Australian Government
Department of the Environment

Department of the Environment Submission

House of Representatives Standing Committee on the Environment - *Inquiry into streamlining environmental regulation, 'green tape' and one stop shops*

This submission is made by the Department of the Environment. It relates to work being undertaken across the Environment Portfolio.

1. Role of the Commonwealth in environmental matters

Environmental policy has traditionally been the remit of State and Territory Governments, based on the division of powers between States and the Commonwealth set out in the Constitution. However, since the 1970s there has been increased public focus on environmental resources and a growing expectation that the Commonwealth Government be involved in matters which concern nationally-significant resources.[1] Societal expectations that the Government will manage natural resources in a way that supports economic development while managing trade-offs between economic development and the natural environment have also grown. This is the result of increased community awareness of the importance of a healthy natural environment for Australia's economic and social wellbeing.

The Commonwealth is generally seen as having a role in matters that involve multiple jurisdictions (as in the case of the Murray Darling Basin), international obligations, or that are seen to be of particular national significance (such as the Great Barrier Reef). This reflects the position of the Commonwealth Government in the Australian federation, which allows it to take on a co-ordinating role in these matters. The Commonwealth Government has developed regulation to address many of these issues, drawing on a range of powers set out in the Constitution.

2. Principles and challenges of environmental regulation

The Australian Government aims to achieve a healthy environment, a strong economy and thriving community now and for the future. The Department supports this aim by developing and implementing high quality environmental policy. In addressing the Government's environmental priorities,[2] the Department aims to deliver best-practice policy through its programme, regulatory and operational functions.

a. Principles for regulatory design

Regulation is one in a suite of tools for achieving the Government's aims and the Department's strategic direction. The Government has emphasised that environmental regulation should:

- focus on environmental outcomes, rather than prescriptive processes by which to achieve them; and
- be simple and streamlined, avoiding unnecessary duplication between levels of government and unnecessary burden on those subject to regulation.

These principles have been supported by recent reports from the Productivity Commission, summarised in Attachment A. Legislation may not always be well suited to address complex policy issues, such as where pollution arises from multiple sources or where it affects a large spectrum of the community and businesses. A range of other tools can be used by governments to address such policy challenges, including the provision of consumer information or incentives, or greater use of institutional frameworks that harness individual

[1] See for discussion Steven Dovers (2013), *The Australian Environmental Policy Agenda*, Australian Journal of Public Administration, vol. 72, no. 2, pp. 114–128
[2] See the Australian Government's 'A Plan for a cleaner environment' at http://www.environment.gov.au/topics/cleaner-environment.

and business resources to conserve or enhance environmental health (like the Reef Trust programme discussed below).

Governments can draw on a range of instruments and measures to achieve environmental objectives while minimising the burden on any one particular party. These should:

- keep the focus on environmental outcomes. Rather than unilaterally imposing precise controls, risk-based approaches to regulation and approaches to involve those affected when setting objectives and processes (that is, co-production models of regulation) should be employed ;
- comprise a hierarchy of approaches, including voluntary private sector responses, market-based mechanisms which create incentives for particular types of behaviour and outcomes, and more prescriptive approaches only if necessary to achieve the desired outcome; and
- be sufficiently flexible to enable adaptive management of the environment, reflecting the dynamic trade-offs between environmental, social and economic drivers.

Regulation focused on outcomes allows greater flexibility for business, community organisations and individuals and can be more effective and efficiently implemented than traditional regulation. Greater community engagement in the design and implementation of regulation can result in similar or better environmental outcomes, with significantly reduced burden and greater community and business support. Regulatory activities can include co-production models of regulation where the Government is not solely responsible for design, implementation and monitoring of outcomes. These are increasingly of interest as they should provide better means for designing targeted, low burden regulation. Impacts can also be reduced by leveraging in-kind support from communities and businesses.

Importantly, the future design of new regulatory mechanisms needs to balance public appetite for additional burden with public acceptance of risk to the environment. While there are some gains to be made by simplifying existing measures, the Portfolio will continue to support the Government to weigh the risks and benefits of various approaches when developing policy responses to environmental issues.

b. Challenges of achieving environmental outcomes through regulation

The Australian Government has established a Red Tape Reduction Programme (the deregulation agenda). This agenda, in relation to environmental regulation, is intended to improve the efficiency and effectiveness of environmental regulation and reduce the burden on community groups, individuals and business, while maintaining environmental outcomes.

The complexity of environmental regulation has increased over recent decades. The main three drivers of regulatory complexity are that:

- Community expectations about environmental protection have increased, resulting in the involvement of Commonwealth, State, Territory and local governments in a range of issues. In some cases, this has resulted in overlapping, duplicative or contradictory regulations. Consequently, a patchwork of regulatory requirements aimed at protecting environmental assets across Australia now exists. Businesses have identified a lack of coherence between jurisdictions in some areas, which creates inconsistent processes, causes delays, and reduces the certainty of outcomes both for the regulated community and the environment.

