

17 April 2020

Professor Graeme Samuel AC
EPBC Act Review
Department of Agriculture, Water and the Environment
John Gorton Building
King Edward Terrace
PARKES ACT 2600

Attention: Professor Samuel AC

SUBJECT: CCAA Response to EPBC Act Review

Cement Concrete & Aggregates Australia (CCAA) is the peak industry body for cement manufacturers, concrete suppliers and extractive operators throughout Australia.

Collectively known as the heavy construction materials industry, our members are engaged in the quarrying of sand, stone and gravel, the manufacture of cement and the supply of pre-mixed concrete to meet Australia's building and construction needs. These businesses range from large global companies, to SMEs and family operated businesses.

Heavy construction materials are vital to delivering the infrastructure required to supporting Australia's built economy which underpins the development of our nation's physical infrastructure, generating approximately \$15 Billion in annual revenue and employing 110,000 Australians. Each year, about 200 million tonnes of stone, limestone, gravel and sand are extracted from 2,200 quarries across Australia. On average, every Australian consumes approximately 7 tonnes of extractive material each year to build the roads, houses and other infrastructure for the future.

In the context of COVID-19 health crisis and the imperative for the building and construction sector to play a leading role in efforts to rebuild and revitalise the Australian economic investment by delivering private and public infrastructure projects, our industry does not believe that the timing is right to make significant changes to environmental protections that would disproportionately shift the present balance against future investment opportunities for quarry operations.

CCAA welcomes the opportunity to comment upon the second independent review of Australia's primary national environmental legislation, the ***Environment Protection and Biodiversity Conservation Act 1999*** (EPBC Act).

Our submission should be read in conjunction with that of the ***Cement Industry Federation*** to ensure a broad appreciation of the issues that impact on companies operating in the heavy construction materials industry.

Similarly, while the EPBC Act affects both quarries and concrete batch plants, our submission focuses on extractive sector operations given the particular impact that the legislation has on such operations.

The EPBC Act is the Australian Government's central piece of national environmental law that seeks to address matters of national environmental significance while providing a nationally co-ordinated approach to managing the natural environment while meeting Australia's international obligations. Operating as part of a broader suite of Commonwealth, State/Territory and Local Government legislations, the Act came into effect on 16 July 2000. An independent review of the Act is required to be undertaken at least once every ten years.

While we understand and support the broader intent of these legislations, CCAA believes that improvements should be made to streamline and reduce duplication, lower the cost impacts for development proposals and better take into account the contributions of quarry owners and operators to improving biodiversity outcomes across their local regions.

We note that the Act contains over 1000 pages and 400 pages within its regulations, some of which overlap with existing state and territory legislation. This review presents a strong opportunity to provide feedback which could improve the Act in the context of overlapping State, Territory and Local legislation while continuing to deliver effective and balanced outcomes for the nation's environment and biodiversity for future generations.

The Extractive Industry Approach to Biodiversity

As outlined above, whilst all sectors of our industry (cement, premixed concrete, and the extractive sector) interfaces with the EPBC, our submission will primarily focus on the relationship of the EPBC with the extractive sector, as this is the sector where it has the most impact, and our colleagues at the Cement Industry Federation will be addressing the cement-industry related impacts in their submission.

In summary, the extractive industry believes that it has a strong obligation to supply critical construction materials for the community in an environmentally responsible and sustainable manner. We have always acknowledged that the first stage of our supply chain – the extraction of raw materials from the earth's crust (quarrying) – has the potential to impact the surrounding natural environment.

However, we equally believe that these impacts can be addressed through inception planning, on-site environmental management measures and the development and implementation of effective and progressive rehabilitation and restoration of quarry sites which contribute to significant long-term environmental outcomes.

Creating new habitats through rehabilitation and mitigation is common practice for operators in our sector and our members understand the importance of managing biodiversity as part of responsible and proactive risk management under the broader scope of the natural environment and land stewardship. Companies that demonstrate responsible business behaviour, by minimising their ecological footprint, and ensuring the preservation of the natural capital as well as the welfare of communities in their areas of operation, can have a competitive advantage, develop company value and achieve better long-term sustainability of their operations.

