Submission to the Senate Standing Committee on Environment and Communications regarding:

Proposed amendments to the Environment Protection and Biodiversity Conservation Act, 1999

Submission by: The Alliance for Responsible Mining Regulation (ARMR)

Date Submitted: 24 November 2025

Introduction

The Alliance for Responsible Mining Regulation (ARMR) is a coalition of community groups and individuals interested in improving the regulation of the mining and quarry industry in the State of Victoria, Australia.

ARMR Vision Statement

ARMR supports financially viable and responsible mining with adequate regulation that is enforced in a timely and effective manner but will oppose proposals that threaten to destroy productive agricultural land, water resources, or negatively impact environmental and human health or that fail to obtain social licence.

Until such time as it can be proven to ARMR's satisfaction that the responsible authorities are regulating existing mines effectively ARMR will strongly oppose any new proposals in Victoria.

While ARMR appreciates this belated Senate Committee Inquiry, we strongly feel that for parliament to have debated the new environment Bills with an intention to pass them before any public consultation has been allowed is an indefensible breach of our democratic rights and protocols.

ARMR has experienced this reversal of proper community consultation procedures at the Victorian state level regarding the amendment of the Mineral Resources (Sustainable Development) Act (MRSDA).

ARMR submits that the failure to consult the people at the outset is a corruption of due process and procedural fairness which is undermining public trust in our governments at all levels. Widespread distrust in public policy processes is increasing and faith in our democracy is dwindling. Only legally-binding decision-making processes that are open, transparent and inclusive can rectify this problem.

Overview

Australia's environment is in a deplorable state and, in many cases, is on life support. The accelerating rate of extinctions is tragic. Apart from habitat destruction, pollution of our air,

soils, waterways and aquifers, climate change is the biggest threat to our natural environment. Cumulative effects of habitat destruction, generally not counted, will increase extinction rates for many species, not just for the rare, endangered and vulnerable. Advancing climate change will accelerate extinctions. A healthy environment is an essential and proven aspect of climate action.

Protecting our environment is a serious and urgent matter of national interest.

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) has been progressively undermined by successive governments for decades. The proposed legislation will not reverse this and could make it worse.

It is in the interests of business and industry to support stronger, firmer powers for protecting Australia's unique and precious environmental assets because, as Ken Henry said in his address to the National Press Club address, 16 July 2025, economic productivity depends on a healthy and thriving environment.

No environment, no economic prosperity. It is that simple.

Recommendations:

ARMR supports the Samuel Report's key recommendations

- Binding, enforceable and high-bar National Environmental Standards that clearly set out what's off-limits for destruction
- An independent watchdog to monitor the impact of projects and ensure the law is enforced
- Communities to have free access to information about decisions, the opportunity to substantively engage in decision-making and the right to challenge bad decisions taken by Government

ARMR supports the abolition of discretionary decision-making powers to be replaced by a set of rules to ensure that decisions are unbiased and objective.

The Samuel Review[1] found that a fundamental shortcoming of the current EPBC Act is that its poor statutory language, full of double negatives and lacking positive wording, encouraged unbridled and subjective discretion in decision-making resulting in uncertainty and poor environmental outcomes. These flaws must be removed if the new legislation is to inject objectivity and certainty into decisions affecting the environment.

ARMR is deeply concerned that legal provisions in the EPBC 2025 Reform Bills do not meet accountability and transparency standards our community expects.

National independent environmental standards with legal powers to override state laws and decision-making are urgently needed.

The two-tiered system has utterly failed to prevent species' extinctions or to protect biodiversity, ecosystems, waterways, groundwater systems, and soils from irrevocable pollution and destruction. It also delays decision-making which is both bad for business, anxious communities and the environment.

ARMR strongly supports that the Commonwealth Government have sole responsibility for national environment laws, standards and regulations.

The Commonwealth government should not delegate its MNES responsibilities to states and territories. Abolishing Bilateral agreements would eliminate duplication and hopefully, preclude

[1] Samuel Review, p 48, 43, 3

state, territory and local government decision-makers from their shameful unwillingness to protect our environment.

ARMR strongly opposes any fast-tracking of mining projects which will further weaken environmental protection.

ARMR's focus is on ensuring that mining in Victoria is conducted in a safe and sustainable way that protects human health, agricultural enterprises and our environment for the benefit of present and future generations.

The proposal to fast-track assessments will fail to identify project risks, e.g. the scale, nature or impact of the action, the proponent's environmental record, "fit and proper" compliance, or public concerns, especially of directly-affected individuals and communities. Even poorer outcomes will be the result.

No matter how important a project may be to Australia's renewables transition, it makes no sense to degrade the environment in the process. Our quality of life and standards of living depend on a healthy fully-functioning environment.

ARMR supports the establishment of Bioregional Plans and NO-GO zones with meaningful buffers.

The assessment of projects on a case-by-case basis does not account for cumulative impacts. Bioregional Plans would ensure that environmental impacts are assessed on a broader regional basis and not be restricted to the immediate mine site. Bioregional assessments would provide a truer picture of a project's range of environmental effects.

