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ATTN:

Premier Roger Cook: wa-government@dpc.wa.gov.au

Minister for Environment – Reece Whitby: Minister.Whitby@dpc.wa.gov.au

MLA Jane Kelsbie Jane.Kelsbie@mp.wa.gov.au

RE: Statement of Concerns about the Proposed Environmental Protection Amendment Bill 2024

Dear Premier Cook and Honourable Members,

Nature Conservation Margaret River Region (NCMRR) is the peak non-profit community-based environmental organisation working on the key environmental challenges facing the southwest of Western Australia. Nature Conservation has more than 3000 local supporters (including businesses, members, donors, active volunteers, and project partners / participants). We advocate for best practice environmental land use and management for the natural environment in our region, and actively work in biodiversity Restoration. Details of our remit and operations can be seen at our website for information: <https://natureconservation.org.au/>

We as Nature Conservation Margaret River Region (NCMRR) are writing to you expressing our grave concern at the proposed amendments to the above bill, which proposes significant changes to the state's independent environmental watchdog and assessment body, the Environmental Protection Authority of WA (**EPA**). We feel these amendments must not be legislated, and that Western Australians require a strong and independent EPA, backed up by strong nature laws. The proposed amendments, taken from the Vogel-McFerran report, are not aligned with the objects and purpose of the EPA's role.

Our key recommendations and concerns are set out below. Our concerns are focussed on the southwest region where we are based, however our comments also apply more generally to the wide, diverse state of WA.

Southwest WA Biodiversity: Assets and Threats

Southwest Western Australia is home to unique flora and fauna, with globally significant biodiversity that is under significant threat. The inclusion of southwest WA as an international biodiversity hotspot is predicated on the definition that states the areas rich biodiversity must also be "under threat" (to qualify as an Internationally recognised biodiversity hotspot (Myers

2000), a region must meet two strict criteria: (1) It must contain at least 0.5% or 1,500 species of vascular plants as endemics, and (2) it has to have lost at least 70% of its primary vegetation). Functioning biodiversity is also a critical support to our economically valuable agricultural, winemaking and tourism industries.

The challenges of biodiversity loss and climate change make it incumbent upon us to strengthen our environmental and nature protection laws and regulations at the current time. WA's plants, animals, and ecosystems are facing increasing threats from a drying climate, climate variability, development, clearing and mining expansion. The Government's initiatives towards Net Zero which are relevant to these issues are welcomed.

Development pressures and transition energies

We are aware that the Government is under pressure from industry and the corporate sector, including the renewable and transition energy industries, to "fast track" development proposals and approvals. Whilst transition energies are required to move towards Net Zero, they must also be subject to the robust Environmental Impact Assessment process administered by the EPA, in the assessment of their impacts on the environment and endemic biodiversity. Some of the proposed transition energy projects are significant and wide reaching in footprint, and must be independently assessed for their net environmental benefit, impacts and costs - the key remit of the EPA.

Proposed changes to the EPA

We are gravely concerned by the proposed amendments to the WA Environmental Protection Authority (EPA). These changes threaten to weaken the protections that are crucial for safeguarding our biodiversity values, including transparency, community participation rights and the EPA's independence. The Amendment Bill and the compromised consultation process around these reforms is undermining key environmental assessment and protection processes and contributing to an eroding public faith in Government. The public want a strong EPA.

Key concerns of the proposed amendment bill include:

1. Reduced Independence of the EPA:

- The proposed Statement of Expectations (Part II, Division 1A) may cause undue pressure and influence over the operation and independence of the EPA. Section 8 of the *Environmental Protection Act* (EP Act) states that the EPA and its Chair are not subject to the direction of the Minister. The proposed amendment to the Bill that requires the Minister to issue a statement of expectations may conflict with this provision of the Act by adding considerable pressure on the EPA to meet government priorities to approve specified projects and forego proper environmental assessment.

Recommendations:

We recommend making amendments to:

- Add express provision that the statement is subject to S8 (independence of EPA), meaning that the State cannot direct the EPA in statement of intent.
- Limit the statement to apply only to priority (being proposal order in the assessment queue) and not to amounts of time; preferred outcome or prioritisation of particular environmental factors.
- Add express requirement that the statement must be consistent with the objects and purpose of the Act (s 4A).