The extractive sector works within a complex range of Federal, State and Local Government legislation which all aim to protect Australia's unique biodiversity, natural landscapes and lifestyle as key contributing factors to Australia's attractiveness as a destination, a place to live and a way of life. Our industry is committed to the protection and improvement of environmental values and minimising impacts when they arise.

In the context of this review, CCAA has put together its policy priorities statement – ***Enhancing Australia's Biodiversity*** (attached separately) which outlines the industry's approach to sustainability and biodiversity awareness. The main points arising from the enclosed statement are:

- Minimise the environmental impact of extractive operations, and where possible, achieve a net positive benefit to biodiversity, sustainable land uses and other environmental values;
- Progressive and staged onsite rehabilitation and ongoing buffer enhancement throughout the life of the quarry;
- Achieve the best biodiversity outcomes through collaboration, consultation, transparency and partnership - with community, government, researchers and other partners;
- Share innovations in biodiversity practices for the betterment of the community, the industry and the environment in which we operate; and
- Develop the industry's capability in biodiversity management, through professional development, stakeholder engagement, technological advances and training.

Our Unique Industry and its values

The extractive industry quarries hard rock and sand to produce coarse and fine aggregates to create concrete (the most common construction material on the planet) and a range of other construction materials.

Unlike many other land uses, our industry contains several unique characteristics that should be considered when environmental and planning frameworks are developed, such as:

- The actual processing part of a quarry is often less than half of the overall quarry property size – the remaining area serves as vegetation or as a natural buffer to adjacent property and land uses;
- Actions associated with quarrying such as vegetation clearing occur progressively and are staged in line with extraction. Unlike housing developments for example where clearing generally occurs over the whole of a development area rapidly to necessitate a development, quarrying is a slow and gradual practice that occurs progressively over time;
- Quarrying serves as a temporary land use with great opportunities for the creation of strategic, end of life use once resources have been exhausted;
- Quarries are long-term operations that serve the needs of their community for many years;
- The location of quarries is dictated by geology with often little opportunity for the operation to be moved; and
- The small overall landscape footprint of the sector.

In 2017, CCAA set out its values and goals in its ***Environmental Management Policy Statement***, a document that was unanimously agreed to by the industry’s senior leaders. Some key points of note from this statement includes:

- We play a critical role in supplying construction materials for the Australian community and we have an obligation to do so in an environmentally responsible and sustainable manner;
- Environmental protection and enhancement are integral to our industry’s operations; and
- While we have made good progress in our approach to environmental stewardship, opportunities remain to improve biodiversity outcomes that benefit the community.

Identified Concerns

CCAA has consulted with members who maintain a broad knowledge and have had experience with EPBC Act referrals, under the review of Department of Agriculture, Water and Environment.

The following issues have been identified as concerns with the Act, in its present operational form.

Issue	Detail	Recommendation
Complexity	Difficult to navigate, inefficient process with duplication at the state and territory level, approval delays lead to business and economic costs	Implement a single panel with the oversight to determine referrals consistently across Federal/State legislation
Inflexible for long-term investment	The Act and corresponding State/Territory legislation is inflexible and fails to properly take into account the long-term investment of a quarry site and staged, progressive site rehabilitation	Exempt Quarry sites from self-assessment of National Environmental Significance matters within the EPBC Act when duplicated with States/Territories.
Offsets	Frameworks are too costly and approval processes are too complex. A lack of clarity and subjective interpretation has led to differences in the size and quality of offset area calculations.	Creation of one agreed, equitable and standardised framework across all State and Territory jurisdictions with flexible contribution arrangements.
Lack of Statutory Timeframes for Assessment under the Act	Timeframes for obtaining decisions/approvals can extend for months or even years. A lack of clear legislative timeframes for assessment periods means there is no incentive or guidance for assessment staff to make decisions in a timely manner	Setting of an absolute time period to determine each referral under the Act. A referral would receive automatic approval if no decision is determined within the absolute timeframe.
Retrospectivity	Adding of new threatened species on matters of national environmental significance, following the approval or exemption of an application.	Strengthen sections 43A and 43B of the Act to protect existing use rights.

