

To: Department for Environment and Water

Re: Draft Biodiversity Bill

18 February 2025

Introduction

AMEC appreciates the opportunity to provide feedback to the Department for Environment and Water (DEW) on the Draft Biodiversity Bill.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing 600 member companies across Australia, with over 45 member companies with direct project interests in South Australia. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

State of the Industry

South Australia's mining industry has long been a key economic sector with mineral exploration and mining companies investing to deliver the following benefits to South Australians in 2023-24.

- \$302.9 million mineral exploration expenditure - 31% increase from \$231.2 million in FY23
- \$3.2 billion capital expenditure
- \$8.9 billion in mineral commodity sales from mines
- \$7 billion in mineral commodity exports
- \$433.2 million in record high royalty payments to South Australians
- Over 45,000 direct and indirect jobs

The commodities explored for and mined, represent a wide range of minerals critical to the energy transition for a decarbonised future. The range of projects across the state that transition from mineral exploration to production will ultimately deliver high-value jobs and royalties of the future and long-term, ongoing social, environmental and economic benefits for the State and its communities.

General comments

The Draft Biodiversity Bill proposes a new legislative framework that could become the state's key piece of environmental legislation with strong influence over actions taken within the state that are likely to have impact on matters involving biodiversity. The Biodiversity Bill will also affect any individual, company, or government agency that is required to obtain any permits or approvals related to impacting or clearing native vegetation, threatened ecological communities or species, and wildlife.

The Draft Biodiversity Bill introduces several legislative changes that have the potential to significantly impact the State's mining industry. The Explanatory Guide alone, lists 39 survey questions addressing various changes. The Bill introduces highly ambiguous legislation leaving much to regulations, policy and guidelines by appointed members, specifically excluding the mining industry in some instances. AMEC has worked with members including legal professionals, environmental approvals specialists and mineral exploration and mining companies to identify and decipher the industry impacts.

AMEC and industry are unable to support many elements of this Bill without further clarification. The uncertainty the Bill introduces translates to an excessive degree of risk for mining industry investment and project development, and this may also be the case for other industries.

Environmental Approvals for mineral exploration and mining

Clarification has been sought around how legislation will specifically impact the range of mineral exploration and mining assessment processes for mining industry approvals along with determination of Significant Environmental Benefits (SEB). DEW have assured AMEC and industry that the current delegated provision for the Department for Energy and Mining (DEM) to manage approvals, including for Native Vegetation clearance, will remain as they are. However, industry remains concerned as DEW and DEM are yet to provide clear information to industry around exactly how this will work.

Mineral explorers and miners across Australia comply with robust environmental legislation, to ensure risks to the environment and community, have been appropriately managed. We are committed to ensuring these risks have been duly considered and addressed in a risk-based manner, minimising duplication, the need for red-tape, administrative burden and increasing cost. A Biodiversity Act that is well deliberated on and transitioned to is anticipated to deliver these outcomes.

As it stands, the introduction of this Bill as drafted, creates significant uncertainty for the development of projects with a lack of detail around what the changes will mean for new environmental requirements. This includes the information needed to satisfactorily work through assessment to gain development approvals and determine SEBs to offset native vegetation clearance. This lack of transparency is an issue for not only private industry but for Government as they work to support mineral explorers and mining operators with social licence in communities.

Legislation and policy uncertainty is an investment deterrent

South Australia has bold ambitions to be a global mining investment destination of choice. The State Prosperity project is driving forward economic opportunities to capitalise on the green transition occurring across the world and to leverage the State's renewable energy, green iron and critical minerals. AMEC supports the intention that ESG credentials are increasingly important to being seen as a trusted, reliable partner by international investors, industry and the Commonwealth, and that introduction of the Biodiversity Act may contribute toward verifying these credentials.

However, as it is currently drafted, this piece of legislation introduces uncertainty around a range of additional requirements that could extend project costs and timeframes. This ambiguity is likely to be a further deterrent to investment in South Australia's mining industry and for that matter, all other industries that rely on access to large areas of regional land for economic production.

Mining is particularly impacted as the location of minerals in the ground cannot be moved. Access to explore and extract mineral resources could be sterilised if surface biodiversity impacts are not able to be mitigated or offset as per several new elements of this Bill. South Australia is already struggling with its global investment rankings, recently plummeting in the 2023 Fraser Institute Mining Survey rankings. On investment attractiveness the State dropped from 9th in the world in 2022 to 19th in 2023 and dropped from 3rd in 2022 to 20th in 2023 on the Policy Perception Index.

The State's ambitions for biodiversity should be complementary to economic development and the community growth opportunities it provides, particularly in regional areas of the State. Biodiversity is important and the objects of the Act can be achieved, but this poorly drafted Bill is another crippling legislative framework that is ambiguous and needs further consultation and consideration of potential lost opportunity costs to achieve it.