2. Changes to the composition of the EPA Board:

- The proposed skills-based board (s7 2A) allows the Minister to recommend the appointment of people to the board who have “*a suitable level of knowledge, skills, experience or qualifications in 1 or more of the following fields*” (s7 2A(b)) which includes (iv) *industry, commerce or economic development*. This would be inconsistent with the EP Act. Industry and economics are separate considerations that are already taken into account in the Minister’s decision.
- The EPA’s objective under Section 15 of the Act states “(a) *to protect the environment; and (b) to prevent, control and abate pollution and environmental harm.*” Skills and experience in industry, commerce or economic development alone do not relate to the objectives or aims of the EPA and the inclusion is seen as undermining the independence and integrity of the EPA in meeting its objectives.

Recommendations:

- Remove industry and commerce provision for board selection (meaning someone from industry / commerce can still be appointed as long as they fit other criteria).
- Amend requirement for EPA members to have “interest and experience in environmental matters generally” to “interest and experience in protection of the environment”, which aligns with purpose of EP Act (s 4A) and EPA’s objective (s 15).

3. Proposed changes to Parallel Decision Making

- Under Section 41 of the Act, other decision-making authorities (DMAs) which have a function to approve or reject a proposal subject to EPA assessment are prevented from making any decision that will have the effect of causing or allowing the proposal to be implemented. This amendment would remove this prohibition, allowing other DMAs to provide approvals before environmental assessments are complete. The proposal to amend s.41(3) could greatly undermine the effect of environmental impact assessments (EIAs) because other agencies' decisions must be consistent with decisions under s.45 of the EP Act.
- If these other agencies' decisions are made (even if not yet implemented) before the EIA process is complete, then this could:
 - Exert undue pressure on the EPA. It may be more difficult for the EPA to reject a proposal if other DMAs have already signed off on approvals.
 - Lead to duplication – for example where a DMA approves a license or permit, but the EPA then recommends the project be rejected or amended or be approved subject to conditions, the secondary approvals will need to be re-evaluated against the EPA recommendations and subsequent conditions.
 - Impact the EPA’s decision on whether to assess a project or not, based upon other government agencies having regulatory powers that do not cover environmental and social impacts.
 - Lead to proponents undertaking preliminary works, despite provisions which prohibits these actions. We note that this is already a frequent occurrence which is rarely prosecuted, and fines are rarely issued.

Recommendations:

- We recommend that the prohibition on parallel approvals should be retained.
- If parallel approvals are to be permitted, then we urge additional amendments be made to mitigate against some of the unintended consequences of this amendment:
 - Increase penalties for non-conformance, including assigning compliance officers.

- Add express requirement for a formal notice to accompany any other approvals, stating that the proponent cannot commence work unless and until approval under the EP Act is in place.
- Further define “minor and preliminary work” (or limiting to those works prescribed by regulations).
- Add a requirement for confidentiality surrounding any other approvals until the EPA’s assessment report has been published. DMAs should be able to talk to each other and share information, but parallel decisions should not be published.

Proposed changes to Appeal Rights

- Appeals are a vital part of our democratic legal system to allow fairness and community feedback on the decisions that impact them. Appeals are one of the few mechanisms by which the WA public can provide information and evidence to the environmental assessment of projects that have the potential to cause significant environmental harm. They provide a mechanism for new information and evidence to be considered, conditions to be improved and the community to have a say in the management of WA’s precious environment. Appeal rights lead to better decisions and provide a safeguard against collusion and erroneous decision making.

Recommendation:

- We recommend to not remove appeal rights for non-assess decisions and the Government to retain the public’s right to appeal decisions where the EPA opts not to assess a proposal, maintaining transparency and community involvement in environmental governance

Thank you for your due consideration of this submission. We look forward to your response.

Regards,



Ann Ward
Chair, Nature Conservation Margaret River Region



Drew McKenzie
General Manager, Nature Conservation Margaret River Region