

10 May 2024

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Chamber of Commerce  
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Dear Mr Tregurtha

### **Nature Positive – Consultation March 2024**

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 help realise our vision to make Western Australia the best place to live and do business.

We have been consistent in our feedback to this process. It is critically important that these reforms strike a sensible balance between protecting the environment and enabling economic development, which creates jobs and ensures we can at least maintain current standards of living. The last thing industry, and indeed the broader community, need is additional layers of complexity and duplication, which threatens investment and much needed capital flows, costs jobs, and restricts government revenue streams.

In April, the Minister announced the decision to return to the phased-in approach as initially proposed by the Samuel review. We welcomed this decision as it provides industry more time to provide genuine feedback. We also understand that instead of delaying the whole suite of reforms, the Minister will seek to push through legislation in the coming months to establish the new Environmental Protection Australia (EPA), tasked with compliance, and Environment Information Australia (EIA), tasked with data collection and management.

The Minister has also publicly committed to further engagement on Tranche 3 legislation, following feedback about the process of engagement so far. It is critically important that Government and industry, including those working on the frontline, work together to test the reforms against current practices and processes, potentially through workshops for different industry sectors. It is also imperative that full transparency is provided as to the regulatory impact, both positive and negative.

Once again, we thank you for the opportunity to provide comment on this matter. CCIWA remains committed to representing all Western Australian businesses and industries at future consultations, and again extends an offer to facilitate engagement opportunities with industry here in Western Australia.

Ahead of any consultation for Tranche 3 legislation, we provide the following overarching comments in relation to the March 2024 consultation in what follows. Further to comments raised in previous submissions, and below, detailed feedback is also provided in Appendix 1.

- The concept of Nature Positive is unworkable as currently defined, and we remain extremely concerned that it remains the principal lens through which all future projects will be assessed and approved. We again reiterate that the Federal Government should look to Western Australia's balanced approach to development, where the social, economic, and environmental factors are considered in our State's decision-making processes. We also suggest the EPA's CEO should have practical experience in the application of these factors.
- We strongly support greater consultation, through workshops and testing, on the Concept Model for Calculating Restoration Contributions (the calculator). While the factors contributing to the calculator appear simpler to navigate, the remoteness factor will significantly impact projects in WA. It also remains unclear how climate change may impact restoration action costings.
- The Minister *must* be required to issue a Statement of Expectations to the EPA, rather than *may* give a Statement of Expectations. This acts as an important accountability measure to ensure the EPA remains on task and remains committed to its tasks.
- Industry is still waiting to hear how these reforms will be 'better for business', which the Minister has clearly identified as one of the key objectives of these sweeping reforms. A clear outline of how the proposed reforms will drive efficiency gains would be welcomed by industry. Further, it is essential that a comprehensive regulatory impact statement for the legislation and corresponding regulations, rules and guidelines is provided, as current materials indicate slower approvals timelines for projects.
- CCIWA strongly opposes the ceding of decision-making powers away from the Minister to the CEO of the EPA. Rather, a framework that is consistent with WA is the preferred model of governance, where the State's EPA, while an independent statutory authority, reports to, and is held accountable by, the Minister for Environment.
- To remove the longstanding issue of a lack of clarity, the legislation should be accompanied by a clear and succinct roadmap, which compares old processes to new, and where decision making authority is proposed to change.
- Clarification is also sought regarding marine parks and the role that the National Parks Director has in relation to marine parks.

### **Concluding Remarks**

Once again, we welcome the change in approach to consultation, which we hope will see more meaningful industry engagement, by including businesses who are at the coalface of decision making.

Given this is the most significant transformation of our system of environmental protection, it is critically important that when Tranche 3 legislation is released publicly, industry is provided the full suite of reforms, including factsheets, roadmaps, rules, regulations and the legislation. This will enable industry to test the framework against current practices, and provide robust feedback.

In addition, there has been significant feedback provided to-date and it's important that Government can demonstrate how this feedback is being managed and considered.

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

A handwritten signature in black ink, appearing to be 'CR' with a horizontal line extending from the end.