Extended timeframe for genuine engagement is required

Working through the impacts of both intended and unintended consequences of this complex 153-page Bill, which introduces a significant number of changes, has not been possible in the short four-week timeframe that DEW provided for consultation (21 January – 18 February). This consultation has been disingenuous, occurring at a time when many South Australians with a vested interest in the outcomes and consequences of this Bill are on leave. There have been no public webinars or public information sessions as is expected with the introduction of a new Act. AMEC and industry question why DEW have not engaged appropriately with businesses and communities in South Australia.

AMEC and industry seek to ensure that the key economic agencies – Department for Energy and Mining, Department for Primary Industries and Resources, Department for State Development and the Department of Premier and Cabinet – who are leading the introduction of the State Development Act, have been fully consulted and are on board. Government must demonstrate a unified approach to assure industry that its concerns have been heard and that the Bill will be re-drafted considering the concerns of industry. As it stands this legislation poses a risk to mining industry companies and projects working to deliver economic development for the State's prosperity.

Priority issues and recommendations

- 1. The Minister will be required to make a new policy detailing how the SEB scheme will operate. AMEC notes that this has the potential for substantial changes in criteria that could have significant impact on project viability, timeframes and cost.**
 - AMEC does not support significant changes to the SEB scheme or changes that will leave industry worse off. A new SEB scheme should continue with a 'one-window' to government through DEM delegations and reduce red-tape and approvals timeframes.
 - To minimise adverse outcomes for industry, mineral exploration and mining companies must be represented in consultation on the SEB policy and an updated Guide for SEB clearance of native vegetation.
- 2. The introduction of Conservation Agreements is questioned, when the State has provisions for conservation measures by declaring parks. AMEC has concerns that these agreements will sterilise access to mineral resources. Provisions for mineral exploration and mining should remain in these areas as per jointly proclaimed parks.**
 - Conservation Agreements also create perception that these areas are no-go for development. This perception becomes a reality and issues relating to community acceptance and social licence for mineral exploration and mining in these areas.
- 3. AMEC has concerns with the introduction of "declared critical habitat" areas. The Mining Act already provides for certain conditions to protect specific habitats and species through approvals and PEPR conditions. Critical habitat areas should not be applied uniformly to every habitat for a species and should be individually assessed by exception, according to transparent and well-defined criteria.**
 - While the Bill provides for minerals industry activity to occur in "critical habitat" areas, the regulatory approvals framework is untested. Declaring "critical habitat" areas also creates perception that these areas are strictly no-go for development. This perception becomes a reality for community acceptance and social licence for mining projects.
- 4. Changing the definition of a "native plant" to any plant indigenous to Australia is not supported. Some plants not indigenous to South Australia may be problematic and considered weeds. The ecological benefit and impact of their inclusion is questioned. Considering all indigenous Australian plants as 'native plants' will impose significant**

additional environmental impact assessment work for mining and other industries seeking project approvals.

- Further consultation is required with DEM and industry to understand what will now be required in EIAs and the impact this will have on companies seeking approvals.
 - SEBs to offset plants that are not native to SA should not be required.
5. **The consultation period on the Draft Biodiversity Bill was inadequate. It is understood that DEW have received extensive feedback from stakeholders to be incorporated in a re-draft. AMEC request an additional consultation period on a re-drafted Biodiversity Bill to ensure adequate and fair consultation with industry.**

Other issues and recommendations

General

6. DEW should work with DEM to provide worked examples of the approvals process, including the Program for Environment and Rehabilitation (PEPR) prior to final drafting of the Bill. This is to de-risk unintended consequences of the legislation and ensure mining approvals can be achieved in commercial timeframes.
7. The mining sector is excluded from consultation on important appointments and development of subordinate legislation. Change the Bill so that the Minister consult with and takes into account views of the Mining Industry for Biodiversity and NPCAC Council appointments and Development of Policy and Guidelines.
8. The introduction of a 'general duty' will potentially substantially extend obligations to assess environmental impact of projects. Further clarification is required regarding the implications for mining industry environmental assessment and approvals.
9. Existing delegations for DEM to manage approvals for Native Vegetation clearance should remain as they are. This should include provisions for the new NPCAC to delegate functions to DEM, as per NVC current delegations to DEM.
10. Clarify how the Biodiversity Act will interact with the Mining Act.
11. Clarify how the Minister responsible for administering Mining Acts will be required to take account of the objects of the Biodiversity Act and how that will affect granting of authorisations by the Minister.

Native Vegetation and Significant Environmental Benefit

12. The Bill introduces a new clearance consent for planted native vegetation when it reaches 20 years old. AMEC seeks to clarify if further approvals will be required for areas previously cleared (under NVC/NPCAC approved clearance) and subsequently rehabilitated with planted native vegetation on minerals exploration and mining leases.
 - This could have significant impact if further required clearance approvals are not granted on approved mining operations.
 - Will clearances be required for native vegetation that spontaneously arises or is planted on areas previously granted clearance approval?
13. AMEC and industry request that the mining industry is represented on the Native Plants Clearance Assessment Committee and the Scientific Committee.
14. AMEC request clarification around what the NPCAC can delegate to DEM and seeks to ensure that they are able to delegate its functions as per the current legislation where the NVC has delegated some decisions to DEM.