- Some regulations have been implemented before the complex environmental systems involved are comprehensively understood. As such, they may not always address underlying issues in the most effective way and can create a burden, without necessarily achieving environmental gains.
    - The slow pace of much environmental change, together with ongoing technical barriers and the cost involved in gathering robust environmental information, make it challenging for governments to identify and manage risks to environmental health. This has often resulted in multiple regulatory instruments addressing a given problem where a single measure is not able to provide a full solution.
- Regulation has sometimes been perceived as the default way to respond to environmental problems. Prescriptive and duplicative regulation and increasingly burdensome administrative practice may have devalued the currency of regulation as an effective policy response by government.

The Government recently released the *Australian Government Guide to Regulation*. The Guide reflects the principle that the use of regulation should not be the policymaker's first response to a problem. Instead, a mix of instruments, supported by high calibre administrative practices, may more effectively achieve the desired outcomes, while decreasing the perceived impact on those affected by regulation.[3]

The Environment Portfolio is developing and implementing policy consistent with this guidance.

3. The Environment Portfolio's contribution to the Government's deregulation agenda

The Government's deregulation agenda presents an opportunity for the Portfolio to maintain or improve environmental outcomes while reducing the compliance burden for businesses, individuals and community organisations.

The Government has committed to reducing the compliance burden for individuals, business and the not-for-profit sector by $1 billion each year after accounting for all increases and reductions in compliance costs. The Environment Portfolio, like all Commonwealth Portfolios, is required to identify areas of regulation for possible repeal, review or streamlining.

The deregulation agenda provides an opportunity to improve the consistency, efficiency and efficacy of environmental regulation throughout Australia. Reducing cumbersome and duplicative 'red tape' improves economic competitiveness . Removing outdated and unnecessary legislation will have immediate and positive impacts for Australian communities and businesses.

A dedicated Deregulation Unit has been established within the Department to lead the Portfolio's engagement with the agenda. The role of the Unit is to build capability within the Department to implement best-practice approaches to regulatory development and reform, and assist in building the capacity of staff throughout the Portfolio to understand and quantify the regulatory burden of their activities. It supports the two Parliamentary Repeal Days

[3] See for example N Gunningham & P Grabosky (1998) *Smart Regulation: Designing Environmental Policy* (https://www1.oecd.org/env/outreach/33947759.pdf).

scheduled each year and assists the Government to work with states and territories to identify and take up opportunities to streamline environmental regulation.

In 2014, the Unit is conducting an audit of all regulation across the Portfolio to determine the burden imposed on individuals, business, community groups and other not-for-profit organisations. The audit will catalogue the Portfolio's regulatory instruments, calculate the cost of the regulatory burden and identify reform priorities. The Department is working closely with business, community organisations and key advisory bodies to obtain expert advice on how the Portfolio can simplify regulation.

The Deregulation Unit is also responsible for compiling annual regulatory reports for the Portfolio. These reports will outline all activities with regulatory impacts during the previous calendar year, information about planned activities and the Portfolio's contribution to the Government's deregulation agenda. The first of these annual reports is due to be released by February 2015.

Streamlining amendments to three Acts were put forward from the Portfolio in the Omnibus Repeal (Autumn 2014) Bill 2014 during the first Parliamentary Repeal Day on 26 March 2014. More information on the Portfolio's contribution to Autumn Repeal Day 2014 is contained in Attachment B.

The Commonwealth has started discussions with States and Territories to identify unworkable, contradictory or incompatible environmental regulation across Australia. A key focus will be opportunities for multi-jurisdictional reform to ensure that environmental regulation is simplified, streamlined and harmonised where there is a case to do so.

As noted above, the Government has regulatory, programme and operational instruments to achieve its policy objectives. In the current structure of the Department of the Environment, policy development and instruments for protection of matters of national environmental significance and environmental quality are spread between two groups. From July this year, these matters will be brought together in one group, the Environment Protection Group.

This group will integrate marine and terrestrial environment and heritage protection, biodiversity conservation and environment quality policy with the various instruments of government intervention that are used to implement those policies: funding (like Landcare, Green Army), regulation (like the *Environment Protection and Biodiversity Conservation Act 1999*, assessment and approval bilateral agreements and the National Environment Protection Council) and operations (like National Parks). This structure is intended to reinforce the focus on environmental outcomes and the most effective means to achieve them.

4. Reform areas within the Environment Portfolio

Several major regulatory reform initiatives are already underway in the Environment Portfolio.

The one stop shop for environmental approvals is designed to address business and community feedback that many environmental processes and protections are duplicated between jurisdictions. These include project assessment, listing of threatened species, waste-related requirements and water management.

