

28/03/2024 08:30:00 PM

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PM Correspondence - ATT:57736 Nature Positive Plan

Prime Minister

Following on from representations made by members of the WA State Government and Industry Peak Bodies, please see the attached letter concerning the Government's Nature Positive Plan.

This letter is co-signed by a range of WA business leaders from across industry to express their concerns regarding both the proposed changes along with the consultation process.

Kind regards

Private & confidential

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2601

HANCOCK
PROSPECTING

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Dear Prime Minister

RE: Government's proposed Nature Positive Plan

As a group of business leaders representing tens of billions of dollars in tax revenue generated each year in Western Australia that is used to fund nurses, teachers, our local schools, hospitals, and roads along with government services across Australia, we write to express significant concerns regarding the proposed Nature Positive Plan.

We also represent some hundred thousand Western Australian families and for some of us, thousands of interstate fly-in-fly-out workers who rely on businesses that operate in Western Australia.

Prior to the election, you committed that reform to the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) under an Albanese Labor Government would end State/Federal duplication and speed up and streamline environmental approvals for proponents. This commitment has been repeated on numerous occasions since your election.

The Nature Positive Plan released by the Australian Government in December 2022 is expressed as having dual objectives: better for the environment, better for business.

Industry supports reforming the EPBC Act to streamline approvals and speed up decision-making. In Western Australia, we operate to high environmental standards with projects already transparently assessed by an independent Environmental Protection Authority. Industry works closely with the WA regulators to protect our environment and heritage values.

Regrettably, we are deeply concerned the Nature Positive Plan, as we understand it – given the lack of clarity over the proposed legislation – will lead to greater uncertainty for business, heightened risk of third-party intervention, approval delays and, fundamentally, material land and resource sterilisation leading to less investment in Australia and wider impacts across the economy, without necessarily leading to better long-term environmental outcomes.

Further concerns raised by industry in lock-in consultations, and directly with Federal Minister for the Environment and Water, the Hon Tanya Plibersek MP, and other members of your Cabinet, have been met with continued insistence the reform will make it easier for business, despite the contrary being illustrated in all information provided to industry to date. We have received little to no feedback on how our legitimate concerns will be addressed.

As currently proposed, we estimate that the reform could and is likely to lead to billions of dollars of lost investment and tens of thousands of lost jobs in Western Australia alone. In important areas like agriculture, housing, tourism, infrastructure, renewable energy and critical minerals developments, this

reform could have undesirable severe impacts across the economy, including on economic productivity, and act contrary to your Government's stated economic policy objectives.

Given the seriousness of the matter, we request that you personally intervene to ensure the spirit of your commitment is adhered to, and specifically request that:

- Consultation is held openly, with the complete reform package (including policies and guidelines) provided as early as possible and road-tested against real life development scenarios across multiple business sectors, to allow a proper assessment of the impact of hundreds of pages of materials well before legislation is introduced into Parliament.
- The planned Environment Protection Australia (EPA) is designed and established with compliance and enforcement powers as proposed in your 2022 election platform, not as an independent approval body. We note, the Samuel Review recommended establishment of an Office of Compliance and Enforcement in the Federal Department, and an Environment Assurance Commissioner to audit Commonwealth decision-making under the EPBC Act. The Samuel Review did not recommend establishment of an independent EPA.
- The Minister remains the decision-maker on environmental approvals, including Critical Protection Areas, and decisions are made with mandatory consideration of economic, social and national interest factors, together with strong environmental outcomes. The Minister is best placed to weigh competing values and balance national objectives.
- The reform is designed to remove duplication between the State and Federal approval processes and delegate more environmental approvals to the States.
- Unrealistic offset requirements do not place a disproportionate burden on proponents that will further disincentivise investment in Australia.
- Rather than replacing the existing EPBC Act process, consider making improvements within the architecture of the existing EPBC Act that would deliver "efficient, streamlined and effective environmental assessment processes", as committed in your 2021 National Platform, and a rationalised, risk-based approach as recommended by the Samuel Review. An example would be automatically recognising tourism environmental assessments, leases and licenses already approved under State National Park legislation to avoid duplication.
- The reform does not lower the threshold of what are considered significant or unacceptable impacts, which would otherwise result in a greater number of projects being federally assessed, while not necessarily resulting in better environmental outcomes for those matters the EPBC Act was intended to protect.
- The proposed new object relating to climate change be removed and any obligations imposed on proponents be limited to those necessary to enable the required reporting to the Minister for Climate Change and Energy under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act).
- The penalty regime is carefully reconsidered to ensure any penalties reflect the level of non-compliance, as recommended by the Samuel Review.