15. Currently, the “Guide for a Significant Environmental Benefit for the clearance of native vegetation associated with the Minerals and Petroleum Industry”, sets out the requirements for Significant Environmental Benefit (SEB).
 - Provisions for DEM (delegated by the NVC) to continue administering native vegetation clearance approvals should remain.
 - The Guide should be consulted on now and updated as part of the Biodiversity Bill. Industry will require this on day one of a new Act and cannot afford surprise changes or costly delays to projects while this is updated.
 - AMEC and industry request further information, including worked examples of determining SEB. These should be consulted and published prior to the final drafting of the Bill. This will provide assurance to industry that there are no unintended consequences when legislation passes.
16. The existing exploration vegetation guidelines will need to be adopted under the new Act at time of enactment 14(2) or exploration companies will need to commence paying SEB for exploration activities.
17. AMEC seeks further information and an industry example showing exactly what will be required to meet the more stringent requirements to demonstrate “on-ground offsets to be achieved” and what will be required in the new plan to demonstrate biodiversity outcomes.

Legislation that may restrict land access for mineral exploration and mining

18. Provide further detail around how culturally significant biodiversity entities including species or ecological communities that have cultural value to some, or all First nations peoples will be recognised. How will this impact mining industry approvals.
19. The ERD Court will be given power to order that no development of the land in relation to which an offence was committed, may be undertaken for up to 10 years. AMEC seeks a review of this legislation to ensure mineral resources are not sterilised.
20. Land available for offsetting projects obtained through SEBs should not be crowded out by competing Biodiversity Projects. In fact, Biodiversity Projects should be allowed for offsetting.
21. Include provisions to ensure that Biodiversity Projects and carbon farming do not sterilise land access for mineral exploration and mining.
22. AMEC continues to ask for a contemporary co-existence framework for all industries including the biodiversity industry. An update to the 2016 Multiple Land Use Framework is requested.

Threatened Species

23. Ensure there is no unnecessary additional administrative burden on industry for species on national lists that are not vulnerable or threatened in SA.
24. Once a species is listed the Bill requires the Minister to decide if a “critical habitat area” should be declared. Individual assessment of ecosystems should occur to determine by exception those needing the full protection of a “declared critical habitat”. AMEC questions the Government’s ability to resource this assessment.
25. Nationally threatened categories will be consistent with the Common Assessment Method and industry seeks further clarification on what is required for State Assessment and approvals processes.
26. Provide further information to understand how the inclusion of fungi, algae, threatened invertebrates, amphibians and fish will impact environmental studies for mining industry projects and how these would be assessed in an EIA.

27. The process for listing threatened species, threatened ecological communities and other ecological entities will now be legislated. The definition of “ecological entities” is ambiguous, open to interpretation and should be constrained and clarified.
28. The composition of the scientific committee to advise the Minister on the assessment, listing and recovery of threatened species, ecological communities and ecological entities, should be included in the Bill.

Biodiversity Data

29. Development of a centralised biodiversity database is supported. AMEC and industry support access to more data. This may help to reduce costs and timelines for project approvals. This should be accessible and include the requirement to submit relevant data captured by private industry and Government.

Governance, appeals, transitional provisions, interaction with other Acts

30. Rights of appeal to the Environment Resources and Development Court should be included on decisions, as per other State environmental legislation.
31. Legislation excludes the mining industry from consultation on important appointments and development of subordinate legislation. As a key impacted sector, they should be included as a representative and meaningfully consulted for the State to understand the impacts of proposed policies and obtain ‘buy-in’ from the sector.
32. There are no transitional provisions included in the Bill and these must be included in this current round of consultation. This must include how provisions under the Native Vegetation Act and those of the National Parks and Wildlife Act will be transitioned into the new Biodiversity Act.
33. Further information should be provided regarding how the Biodiversity Act will interact with the EPBC Act, the Nature Repair market legislation and the Biodiversity market.

Issues and recommendations in detail

Further detail on AMEC’s 33 recommendations is outlined in Attachment 1.

Native Vegetation regulations moved into legislation

Parts of the Native Vegetation Regulations 2017¹ will be moved into legislation. This is included in the Draft Bill, Part 2 – Clearance of Native Plants, Division 5 – Mining and petroleum activities. AMEC notes that the Act permits Schedule 2 can be amended by regulation and this flexibility is supported.