Lack of clear, objective criteria for assessing impact of habitat	Interpretation of the legislative provisions and guidelines relating to the impact assessment of clearing koala and black cockatoo habitat means that impact assessment results are different for each site based on individual assessment staff interpretation.	One clear strategic assessment guideline and interpretation for the assessment of clearing habitat under the Act.
Administration	<p>Significant turnover of assessment staff within the Department has led to the provision of inconsistent advice and subsequent approval delays.</p> <p>Department would not assess some applications until extremely high fees were paid to cover the cost of outsourcing the assessment to a consultant.</p>	Stronger administrative processes within the Department to ensure consistent advice and no delays to approvals. Referrals should not be outsourced and should receive automatic approval if they are unable to be determined within a six-month timeframe.

⊗ **Complexity**

The EPBC Act, combined with State and Territory legislations perversely acts as a disincentive for environmental assessment and approvals of quarry operations, given the repetition, duplication, the lack of clarity of decision making.

Matters of national environmental significance under the Act are often protected by State/Territory legislation, however each jurisdiction may have different requirements, leading to situations where approval conditions set by a state maybe insufficient to meet EPBC requirements. Removing duplication and creating more uniformity throughout the assessment and approval process would be welcomed by our industry.

⊗ **Inflexible for long-term investment**

Quarry life cycles are typically long-term use, serving the community for decades. Their location is determined by geology and they provide significant opportunity for staged, progressive site rehabilitation once materials are extracted. Extensive planning is required to balance local impacts and quarries need to be close enough to the market to transport and deliver construction materials, enabled by existing transport infrastructure.

Too often, inefficient regulation stifles the ability to deliver beneficial and balanced outcomes, despite the obvious ability to create balanced outcomes through reduced land use, buffer zones and progressive site rehabilitation. Investment opportunities are subsequently eroded which lead to a loss to the economy, governments, private industry and the wider community.

CCAA believes quarry sites and their owners are not properly recognised for their overall contribution and benefit to the wider local region, particularly given site rehabilitation, land buffer management and small overall use of the site for extractive purposes.

⊗ **Offsets**

CCAA members have long called for a standardised, industry specific approach to environmental offsets that provides greater certainty and lower start-up costs to encourage investment and facilitate affordable construction materials.

Unfortunately, the present processes surrounding the creation of land offsets are significantly expensive, approval processes are long and costly and inconsistent decision making from assessment staff have led to a lack of certainty.

Online biodiversity calculators should be able to support consistent offset outcomes, but the complex, scientific nature of many of these calculators can result in anomalous outcomes. This is particularly the case with regards to the calculations for koala or black cockatoo habitat clearing.

⊗ **Lack of Statutory Timeframes for Assessment under the Act**

A lack of clear legislative timeframes for assessment periods means there is no incentive or guidance for assessment staff to make decisions in a timely manner. In some instances, assessments can extend for many months or years, resulting in significant uncertainty and disincentive for quarry owners to continue operations or invest in future operations and capital expenditure projects.

The lack of timeframes also complicates the interaction of legislation between State and National government jurisdictions when dealing with the assessment of matters of State and National Environmental Significance concurrently.

To provide greater confidence in the process surrounding the EPBC Act and to enhance certainty for applicants, CCAA strongly argues that time limits need to be placed on assessment periods for all stages of the assessment and decision-making process, thus providing an incentive for staff involved with assessment processes to deliver consistent outcomes that won't unfairly burden the quarry operator. Assessments should be deemed approved if they are unable to be determined within an agreed timeframe.