A lack of consistency between jurisdictions can lead to inconsistencies in processes and outcomes and conflicting timeframes, and makes navigating the complex suite of environmental regulations more difficult for business, community groups and others.

In addition, the repeal of the carbon tax will reduce cost pressures for businesses and households.

a. One stop shop for environmental approvals

The Government committed before the 2013 election to a one stop shop policy to reduce the duplication between Commonwealth and State and Territory environmental legislation. The Department has lead responsibility for implementing this policy.

Development of the one stop shop relies on bilateral agreements between the Commonwealth and States and Territories. This model is intended to provide equivalent environmental protections through a simpler process. This type of process, aimed at achieving at least equivalent environmental outcomes with less regulation, may be a model for a broad range of environmental measures in the future.

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has provisions for entering into agreements with States and Territories to accredit environmental assessment and approval processes. The Commonwealth has national standards to be considered prior to entering into an agreement. The standards are based on the requirements of Commonwealth law and facilitate the maintenance of strong environmental outcomes through the one stop shop. Separate Commonwealth assessment and approval of projects under the EPBC Act will not be required where a State or Territory approval is granted under an accredited process.The Department is well advanced in implementing the Government's commitment to a one stop shop through a three step approach with the States and Territories:

- memoranda of understanding to create a one stop shop for environmental approvals, which have been signed with all states and territories;
- assessment bilateral agreements, which are in the process of being agreed with States and Territories. Assessment bilateral agreements have already been agreed with Queensland and New South Wales; and
- approval bilateral agreements, which are in the process of being negotiated with States and Territories.

i. Benefits of the one stop shop reform

The one stop shop is a leading example of a reform which will reduce duplication between the Commonwealth and States and Territories. The reform will maintain high environmental standards while delivering an improved means to achieve better outcomes for business. The approval bilateral agreements will contain explicit and robust assurance processes, to provide confidence to the Commonwealth Government and the public that the standards required of the Commonwealth under the EPBC Act are being met.

Benefits for the environment include:

- *Improvement in standards over time.* The reform will maintain the high environmental standards of the EPBC Act. The Australian Government is committed to improving environmental standards over time cooperatively with the states and territories. To

ensure this outcome continuous improvement will be a key feature of agreements with State and Territory governments. The strategic approaches committed to under the one stop shop reform also allow for better planning and address cumulative impacts on the environment.

- *Improvement in our ability to track and report on the state of matters of national environmental significance and the environment*. This will assist communities in protecting the environment, enable governments, communities and business to target resources, and support environmental decision making.
- *Increased use of strategic approaches*, such as strategic assessments.[4] Strategic assessments improve environmental outcomes by considering the cumulative impacts of environmental pressures and delivering comprehensive offsets earlier.[5]
    - For example, the Western Sydney strategic assessment considered the cumulative impact of 20 years of development on critically endangered woodlands and provided $530 million to offset the impacts of development. Offset monies are being consolidated by the New South Wales Government to purchase priority conservation lands across the region.
    - Similarly, under the *Melbourne's Urban Growth Boundary* strategic assessment, developers are investing millions of dollars in over 12,000 hectares of new grassland reserves and 1,200 hectares of Red Gum grassland reserves, each of which is large enough to achieve ecological integrity and protect threatened species in the area.

Benefits for business include:

- *Lower administrative costs*, as business will no longer have to meet the requirements of two separate regulators. The one stop shop will remove unnecessary administrative and compliance costs for business by making the State or Territory the sole regulator (for both State and Commonwealth requirements). Business will need one application, one environmental assessment and one decision.
- *Lower compliance costs*, as business will only need to comply with one set of conditions which addresses both State and national matters in a consistent and compatible way.
- *Streamlined approval of projects* will be delivered under the one stop shop, as business will no longer need to wait for two separate approvals. Indicative examples of the potential benefits and time saved for infrastructure and mining projects are provided in Attachment C.
- *More certainty for investors* with a simpler, transparent and more predictable national regulatory system which is good for Australia's international investment reputation.
- *Further streamlining.* Strategic assessments have been demonstrated to significantly reduce the cost associated with major development projects. For example, Access

[4] Under Part 10 of the EPBC Act the Minister can undertake a strategic assessment of the impacts in implementing a policy, plan or program to provide upfront environmental approval for projects in a region. If satisfied the Minister can endorse the policy, plan or program and approve classes of actions rather than dealing with individual projects on a case-by-case basis.

[5] Offsets are measures that compensate for the residual impacts of an action on the environment, after avoidance and mitigation measures are taken. Where appropriate, offsets are considered during the assessment phase of an environmental impact assessment under the EPBC Act. The Australian Government's Environmental Offsets Policy is available at: http://www.environment.gov.au/resource/epbc-act-environmental-offsets-policy.

