



Friday, 5 June 2026

Ms Jennifer Kay  
Head of Division,  
Environmental Law Reform Taskforce  
Department of Climate Change, Energy, the Environment and Water  
Ngunnawal Country, John Gorton Building, King Edward Terrace  
Parkes ACT 2600

Dear Ms Kay

**Re: CEC submission regarding tranche 2 reforms**

The Clean Energy Council (**CEC**) welcomes the opportunity to provide a submission to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) on the exposure draft of the tranche 2 Environment Protection and Biodiversity Conservation Regulations (**Tranche 2 Reforms**).

The CEC is the peak body for the clean energy industry in Australia. The CEC supports the policy intent underpinning the Tranche 2 Reforms, including improving environmental outcomes, increasing transparency and consistency in decision-making, and streamlining assessment and approval processes under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**).

While supportive of the intent of the reforms, this submission raises a number of recommendations regarding the practical implementation and drafting of the proposed Tranche 2 Reforms, with a particular focus on project certainty, clarity of obligations, and efficient administration. Amendments to the key sections of the Tranche 2 Reforms to address our recommendations are summarised below and outlined at **Annexure A**.

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## Minor or preparatory works

Proposed regulation 4.05(4) provides that the Minister has 20 business days to decide an application for minor or preparatory works. Time starts running from the date the Minister decides that the larger action is a controlled action. Similarly, regulation 4.05(5)(a) provides that the Minister can only make a decision if the Minister has decided that the larger action is a controlled action.

The CEC recommends that time should instead start running from the date the application is made, irrespective of whether the Minister has determined that the action is a controlled action. Any request relating to minor or preparatory works necessarily requires consideration of whether there will be impacts on protected matters, which falls within the scope of the EPBC Act. As such, it is not

considered necessary to wait until a controlled action decision has occurred to enliven DCCEEW's jurisdiction.

Statutory timeframes for controlled action decisions can be extended, resulting in delays between referral and determination. Allowing earlier applications would enable certain minor or preparatory works to progress during this period without undermining environmental protections.

Regulation 4.05(5) requires that, in making a decision, the Minister must be satisfied that any impacts the proposed action will have, or is likely to have, on a protected matter are minor and repairable. The CEC considers that the threshold should be amended from 'minor and repairable' to 'minor *or* repairable', which would better align with the intention of the provision to facilitate minor or preparatory works while ensuring that impacts remain appropriately manageable. The CEC recommends including further guidance, potentially in a note to the regulation, regarding the meaning of 'minor and repairable', including examples of the type of information proponents could provide to demonstrate that this threshold has been met.

**Recommendation 1:** The regulations should be amended to allow applications for minor or preparatory works to be considered prior to a controlled action decision.

**Recommendation 2:** Amend 'minor and repairable' to 'minor or repairable' and provide further guidance regarding the meaning of these terms. To avoid confusion, include a definition of 'larger action' and 'proposed action'.

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## Lapsing of decision that action is not a controlled action

A decision lapses if the relevant action has not been substantially commenced within five years. Clarification is required as to what constitutes an action being 'substantially commenced'. In particular, further guidance should be provided regarding the types of activities that would satisfy this threshold, including whether preparatory works, early construction activities, or financial commitments would constitute substantial commencement.

Further detail is also needed regarding the criteria for granting extensions beyond the provision of information requirements, including the factors that will inform decision-making and the circumstances in which extensions may be granted or refused. Greater transparency regarding the exercise of this discretion would assist proponents in project planning and risk management.

In addition, the CEC seeks confirmation regarding the transitional application of these provisions and the implications of a decision lapsing, including whether any re-referral would be assessed under the legislative framework in force at that time.

**Recommendation 3:** Include a definition of 'substantially commenced'.

**Recommendation 4:** Include criteria for extension decisions, and clarify the transitional and legal consequences of a lapsing decision.