Final comments

Mining and mineral exploration activities should not be disadvantaged

AMEC and industry seek to ensure that the Draft Biodiversity Bill is redrafted to ensure that it:

- Do not adversely affect companies who have current approved mineral exploration activities or mining operations.
- Will not economically disadvantage or leave the future industry worse off and should not create barriers for the range of mineral explorers and potential miners that are progressing

¹ 2023. Native Vegetation Regulations 2017. Version 2.11.2023
www.legislation.sa.gov.au/_/legislation/lz/c/r/native%20vegetation%20regulations%202017/current/2017.15.auth.pdf

toward mining approvals. As it is currently drafted, the Bill is expected to deter investment in the mining industry and limit new entrants into the market to explore and develop new mining projects.

- Does not delay mining industry approvals with additional considerations that do not actually achieve the Objects of the Act and amount to nothing more than red-tape and lengthy approval wait times.
- Delays to projects could diminish South Australia's current and future supply of minerals for clean energy and limit the environmental, social and economic benefits that the mining industry can provide to the people of South Australia.

Adequate Government resourcing for legislative changes and new policies

Amendments, including consequential amendments to Mining Act must be adequately resourced with additional staff. DEW must be adequately resourced to undertake the current and anticipated mining approval referrals. Approvals should not be slowed further by re-assigning regulators to develop Biodiversity Act regulations, policies and guidelines. DEM regulators have been re-assigned to the HRE Act and the MERS system over the past 3 years. This has significantly impacted mineral exploration and mining approvals. Industry cannot afford to have another long period of delays and seeks to ensure Government is well resourced to meet commercial timeframes to bring forward economic benefits to the State.

Further consultation is required

The mining industry is expected to be significantly affected by this proposed new legislation as it is currently drafted. The Draft Biodiversity Bill has a broad scope and is complex. It introduces many new elements of legislation and AMEC have outlined several issues that require further consultation and refinement. AMEC and industry therefore ask for additional public consultation on a re-drafted Biodiversity Bill to ensure adequate and fair consultation with industry and other stakeholders. This will provide assurance that the consequences have been worked through and impacts and risks to industry are well understood and eliminated where possible. The introduction of the Biodiversity Act should not leave the mining industry in a worse position to deliver economic outcomes to the State.

AMEC and industry thank DEW for recent engagement with members at an information session on the Draft Biodiversity Bill. We welcome ongoing engagement and targeted mineral exploration and mining industry consultation with DEW on the draft Biodiversity Bill and subsequent regulations, policy and guidelines.

Related AMEC submissions

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

For further information contact:

[REDACTED]

[REDACTED]

Association of Mining and Exploration Companies

[REDACTED]

Attachment 1 – Issues and Recommendations in detail

ISSUE NO.	DETAILS OF THE ISSUE	RECOMMENDATIONS
Priority issues and recommendations		
1	A new SEB scheme is to be developed by the Minister under the Act and this has the potential for changes in cost and criteria which will be the subject of consultation. DEM has delegation from the Native Vegetation Council to administer SEB requirements for exploration and mining. This includes through the mineral exploration and mining approvals assessment, including for the Program for Environmental Protection and Rehabilitation (PEPR). AMEC and industry seek to ensure that this process will continue unchanged. Section 161 requires the Minister to make a significant environmental benefit scheme (SEB Policy) which must be the subject of consultation. Mining industry bodies are currently excluded from this.	AMEC request that mining industry bodies are included as prescribed entities in the Act and included in consultation. The introduction of the Biodiversity Act should not result in increasing costs and timelines for higher offset requirements or additional fees under the SEB scheme.
2	The Biodiversity Council may enter into a Conservation Agreement with the owner of land for the protection, restoration or enhancement of native plants on the land. - The need for this additional type of park is questioned, when the State already has a process for Government to make new parks where required for the purposes of conservations. - There is potential that these Conservation Agreements occur on pastoral lands owned by the State. Mineral resources are owned by the State for the people of South Australia and access for responsible development should continue.	AMEC and industry seek to ensure that Conservation Agreements allow minerals resources to continue to be explored for and mined as they are in jointly proclaimed parks. These should not be retrospectively applied to change conditions for existing Mineral Exploration and Mining approved activities and PEPRs
3	The Bill proposes “critical habitat areas” that will impact land access for mineral exploration and mining. - The Bill introduces a new requirement that once a species is listed the Minister decides if a 'critical habitat area' (a new provision) should be declared. - AMEC and industry are concerned that blanket no-go “critical habitat areas” may apply for all species regardless of the individual assessment of whether that species is in a thriving ecosystem or in one that has been assessed as needing the full protection of a declared “critical habitat”. - The assessment process for mineral exploration already has effective regulatory provisions that ensure areas of critical habitat are protected. This is done by risk assessment of the activities on a case-by-case basis for the individual ecosystem. - The Mining Act provides for certain conditions to protect specific habitats and species.	The introduction of “declared critical habitat areas” should not apply for every location of a species. Individual assessment of ecosystems should occur to determine by exception those needing the full protection of a “declared critical habitat” if those protections are not available under any other Act. Critical habitat areas should not be retrospectively applied to change