Economics has estimated that the Melbourne strategic assessment has had a total benefit to the private sector of over $3.2 billion in net present value terms.

ii. Assurance framework

The balance between regulatory burden and environmental benefits under the one stop shop will be supported by an assurance framework. The framework will provide a cooperative approach to support stable and durable arrangements that achieve good outcomes for business and the environment. The assurance framework will incorporate:

- *Standards for accreditation of environmental approvals*, which reflect the requirements and considerations for a State or Territory process to be accredited.
- *Performance assurance*, to ensure that commitments are met under approval bilateral agreements and that the Commonwealth can meet its reporting obligations (such as the annual report to Parliament and international reporting obligations). Performance assurance will be achieved through monitoring, risk-based auditing and review provisions that provide timely resolution of disputes.
- *Outcomes assurance*, to ensure good outcomes for business and the environment. Outcomes assurance will be achieved by open access to environmental information and data and by streamlined advice and guidance. These are recognised by the Productivity Commission as being important to streamlining the development application process for business.[6] Open access to publicly available information can reduce transaction costs for government and business, expedite environment approvals, lead to a greater understanding of cumulative impacts, and facilitate strategic assessments and regional scale planning.
- *Approval bilateral agreements* that will give legal effect to the standards and the performance and outcomes assurance elements of the framework.

iii. Further streamlining of environmental regulation

The Memoranda of Understanding for the one stop shop include a commitment to identify high priority areas for future strategic assessments.

The Department has recently finalised the National Offshore Petroleum Safety and Environmental Management Authority strategic assessment, with this Authority now being the sole regulator for petroleum and greenhouse gas activities in Commonwealth waters. The strategic assessment removes duplication and will result in faster approvals while maintaining high environmental standards, which will boost Australia's productivity and international competitiveness. Business and the community now have one point of contact and a single process of engagement. This streamlining initiative is estimated to provide average annual savings for business and environmental groups of $120 million.

The Department is also implementing programmes to encourage strategic environmental offsets. For example, the Reef Trust programme which combines Commonwealth and private funds (including offset funds from companies) will deliver integrated, better and larger scale protection for the Great Barrier Reef. This approach will leverage community support to achieve environmental outcomes, rather than relying solely on regulation.

As the one stop shop is implemented, joint efforts between the Commonwealth, States and Territories to strengthen intergovernmental cooperation on the environment will continue to

[6] Productivity Commission, *Major Project Development Assessment Processes*, 10 December 2013.

further streamline regulation. Areas of focus, as outlined in the Memoranda of Understanding[7], will provide a solid basis for future cooperative streamlining.

b. *Carbon Tax Repeal*

The Department is the lead agency supporting the Government in the carbon tax repeal process and implementation of the Direct Action Plan to reduce greenhouse gas emissions. The centrepiece of the Direct Action Plan is the Emissions Reduction Fund, which will replace the carbon tax with a system based on incentives for businesses and landowners to reduce emissions.

Repealing the carbon tax will remove a significant regulatory burden from the Australian economy. The carbon tax imposed a total burden of $7.6 billion in 2012–13 and compliance costs of around $85 million a year. The Government has committed to repeal the carbon tax as soon as possible, with the end of carbon tax liabilities to take effect from 1 July 2014. The carbon tax repeal bills have been considered by the Parliament. The Government will reintroduce the bills following the Senate's rejection of the legislation.

The Government's policy is that replacing the carbon tax with an incentives-based system will better address community expectations that environmental regulation should be more flexible and deliver clear benefits, while reducing the cost to the taxpayer.

Benefits for businesses and individuals include:

- reducing the cost pressures on businesses and households, especially for energy services; and
- removing the competitive disadvantage faced by Australian businesses competing with businesses in other countries without an equivalent carbon tax.

The Emissions Reduction Fund will provide positive incentives to adopt low-emissions technologies and practices. The Emissions Reduction Fund has been the subject of an extensive policy development and consultation process. The Emissions Reduction Fund White Paper was released on 24 April 2014.

The Fund will make payments to businesses and other proponents once emissions have been verified. It will make use of existing systems for reporting emissions and crediting emissions reductions, including the National Greenhouse and Energy Reporting Scheme and the Carbon Farming Initiative, thereby reducing transitional costs for businesses.

The Emissions Reduction Fund will deliver direct and practical environmental outcomes including:

- lower greenhouse gas emissions;
- improved energy and resource efficiency; and
- improved water quality, and reduced erosion and salinity through land sector activities like revegetation.