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## Critical habitat

The CEC seeks clarity regarding how ‘critical habitat’ and ‘registered critical habitat’ will be treated, particularly where habitat meets the definition of critical habitat but is not formally listed on the register. In particular, clarification is required as to how proponents and decision-makers are expected to identify and assess unregistered critical habitat, and whether unregistered critical habitat will carry the same weight in decision-making and unacceptable impact assessments as habitat formally included on the register.

Regulation 7.09(2)(b) requires that, before listing habitat on the register as registered critical habitat, the Minister must, where the habitat is not in a Commonwealth area, be satisfied that reasonable steps have been taken to consult with the relevant owner of the property. The CEC recommends clarifying which party is responsible for undertaking consultation with the landowner. Further detail should also be provided regarding the nature of the consultation required, the expected outcomes of that consultation, and whether any access or land use consequences may apply in relation to proponents proposing to impact registered critical habitat on private land.

Regulation 7.09(1) requires the Minister to consider whether to list critical habitat when making or adopting a recovery plan. The CEC recommends a similar obligation in the context of preparing or adopting a protection statement. In this regard, the CEC notes that section 298B(2)(b) requires information about critical habitat for the species to be included in a protection statement.

**Recommendation 5:** Clarify the implications of ‘critical habitat’ as compared to ‘registered critical habitat’, including the weight to be afforded to each in assessment and decision-making processes.

**Recommendation 6:** Clarify who is responsible for undertaking consultation with private landowners of critical habitat (prior to that habitat being registered).

**Recommendation 7:** Includes a similar requirement to that in regulation 7.09(1) to apply to protection statements.

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## Protection statements

The CEC notes that the proposed drafting appears to represent a shift in approach from the original intention that protection statements operate as a consolidated ‘source of truth’ regarding species protection requirements. Under the proposed framework, protection statements would instead operate alongside other instruments, including recovery plans and conservation advices. This raises the potential for inconsistency between documents, particularly where older recovery plans may conflict with newer protection statements. We recommend including a requirement that protection statements are as far as reasonably practicable consistent with any recovery plans or conservation advice, or to the extent of any inconsistency the protection statement prevails.

In relation to regulation 8AA.01, protection statements must be based, to the extent practicable, on accurate and high-quality information. Challenges may arise with this requirement in practice,

particularly in relation to bird and bat impacts associated with renewable energy projects, where it may not always be possible to obtain complete or highly certain information.

The proposed definition of 'improve the protection' requires that a protection statement provide one or more additional protections beyond those provided by any recovery plan or approved conservation advice. In practice, this means there will inherently be inconsistencies between these documents, as protection statements can only be created where matters are not already addressed in recovery plans or conservation advices. This approach increases the risk of inconsistency and regulatory complexity for proponents. The CEC recommends that the definition instead focus on improving protection by clarifying, consolidating, and ensuring consistency with existing recovery plans and conservation advices.

**Recommendation 8:** clarification regarding the hierarchy and interaction between protection statements, recovery plans, and conservation advices, including how inconsistencies between documents should be resolved in practice.

**Recommendation 9:** Clear guidance should be provided regarding the meaning of 'accurate and high-quality information', particularly in circumstances where ecological data is inherently uncertain or evolving.

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## Register of Auditors

Requiring the EPA to individually assess each applicant's qualifications, knowledge, expertise, competence, and independence may prove administratively burdensome. In addition, a Commonwealth registration process could create a bottleneck during periods of heightened audit demand, particularly given the limited pool of specialised environmental auditors. We recommend introducing a simplified auditor registration framework that recognises state and territory based auditor schemes.

**Recommendation 10:** introduce a simplified auditor registration framework that recognises state and territory based auditor schemes.

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## Rulings

The exposure draft includes the matters to be considered when reviewing rulings. It is recommended that the review process should include consideration of whether the ruling is improving clarity for proponents and decision-makers; and remains consistent with the intent of the EPBC Act and associated regulations. The CEC also recommends including detail in the regulations regarding circumstances when a review should occur more than every five years, for example, where new information becomes available.