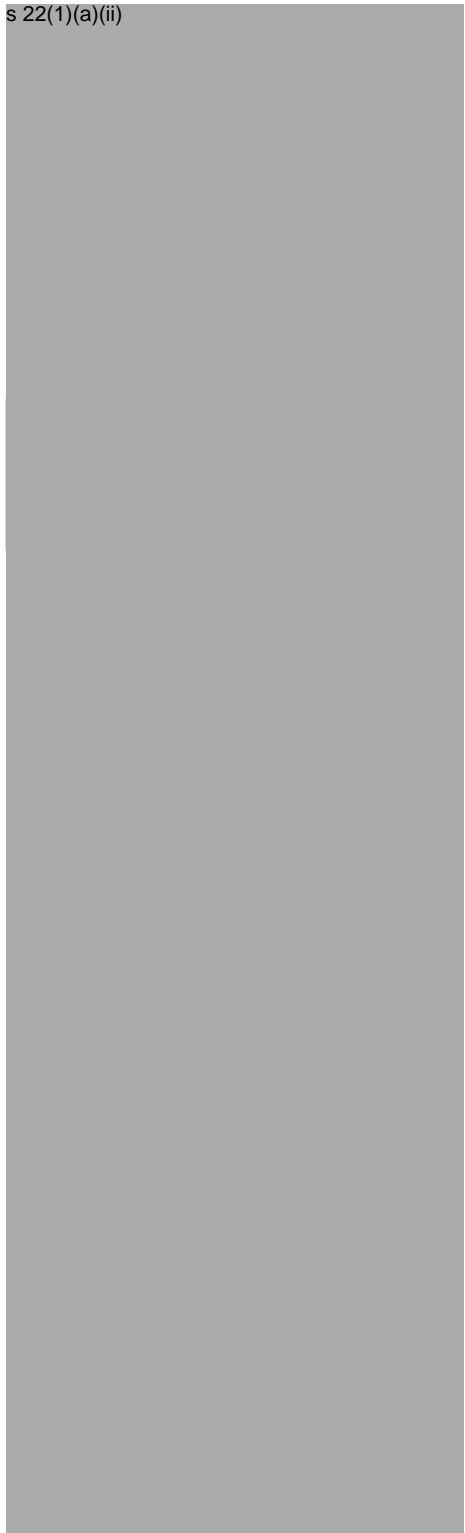
These issues are explored in further detail in the attachment to this letter.

These are important reforms. Unless the workability of the whole package is tested and fulsome consultation occurs (including release of the full draft legislation and supporting documents, as your Government indicated it would do in its Nature Positive Plan 2022) they are likely to have severe impacts across the economy, adding to the cost of living pressures and redirect investment, necessary to maintain living standards, away from Australia.


Our contact details are listed below. We hope to hear from you soon so we can continue working together to protect our environment while continuing to grow the Australian economy and maintain the living standards of Australians.