Chris Rodwell  
**Chief Executive Officer**

Papers	Feedback
<p><b>Transitional and Consequential</b></p>	<ul style="list-style-type: none"> <li>• The decision-making on proposed accreditation frameworks for assessment and authorisation processes, to replace bilateral processes, should remain with the Minister.</li> <li>• While a two-year grandfathering clause is nominated, it is unclear what arrangements have been considered if an event takes longer than two years to resolve. Given the slow pace of adopting and finalising arrangements, a longer timeframe may be more realistic for some States with higher interactions with Federal legislation.</li> <li>• ‘Stop the Clock’ provision orders should be extended to at least 12 months, as there are numerous situations where the proposed 3-month time requirement can simply not be met. E.g.: additional seasonal data requests, additional groundwater information.</li> </ul> <p>The cancellation of assessments and forcing proponents to commence a new application mid-way through an existing process is a significant and material concern for proponents. Applications to vary conditions still being considered at the transition date should not require a complete restart of the variation request process.</p>
<p><b>Concept Model for Calculating Restoration Contributions</b></p>	<ul style="list-style-type: none"> <li>• The lack of quantitative values in the model makes it difficult to test the outcomes of the concept model. Industry would need further detail on the elements confirmed to factor into the model and the definitions of concepts factoring into the calculator. Further, the Department should confirm if other factors such as climate change and projected net gain will impact the calculator, and whether terms used interchangeably are defined the same (for example, vegetation, habitat, ecosystem are all used).</li> <li>• Given that habitat condition may be different for different species captured in the development area, how will the model take this into consideration?</li> <li>• Remoteness factors could significantly drive up the costs of projects, and in turn, act as a major disincentive to business investment in WA, given that the majority of our projects could be classified as remote or very remote. The addition of a remoteness multiplier contrasts with financial assistance given to critical minerals and remote housing projects. We strongly urge the Department to consider another option that does not unfairly penalise WA, our regional communities and future opportunities for economic diversification.</li> <li>• Any discussion of ‘proportionate costs associated with project environmental risk’ need to be strongly considered in the context of Australia’s already high-operating cost environment and the impact this has on future investment.</li> <li>• Environment Information Australia should provide standardised, regional, land quality ratings. These ratings should be reviewed on a regular basis, and factor in both short and long-term historical change.</li> </ul>

Draft Standards	Feedback
<b>Matters of National Environmental Significance</b>	<ul style="list-style-type: none"> <li>• Clarity is sought on the role of Statutory Committees, where a MNES or NES may have reference to a Statutory Committee.</li> <li>• It is currently unclear if definitions are consistent across legislation and policy, particularly 'baseline', 'habitat' and 'net positive outcome'. For example, the definition of habitat in the MNES includes former and potential habitat.</li> </ul>
<b>Restoration Actions and Restoration Contributions</b>	<ul style="list-style-type: none"> <li>• Industry have raised concern about the real-world application of the proposed model, given some projects are constructed in phases.</li> </ul>
<b>Regional Planning</b>	<ul style="list-style-type: none"> <li>• The concept of regional planning needs to be clearer and better defined. Industry would greatly welcome better transparency around intent and outcomes of regional planning.</li> <li>• It is proposed that Regional Plans will be developed through engagement with local communities, local government, First Nations groups and other relevant stakeholders. The Regional Planning standard should explicitly include existing land holders and users.</li> <li>• Clarity is sought on the information captured in regional planning, and whether economic contributions of a region will interact with decision making pathways. For example, the draft Pilbara Biodiversity Statement completely failed to acknowledge economic and strategic importance of the Pilbara Bioregion, and how existing land use interacts with approvals processes under the EPBC Act currently.</li> <li>• Regional Planning approvals should be faster and clearer, to acknowledge the economic contribution.</li> <li>• Boundaries for regional planning zones should be flexible, to cater for projects on or across boundaries.</li> </ul>
<b>Data and Information</b>	<ul style="list-style-type: none"> <li>• The draft standard reads as a collection of principles, rather than a set of standards. The intent of the document should be clearer, and all technical guidance should be finalised before the standard is finalised.</li> <li>• Industry is concerned that the data held in private may not align with the core principles of the letter.</li> <li>• The approach that 'some data is better than no data' may see an influx of data classed as Tier 2 or 3, as a default option for assessment officers.</li> </ul>

Exposure Drafts	Feedback
<b>Nature Positive (Environment Protection Australia) Bill 2024</b>	<ul style="list-style-type: none"> <li>• If approvals are transferred to the CW EPA, it should have an explicitly legislated objective to consider social and economic impacts of a project.</li> <li>• The CW EPA should have an explicitly legislated ability to hire external contractors, as is afforded to the EIA.</li> <li>• Any future CEO of the CW EPA should have experience in social, economic and environmental factors, and sustainable development practices.</li> </ul>
<b>Nature Positive (Environment Information Australia) Bill 2024</b>	<ul style="list-style-type: none"> <li>• Industry understands that the concept of the environmental economic account will be determined by the EIA, with the purpose of determining the concept of nature positive and to assist with reporting on the State of the Environment. This concept should be further defined, including the principles and factors contributing to the account, prior to Government implementing this concept in any manner or form. There is a risk that the policies and future legislation will be developed based on incomplete data and/or may be too broad to be applied across different geographic contexts.</li> </ul>
<b>Nature Positive (Environment) Bill 2024: Accreditation of processes and arrangements</b>	<ul style="list-style-type: none"> <li>• If the Minister suspends or cancels part of an accreditation, and the updated version is made publicly available, it is unclear if the suspended or cancelled parts will remain in the public version.</li> <li>• If the Minister or CEO of the CW EPA imposes conditions on an accreditation, these conditions should be made public and justified with data from the EIA.</li> </ul>
<b>Definitions</b>	<ul style="list-style-type: none"> <li>• The proposed definition of 'intergenerational equity' should be removed from the legislation, or alternatively be re-titled to 'intergenerational environmental equity', as the current definition is too broad and subject to interpretation, adding significant risk and vulnerability to approvals processes.</li> </ul>