**Recommendation 11:** when reviewing rulings, regard should be had to whether the ruling is improving clarity and is consistent with the relevant legislation.



Amendments to the key sections of the Tranche 2 Reforms to address these recommendations are outlined at **Annexure A**.

The CEC welcomes further engagement with DCCEEW in relation to the EPBC reforms. If you have any queries or would like to discuss this submission in more detail please contact me on [erutherford@cleanenergycouncil.org.au](mailto:erutherford@cleanenergycouncil.org.au).

Kind regards,

A handwritten signature in black ink, appearing to read 'Elise Rutherford'.

**Elise Rutherford**

General Manager, Environment and Planning

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## Annexure A – Recommended amendments to key sections of the Tranche 2 exposure draft

Black text = original exposure draft

Green text = recommended additions

Red strikethrough = recommended deletions

[Grey] = comments

### 4.05 Requirements to obtain Minister’s agreement to take minor or preparatory action

#### *Requirements to obtain Minister’s agreement*

- (1) For the purposes of paragraph 74AA(2A)(b) of the Act, the requirements for obtaining the Minister’s agreement are:
- (a) the proposed action for which the Minister’s agreement is sought is a component of a larger action that has been referred to the Minister for a decision under subsection 75(1) of the Act (the **larger action**); ~~the Minister has:~~
    - ~~(i) decided, under subsection 75(1) of the Act, is a controlled action; or~~
    - ~~(ii) not yet made a decision, under subsection 75(1) of the Act, is a controlled action;~~
  - [Note: insert definition of ‘larger action’, potentially by reference to regulation 4.05. For clarity in this section consider including a definition of ‘proposed action’ to avoid confusion between the application to undertake minor or preparatory works and the application for assessment of the larger action.]*
  - (b) the person makes an application for the Minister’s agreement that is:
    - (i) in writing; and
    - (ii) made in the approved form (if any); and
  - (c) the application is accompanied by the information or documents specified in subregulation (2).

#### *Information or documents to accompany an application*

- (2) The application to take minor or preparatory action under subregulation (1) (the **proposed action**) must be accompanied by the following:
- (a) a description of the proposed action, including any activities that would be carried out in taking that action;
  - (b) a description of the larger action, of which the proposed action is a component, including:

- (i) the identification number allocated by the Department to the larger action; and
- (ii) the title of the larger action that is the same title as the referral for that action; and
- (iii) the name of the designated proponent of the larger action (if the designated proponent is not the person making the application);
- (c) a description of the location where the proposed action is to be taken, ~~within the proposed project area of the larger action,~~ including any relevant spatial data;
- (d) any survey data relevant to the proposed action;
- (e) the timeframe within which the proposed action is intended to substantially commence;
- (f) information about why the person considers that the proposed action needs to be taken prior to the assessment and approval of the larger action;
- (g) information about why the person considers that the proposed action is a minor or preparatory component of the larger action;
- (h) either:
  - (i) information, including documentary evidence (if available), on the nature and extent of the impacts the proposed action will have, or is likely to have, on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action; or
  - (ii) evidence that the proposed action will not have, or is not likely to have, any impacts on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action; or
  - (iii) **evidence that any impacts from the proposed action can be repaired such that the proposed action will not have, or is not likely to have any impacts on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action;**
- (i) if any consultation was undertaken in relation to the proposed action, or the larger action, after the decision under section 75 of the Act has been made—details of that consultation.

*When application is taken to be withdrawn*

- (3) The application for the Minister's agreement is taken to be withdrawn if, after the application is made, the Minister decides, under subsection 75(1) of the Act, that the larger action, of which the proposed action is a component, is not a controlled action.

