



19 November 2020

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: ec.sen@aph.gov.au

Dear Committee Secretary

The Minerals Council of Australia (MCA) welcomes the opportunity to provide a submission to the Senate Committee inquiry to support the Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020 (the bill).

The MCA represents Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. MCA member companies are signatories to *Enduring Value – the Australian Minerals Industry Framework for Sustainable Development*, the principles of which are consistent with the United Nations' Sustainable Development Goals.¹ The MCA supports robust environmental regulation that is both efficient and effective in achieving the sustainable development outcomes expected by the Australian community.

The MCA supports passage of the bill which represents an important and timely first step in reforming the operation of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for improved business and environmental outcomes. Specifically:

- The reforms in the bill are largely administrative and will not have an impact on the environment
- The bill aligns directly with draft outcomes and direction of the independent review
- A staged approach to reform is appropriate. Moving early to support economic recovery from COVID-19 while maintaining strong environmental protection is sensible. Broader reforms anticipated to be included in the independent review final report will take time to consider and implement.

The reform imperative

For business, regulatory inefficiency leads to delays that impact investment, increases costs to business and slow or prevent the benefits from mining flowing to regional communities and the broader Australian economy. A one-year delay to a project can reduce the Net Present Value (NPV) by between 10 and 13 per cent. For large mining projects (of \$3 billion to \$4 billion), delay costs can be up to \$1 million per day.

Capital investment is mobile. Delays and uncertainty in regulatory processes increases business risk, making Australia less attractive for investment. For the minerals sector, this diverts investment offshore affecting the broader economy through reduced national output and the related economic and social contributions over the long term.

¹ Minerals Council of Australia, [Enduring Value Framework](#), 2015 Edition, MCA, Canberra, 2015.

Australia has faced an unprecedented economic and social threat from the COVID-19 pandemic. Pragmatic reforms to the EPBC Act will help reduce delays in project approval processes, without compromising the environment. This in turn will stimulate minerals industry and other investment and bring forward the major projects needed to support a speedy economic recovery that will benefit all Australians.

Unnecessary duplication and complexity

Many, if not all minerals developments require approval at the Commonwealth level in addition to assessment and approval under state/territory legislation. Commonwealth and state/territory environmental approval processes often overlap and are rarely synchronised. Different triggers, timeframes, reviews, requests for further information and a lack of efficient inter-agency coordination create unnecessary complexity, costs and delays and reduce investment attractiveness.

Further details on delays caused by these duplicative requirements can be found in the [MCA submission](#) to the independent review of the EPBC Act.

A succession of reviews have identified the problem of regulatory overlap, with the most recent, the Independent review of the EPBC Act having only just been completed. The review has been conducted over twelve months, involving input from hundreds of stakeholders along with extensive engagement. While the release of the final report is pending, the interim report found that:

A key criticism of the EPBC Act is that it duplicates state and territory regulatory frameworks for development assessment and approval. The Review has found that, with a few exceptions, this is largely true.²

A 2014 analysis by the then Commonwealth Department of the Environment concluded that coordinating Commonwealth and state/territory environmental approval processes would save Australian businesses \$426 million annually³

Approval bilateral agreements can play a critical role in reducing delays and addressing duplication. A well-functioning and stable approvals bilateral agreement supported by enabling legislation and appropriate safeguards to ensure outcomes are met would provide an integrated environmental assessment and approvals process, without reducing environmental protection.

Support for the Streamlining Environmental Approvals Bill

The MCA supports the Australian Government's regulatory reform agenda, including the implementation of 'single touch approvals'.

These reforms are consistent with the objects of the Act and do not affect environmental protection. Approval bilateral agreements are already enabled under the EPBC Act. The objective of the bill is only to improve the stability of those arrangements. These process-related reforms are necessary to ensure certainty for both proponents and governments where these agreements are established.

The bill is an important first step in a comprehensive reforms agenda – informed by Professor Samuel's review - that will provide increased certainty for proponents, reduce costs and delays for proponents and regulators by removing duplicative processes and delivering improved environmental outcomes.

The bill is consistent with the devolved decision making model proposed by the independent review of the EPBC Act. Professor Samuel's interim report notes:

Efforts have been made to harmonise and streamline with the states and territories, but these efforts have not gone far enough

² Ref p 8

³ Department of the Environment, [Regulatory cost savings under the one-stop shop for environmental approvals](#), Australian Government, Canberra, September 2014, p. 1.

The interim report also notes that where supported by national environmental standards:

Greater devolution will deliver more streamlined regulation for business, while ensuring that environmental outcomes in the national interest are being achieved.⁴

To support the establishment of approval bilateral agreements, Professor Samuel found:

Under the current settings, the mechanism to devolve approval decisions is inherently fragile.

Particularly important amendments are needed to:

- enable the Commonwealth to complete an assessment and approval if a state or territory is unable to
- ensure agreements can endure minor amendments to state and territory settings, rather than requiring the bilateral agreement to be remade (and consequently be subject to disallowance by the Australian Parliament on each occasion).⁵

The reform bill provides the necessary administrative fixes to address these issues.

Similarly, the recent Productivity Commission draft report on Resources Sector Regulation recognised that 'bilateral approval agreements have the potential to simplify the approval process for proponents' and recommended that the Act be amended in line with the similar 2014 amendment bill.⁶

It is understood the bilateral agreements will be supported by the establishment of national environmental standards and robust assurance arrangements. These mechanisms provide the necessary safeguards to ensure environmental outcomes are being achieved alongside efficiency gains.

The MCA, along with other stakeholders, has provided input on the development of draft national environmental standards and assurance arrangements. The MCA has noted these standards should be outcomes focused, practical to implement, reflect existing requirements and be applied at a regional (or collective) level.

The MCA would welcome the opportunity to provide further input on these important reforms. Should you have any questions, please do not hesitate to contact Chris McCombe – General Manager, Sustainability on 02 6233 0627 or via email chris.mccombe@minerals.org.au.

Yours sincerely



TANIA CONSTABLE PSM
CHIEF EXECUTIVE OFFICER

⁴ Samuel G, [Independent Review of the EPBC Act – Interim Report](#), June 2020, p.1

⁵ Samuel G, [Independent Review of the EPBC Act – Interim Report](#), June 2020, p.8

⁶ Productivity Commission (2020), [Resources Sector Regulation, Draft Report](#), March 2020, pp. 42 and 149