



Senate Standing Committee on Environment and Communications

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/NaturePositivebills

15 July 2024

Dear Committee Chair

The Australian Aluminium Council (the Council) represents Australia's bauxite mining, alumina refining, aluminium smelting and downstream processing industries. The Council welcomes the opportunity to provide feedback to the Inquiry into Nature Positive (Environment Information Australia) Bill 2024 [Provisions] and related Bills.

To achieve net zero will need more mining – not less.

Without mining, the world cannot reach net zero by 2050, and the minerals required to achieve our decarbonisation goals are of such magnitude that to reach net zero, we will need more mining, not less. While seeking to maintain Australia's highest standards for ESG, it is also worth considering that global demand will continue to be met from elsewhere if not provided by Australia.

Aluminium is one of the commodities most widely used in the global transition to a clean energy future¹. It is also recognised for its importance to both economic development and low emissions transition. Aluminium use is highly correlated with GDP, so as countries urbanise, per capita use of aluminium increases. It is expected that by 2050, global demand for aluminium is expected to nearly double². While an increasing proportion will be met through recycled aluminium, there will still be a need for increased production of primary aluminium requiring a comparable increase in global bauxite mining and alumina refining rates. With the right policy settings, bauxite, alumina and aluminium will have a central role in Australia's transformation to clean energy superpower, with policy support to be commercially and environmentally sustainable.

A suite of government policies³ and frameworks, including environmental approvals, are required to decarbonise Australia's domestic manufacturing in order to establish a 'green metal' industry in Australia. Australia's historic advantage in the aluminium industry stemmed principally from its substantial high quality bauxite reserves. The success of Australia's green metals industry requires an integrated system of policies, including those which support ongoing approval to mine Australia's bauxite reserves.

Most of the world's bauxite comes from surface mines in tropical and sub-tropical areas, where bauxite typically occurs in extensive, relatively thin near-surface layers, normally beneath a few metres of overburden. Because bauxite deposits often cover a very large area, bauxite mining involves disturbance of comparatively large land areas compared to the mining of other minerals, though for a shorter time. Australian bauxite deposits have high grades and are shallow and relatively easy to mine. Bauxite mining is well suited to progressive rehabilitation.

Australia's integrated aluminium industry means an efficient overall regulatory framework is needed

Australia's aluminium industry, including bauxite mining, alumina refining, aluminium smelting and downstream processing industries, has been operating in Australia since 1955, and over the decades has

¹ <https://www.worldbank.org/en/topic/extractiveindustries/brief/climate-smart-mining-minerals-for-climate-action>

² International Aluminium Institute High Substitution Scenario

³ The Council has made a detailed submission to the Government's Green Metals Consultation Process which is available from <https://aluminium.org.au/news-category/submissions/>

been a significant contributor to the nation's economy. It includes six bauxite mines which collectively produce over 100 Mt per annum making Australia one of the world's largest producers of bauxite. Australia is the world's largest exporter of alumina with six⁴ alumina refineries producing around 20 Mt per annum of alumina. Australia is the seventh largest producer of aluminium, with four aluminium smelters and additional downstream processing industries including more than 20 extrusion presses. Aluminium is Australia's highest earning manufacturing export. The industry directly employs more than 19,000 people, including 6,600 full time equivalent contractors. It also indirectly supports around 60,000 families predominantly in regional Australia. The integrated nature of bauxite mining, alumina refining, aluminium smelting and extrusion processes in Australia means that efficient and effective regulatory processes for each step are critically important to the ongoing operation of the overall system.

Australia's aluminium industry contributes more than \$16B⁵ a year to the economy in export value. Australia is one of the very few countries which has bauxite mining, alumina refining, aluminium smelting and aluminium extrusion industries, making aluminium one of the few commodities in which the raw materials are mined and are processed all the way to a consumer product right here in Australia. However, there is an opportunity to leverage this existing industry further. The bauxite (aluminium ore) mined in Australia produces around 20 Mt of primary aluminium; more than 13 times Australia's current production. So, while the existing aluminium industry in Australia is a successful example of vertical integration, it is far from being at capacity and there is economic opportunity for Australia to be gained under the right policy conditions.

Conversely, the current capacity remains vulnerable to both domestic policy and geopolitical risk. While seeking to maintain Australia's highest standards for ESG, it is also worth considering that global demand will continue to be met from elsewhere if not provided by Australia. This may increase the net global impact of mining, compared with continued development in Australia. While Australia has been the world's largest producer of bauxite and has 22% of global reserves, Guinea has 27% of global reserves, and is now an equally large producer of bauxite and is the world's largest exporter of bauxite, principally to China. Whilst Western world production has been falling, China has secured its supply of bauxite by significant investment in bauxite mines in Guinea and has constructed low cost alumina refineries built on the coast to reduce freight costs. Australia's mineral exports, such as bauxite and alumina, rely on bulk freight which has also undergone a step change in its volatility, exposing the industry to vulnerabilities.

Australia's environmental protection system requires review

Current environmental approval processes challenge both brownfield and greenfield developments across all aspects of the resources and energy sectors, irrespective of technology. Parallel processes run by Federal and State governments can be difficult to navigate and must be simplified and streamlined without reducing standards. The current system is inefficient and requires review.

The Council recognises that environmental approval processes must appropriately balance the need for environmental rigour and protection with timelines that reflect commercial needs. The industry is increasingly aware of delays, beyond the statutory timelines, for both new and post approval processes. These delays in the current system are impacting on business confidence in Australia's policy environment. As a leader in sustainable mining practices, the aluminium industry supports regulations that meet the highest standards of environmental protection. Approval processes must reflect the commercial realities of long-life capital-intensive projects and provide efficient pathways for projects seeking approvals without diminishing regulatory standards. Failure to do so will see projects and production move offshore, often to countries with much lower environmental standards. Transitional arrangements for any existing projects or referrals must be clearly articulated. The long term future for the sector in Australia is positive but it is under near term stress.