*Timeframe for Minister's decision*

- (4) The Minister must decide whether or not to agree that the person can take the proposed action within 20 business days **of receipt of the application. the following:**
  - ~~(a) if the application is made after the Minister has decided, under subsection 75(1) of the Act, that the larger action, of which the proposed action is a component, is a controlled action—the day the application for the Minister's agreement is made;~~

~~(b) if the application is made before the Minister has so decided—the day the Minister makes that decision.~~

*Minister may agree to action if satisfied of certain matters*

(5) The Minister may agree that the person can take the proposed action if and only if the Minister is satisfied of the following matters:

~~(a) that the proposed action is a component of a larger action that the Minister has decided is a controlled action under subsection 75(1) of the Act;~~

(b) that any impacts the proposed action will have, or is likely to have, on a matter protected by a provision of Part 3 of the Act that is a controlling provision for the larger action are minor ~~and~~ or repairable;

(c) that it is appropriate for the person to take the proposed action before the larger action has been assessed and approved; ~~and~~

(d) if the Minister has previously agreed that the person can take one or more actions that are a minor or preparatory component of the same larger action—that the proposed action, when taken together with those actions previously agreed to, is still a minor or preparatory component of the larger action.

*Notice of Minister's decision*

(6) The Minister must, as soon as practicable after making the decision **in relation to the proposed action**, give written notice of the decision to the applicant and publish a copy of the notice on the Department's website.

(7) If the Minister agrees to the person taking the proposed action, the notice given under subregulation (6) must include the following:

(a) a description of the action (the **agreed action**) that the Minister has agreed that the person can take;

(b) a description of the larger action of which the agreed action is a minor or preparatory component;

(c) a description of the location where the agreed action is to take place within the project area of the larger action; ~~and~~

(d) the day the Minister's decision comes into effect, which must not be a day earlier than the day after the decision is made.

(7) If the Minister does not agree to the person taking the proposed action, the notice given under subregulation (6) must include the reasons for the decision.

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## Part 4B—Lapsing of decision that action is not a controlled action

#### **4B.01 Information or documents for request to extend date of lapsing of decision that action is not a controlled action**

*For the purpose of regulation 4B.01, ‘Substantially commenced’ means the point at which the action has progressed beyond planning, design, approvals, financing, procurement, or other preparatory steps, and works or activities that form part of the action have been commenced in a material and substantive way. [Note to Industry: please carefully review this definition and confirm you are comfortable]*

For the purposes of subparagraph 79G(2)(c)(ii) of the Act, the following information or documents are prescribed:

- (a) the reasons why the taking of the action will not have substantially commenced before the fifth anniversary of the date of the notice of the decision under section 77 of the Act (the *initial notice*);
- (b) a proposed later date on which the decision under section 75 of the Act, that the action is not a controlled action, ceases to be in force, which must not be a date later than the tenth anniversary of the date of the initial notice;
- (c) information, including documentary evidence (if available), about:
  - (i) any steps the person is taking, or intends to take, to ensure the taking of the action will substantially commence by the proposed date referred to in paragraph (b); and
  - (ii) a proposed timeline for the taking of those steps.

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#### **7.09 Identification of critical habitat**

- (1) For the purposes of subsection 207A(1) of the Act, the Minister must, when making or adopting a recovery plan for a species or an ecological community, consider whether to list critical habitat, that is identified in the recovery plan for that species or ecological community, on the register.
- (2) For the purposes of subsection 298A(1) of the Act, the Minister must, when making a protection statement, consider whether to list critical habitat that is identified in the protection statement, on the register.

*[Note: section 298B(2)(b) states that a protection statement may include information about critical habitat, accordingly, we suggest including a similar requirement when protection statements are made]*

- (3) Before listing habitat on the register as registered critical habitat, the Minister must:
  - (a) consider any advice from the Scientific Committee about whether the habitat is critical habitat for a listed threatened species or listed threatened ecological community; and

- (b) if the critical habitat is not in a Commonwealth area, be satisfied that reasonable steps have been taken **by the relevant government Department**, to consult with the owner of the property where that critical habitat is located.
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## Part 8AA—Protection statements

### 8AA.01 Criteria for protection statements for listed threatened species and listed threatened ecological communities

For the purposes of paragraph 298A(2)(b) of the Act, the following criteria are prescribed:

- (a) that the protection statement, **so far as is reasonably practicable**, provides effective guidance for decision makers;
- (b) **that the protection statement, so far as is reasonably practicable, is consistent with any relevant recovery plan or approved conservation advice;**
- (c) that the protection statement is likely to improve the protection of the listed threatened species or listed threatened ecological community, or relevant part of that species or community;
- (d) that the protection statement is based, ~~to the extent~~ **so far as is reasonably practicable**, on accurate and high quality information.