ARMR supports strict compliance with Australia's international legal obligations.

<u>Ramsar Wetlands</u>

Experience shows our governments are contemptuous of Australia's international obligations. Our **Ramsar Wetlands** are in a deplorable state. In Victoria, mines are permitted to discharge toxic chemicals (Chemicals of Concern) into rivers and creeks, e.g. the Campaspe River, the Kanukulk Creek, that flow to the Murray Darling Basin. Despite spending millions of taxpayers' dollars, the Victorian government who now *owns* the abandoned Stockmans mine, Benambra, can't stop the toxic seepage from flowing into the Tambo River and the Gippsland Lakes.

Apart from toxic dust and seepage, the potential collapse of even one of Victoria's gold mine tailings dams, but especially one at Fosterville Gold Mine, would render uninhabitable a major section of the Murray-Darling river system (approx. 600kms) and even affect Adelaide's water supply. No amount of financial compensation could reverse the destruction.

<u>Matters of National Significance (MNES)</u>

Under the EPBC Act 1988, species' extinction has drastically increased due to habitat destruction, pollution and, in some cases deliberate killing of wildlife.[2] Ample scientific evidence proves that mining is having significant adverse effects on MNES because state, territory and national legislation is not enforced and/or is overruled by a succession of Ministers for the Environment.

Recent decisions of the current Minister for the Environment, Senator Murray Watt, to allow ongoing destruction of significant and irreplaceable indigenous cultural heritage, such as the UNESCO World Heritage Murujuga rock art, is particularly egregious. And a devastating loss to Australia's national heritage, important to all of us.

[2] Fingerboards EES, Proponent EES 34 Appendix A005 Detailed Ecological Investigations, p95/403) states under **7.3.2 Direct Fauna Mortality**: "During clearing susceptible species are at high risk of mortality."

International Court of Justice (ICJ) Advisory Opinion on *Obligations of States in Respect of Climate Change*: Climate Trigger

Following the ICJ's July 2050 landmark advisory opinion concerning countries' legal duties to reduce GHG emissions, Australia is now legally bound under international law to ensure its policies align with science-based pathways to emissions reduction, not on voluntary targets alone.

The proposed legislation fails to meet Australia's duty to prevent transboundary environmental harm. The ICJ's Opinion confirms:

- climate change is an "unprecedented challenge"
- the "well-being of present and future generations of humankind demands an urgent response."
- "a clean, healthy and sustainable environment" is a human right
- the adverse impacts of human-induced climate change is widespread globally and disproportionately affects the most vulnerable people and systems
- all States under international law have legal obligations to protect the climate system and the environment generally from anthropogenic emissions.

ARMR recommends that a Climate Trigger that requires companies to regulate and mitigate their Scope 1, 2 and 3 emissions be mandated in all State, Territory and Commonwealth legislation in accordance with the ICJ Advisory Opinion.

All mines emit significant Scope 1 and 2 emissions. In Victoria, mines only have a General Environmental Duty (EPA GED) to reduce emissions "as far as reasonably practicable". One of the definitions of "practicability" is having the money to afford to do so. So easy for companies to claim they can't afford to reduce emissions.

Whether or not Ministerial Environmental Effects assessments consider Scope 1 and 2 emissions is at the whim of the Minister at the time (even the same Minister) even though Inquiry Advisory Committees may consider them in their reports.

The adverse environmental impacts of climate change are irrefutable. For the Victorian government not to include emissions in approvals is contrary to the *Climate Action Act 2017, Sec 17: decision makers must have regard to climate change.*

Without a legislated Climate Trigger, Australian governments face litigation risk and claims for reparation which would be detrimental to their fiduciary and financial duties.

ARMR supports the inclusion of Scope 3 emissions for critical minerals.

Scope 3 refer to the entire value chain, including emissions from extraction, processing, transportation, and use. Their exclusion from assessments of the impacts of critical mineral mining, especially mineral sands rare earths mining, refutes the argument that fast-tracking critical minerals mining is essential for Australia's renewables transition because these mines create enormous *in toto* carbon footprints which neutralises the benefits of renewables.

ARMR opposes the use of offsets even with Net Gain provisions.

Offsets simply continue the long-term ecological decline. Offsets are proven not to work largely because they are often in locations far away from the lost habitat and it is extremely difficult, if not impossible, to replicate the existing habitat, especially mature trees, that provide critical breeding and refuge hollows for birds and animals, many facing extinction. Mature trees take decades to produce these hollows. Once lost they may never be re-established.

All revegetation projects face difficulties being made worse by advancing climate change. Offset plantings are labour intensive and without consistent watering during hot weather, losses can be large. Due to the bulldozing of topsoil and destruction of the original soil biota,

attempts to replicate the cleared vegetation and the structure and function of the destroyed ecosystems “in situ” simply fails. Offsite plantings cannot reverse that loss. Nor can financial payments which must be banned. Offsets cause further environmental degradation.

