



**Independent review of the  
*Environment Protection and Biodiversity  
Conservation Act 1999***

**Discussion Paper**

**December 2008**

The South Australian Chamber of Mines and Energy (SACOME) is pleased to have this opportunity to make a submission to the *Discussion Paper* to the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

SACOME is the peak industry association for all companies with business interests in the resources industry in South Australia, including those with business, vocational or professional interests in minerals exploration, mining and processing, oil and gas exploration, extraction and processing, power generation including geothermal power, transmission and distribution, logistics, transport, infrastructure, and those with clients in these sectors.

SACOME represents 275 core industry and services members.

The minerals and energy industry in SA supports the conservation, protection and improvement of matters of national environmental significance. The industry is very much aware of its responsibility and the priority placed on environmental credentials by our member companies is highlighted by the significant resources devoted to environment and sustainability.

SACOME also wants to ensure the industry retains the opportunity to explore the resources potential of areas, in accordance with federal and state legislative requirements.

The views contained in our submission are the views of our members, which we have either quoted directly or condensed into a summary.

SACOME looks forward to ongoing consultation of the Independent Review with the resources industry during the review process.

### Contact

Dr Nigel Long

Director, Environment and Sustainability

P: (08) 8202 9933

E: [nlong@sacome.org.au](mailto:nlong@sacome.org.au)

## **Scope of the Act**

SACOME acknowledges the objectives of the EPBC Act are valid, and supports the ideal of protecting and improving our biodiversity; however the Chamber questions whether the Act really addresses the heart of the decline of biodiversity and provides the right incentives to actively manage and enhance the environment. State legislation in SA is equally limited in approach with a focus around stopping the decline and loss primarily through banning clearance of vegetation. The fragmented nature of our biodiversity means our environment will continue to decline irrespective of clearance being banned, unless a more strategic, incentive based process is used. State and federal legislation has to date failed to make biodiversity an asset, rather than a liability, and develop real incentives to actively management and improve of our natural resource environment. Environmental stewardship payment schemes, such as the pilot introduced by the federal government in 2007 in relation to the Box Gum Grassy Woodland, is an example of an incentive program that if well resourced and managed could deliver good environmental outcomes.

### *Definition of nuclear action*

Under the EPBC Act the mining of uranium ore is defined as a 'nuclear action'. The inclusion of uranium mining under the act as a 'nuclear action', and therefore automatically defined as a controlled action, is seemingly inconsistent with the other matters of national environmental significance (NES), which are legitimate matters for environmental protection under the Act. Uranium mines should be assessed under the act as for any other mine where the action will have, or is likely to have, a significant impact directly on matters of national environmental significance. SACOME questions whether the act of mining uranium should, of itself, be classified as a 'nuclear action' for the purposes of the EPBC Act. The Chamber believes the other definitions captured by the Act are more in line with what constitutes a 'nuclear action'.

Irrespective of the definition of 'nuclear action' the Act does not clearly define mining in the context of uranium. The Chamber is concerned that some activities could technically invoke the Act and be deemed controlled actions because they involve the extraction of material that contains uranium, although not the target resource. These include geothermal and mineral sands operations, and could also extend to oil and gas operations. The Department of Environment, Water, Heritage and the Arts (DEWHA) web site clarifies that mineral sands is excluded as a nuclear action, although the EPBC Act itself and the relevant guidelines (EPBC Act Policy Statement 1.1 – Significant Impact Guidelines, May 2006) does not clearly articulate this exemption.

The Act and guidelines/policies need to be clear on matters around what constitutes a nuclear action. For operations where uranium is incidental to projects such as geothermal, mineral sands, and oil and gas, these should be specifically excluded as a nuclear action under the Act.

## **Assessment and Approvals / Decision Making under the Act**

The resources industry more than most sectors of the economy is exposed to the most stringent of environmental standards (including in comparison to many overseas countries) and therefore understands their environmental responsibility both through public perception and regulation under federal and state legislation.

### *Referrals*

The statistics provided in the discussion paper (page 17 of the *Discussion Paper*) illustrates the large number of projects being referred for approval, highlighting uncertainty by proponents as to whether actions invoke the Act. The high numbers referred and deemed not to be a controlled action re-enforces the need for better processes to avoid unnecessary referrals under the Act. While guidelines under the Act can not go beyond the legislation, the statistics clearly demonstrate improved information for proponents is necessary for them to make decisions around action(s) that will or will not invoke the process. The Chamber believes the Act needs to be amended to allow greater legislative flexibility to avoid unnecessary referrals without risking the objectives of the Act.