Note: For the purposes of paragraph (b), see the definition of *improve the protection* in the Dictionary.

Note: **For the purposes of paragraph (c), in determining whether information is accurate and high quality, regard may be had to: the nature, availability and reliability of information relevant to the protected matter; the detectability, ecology and distribution of the protected matter (including whether it is cryptic, seasonal, migratory, rare or otherwise difficult to survey); and any practical constraints on the collection of reliable data. [Note to Industry: does this note sufficiently address issues with meeting accurate/high quality? Particularly in relation to bird and bat uncertainty]**

### 8AA.02 Additional matters for making protection statements

For the purposes of paragraph 298A(3)(e) of the Act, the following matters are prescribed:

- (a) any unacceptable impacts (within the meaning of section 527F of the Act) for the species or community;
- (b) if one or more annual reports have been prepared under subsection 177DI(1) of the Act that identifies the species or community, or relevant part of it, as an impacted protected matter for which a general restoration action was not available under paragraph 177DI(2)(h) of the Act—the most recent annual report containing that information.

### 8AA.03 Other information to be included in protection statements

For the purposes of paragraph 298B(2)(e) of the Act, the following information is prescribed:

- (a) information about whether an impact that an action will have, or is likely to have, on the species or community or relevant part of that species or community is a significant impact;
- (b) information on best practice for surveys or measures to avoid or mitigate impacts on the species or community or relevant part of that species or community; **and/or**
- (c) information on restoration or compensation priorities, including any priority restoration actions **or indirect compensation priorities**, for the species or community or relevant part of that species or community.

### 8AA.04 Matters to be considered in a review of protection statement

For the purposes of paragraph 298H(4)(a) of the Act, the following matters are prescribed:

- (a) the extent to which the protection statement **so far as is reasonably practicable**, provides effective guidance for decision makers and persons proposing to take an action;
- (b) the extent to which the protection statement has improved, or is improving, the protection of the listed threatened species or listed threatened ecological community or relevant part of that species or community;
- (c) the extent to which the protection statement is based, **so far as is reasonably practicable**, on accurate and high quality information.

Note: For the purposes of paragraph (b), see the definition of **improve the protection** in the Dictionary.

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**improve the protection** of a listed threatened species or listed threatened ecological community means to ~~provide one or more additional~~ **enhance or strengthen the** protections ~~than are~~ provided by any recovery plan or approved conservation advice for the species or community

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### 19.03 Review of rulings

For the purposes of subsection 514YS(2) of the Act, the following matters are prescribed:

- (a) any previous application of the ruling by persons (**decision makers**) performing a function or exercising a power under the Act or these regulations, including:
  - (i) whether any decision makers acted inconsistently with the ruling; and
  - (ii) for each case (if any) of a decision maker acting inconsistently with the ruling—how the decision maker acted inconsistently with the ruling and the reasons given by the decision maker for that inconsistency;

- (iii) whether any previous application of the ruling has improved clarity for proponents and decision makers;
- (b) any of the following that have been made since the ruling was made, varied or last reviewed (whichever is later) and that are relevant to the ruling:
  - (i) amendments to this instrument, a national environmental standard or any other instrument made under the Act;
  - (ii) any national environmental standard or other instrument made under the Act;
- (c) any other rulings made under section 514YM or 514YN of the Act, which affect, interact with or are inconsistent with, the ruling that is the subject of the review;
- (d) whether the ruling remains consistent with the intent of the Act and associated Regulations; and/or
- (e) any other matters the persons undertaking the review consider relevant.