[7] http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/one-stop

c. *Other identified areas for streamlining considerations*

A range of other existing programmes are currently being considered for amendment, are under review, or are scheduled for review. Details of these are listed in Attachment D. These include:

- Historic Shipwrecks;
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*;
- Water Trigger (EPBC Act);
- Listing requirements under EPBC Act and National Heritage processes;
- Identified reviews of existing regulatory activities;
- Renewable Energy Target ;
- National Greenhouse and Energy Reporting Scheme;
- Commonwealth Marine Reserves;
- *Water Act 2007*;
- *Product Stewardship (Oil) Act 2000*;
- *Hazardous Waste (Regulation of Exports and Imports) Act 1989*;
- *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; and
- *Water Efficiency Labelling and Standards Act 2005*

5. Conclusion

There is a wide range of activities underway to examine opportunities to streamline and simplify environmental regulation within Australian governments.

The Commonwealth will continue to work with the States and Territories to review environmental regulation and identify prospects to innovate, streamline and improve regulation between jurisdictions.

The Government has been clear about the importance of taking a thorough and considered approach to streamlining environmental regulations. The consequences of changes to regulatory frameworks – additions, amendments and repeal – must be well understood in order to ensure environmental outcomes are maintained or improved with minimal burden placed on businesses, community organisations and individuals.

ATTACHMENT A

Issues raised in recent Productivity Commission reports

a. *Productivity Commission Report - Non-Financial Barriers to Mineral and Energy Resource Exploration (5 March 2014)*

The Productivity Commission found that mineral and energy resource exploration in Australia is governed by a complex framework of legislation, especially in relation to onshore, offshore and mineral and petroleum resource exploration. This is due to the broad scope of Commonwealth and State and Territory policy and regulatory intervention as well as differential treatment of specific resources and jurisdictional variation in relevant policies (for example, heritage protection or native title frameworks).

The Productivity Commission noted the potential for reform to governance arrangements by:

- streamlining exploration licence approval processes;
- removing duplicate State, Territory and Commonwealth environmental approvals processes;
- incorporating the benefits of exploration in decision making; and
- accrediting State and Territory government processes with respect to Indigenous heritage protection.

The Productivity Commission also made a number of specific recommendations that have a direct bearing on the Environment Portfolio, namely that:

- a lead agency shepherd exploration proposals and approvals;
- agencies reduce approvals timelines by setting time targets and expand the use of online lodgement;
- evidence based analysis be used in deciding to declare a new national park or conservation reserve;
- the Commonwealth Minister endorse the National Offshore Petroleum Safety and Environmental Management Authority process for assessing and accepting environmental management arrangements;
- the efficiency of the assessment and approval process under the EPBC Act be improved;
- the costs and benefits of the water trigger amendment to the EPBC Act be reviewed; and
- the Commonwealth make greater use of strategic assessments under the EPBC Act.

Many of these measures are underway through the one stop shop approach and are providing tangible benefits to a range of businesses and organisations. Other measures contained within the report are being considered through future deregulation activities.

b. *Productivity Commission Report - Australia's major project development assessment processes (10 December 2013)*

This report looked at ways to improve the efficiency of development assessment and approval processes to achieve current protection objectives for environmental, heritage and cultural assets at a lower regulatory cost to both proponents and the community.

In particular, the report recommended:

- reducing regulatory overlap and duplication and establishing a 'one project, one assessment, one decision framework' through increased use of assessment and

approval bilateral agreements while ensuring high environmental standards are maintained;

- increasing the use of strategic planning and assessments to both reduce the costs of project approval, while delivering environmental and other regulatory outcomes that are equal or superior to those achieved under other processes;
- undertaking a regulatory impact assessment of the water trigger amendment to ascertain if there are net benefits to the community from the amendment; and
- the Council of Australian Governments commissioning an independent and public national review of policies and practices relating to environmental offsets by the end of 2014.

Some of the main outcomes of this report are already being addressed through activities that are underway within the Department or the Portfolio. Further, the Review of National Environmental Regulations, which is commencing in conjunction with the States and Territories, will support continued reform on jurisdictional issues.

ATTACHMENT B

Environment Portfolio contribution to Autumn 2014 Repeal Day

Following the future passage of the Omnibus Repeal Day (Autumn 2014) Bill 2014 by the Senate:

- The *Sea Installations Act 1987 (Cth)* will be amended and the *Sea Installations Levy Act 1987 (Cth)* will be repealed. The *Sea Installations Act 1987* establishes a permit scheme to protect the environment from the operations of sea installations, such as pontoons and artificial islands. This is largely duplicated by the comprehensive environmental protection regime established under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Great Barrier Reef Marine Park Act 1975* which ensures Commonwealth marine areas are protected in the same way as our land-based matters of national environmental significance.
- The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)* will be amended to reduce the regulatory burden on low volume importers. This Act governs the requirements for the import, manufacture and export of ozone depleting substances. These changes will come into effect once the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* have been amended or a legislative instrument made to reflect the threshold for low volume importers.
- Section 255AA of the *Water Act 2007 (Cth)* will be repealed. This will remove the requirement to undertake an independent expert study on the impacts of any proposed mining on the Murray-Darling Basin before a licence is granted. Recent changes to regulations that protect the Murray-Darling Basin have made this requirement redundant. These include the Basin Plan and the addition of water resources as a matter of national environmental significance under the EPBC Act in relation to coal seam gas and large coal mining development