Yours sincerely

s 22(1)(a)(ii)



s 22(1)(a)(ii)




Garry Korte

Chief Executive Officer

Hancock Prospecting

s 22(1)(a)(ii)

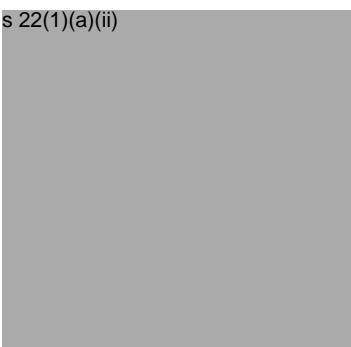


Simon Trott

Chief Executive Officer, Iron Ore

Rio Tinto

s 22(1)(a)(ii)



Reform Process

The reform process to date has been largely behind closed doors with no real business and stakeholder participation.

There has only been a piecemeal public release of limited materials being the 'Nature Positive Plan: *better for the environment, better for business*' December 2022, the Government response to the 'Independent Review of the EPBC Act – Final Report', October 2020 by Professor Graeme Samuel AC (Samuel Review) and policy-setting papers and draft National Environmental Standards from the three confidential consultation sessions held in Canberra in October and December 2023, and February 2024.

Also, only sections of the draft legislation have been released during closed door meetings on a confidential basis. No regulations, rules or guidelines have been released in any form.

In the Nature Positive Plan, the Australian Government committed to "*extensive consultation with stakeholders around the detail of the legislation.*" It was indicated that draft legislation would be released as part of this consultation to enable "*detailed feedback*". It also stated that the "*legislation will be released as an exposure draft prior to being introduced into the Parliament*".

The complete reform package needs to be publicly available and road-tested against real life development scenarios across multiple business sectors. Not doing so means the true economic impact cannot be understood, nor the potential for unintended consequences.

Environment Protection Australia (EPA)

Labor's 2022 election platform proposed designing and establishing an EPA with compliance and enforcement powers.

The reform extends the EPA's functions to assessment and decision-making in respect of all project applications. The Minister will only retain a call-in-power which can only be exercised in circumstances where the proponent's application has been accepted by the EPA. This is a direct contradiction of the Samuel Review recommendation which specifically rejected calls for an independent body to make approval decisions.

Decision-making requires consideration of complex factors in addition to environmental impacts including from an economic, social and national interest perspective. An unelected EPA with core capability in environmental aspects only is inherently ill-suited to this role.

Decision-making also carries great responsibility and needs to be undertaken by an elected official. The Samuel Review stated that it "*is entirely appropriate that elected representatives (and their delegates) make decisions that require competing values to be weighed and competing national objectives to be balanced.*"

No Devolution

A key recommendation of the Samuel Review and reflected in the Australian Government's Nature Positive Plan was legally enforceable National Environmental Standards to provide a clear pathway for greater devolution by the Australian Government to the State Governments.

The reform proposals for National Environmental Standards do not provide a pathway to devolution. Without devolution, duplication between the State and Federal environmental approval processes remains just as inefficient and costly for the environment, business and the community.

A clear pathway for devolution and a single touch approval process must be facilitated through the reforms. This requires greater focus on State accreditation than is currently evident.

Restoration Actions and Contributions (formerly known as offsets)

The approach to calculation of offsets remains opaque – a new offset calculator is being developed, but there has been no consultation whatsoever.

Further consultation with stakeholders is required to ensure the reform proposals with respect to both restoration actions and contributions are fit-for-purpose. This is particularly critical in respect to the proposed offset calculator.

Threats to the Australian environment are not exclusively a product of development regulated under the Nature Positive legislation. The reform process should take account of the holistic threat profile for protected matters and how net gain outcomes are to be achieved beyond the obligations arising from development.

We remain concerned the proposed offset requirements risk a disproportionate burden being placed on proponents, further disincentivising investment in Australia.

Approval Process

The reform proposals contain a new approval process flow replacing the existing approval process structure under the EPBC Act.

The proposed new process is complex, uncertain and largely front ended, that is, a significant proportion of the process is self-assessment and takes place before an application for approval can be made. This creates greater uncertainty for proponents as they will not know if they are on the right track until the application is lodged.