	AMEC is also concerned that use of the term 'critical habitat areas' will create a perception that these areas are no-go for project development. This could decrease the ability of mineral explorers and miners to gain community buy-in and social licence.	conditions for existing Mineral Exploration and Mining approved activities and PEPRs AMEC questions the Government's ability to resource the process to assess areas and decide declared critical habitats when each new species is listed.
4	Changing the definition of a "native plant" to any plant indigenous to Australia is expected to impose significant additional environmental impact assessment work for mining and all other industries seeking approvals. - There are many areas of South Australia with introduced Australian natives that are not locally indigenous, and, in some circumstances, these may be considered weeds and an invasive species detrimental to local ecological systems and biodiversity. - A Biodiversity Act that protects weeds and affords then the same biodiversity value as locally indigenous plants is problematic for biodiversity outcomes. It also introduces additional requirements in the preparation of mining industry Environmental Impact Assessments and Significant Environmental Benefits	This change should not impose significant additional environmental impact assessment work for the mining industry. SEBs to offset plants that are not native to SA should not be required.
5	Consultation on the Draft Biodiversity Bill occurred from 21 January to 18 February 2025. A time when many key stakeholders were on annual leave. The four-week period did not provide adequate time for impacted stakeholders to review and provide detailed feedback the 153-page Bill.	The consultation period on the Draft Biodiversity Bill should be extended by a further four-week period to ensure adequate and fair consultation with industry and key stakeholders
General		
6	Unintended consequences of the legislation should be de-risked to ensure that mining approvals can be achieved in commercial timeframes under the new Biodiversity Act and existing Mining Act. - DEW have assured AMEC and industry that the current delegated provisions for the Department for Energy and Mining (DEM) to manage approvals, including for Native Vegetation clearance, will remain as they are. - However, industry remains concerned as DEW and DEM are yet to provide clear information to industry around exactly how this will continue to work.	DEW should work with DEM to provide worked examples of the approvals process, including the Program for Environment and Rehabilitation (PEPR) prior to final drafting of the Bill.
7	Key impacted sectors, including the mining sector are excluded from consultation on important appointments and development of subordinate legislation. Section 13 of the Bill prohibits the Minister responsible for the administration of a "mining Act" from assuming responsibility for the Biodiversity Act. Clearly indicating this sector will be heavily regulated and impacted by the legislation. The mining sector should be consulted on the appointment of members of the peak body for the	AMEC requests that the Bill is changed so that the Minister must consult with and take into account the views of the Mining Industry for:

	development of policy under the Bill, and in the development of the policies and guidelines. The best outcomes and most effective guidelines and policies can be achieved by consulting with these sectors to understand the impacts of the proposed policies/regulation and obtain 'buy in' from those sectors. - Section 15 of the Bill requires consultation by the Minister on appointments to the Biodiversity Council with the Conservation Council, LGA, Primary Producers SA, Premiers Climate Change Council but not with the mining sector. Industry bodies from the mining sector should be included as entities to be consulted on these appointments. - Mining industry bodies should also be prescribed for the purposes of consultation on the Guidelines by the Council for the purposes of Biodiversity policies (s161(8)(b)).	Biodiversity and NPCAC Council appointments Development of Policy and Guidelines.
8	Part 2, Section 11 of the Act introduces a 'General duty' where an entity must not undertake an activity that harms or has the potential to harm biodiversity unless the entity takes all reasonable and practicable measures to prevent or minimise any resulting harm. The Act lists considerations in deciding what is 'reasonable and practicable'. - This new general duty will potentially substantially extend obligations to assess environmental impact of projects. Further clarification is required regarding the implications for mining industry environmental assessment and approvals. - This duty relies on the broad definition of "Biodiversity". Biodiversity or biological diversity is defined in the Bill as "the variety of life forms represented by plants, animals and other organisms and micro-organisms, the genes that they contain and the ecosystems and ecosystem processes of which they form a part". - This definition of biodiversity is so broad that the general duty is a very substantial and nebulous expansion of environmental obligations. It might be appropriate to biologists but to form the foundation of a legal duty is problematic. The Explanatory Guide (p.10) notes that measures will be applied gradually with industry in an evolving regulatory environment which includes the development of biodiversity policies and regulations on how to comply with the General Duty. This creates a significant level of uncertainty for the mining industry which has project timelines and assessment timeframes of years to decades. Commitment to invest in a project now only to have policies that change the goal posts in the future is untenable.	<i>AMEC asks for clarification on how this General Duty will apply to the mining industry.</i> <i>The mining industry should be included in the development of biodiversity policies and regulations on how to comply with the General Duty.</i> <i>The definition of Biodiversity remains problematic in a legal sense and further clarification of the definition is required.</i> <i>AMEC seeks to ensure that these policies and regulations are not applied retrospectively to mineral exploration or mining projects.</i>
9	Division 5, 14 – Mining explorations Clearance of native plants incidental to exploratory operations authorised under a designated Act if undertaken in accordance with guidelines adopted by the Council under section 61 for the purposes of this clause following consultation with the Minister responsible for the administration of the <i>Mining Act 1971</i> (the <i>mining 5 Minister</i>). The NVC currently delegates functions to DEM to manage approvals for Native Vegetation clearance. It is not clear under new legislation how the Minister responsible for the Biodiversity Act provides for the NPCAC (which will replace the NVC) to delegate those functions to DEM.	<i>Existing delegations for DEM to manage approvals for Native Vegetation clearance should remain as they are – authorised under the Mining Act. This should include provisions for the new NPCAC to delegate functions to DEM, as per NVC current delegations to DEM.</i>