The *Environment (Spent and Redundant Instruments) Repeal Regulation 2014* repeals 866 spent or redundant legislative instruments within the Environment Portfolio. The Regulation was made by the Governor-General on 13 March 2014 and was tabled in Parliament on 26 March 2014. The majority of instruments contained in the regulation amend or repeal items on principal lists relating to specimens taken to be suitable for live import, the Convention on International Trade in Endangered Species of Wild Fauna and Flora specimens, native specimens exempt from trade control and migratory species.

ATTACHMENT C

Hypothetical case studies - Benefits from streamlining approvals under the one stop shop

Business manages competing factors when deciding if a project can commence, including environmental regulatory approvals, weather conditions, financial approvals, engineering constraints, access to skilled labour. As a result, benefits of streamlined approval timeframes under the one stop shop are difficult to calculate, as the benefits for each project are unique, subject to other considerations affecting project commencement.

The following hypothetical case studies of major projects illustrate some of the expected benefits and time savings that may be realised under the one stop shop model.

Infrastructure

Historical delays: A large rail project in eastern Australia requires an approval under the EPBC Act, as it is likely to have a significant impact on matters of national environmental significance. During the assessment period the Commonwealth approval decision is extended by 68 days to take into account late third party comments, resulting in a total of 110 days lapsing between the State and Commonwealth approval decisions.

Benefits under the one stop shop: These types of delay will be avoided or greatly minimised under the one stop shop, as third party comments will be considered in a single, early consultation process managed by the State. If the project has a net present value of **$130 million**, under the Government's regulatory burden measurement framework, there will be a benefit to business of up to **$1 million**.[8]

Mining

Historical delays: A proposed iron ore mine in southwest Australia requires assessment by Environmental Impact Statement under the EPBC Act. After reviewing the final Environmental Impact Statement, the Commonwealth approval decision is extended by 108 days to seek additional information on a listed ecological community. This results in a total of 150 days between the State and Commonwealth approval decisions.

Benefits under the one stop shop: These types of delays will be avoided or greatly minimised under the one stop shop as a single regulator will inform the proponent of the information required to make a decision on impacts to matters of national environmental significance. Under the one stop shop, the proponent will provide information once, early in the process. If the project has a net present value of **$1 billion**, under the Government's regulatory burden measurement framework there will be a benefit to business of up to **$11 million**.[8]

[8] Using the Australian Government's Regulatory Burden Measurement Framework, available at: http://www.dpmc.gov.au/deregulation/obpr/proposal/docs/interim_RIS_process_guidance_note_Jan2014.pdf.

ATTACHMENT D

Other identified areas for streamlining considerations or review

Various measures are being considered for amendment or review. These are discussed below.

Historic Shipwrecks

Repeal of the *Historic Shipwrecks Act 1976* and drafting of an Underwater Cultural Heritage Bill are proposed as part of the Portfolio's contribution to the deregulation agenda, which also includes measures that focus on legislative streamlining, legislative modernisation and a reduction of regulatory burden. The proposed Underwater Cultural Heritage Bill will substantially modernise the existing Historic Shipwrecks Act, enabling the introduction of statutory standards that will deliver a nationally consistent approach to protecting underwater cultural heritage.

A national approach will be delivered through the existing Historic Shipwrecks Act with a delegated structure in collaboration with the States, the Northern Territory and Norfolk Island. Statutory standards will also enable the simple and efficient integration of underwater cultural heritage into the National Offshore Petroleum Safety and Environmental Management Authority and one stop shop systems for environmental approvals.

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the ATSIHP Act) enables the Commonwealth Minister to make declarations to protect areas or objects of 'particular significance to Aboriginals in accordance with Aboriginal tradition' from specific threats of damage or desecration. The ATSIHP Act is triggered by applications from Indigenous persons which are then decided by the Minister. A declaration requires evidence of Aboriginal tradition, which is often strongest in areas covered by native title or land rights. This 'last resort' approach was meant to protect particularly sacred sites and objects if State or Territory law was inadequate.

Various reviews (including the 2009 *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*) have noted the lack of effectiveness, the overlap with other legislation, and the need to repeal or reform the ATSIHP Act; most recently the Productivity Commission's inquiry into Mineral and Energy Resource Exploration released on 5 March 2014. Less than five per cent of an estimated 473 applications since 1984 have resulted in a declaration and no declarations have been made since 2002.