⁴ Alcoa has announced it will curtail Kwinana later in 2024 <https://www.alcoa.com/australia/en/news/releases?id=2024/01/alcoa-announces-curtailment-of-kwinana-alumina-refinery-in-western-australia&year=y2024>

⁵ <https://www.industry.gov.au/sites/default/files/2023-12/resources-and-energy-quarterly-december-2023.pdf>

Noting the Council's concerns about both the current system across Federal and State Governments; the Council believes that there may be value in the Commonwealth adopting an incremental path, as is currently proposed in the Stage 2 and Stage 3 approach, in order to most quickly and effectively deliver the much needed changes in Australia's approval processes, while maintaining environmental rigour.

However, the Council has concerns about the level of consultation proposed for Stage 3 reforms and how these will intersect with the proposed Bills. The Council is particularly the inclusion of the consideration of Climate Change and other climate related reforms under this process. Climate Change is already addressed by other measures in place by the Government and **there should be no inclusion of any "climate trigger" in environmental approval measures.**

Specific Feedback

The Council supports the submission of the Australian minerals industry (including the Minerals Council of Australia, Chamber of Mines and Energy WA and Queensland Resources Council), with regard to specific issues. Attachment A includes a selection of amendments important to the Council and its Members which are summarised as:

- **Transitional provisions** and arrangements for any existing projects or referrals must be clearly articulated. The proposed changes are substantial, and time is needed to be incorporated into business planning processes. The commercial uncertainty created over the scale of these reforms should not be underestimated.
- There are **inadequate transition periods**. For example, the compliance and enforcement parts of the legislation will come into effect upon assent, which does not give operations a lot of time to mitigate risks and in some cases will result in automatic non-compliance upon commencement when an operator is acting in good faith and potentially operating under complex agreement (pre-dating the EPBC Act).
- **Compliance and penalties** are included with large penalties which are not in line with environmental breach. This could constrain innovation and adaptive management. Mitigation and management should use an adaptive approach with the ability to modify approach if it is not working or maximising positive outcomes (instead of punishing proponents) to promote innovation and continuous improvement with the exception where proponents are wantonly and intentionally breaching.
- The reforms create a power for new grounds of termination of approvals and no requirement for prior notice of termination under Environmental Protection Orders. Government should be transparent with industry and be **explicit on all grounds for termination** and provide notice of termination, and **opportunity for proponent to respond to notice of termination**.
- It is not clear how social (including First Nations) or economic factors are taken into account by the EPA staff, CEO, or Minister or in regional planning. It appears that that **social and economic factors** are only a reason to overturn approval not considered in favour of approval.
- The CEO and Minister have very broad decision making powers, which seem to be inconsistently applied within different sections of the policy approach creating uncertainty. The Council **believes the Minister should be the default decision maker and be able to consider social and economic factors.**

The Council recognises that further work is required in the reform of Australia's environmental approvals. The Council has sought to propose constructive amendments which account for the scale and implications of these reforms but also recognise the Government's agenda in their progress.

Kind regards,

Marghanita Johnson
Chief Executive Officer
Australian Aluminium Council

Attachment A – Specific Amendments

Delegation of Ministerial powers

Delegation of the Minister's powers in respect to the EPBC Act should mirror the wording of the current Act: The following needs to be added to the delegation statement: *the delegate is, in the exercise or performance of a delegated power or function, subject to the directions of the Minister.*

State and Federal Interoperability

- The success of Nature Positive Reforms relies on the parallel evolution of both Federal and State environmental reforms; one is not successful without the other.

CEO Accountability

There should be stronger accountability provisions:

- The Government should have the power to remove the CEO for failure to meet statutory requirements, demonstrable failure to consider the Minister's Statement of Expectations, or maladministration.
- There should be a stronger link between the independent review of the EPA and the CEO's performance:
- The period of appointment of the CEO should be reduced to 3 years. Given the shorter appointment duration, the CEO should be able to be reappointed twice.
- The review of the EPA should be required to be conducted by the National Audit Office.
- The review should be completed and published at least three months prior to the expiry of the CEO's term.

Recognition of the elected Government's policy

- Require the EPA to consider the Minister's statement of expectations in discharging its responsibilities.

Environment Protection Orders

- An Environment Protection Order should have a maximum period of 14 days in which it applies.
- To extend an order on a project beyond 14 days there should be to judicial oversight – that is, it can be extended only by application to a court.
- The Minister should be required to have evidence to support their decision in imposing an Environment Protection Order.

New Penalty Provisions

- New maximum civil penalty formula should apply solely to extremely serious intentional breaches.
- Conversely, they should not apply to unintentional breaches, to breaches due to technicalities in conditions, or due to the poor design of conditions imposed.

Function of EPA

- Assessments should not be part of the new EPA, and instead should remain within the Department.
- The scope of the EPA should only include compliance and assurance regulatory functions.
- The EPA should have interim review periods established within the first 5 year cycle to build confidence in its operation, both within and outside of the agency. These reviews should be carried out by a third party.

Stop the Clock Processes

- Request for information in assessments can result in lengthy stop the clock periods.
- While positive proponents are able to contest these, there remains an imbalance, where by the EPA may simply reject a project on that basis.

Limitations on Third Party / Vexatious Appeals

- There should be some level of constraint on these third parties to avoid significant delays and costs to business.