### *Streamlining Processes – Bilateral agreements*

A bilateral agreement between the SA Government and the Australian Government allows for the assessment of controlled actions under the Development Act (SA), in that an Environmental Impact Statement, Public Environment Report or Development Report submitted to the *Development Act 1993* (SA) satisfies the environmental reporting under the EPBC Act. While this has streamlined the process to some degree, the action(s) proposed to be taken still require separate, and duplicative, processes under both Acts, and separate decision making (there is currently no approvals bilateral between the federal and SA governments). Further refinement and streamlining of the processes to reduce the approval process could be developed, including accreditation of state agencies to make some decisions under the EPBC Act. Such a provision, whereby an accredited state agency could act as the regulator of actions, could be limited to relatively small straight forward projects. Where matters are complex the assessment process would then be transferred to the federal regulator for approval. Accordingly, proponents would only deal with one regulator on environmental issues covered by the EPBC Act with protections (assessment requirements meet the EPBC Act standards), and that complex matters are referred to the federal agency without the need for additional compliance obligations.

### *Management arrangements, bioregional plans and strategic assessments*

Whether accredited management plans, bioregional plans or strategic assessments are adopted to regulate actions, certainty for proponents around matters of NES is essential. Alignment with state and regional Natural Resource Management (NRM) plans and objectives under state legislation (*Natural Resource Management Act 2004*) is essential for certainty. It would be counter productive if state, regional and federal strategic plans for an area were designed to achieve different environmental outcomes.

## **Biodiversity**

### *Emergency listings*

Any consideration of allowing for the emergency listing of species and ecological communities must ensure there is certainty of the process for proponents. A clearly defined, open and transparent process and consistent in the parameters of assessment remains fundamental.

The emergency listing process should not undermine the EPBC Act as a mechanism for appropriate protection of biodiversity, nor diminish the confidence of industry that assessments and approvals under the Act will be robust and based on sound knowledge and good science.

SACOME would expect the industry to be consulted on how the emergency listing process would be implemented including defining the parameters of the decision process.

Industry would also be concerned if the process is not clearly defined on the issue of how to deal with such listings where actions (with any associated conditions) have been previously approved and the action(s) is in progress, completed or not yet commenced.

### *Wildlife conservation plans*

Recovery plans and threat abatement plans (TAP) can form the basis of protection/conservation recovery and management.

The impact of TAPs are more obvious given the plans are focussed on issues that are able to be defined (for example the management of pest species), whereas management plans/recovery plans especially for biodiversity are less able to be defined given the generally lower degree of understanding of ecological processes which support biodiversity and its resilience.

While the Act provides for the development of management plans and recovery plans, in and of themselves such plans will not protect nor improve (recover) threatened species and ecological communities unless they are implemented and managed. The key to successful implementation is to set appropriate incentives to encourage the active management of biodiversity. Active management is critical to support ecological systems becoming sustainable and resilient. Environmental stewardship payment schemes are a mechanism to deliver active management, and if well resourced and managed can bring about good environmental outcomes.

Where plans identify a ban or limitation on access for exploration and mining the Chamber would expect there to be appropriate consultation with industry prior to decisions to implement the plan.

## **Indigenous Involvement**

SACOME acknowledges and respects the role of Joint Boards of Management in preparing management plans, making decisions consistent with those plans and advising the Minister on future development of reserves. However the chamber would expect clear and consistent processes to be established including appropriate consultation with industry where decisions or recommendations may prejudice

exploration and mining access and activities. Definitive timeframes should also be set for the Boards to provide advice and comment back to the Minister for Environment. Equally where the Minister refers project proposals to the Joint Boards for advice and comment definitive timeframes should be in place to ensure assessments and approvals are progressed expeditiously.

In SA, exploration and mining companies are entering into Indigenous Land Use Agreements (ILUA) with claimants and Native Title holders, and it is common for such agreements to include clauses with specific time lines for consultation and communication between parties.

The experience of the ILUA process in SA suggests the implementation of formalised processes would not be an unrealistic expectation on Joint Boards of Management involved in the management of protected matters under the EPBC Act.

### **Environmental Offsets**

While the discussion of environmental offsets is not specifically within the terms of reference of the review, it is related to the assessment and approval process, and the provision of certainty for proponents of activities potentially affected by the EPBC Act.

Offsets can be applied under the Act as a condition to the approval of actions. A draft policy statement on the use of environmental offset arrangements under the Act was released for comment in 2007 by the previous federal government. However the policy has seemingly not progressed.

SACOME is broadly supportive of the principle of environmental offsets, however, offsets in and of themselves (*i.e.* solely for the sake of replacing a clearance) do not deal with the issue of biodiversity protection unless they are strategic, tackle the heart of the decline in biodiversity and are actively managed to support biodiversity improvement. Environmental offsets have to be based on a landscape scale approach, integrated with regional NRM plans and based on good science.

SACOME wishes to gain clarity on policy guiding their application within the EPBC Act framework.