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Chamber of Commerce and Industry WA

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Rachel Parry
Deputy Secretary
Department of Climate Change, Energy, the Environment and Water
GPO Box 3090
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*Via email: EnvironmentLawReform@dcceew.gov.au*

Dear Deputy Secretary

**Consultation: National Environmental Standard: Matters of National Environmental Significance**

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.

Thank you for the opportunity to provide comment on the proposed National Environmental Standards (NES), which underpins the *Environmental Protection and Biodiversity Conservation Act (the EPBC Act).*

The primary objective of the newly reformed *EPBC Act* is to create an approvals framework that is better for the environment and better for business, facilitating ecologically sustainable development.

The NES must first align with the objectives, principles and outcomes of the *EPBC Act*, and secondly, they must be workable, realistic, and concise.

From the outset, we note that Matters of National Environmental Significance (MNES) are the non-negotiable matters that proponents must protect under the *EPBC Act*. Provided for consultation is the draft legislation (the regulation) and the policy position (the policy). At this stage, we suggest amendments are needed to meet both the policy and regulatory context.

With this in mind, we provide the following feedback regarding the MNES NES.

**Policy divergence regarding 'impacts':** We welcome the clearer application of the term 'unacceptable impact' in the legislation. Despite this, there is still a lack of clarity in both the regulation and policy as to when different definitions of impact apply, and why.

For example, indirect impact is defined in the *EPBC Act* and regulation, yet the policy broadens the definition by introducing several additional considerations for the decision-maker and proponents, beyond the secondary action test (s527E, *EPBC Act*).

This also presents a risk that the proponent will be required to address all MNES at point of referral even if certain MNES are not relevant. If a proponent does not address all MNES at the referral stage, and the decision-maker approves an action, the current wording implies the risk of an application subject to judicial review.

Further divergence occurs with the requirement to consider impacts in past, present, and reasonably foreseeable context. Respecting the concept and intent, without clear guardrails for decision-makers, there is a real risk that individual project assessments inherit regional burdens from other proponents, legacy impacts and broader land-use change. This may result in findings that 'significant' or even 'unacceptable' impacts will occur, despite strong project-level design and mitigation.

We recommend that both the policy and regulation be revised to explicitly outline that proponents are only required to identify relevant MNES at their site, and outline how the principles in the NES then apply. This should include, for example, setting the quantitative limits through bioregional plans or protection statements. Project-level application should be proportionate, based on agreed datasets, and designed to avoid double-counting across multiple projects.

**Repair and rehabilitation are not contradictory:** The regulation and policy both conclude that rehabilitation is not considered repair, with the policy explicitly stating that progressive rehabilitation is not repair. This results in a very narrow definition of the concept of repair, with major implications for the resources sector, particularly critical minerals. This does not align with international approaches to the mitigation hierarchy.

As currently worded, we hold concerns that if a mine is designed for progressive rehabilitation and full closure, these works will not count towards reducing "residual significant impacts". More of a proponent's operational footprint is, therefore, likely to be treated as residual and, as a result, must be fully compensated through offsets or restoration contributions.

Further, the interchangeable use of 'repair', 'remediate', 'rehabilitation' and 'restoration' also creates uncertainty on how the relevant legislation will be applied.

Altogether, the current wording creates a number of risks, including:

- disincentivising investment in closure, as high-quality rehabilitation does not reduce offset or contribution obligations.
- creates duplication between State and Federal obligations and/or payments, and increases Commonwealth liability for projects with strong rehabilitation outcomes and designs; and
- inadvertently causes a project to reach unacceptable impact thresholds.

We recommend that the definition of repair is amended so that rehabilitation, which meets defined ecological or functional criteria, can count towards 'repair' under the mitigation hierarchy. This should occur when the action suggested clearly reduces the residual significant impact with only the remaining gap treated as compensable under

other NES processes. We also recommend that the policy is clearer in guiding proponents and regulators, particularly proportionality at a landscape scale.

**Further clarification needed on core definitions and other NES:** The policy paper envisages the MNES Standard applying not only to individual approvals, but also to classes of actions, strategic assessments and bioregional plans. Despite this, key parameters such as baselines, multipliers, and net gain are not publicly available.

Combined, these have significant implications for the approval of Bilateral Agreements, as the Minister must be satisfied both that the accredited State process and the decisions made under it are 'not inconsistent' with all relevant NES.

However, we are yet to be advised on how many NES to expect, their intent, and target audiences. We therefore reiterate calls for a clear 18-month timeline for future NES consultations.

For example, the Minister alluded to 'Net Gain' being prescribed as an NES during debate in Parliament.[1] There has also been significant feedback regarding the Offsets/ Restoration Contributions Calculator over the past few years, as several aspects were entirely unworkable. It remains unclear how this calculator will be operationalised.

We also suggest that DCCEEW clarify if it is intended to start anew on the *Draft Pilbara Bioregion: EPBC Act Policy Statement* from 2024. This policy was unworkable and, since it was initially pulled, there has been no further request for industry comment. It is important that the supporting framework documents include consultation with industry regarding the practicality of on ground implementation.

Until we receive the full package of regulations and policy, it is difficult to understand the full requirements under the *EPBC Act*. This hampers State Governments in securing Bilateral Agreements, as they cannot compare future NES requirements against existing processes.

We also recommend that the regulations and guidance for accreditation to partially or fully recognise existing State policy frameworks and offset funds where they deliver outcomes equivalent to, or better than, the MNES NES.

Should you wish to discuss the content of this letter further, please do not hesitate to contact Anthea Wesley, Head of Policy, via email .

Yours sincerely

Matt Golds
**Acting CEO**

[1] Commonwealth of Australia. Hansard – Senate, page 78. November 2025