In contrast, the current EPBC Act process involves the participation of the regulator much earlier through the making of a controlled action decision and is iterative from that point. Also, the current EPBC Act approval process is well established and aligned with State environmental impact assessment processes in Australia.

Rather than replacing the existing EPBC Act process, a more certain and simple reform would be achieved by making improvements within the architecture of the existing process.

Jurisdictional Creep

There is now a proposed definition of 'unacceptable impacts' and an appreciable lowering of the threshold at which impacts are likely to be considered significant. Consequently, more projects will be captured and there will be increased duplication with State and Territory regimes.

Numerous requirements of the approval process can be prescribed in the rules. This also leaves the door open for regulatory creep and increased burden on proponents over time.

Prohibitions including Critical Protection Areas

The reform proposals contain a requirement that the EPA must not approve actions if the CEO is satisfied that the action would have, or is likely to have, an unacceptable impact on a protected matter. The Minister, not the CEO of the EPA, should be responsible for making determinations of this nature.

The thresholds proposed for prohibitions have not been tested, are open to interpretation and generally lack any materiality threshold. The process for determining Critical Protection Areas is also unclear.

This concern is illustrated by the Australian Government's recent release of the draft Pilbara Bioregion: EPBC Act Policy Statement (Pilbara Policy).

The Pilbara Policy identifies "*avoidance areas*" – essentially *exclusion zones* that pursuant to the Pilbara Policy have been "*informed by a review of specific literature and studies of species ecology*". There is no reference to proponent commissioned information informing the policy. On the face of it there is major data bias and gaps. Coupled with statements regarding impact that are not supported by objective justification and avoidance areas that are extremely conservative, the Pilbara Policy would effectively sterilise major land area and resources.

If Critical Protection Areas follow a similar policy direction, the consequences will be the same.

The Minister, not unelected public servants, should be responsible for making determinations of this nature. Decisions should be made after taking into account factors including economic benefit and the national interest.

Climate Change

The Australian Government policy position on climate change was not to include a climate change trigger for assessment, rather, "*integrate climate change considerations, where relevant, throughout national environmental law without duplicating existing mechanisms for reducing greenhouse gas emissions*".

The inclusion of a number of climate change requirements including the provision of greenhouse gas emission estimates and a new object being "*climate responsibilities that contribute to global goals for protecting nature and responding to climate change*" erodes that position and establishes a direct pathway for duplication of other requirements, including under the NGER Act and associated Safeguard Mechanism.

The Australian Government's policy position should be reflected by removing the proposed new object relating to climate change and any obligations imposed on proponents be limited to those necessary to enable the required reporting to the Minister for Climate Change and Energy under the NGER Act.

Penalty Regime

The reform proposals include a limb that contemplates a penalty calculation that is referable to 10% of the corporation's annual turnover. This limb appears to be modelled on other Commonwealth legislation, including legislation targeting financial crime.

The liability regime includes a strict liability offence for every provision meaning even where a proponent exercised due diligence and did not intend to cause the compliance issue, liability can arise. Significant penalties may also be issued administratively without any burden of proof being discharged by the EPA.

The penalty regime needs to be carefully reconsidered.



Australian Government
Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING
ONE NATIONAL CIRCUIT
BARTON

Reference: MC24-047186

Dear s 47F

Thank you for getting in touch with the Prime Minister.

Looking at the issues you have raised, I would recommend the Department of Climate Change, Energy, the Environment and Water would be best placed to respond to you.

To assist with that, we have referred your correspondence to the Department of Climate Change, Energy, the Environment and Water for their consideration.

Please keep in mind that your correspondence might need input from multiple government departments or agencies and this could take time to compile for you.

You can contact the Department of Climate Change, Energy, the Environment and Water regarding the progress of your correspondence by visiting their contact us web page.

On behalf of the Prime Minister, thank you again for getting in touch.