10	It is unclear how the Biodiversity Act will interact with the Mining Act.	<i>Clarify how the Biodiversity Act will interact with the Mining Act.</i>
11	It is unclear how the Minister responsible for administering Mining Acts will be required to take account of the objects of the Biodiversity Act and how that will affect granting of authorisations by the Minister. For example, objects of the Act include: ▪ identification and prioritisation of biodiversity assets for conservation and restoration across the State <u>to inform land use planning and decision-making frameworks.</u> ▪ to promote biodiversity conservation and restoration as <u>a responsibility equally shared</u> by all of society across <u>all sectors</u> and supported by individual accountability	<i>Clarify how the Minister responsible for administering Mining Acts will be required to take account of the objects of the Biodiversity Act and how that will affect granting of authorisations by the Minister.</i>
Native Vegetation and Significant Environmental Benefit		
12	The Bill introduces a new requirement for clearance consent for planted native vegetation when it reaches 20 years old. ▪ This may impact mining industry where native vegetation has been planted on mining leases (ML), and these are subsequently required to be cleared for a mine expansion.	<i>Further clarification is sought on the need for a new clearance in areas that have previously been cleared (with NVC/NPCAC approval), then planted and subsequently required to be cleared for a mine expansion on an approved ML.</i>
13	The Native Vegetation Council (NVC) responsibilities will be replaced by the proposed Native Plants Clearance Assessment Committee (NPCAC). ▪ There is no certainty about the composition of membership of the NPCAC and the Scientific Committee, this is left to regulations. ▪ It is important to ensure there is a balanced representation of members on these committees.	<i>AMEC and industry seek to ensure that there is a balanced representation of members on these committees, and this should include a mining industry representative. Membership composition should be included in the Bill and be part of this consultation process.</i>
14	Section 12 allows the Minister to delegate their functions under the Act. ▪ However, there is no apparent provision for the new NPCAC to delegate its functions as per the current legislation where the NVC has delegated some decisions to DEM. ▪ As NPCAC is a statutory body its functions are not ministerial functions that the Minister could delegate.	<i>AMEC request clarification around what the NPCAC can delegate to DEM and seeks to ensure that they are able to delegate its functions as per the current legislation where the NVC has delegated some decisions to DEM.</i>

15	DEM is responsible (via delegation from the Native Vegetation Council) for the approvals process in accordance with the “<i>Guide for a Significant Environmental Benefit for the clearance of native vegetation associated with the Minerals and Petroleum Industry</i>”². This should continue as per the information below on the DEW website, but with the transfer of NVC delegations to the NPCAC³. The NVC is provided with the following plans for comment as part of the mining authorisation process: - under a Mining Act: a management plan that incorporates details of the proposed clearance and a Significant Environmental Benefit (SEB) management plan. - The NVC will assess the proposed clearance and SEB in accordance with the Guide for the Mining and Petroleum Industry and the Mitigation Hierarchy. Note that an SEB may not be required for exploration if clearance is in accordance with NVC-approved industry standards for exploration. DEM and DEW have not provided information on how the Guide might change with the introduction of the Biodiversity Bill. Changes, even if only administrative, should be worked through now. This will provide industry with assurance that there are no unintended consequences when legislation passes. Industry will require the Guidance document remain valid throughout the transition to the new Biodiversity Act and cannot afford costly delays to projects if there is a policy gap while this is updated.	AMEC and industry seek assurance that provisions for DEM to administer approvals for Native Vegetation Clearance remain as per the Guidelines. The “<i>Guide for a Significant Environmental Benefit for the clearance of native vegetation associated with the Minerals and Petroleum Industry</i>” should be consulted on and updated now to reflect changes proposed in the Biodiversity Bill. Worked examples should be included. AMEC also seeks to ensure that calculations for SEB as set out in the “<i>Guide for calculating a Significant Environmental Benefit</i>” do not change without consultation.
16	Schedule 2, Division 5, Section 14 (clearance exemptions for exploration) appear to be duplicated from the Native Vegetation Act. (2) Guidelines adopted by the Council for the purposes of this clause must— (a) be directed towards ensuring that exploratory operations will have a minimal impact on biodiversity and be conducted in a manner that will allow for regrowth of native plants; and (b) adequately address any concerns raised by the mining Minister during consultation.	The existing exploration vegetation guidelines will need to be adopted under the new Act at the time of enactment 14(2) or exploration companies will need to commence paying SEB for exploration activities.
17	The Bill clarifies that the NPCAC must be satisfied that an on-ground SEB is not possible before accepting payment in lieu of an SEB. The Bill states in clear terms that an on-ground offset is required in accordance with the SEB scheme and a cash offset cannot be accepted unless the NPCAC is satisfied that it is not possible for an on-ground offset to be achieved. Whilst this has always been the position under the existing legislation, the provisions of the Bill are more emphatic in stating this position.	AMEC seeks further information and an industry example showing exactly what will be required to demonstrate on-ground offsets to be achieved and what will be required in this plan to demonstrate biodiversity outcomes.