⊗ **Retrospectivity**

The EPBC Act regulates actions that impacts on matters of National Environmental Significance (NES). Through these provisions, a person must not take an action that has, will have, or likely to have a significant impact on a matter of NES, unless the action has been assessed and approved under the EPBC Act.

A key concern raised for our members is that NES matters are not static and new species can be added to the list of species or in some instances, present species could be reclassified (e.g. from vulnerable to endangered), potentially triggering a new evaluation of an existing approval.

While certain provisions are available to deal with retrospectivity such as prior authorisation, it does not provide sufficient cover to prevent an operation being subject to ongoing and future assessment, particularly when a new matter is listed and the original action was not previously referred. This issue can also result in the referral of actions when no impact on a matter of NES is identified to simply safeguard an operation under the current legislation from future assessment. This process places an additional assessment burden on the Government even though an impact on a current matter of NES is unlikely.

⊗ **Lack of clear, objective criteria for assessing the impact of habitat**

Members have found that the interpretation of legislative provisions within the Act can often be largely subjective in nature, leading to differences in the size, characteristics and quality of the offset area for each jurisdiction.

This is compounded by the individual interpretation of legislation and guidance by assessment officers and is particularly relevant in relation to the impacts of habitat clearing such as the koala and black cockatoo.

More consistent and detailed decision making and guidance material available to both industry and assessment officers would greatly assist industry to understand the specifics of an assessment for various matters ultimately reducing assessment timeframes and improving environmental and biodiversity outcomes.

⊗ **Administration**

CCAA members have advised that the significant turnover of assessment staff within the Department has led to inconsistent advice for applicants and subsequent delays in approval critical projects. The economic cost of delayed projects is substantial and can lead to job losses and lost investment opportunities to support government and private investment projects. The extractive sector produces high volume, low value products. Additional costs of production are therefore ultimately passed onto the consumer, resulting in increased materials costs to construction projects, housing and key infrastructure projects.

We understand that staff turnover led to examples where the Department was unable to assess certain applications and the cost of recovery of fees to outsource the assessment to an external consultant were excessive.

Recommendations

The extractive sector makes the following recommendations which we believe will deliver positive outcomes while seeking to maintain balanced outcomes for the environment and biodiversity.

CCAA has made seven recommendations which are targeted towards the streamlining and simplification of the Act, how it operates and how it interacts with state/territory legislations.

- 1. A single panel to determine referrals across State/Territory legislation**
- 2. Exempt quarry sites from NES self-assessment matters, where duplicated**
- 3. One agreed framework for Offsets to be applied across all jurisdictions**
- 4. Setting an absolute timeframe for referral decisions with automatic approvals**
- 5. Strengthen sections 43A and 43B of the Act to protect existing use rights**
- 6. One clear strategic assessment guideline for habitat clearing**
- 7. Stronger administrative processes to ensure greater accountability**

1. A single panel to determine referrals and assessments

CCAA recommends the implementation of a single, central panel with oversight powers to review and determine referrals and assessments under the EPBC Act and relevant state/territory legislation.

The purpose of such a panel is to have one assessment process that would enable input across both Government levels and cover the strategic and legislated requirements which often differ. It offers an approach to remove duplication by ensuring that multiple applications do not need to be made.

This type of panel is not too dissimilar to planning panels that have operated in New South Wales, Victoria and other jurisdictions for high tier/\$ value development assessments with representatives from both levels of government represented at each panel assessment.

2. Exempt quarry sites from self-assessment of matters of National Environmental Significance (NES) where duplicated

The requirement for an applicant to self-assess the significance of their development against a range of matters under NES can be challenging, costly and cumbersome. This process fails to take into account the long-term track record and efforts of quarry operators to effectively manage their sites, the small scale of development across each land holding nor the long-term investment and site use requirements for the operation of a quarry.

CCAA believes that applications for quarry sites should be exempt from matters pertaining to the NES where they are duplicated at the state and territory level. At the beginning of the application process, it can be difficult to ascertain if actions are deemed to be significant and therefore requiring referral. The removal of this step under the EPBC Act would be welcomed by our industry, removes a layer of bureaucratic duplication and keeps a check on environmental outcomes through State/Territory regulation.