ARMR supports the broadening of the water trigger to apply to all mines and be subject only to national environmental standards.

Currently, the "water trigger" which adds water resources to the list of nationally protected environmental matters (NPEMs), only applies to coal seam gas (CSG) and large coal mining developments, such as the three mines in the Latrobe Valley, Victoria.

Australia has significant water challenges. These are not just about reliable and adequate water supply but the contamination of decades of acidic wastewater discharge and radioactive residue in unlined ponds into waterways, aquifers, and productive soils. Even post-mining, these toxic discharges continue to seep into the landscape and groundwater, forever.

Applying the water trigger to all mines would mean that their significant impacts on water resources would be assessed at the national level and be subject to national environmental standards. Mineral sands mines need massive amounts of water, both in mining extraction, on-site processing and dust suppression. The water they consume and waste means water is taken from essential uses such as food-growing, town water supplies and environmental flows. Applying the water trigger to mineral sands mines is vital.

ARMR vehemently opposes the use of Ministerial Discretion to override environmental protections through a “national interest exemption”. This defeats the whole purpose of the new Bills and is NOT in the national interest.

ARMR agrees with Clayton Utz’s analysis that the Ministerial Discretionary powers proposed are “broad and significant” and could be used to approve critical minerals projects and other projects deemed nationally significant despite being inconsistent with national standards or that will have unacceptable impacts.[3]

One of the proposed reforms states that “an approval cannot be granted for a proposal which will have an unacceptable impact”. That Ministerial Discretion can override this requirement is unconscionable and terrible public policy, which needs to be consistent and firm.

ARMR supports that decisions be subject to judicial and merits review

Clayton Utz’s early analysis of the drafting suggests “the threshold for an ‘unacceptable impact’ is not as high as the Government intends when applied to real-world examples [and] further testing is required to ensure that unintended consequences are avoided.”

Clayton Utz’s finding that although judicial review, that is, checking the legality of decisions for legal compliance will continue, merits reviews to determine whether they achieve the “best” environmental outcomes will not be part of the new legislation. This is a significant flaw which runs counter to its stated objective to strengthen environmental protection.

ARMR supports the concept of a National Environment Protection Authority (NEPA) but only if it is truly independent.

ARMR is extremely concerned that Ministerial Discretion to privilege industry at the expense of the environment will mean the NEPA will become the Minister’s lapdog and be in thrall to regulatory capture due to powerful mining interests. To be effective a NEPA must have independent powers to enforce strong, enforceable and scientifically-based laws and standards without fear or favour.

[3] https://www.claytonutz.com/insights/2025/october/fundamental-reforms-to-australias-environmental-laws-new-standards-unacceptable-impacts-and-national-interest-test

To ensure the NEPA's independence, the Minister's powers to dismiss the NEPA Commissioner should be limited. Reasons for doing so must be transparent and subject to judicial review.

ARMR strongly supports that a NEPA have fully-resourced regulatory powers to support the full intent of the EPBC Act.

ARMR finds that our Victorian regulators, EPA and Resources Victoria, consistently fail to undertake full and proper monitoring and regulation of mining operations. If the new Bills are to improve environmental protections, increased surveillance and monitoring of compliance, including significant and meaningful fines, even imprisonment, for breaches must be introduced as a matter of urgency. Legal powers without stringent enforcement are "*toothless tigers*"—utterly useless and invite non-compliance.

ARMR strongly supports the Samuel Review's recommendation that people and communities be able to fully participate in decision-making processes as well as the right of any individual or group to have legal standing to challenge bad decisions taken by governments.

Full participation means that individuals and communities must be enabled to have free and unfettered access to information so they can have meaningful input into decision-making processes, such as Environment Effects Assessments, **before** decisions are made. Free and unfettered access may mean funding from governments, or, preferably, by the proponent.

Importantly, in the interests of "*onus of truth*", proponents must be legally compelled to provide reports that are free of bias and misinformation and soundly based on peer-reviewed science. It should not be up to individuals and groups to prove that proponents' reports are not factual, especially at their own cost.

Conclusion

ARMR is adamant that the failure of the Albanese government to implement the Samuel Review's key recommendations will **not** lead to stronger enforceable environmental protection, let alone improvement. It makes a complete mockery of the whole review exercise. The result is that public distrust in Government is well-founded.

Like many other Australians, ARMR is completely disillusioned with the way our governments are ignoring our democratic rights not only to be consulted but to have our concerns acknowledged and incorporated in legislation. Collectively, ARMR members have significant academic and professional expertise and experience as well as in-depth, long-time local knowledge. Our submissions are founded on scientific evidence and ground-truthing.

The changes described in the new Bills confirm ARMR's assessment that the Albanese Labor government is **not** serious about environmental protection. For environmental law to privilege mining and business interests over the environment is, quite frankly, appalling. This points to a serious governance issue.

Good governance rests on the government's duty to develop public policy and law anchored in the principles of transparency, accountability, inclusiveness, fairness and integrity.

With only 35% of the primary vote, the Albanese government does not have a mandate to trash the environment.