² NVC. 2017. Guide for a Significant Environmental Benefit for the clearance of native vegetation associated with the Minerals and Petroleum Industry. <cdn.environment.sa.gov.au/environment/docs/seb_mining_guide_august_2017.pdf>

³ 2025. DEW website. Clearing Native Vegetation - Mining and exploration. <www.environment.sa.gov.au/topics/native-vegetation/clearing/mining-and-exploration>

	An applicant may be required to demonstrate why it is not possible to achieve an on-ground offset before a cash offset is accepted – see s48(4)(c)(ii). Paying into funds must be accompanied by a plan that shows how the fund will achieve measurable biodiversity outcomes. In addition: If the applicant has proposed to carry out or undertake, or cause to be carried out or undertaken, an act or activity to offset the impacts of an act or activity under section 50(9), the NPCAC must attach a condition to the consent requiring that the proposed act or activity be achieved.	AMEC seeks to ensure that the Bill does not result in increasing project costs and timelines through changes to offset requirements or additional fees under the SEB scheme.
<i>New legislation may restrict land access for mineral exploration and mining</i>		
18	Culturally significant biodiversity entities including species or ecological communities that have cultural value to some, or all First nations peoples will be recognised. - There are concerns that a species identified as culturally significant by one group of First nations peoples will be subsequently recognised in all regions and similar ecosystems even when other First nations peoples may not recognise them as culturally valuable. - Given the confidentiality concerns around heritage and cultural significance likely to differ between Traditional Owner groups throughout the state.	Further information is needed to understand how this recognition will apply. How will this impact mining industry approvals.
19	Unlawful clearance under s116 of the Bill gives the ERD Court power following criminal conviction to order that no development of the land in relation to which the offence was committed may be undertaken during a period of up to 10 years. This could effectively sterilise access to develop mineral resources and could result in missed opportunities for regional economic development and supply of critical minerals.	AMEC seeks a review of this legislation to ensure mineral resources are not sterilised.
20	There are a number of matters relating to competing land use that should be included in the Biodiversity Plan required under this new legislation. These will need to consider availability of land for offsets, Biodiversity Projects, Carbon farming alongside land access for mineral resources and other competing industries such as renewable energy and infrastructure projects. - AMEC and industry are concerned that Biodiversity Projects, Carbon farming projects may occur in areas where critical and unique mineral resources are located. - Policies should be developed to ensure that where possible, access to explore and extract mineral resources is not sterilised.	Land available for offsetting projects obtained through SEBs should not be crowded out by competing Biodiversity Projects. In fact, Biodiversity Projects should be allowed for offsetting but not where they may sterilise access to mineral resources.
21	AMEC and industry have concerns that Biodiversity Projects including those under the Commonwealth Nature Repair Market, and Carbon Farming may sterilise access to explore and mine critical minerals resources.	Include provisions to ensure that Biodiversity Projects and carbon farming do not sterilise land access for mineral exploration and mining.