Yours sincerely

s 22(1)(a)(ii)

Senior Adviser
Ministerial Correspondence Unit
Department of the Prime Minister and Cabinet

Note: Please do not reply to this email as this address is not monitored. If you have follow-up questions for the Department of the Prime Minister and Cabinet, please visit our contact us form: www.pmc.gov.au/contact-us#contact-form

From: [MAILOUT](#)
To: s 47F
Subject: Ministerial Correspondence - MC24-047186 [SEC=OFFICIAL]
Date: Thursday, 11 April 2024 2:26:40 PM

OFFICIAL

Good afternoon s 47F

Thank you for submitting correspondence to the Hon Anthony Albanese MP, the Prime Minister on 28 March 2024 co-signed by a range of WA business leaders regarding Nature Positive Plan.

Please be advised that a system error resulted in an auto-acknowledgement response being generated advising that the correspondence had been referred to the Department of Climate Change, Energy, the Environment and Water. This is incorrect and your correspondence is currently being considered by the Department of the Prime Minister and Cabinet.

Regards

Ministerial Correspondence Unit
Department of the Prime Minister and Cabinet



ASSISTANT MINISTER TO THE PRIME MINISTER
ASSISTANT MINISTER FOR THE PUBLIC SERVICE
MEMBER FOR PERTH
The Hon Patrick Gorman MP

Reference: MC24-047186

s 22(1)(a)(ii) and co-signatories

s 47F

s 47G(1)(a)

Dear s 22(1)(a)(ii) and co-signatories s 22(1)(a)(ii) s 22(1)(a)(ii) s 22(1)(a)(ii)

Thank you for your correspondence dated 28 March 2024 to the Hon Anthony Albanese MP, Prime Minister, regarding implementation of the Government’s Nature Positive environmental law reforms. The Prime Minister has asked me to reply on his behalf.

The Australian Government is committed to reforming our environment laws to better protect nature, while making it easier for business to get the approvals they need.

Ahead of the election, we committed to work with stakeholders to provide a full response to Professor Samuel’s Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The response, the Nature Positive Plan, was released by the Hon Tanya Plibersek MP, Minister for the Environment and Water (Minister Plibersek), in December 2022, and sets out the Government’s approach to environmental law reform. Since then, the Government has worked methodically on sensible reforms to national environmental law, consistent with the Nature Positive Plan. It remains our view that this will deliver a system that works better for business and nature.

You will be aware Minister Plibersek has announced next steps for Nature Positive reforms. This includes the introduction of legislation for the second stage of reforms in the coming weeks, to establish an independent environmental regulator, Environment Protection Australia (EPA), that will provide better guidance to businesses going through their environmental approvals, and to set up Environment Information Australia, a data-holding body that will give businesses easier access to the data they need.

I note the views expressed in your letter that the EPA should be established as a compliance body only. Consistent with the commitment set out in the Nature Positive Plan, the EPA will be responsible for project assessments, decisions and post-approvals, where these are not undertaken by another accredited decision-maker. There will also be opportunity for WA environmental agencies to be accredited to assess and approve projects under new nature positive laws in the future.

Minister Plibersek also announced nearly \$100 million to speed up environmental approval decisions, through more staff to assess project proposals, more tailored support for businesses, extra funding for threatened species research, and extra funding to work with the states and territories on regional plans, to help proponents avoid sensitive, no-go areas and allow projects to proceed more quickly.

The Government will take the time it needs to get reforms right, and will continue to consult closely with stakeholders throughout, including releasing a comprehensive exposure draft of the third stage of the new laws for public consultation prior to their introduction into Parliament. This means stakeholders will be able to see legislation for reforms to the assessment and approvals processes, accreditation pathways, and restoration actions and contributions.

Thank you again for bringing your concerns to the Prime Minister's attention.

Yours sincerely

s 22(1)(a)(ii)

PATRICK GORMAN

16 / 05 / 2024