In the event that the matter is not duplicated at State/Territory level, and the result of a self-assessment process identifies that the project does not warrant referral, we would prefer that a mechanism is in place to ensure that future changes to NES matters will not trigger a further requirement for referral. Such a mechanism would reduce duplication for low-risk projects and negate the current practice of proponents requiring the referral of every project to obtain certainty.

3. One agreed framework for Offsets to be applied across all jurisdictions

The creation of one agreed, equitable and standardised framework for environmental offsets across all State and Territory jurisdictions with flexible contribution arrangements, would be welcomed.

Too often, we see outcomes that are interpreted inconsistently that deliver largely differing outcomes across each state and territory.

CCAA would like to see a national guideline implemented that would seek to align all state, territory and local assessment and approval requirements. Such streamlining could be delivered as part of a more strategic implementation within the EPBC Act with assessment carried out according to the guideline, by State and Territory departments.

The implementation of a standard offsets calculator, applicable to determine all potential offset calculations would also be useful for quarry operators across our sector.

4. Setting an absolute timeframe for referral decisions with automatic approvals

CCAA strongly calls for the setting of a statutory timeline for referrals and applications to be determined under the Act. At present, there is no incentive for Department assessment staff to review applications in a timely manner and delays add costs and uncertainty for quarry operators and investors.

We believe a timeframe of six months should be more than enough for assessment and beyond this timeline, any applications that are unable to be determined would be deemed as automatically approved.

5. Strengthen sections 43A and 43B of the Act to protect existing use rights

CCAA believes that sections 43A and 43B of the Act should be strengthened to protect existing use rights that may be affected by a reclassification of species under NES.

Given the long-term nature and proven track record of our industry, we are more likely to contain a longer time span with existing use rights (compared with other shorter-term land development sectors) where a reclassification of species could be made.

Concerns remain about the potential reclassification of species that could potentially trigger a new evaluation of an existing or previously approved application under the EPBC Act. Retrospectivity in this sense, would be extremely costly for our sector and add to uncertainty for new investment if the goals posts are changed down the track.

Where reclassifications to species are made, a check of newly classified items can still be reviewed at the State/Territory planning level.

6. One clear strategic assessment guideline for habitat clearing

One clear strategic assessment guideline and interpretation for the assessment of clearing habitat under the Act is required and this should be administered consistently across each State and Territory jurisdiction to ensure consistent and equitable outcomes.

Such a guideline would assist to deliver equitable outcomes and ensure greater consistency for clearing land containing fauna such as the Koala or Black Cockatoo.

7. Stronger administrative processes to ensure greater accountability

While we understand that there has been a considerable amount of staff turnover within the Department, it is critical that assessment responses remain clear and consistent and not lead to delays with approvals.

Assessment staff need to be incentivised to ensure that all assessments are carried out efficiently and without added delay for quarry operators. CCAA supports the setting of a six-month window for the determination of all assessments and referrals under the Act.

Conclusion

Once again, CCAA is grateful for the opportunity to comment upon the review of the EPBC Act. The recommendations that we have made assist the streamlining of applications while reducing the cost

and complexity for industry and maintain protection of Australia's biodiversity and conservation values.

Given the critical imperative for the building and construction sector to play a leading role in efforts to rebuild and revitalise the Australian economy following COVID-19, we believe these suggestions offer a credible path to securing investment stability while maintaining balanced protections for environmental outcomes. We reiterate that now is not the time to make significant changes to environmental protections that would disproportionately shift the balance against reduced investment opportunities for quarry operations.

For further discussion of this submission, please contact Andrew Jefferies (National Policy Manager) on andrew.jefferies@cca.com.au or 02 9667 8325.

Yours sincerely,



**KEN SLATTERY
CHIEF EXECUTIVE OFFICER
CEMENT CONCRETE & AGGREGATES AUSTRALIA**