22	The Bill leaves detail on multiple land use to the regulations and policy. How competing land use for offsetting projects obtained through SEBs will compete with land for Biodiversity Projects and with land access for mineral exploration mining, renewable energy, pastoral and agricultural industry.	AMEC continues to ask for a contemporary co-existence framework for all industries including the biodiversity industry. An update to the 2016 Multiple Land Use Framework is requested.
Threatened Species		
23	A single list of threatened species containing both state and national categories will be created. - The Explanatory Guide states "a species assessed as nationally threatened will be given its national status only". This relates to section 68 of the Bill which lists categories as either national or state. While alignment between State and Federal requirements is important to reduce red tape there is concern that species listed as 'vulnerable' nationally will start to receive State status despite no evidence of decline in SA. - For example, the Southern Whiteface is declining in eastern states due to broadscale agricultural clearance. These population declines are limited to clear spatial areas that do not apply in SA. - These changes place administrative burden on industry approvals for species that may not require protection in SA.	Ensure there is no unnecessary additional administrative burden on industry for species on national lists that are not vulnerable or threatened in SA.
24	Once a species is listed the Bill requires the Minister to decide if a 'critical habitat area' (a new provision) should be declared – see comments at Issue No. 17	
25	Nationally threatened categories will be consistent with the Common Assessment Method. Listing processes for species and communities by the Common Assessment Method expands the matters protected at the state level	Industry would like to understand what this involves. It is expected to be comparable with what is required for the EPBC assessment, but further information is required.
26	The definition for native plants and protected animals will be expanded to include fungi, algae, threatened invertebrates, amphibians and fish. This introduces a range of new considerations. - While providing protection for these kingdoms makes sense there is a risk the 'precautionary principle' may be used to allow species to be listed based on lack of data. - This would then place the emphasis of demonstrating these species are not threatened on developers / miners. How this is implemented will depend upon the scientific committee.	Provide further information to understand how the inclusion of fungi, algae, threatened invertebrates, amphibians and fish will impact environmental studies for mining industry projects. How will these be assessed in an EIA, PEPR and other mineral exploration and mining approvals and compliance.
27	The process for listing threatened species, threatened ecological communities and other ecological entities will now be legislated. Ecological entity means a spatially delineated level of biological organisation that meets the criteria prescribed by the regulations for the purposes of this definition.	This definition is ambiguous and open to interpretation and needs to be constrained and clarified.

28	A scientific committee to advise the Minister on the assessment, listing and recovery of threatened species, ecological communities and ecological entities. This Committee will ensure there is a balanced approach to listing threatened species, ecological communities and entities. These underpin the declaration of critical habitats and other consequences that will restrict project development.	<i>AMEC asks that the composition of this membership should be included in the Bill and part of this consultation process.</i>
Biodiversity data		
29	Biodiversity data responsibility will fall to the Minister. The Bill creates a Biodiversity Register which will be an online portal containing a register of applications, decisions, spatial data and other information relevant to biodiversity in South Australia. There is an abundance of environmental data that is required to be captured by mineral explorers and miners for environmental assessment, approvals and ongoing compliance of mineral exploration and mining operations. This is costly and time consuming to obtain.	<i>Development of a centralised biodiversity database is supported. Access to more data may help to reduce costs and timelines for project approvals. This database should be accessible and include the requirement to submit relevant data captured by private industry and Government.</i>
Governance, appeals, transitional provisions, interaction with other Acts		
30	There is no right of appeal on decisions on application for consent to clear native plants. - Rights of review or appeal provide a level of independent oversight of executive decision making which promotes public confidence in the decisions and leads to better administration of the legislation. In this way, there is greater assurance that native vegetation is protected in the way intended (and permitted) by the Parliament in enacting this legislation. It is all the more important when the policies that are applied in the assessment of native vegetation are complex, as often are the facts that may be relevant to a decision, and decision-makers are often time-poor when it comes to absorbing all of that information. - All other environmental legislation in the State (Environment Protection Act, Landscape South Australia Act) affords rights of appeal from licence/permit/approval decisions. The State has established and maintained for over 30 years a specialist Environment Resources and Development Court (ERD) Court for this purpose.	<i>Rights of appeal to the Environment Resources and Development Court should be included on decisions, as per other State environmental legislation.</i> <i>AMEC previously asked for this in consultation on the Amendments to the Native Vegetation Act in April 2024.</i>
31	Legislation excludes the mining industry from consultation on important appointments and development of subordinate legislation.	<i>As a key impacted sector, the mining industry should be included as a representative and meaningfully consulted for the State to understand the impacts of proposed policies and obtain 'buy-in' from the sector.</i>
32	There are no transitional provisions included in the Bill and these should be included in this current round of consultation.	<i>Clarification on transitional provisions should be provided on the Your Say</i>

	• This must include how provisions under the Native Vegetation Act (NV Act) and those of the National Parks and Wildlife Act will be transitioned into the new Biodiversity Act. The mining industry is particularly impacted by the SEB policy set out under the current NV Act and provision must be clear and provide certainty for industry and DEM processes to undertake Native Vegetation assessment for mineral exploration and mining as per DEM delegations under the NV Act. • Particularly as DEW have communicated verbally that this Act will have a long and potentially complex transition period.	<i>consultation web page for the 'Draft Biodiversity Bill'</i>
33	Further information should be provided regarding how the Biodiversity Act will interact with the EPBC Act, the Nature Repair market legislation and the Biodiversity market.	<i>AMEC is seeking clarification regarding how the Biodiversity Act will interact with the EPBC Act.</i> <i>AMEC is seeking further information around how the Biodiversity Act will work with the Commonwealth Nature Repair market legislation, the Biodiversity market.</i>