining equivalence may be challenging to navigate. The limitation of focusing restoration actions within the same state/territory is overly restrictive and fails to allow for restoration of habitat for migratory species.

The overall impact of the above appears to be a framework that will be overly complex and onerous to navigate, not only for the proponents, but also the assessing officers within the Environmental Protection Authority. This not only fails the intent of the Nature Positive reforms, but also places at risk current and future investment pipelines in Western Australia. It too has the potential to create perverse outcomes where projects that are critical to decarbonisation are stifled by impractical regulation.

### **Approvals timelines are likely to be longer, not shorter**

Streamlining approval processes should be of high priority to ensure efficiency and minimise duplication of effort, however it is currently unclear how this will be achieved.

As an example, the proposed 'Low Impact' pathway will effectively replicate the key steps of the current approvals process, with the same timeframes. Further, the absence

of defined timeframes when 'stop the clock' (request for information) provisions are used, the lack of information about regional planning, and the fact that the reforms require the bulk of information up front fails to align the legislation with the intended goal of shortening approvals timelines.

Similarly, it does not appear that the new Federal system will follow the Western Australian model in considering economic and social outcomes for projects. This means parallel processing between the two systems will be difficult, adding to approvals timelines.

Regional planning could alleviate some of these concerns, but there is a lack of detail on this process and how regions are being identified as suitable for this approvals system.

Accreditation of State processes by the new Environmental Protection Australia is crucial for industry, emphasising the need for the Federal Government to prioritise this accreditation and provide clear timeframes for its implementation.

The inclusion of post-assessment matters, like the NES *Restoration Actions and Restoration Contributions* requirement means that a restoration action management plan needs to be developed and subject to expert approval prior to commencement action. This further extends the approval and assessment period, which poses significant challenges for major projects.

### **Accountability and trust**

There are two key concerns in relation to accountability and trust, which have been further exacerbated by the Department's release of the draft Pilbara Bioregion Policy Statement.

The first is the risk of a potential disconnect between the policy and operational context of the Department and Environmental Protection Australia (EPA). For both to work together effectively, they must both interpret policy in the same way, agreeing to the same language, definitions and statement of intent. This extends to timeframes and expectations.

Furthermore, the governance structure of Environmental Protection Australia must be robust and fair. A large amount of decision-making is being transferred from the Minister to the Chief Executive Officer of EPA, and with this comes a transfer of trust. To ensure accountability however, it is critically important that the EPA, while an independent statutory authority, reports to the Minister for Environment. The Minister would then issue a Statement of Expectations for key approval and regulatory agencies, including the EPA, and require the EPA and agencies to issue a Statement of Intent in response.

### **Concluding remarks**

Once again, we thank you for the opportunity to participate in this process. It is clear there is still considerable work that needs to be done to ensure we strike the right balance with this reform, and giving industry the opportunity to fully engage in this process is essential.

To this end an exposure draft accompanied by the rules, regulations and technical guidance must be released prior to its introduction into Federal Parliament. As we have seen with other areas of policy, it doesn't bode well for the community, particularly in terms of building trust and demonstrating accountability, when significant reforms are rushed through Parliament without adequate consultation and scrutiny.

It would also be helpful for the Department to demonstrate how industry's concerns are being addressed in shaping the policy and legislative design. Similarly, providing insight into what processes, practices and definitions have not changed would also be useful.

Should you wish to discuss the content of this letter further, please do not hesitate to contact Aaron Morey, CCIWA Chief Economist, Director of Policy, via email at [aaron.morey@cciwa.com](mailto:aaron.morey@cciwa.com).

Yours sincerely

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