Concerns have been raised that the ATSIHP Act does not reflect developments in Commonwealth, State and Territory laws on native title and Indigenous heritage. Applications made under the ATSIHP Act bypass native title processes and environmental regulation, generally creating uncertainty and delays without enhancing heritage protection. The Minister is required to consider every application, regardless of traditional rights or assessments under other laws.

Water Trigger (EPBC Act)

The EPBC Act was amended in June 2013 to identify water resources as a matter of national environmental significance in relation to coal seam gas and large coal mining development ("water trigger"). This means that coal seam gas and large coal mining developments require Commonwealth assessment and approval if they are likely to have a significant impact on a

water resource. Currently, the EPBC Act does not allow projects affected by the water trigger to be accredited under the one stop shop.

The Department is in the early stages of scoping the post-implementation review of the water trigger which is required within two years of commencement of this new requirement. This review will consider the costs and benefits of the water trigger amendment. This is consistent with recent recommendations by the Productivity Commission.[9] The Department is also streamlining the operation of the water trigger for projects currently being assessed under the EPBC Act through the use of assessment bilateral agreements.

Listing requirements under EPBC Act and National Heritage processes

The Department will investigate EPBC Act amendments to remove inefficient administrative steps in the listing and assessment process for heritage matters, species and ecological communities, including in the public nomination process. This will be accompanied by a review of provisions of the *Environment Protection and Biodiversity Conservation Regulations 2000* specifying the minimum content requirements for nominations, as well as for management, conservation and recovery plans.

The Department and the Threatened Species Scientific Committee are also currently developing a way to seek pro bono support from external experts to enhance the efficiency of the species assessment and improve the listing activity.

Reforming provisions of the EPBC Act in relation to the National Heritage List would improve the efficiency and cost effectiveness of the Commonwealth's involvement in heritage matters. This could include streamlining processes around nominations, assessment and listings. Further to these priorities for streamlining, including the one stop shop for environmental approvals, reviews of a number of existing regulatory activities are currently underway or commencing shortly.

Renewable Energy Target

On 17 February 2014, the Government announced the review of the Renewable Energy Target scheme by an expert panel, which will report by mid-2014. The review is to examine the operation and costs and benefits of the *Renewable Energy (Electricity) Act 2000* (RET Act) and related legislation and regulations, and the scheme constituted by these instruments. This includes considering:

- the economic, environmental and social impacts of the Renewable Energy Target scheme, in particular the impacts on electricity prices, energy markets, the renewable energy sector, the manufacturing sector and Australian households;
- the extent to which the formal objects of the RET Act are being met; and
- the interaction of the scheme with other Commonwealth, State or Territory policies and regulations, including the Commonwealth Government's commitment to reduce business costs and cost of living pressures and cut red and green tape, and the Direct Action policies currently under development.

For more information on the scope of this review, please see the Terms of Reference at Attachment E below.

[9] Productivity Commission Research Report, Major Project Development and Assessment Processes, November 2013; Productivity Commission Inquiry Report, Inquiry into non-financial barriers to mineral and energy resource exploration, 27 September 2013.

ATTACHMENT D

National Greenhouse and Energy Reporting Scheme

The Department is working with the Clean Energy Regulator to pursue opportunities for further streamlining of the National Greenhouse and Energy Reporting Scheme. These opportunities will build on previous efforts to simplify reporting requirements and improve the functionality of the Scheme for reporters. The Department is considering a range of areas to streamline when implementing the Emissions Reduction Fund. This includes reducing the overlap between reporting requirements imposed under the Scheme and other government programmes, and further examination of reporting thresholds so as to focus reporting on the most material emissions and energy data. The Clean Energy Regulator will continue to improve the effectiveness and efficiency of its systems, further reducing administrative costs to businesses.

Commonwealth Marine Reserves

The Government has committed to undertake a review of the Commonwealth marine reserves proclaimed in November 2012. Statutory management plans for selected marine reserves were set aside in December 2013 to make way for the review. The review will not change the reserves' external boundaries but will inform the development of new management plans, including which activities are allowed in particular areas. The marine reserves will remain in place with transitional management arrangements in effect until new management plans are established.

The *South-east Commonwealth Marine Reserves Network Management Plan 2013-23* – the only statutory plan currently in effect and not subject to review – contains a number of streamlining measures. These have been specifically designed to avoid duplication of assessment and approval processes for activities in marine reserves, when stringent sectoral management regimes – for example for offshore oil and gas and for commercial fisheries – already exist. The review of zoning and management arrangements for all other Commonwealth marine reserves offers the opportunity to work with relevant businesses and other groups to improve existing arrangements and consider additional measures to reduce the regulatory burden on commercial and recreational users of marine reserves.

Water Act 2007

A review of the *Water Act 2007* ("Water Act") will be conducted in 2014 in line with the statutory requirements set out at section 253. The review will present an opportunity to consider the effectiveness of the Water Act in achieving its objects and to identify any unnecessary regulatory burden imposed. The review, including terms of reference and consultation arrangements, will be announced shortly.

Product Stewardship (Oil) Act 2000

The *Product Stewardship (Oil) Act 2000* ("PS (Oil) Act") minimises environmental damage caused from the disposal of waste oil. It establishes the general framework for the Product Stewardship (Oil) Scheme under which benefits are paid to recyclers as a volume-based incentive to encourage increased oil recycling. The most recent independent review of the PS (Oil) Act and the Scheme was completed in September 2013 by Professor Neil Byron with the support of Aither.

The review found that, over twelve years, the Scheme had achieved much to minimise the improper disposal of oil and encourage the collection and re-use or recycling of used oil, but identified some adjustments that could be made to support the long term financial viability of the Scheme. The Government is currently considering the recommendations of this review.

ATTACHMENT D

Hazardous Waste (Regulation of Exports and Imports) Act 1989

The *Hazardous Waste (Regulation of Exports and Imports) Act 1989* ("Hazardous Waste Act") implements Australia's international obligations under:

- the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal;
- the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement of Hazardous Wastes within the South Pacific Region; and
- the Organisation for Economic Co-operation and Development Decision C(2001)107/FINAL concerning the control of transfrontier movements of wastes destined for recovery operations between Organisation member countries.

The Hazardous Waste Act implements these obligations by regulating the export, import and transit through Australia of hazardous waste to ensure transboundary movements are managed in a manner that protects human health and the environment. A review of the Hazardous Waste Act will ensure that Australia is effectively and efficiently meeting its international obligations for managing hazardous substances, hazardous wastes and other wastes.

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

The Ozone Act and associated legislation protect the environment by reducing emissions of ozone depleting substances (ODS) and synthetic greenhouse gases (SGGs) and allow Australia to meet its international treaty obligations relating to ODS and SGGs. While the Ozone Acts have been successful to date, they have not been reviewed since 2001 and so it is timely to assess their appropriateness, efficiency and effectiveness. This review, expected to be complete by mid-2015, will identify opportunities to reduce regulatory burden for businesses that use or supply ODS and SGGs and provides a timely opportunity to consider how non-regulatory approaches could contribute to emissions reductions in the future in line with international efforts to better protect our atmosphere.

Water Efficiency Labelling and Standards Act 2005

A review of the Water Efficiency Labelling and Standards Act 2005 ("WELS Act") will commence in 2014 in line with the statutory requirements for review . The review will present an opportunity to consider the efficiency and effectiveness of the WELS Act in achieving its objects and to identify any opportunities for further streamlining WELS requirements.
The review, including terms of reference and consultation arrangements, will be announced once agreement is reached with state and territory governments.

ATTACHMENT E

Review of the Renewable Energy Target Terms of Reference

Background

The Renewable Energy Target (RET) scheme, comprised of the large-scale and small-scale schemes, is aimed at increasing renewable energy generation and reducing greenhouse gas emissions from the electricity sector. It is designed to deliver the equivalent of 20 per cent of Australia's electricity from renewable sources by 2020.

Scope of the review

The review is to examine the operation and costs and benefits of the Renewable Energy (Electricity) Act 2000 ("the Act") and related legislation and regulations, and the RET scheme constituted by these instruments. This includes considering:

1. the economic, environmental and social impacts of the RET scheme, in particular the impacts on electricity prices, energy markets, the renewable energy sector, the manufacturing sector and Australian households;
2. the extent to which the formal objects of the Act are being met; and
3. the interaction of the RET scheme with other Commonwealth and State/Territory policies and regulations, including the Commonwealth Government's commitment to reduce business costs and cost of living pressures and cut red and green tape, and the Direct Action policies under development.

The review should provide advice on:

1. whether the objective of the RET scheme, to deliver 41,000 gigawatt hours (GWh) and small scale solar generation by 2020, is still appropriate;
2. the extent of the RET's impact on electricity prices, and the range of options available to reduce any impact while managing sovereign risk;
3. the operation of the small-scale and large-scale components of the RET and their interaction;
4. implications of projected electricity demand for the 41,000 (GWh) target; and
5. implementation arrangements for any proposed reforms to the RET, including how to manage transition issues, risks and any adjustment costs that may arise from policy changes to the RET.

The review is also to consider the Government's election commitment to reinstate native forest wood waste as an eligible renewable energy source.

Process

The review is to be led by a panel of experts appointed by the Ministers for Industry and the Environment, supported by a secretariat in the Department of the Prime Minister and Cabinet.

The panel is to undertake public consultations, seek submissions and provide a report to the Prime Minister, the Treasurer and the Ministers for Industry and the Environment by mid-2014.