

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ENVIRONMENT

Inquiry into Streamlining environmental regulation, 'green tape' and one-stop shops

Public Hearing – Thursday, 26 June 2014

ENVIRONMENT PORTFOLIO

RESPONSES TO QUESTIONS ON NOTICE

1. THREATENED SPECIES AND ECOLOGICAL COMMUNITIES LISTED UNDER THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION (EPBC) ACT 1999

The Committee asked:

CHAIR: Whose responsibility is it then to monitor the accuracy of the lists and review them? Is it the government departments at federal and state level? Is it environment departments?

Mr Thompson: Certainly, taking advice from the Threatened Species Scientific Committee, at least at Commonwealth level. We have a committee of experts that looks at the list, looks at how contemporary it is and looks at potential new listings.

CHAIR: That is a regular process?

Mr Thompson: Yes, very regular. That committee would meet two, three or possibly four times a year. It gets nominations for listings. It does not always accept those nominations, based on the science. Some of those nominations—

CHAIR: Are things ever delisted?

Mr Thompson: Yes. Not often, but there have been some delistings where they have found that the species is more abundant than it was—or, if not delisted, then downgraded in the list.

Discussion moved to other topics and returned to threatened species

Mr Knudson: Just on your question about the number of species that have been either uplisted or delisted based on advice from a state or territory, I think we should also take that on notice because I would like to give you absolutely accurate numbers.

Answer:

There are currently 1748 species listed as threatened under the EPBC Act. Since the commencement of the EPBC Act 133 species have been delisted (removed from the list) and 89 species have been transferred from one category to another.

Species that are delisted are removed due to new information that indicates that they are no longer threatened or, in one case, have recovered. Species that are transferred between categories are either uplisted to a more threatened category or downlisted to a less threatened category based on new information.

The Threatened Species Scientific Committee reviews the status of species as new information becomes available and resources allow. New information regarding a species' status is regularly provided by state and territory governments, particularly for species endemic to the jurisdiction. The Department has informal information sharing arrangements with all states and territories regarding threatened species. In all cases when an assessment is being undertaken to reassess a species, the relevant states or territories are consulted regarding the reassessment.

2. STATE AND LOCAL GOVERNMENT REFERRALS UNDER THE EPBC ACT

The Committee asked:

Mr ZAPPIA: I have two questions. They are related, and they go to the question of the one-stop shops. Firstly, can you provide us with some statistics on how many of the proposals that are referred to you under the EPBC Act come from state and local governments? And, under the one-stop-shop proposition, are there going to be special provisions for dealing with applications that arise from or that the state and local governments have an interest in?

Dr Bacon: Your first question was about how many EPBC referrals come from state and local governments. We would need to take that on notice because I do not have those figures with me today.

Answer:

The statistics on how many state and local government proposals are referred under the EPBC Act have been provided in the response to the Questions in Writing (Question 10).

3. COMMONWEALTH STATUTORY TIMEFRAMES

The Committee asked:

Ms MARINO: Some of the witnesses we have had have actually advocated to us for statutory time frames for environmental assessments and approvals processes, and you can understand why they would do so. Do any of these exist within the federal jurisdiction? If you could detail those, that would be good....

Mr Knudson: I can answer the first question. There are statutory time frames associated with each level of assessment, because there are different levels—more complex and less complex assessments. And there are statutory time frames, once a referral is received from a proponent, around when the decision needs to be made on the level of assessment that will follow after that. Then, subsequent to that, once a proposed decision is made there is a statutory time frame for when the final decision needs to be made. I will take on notice providing you with those statutory time lines for each of those levels of—

Ms MARINO: Cumulatively—that is an issue as well.

Mr Knudson: Absolutely. But in addition to that I will provide some statistics on the average number of days that we are late on making our approval decisions.

Answer:

The attached table (Attachment A) summarises the statutory timeframes for assessments and decisions that are specified in the EPBC Act.

For 2012-13 (which is representative of average departmental performance) the total number of referrals received was 439, when delays occurred the average time decisions were late was 24 days. However, statutory timeframes for environmental approvals were met 95% of the time.

4. STATE STATUTORY TIMEFRAMES

The Committee asked:

Ms MARINO:....Do statutory time frames exist within the processes of all state and territory jurisdictions as well? And will there be uniform statutory time frames in each jurisdiction once the one-stop shop is established?

Dr Bacon: And I might answer your questions around the states and territories and what arrangements they have in place. Generally speaking, yes, there is a similar approach in states and territories in that there are often statutory time frames in relation to assessment processes and then approval decisions. So generally speaking the states and territories do have those requirements in place as well.

Ms MARINO: Generally? Or all?

Dr Bacon: I would have to take on notice the specific processes and what the time frames are in individual state processes. In relation to whether it will be uniform, the answer to that is no. It will not be uniform once there are one-stop shop arrangements in place. The reason for that is that the bilateral agreements that we are making with states and territories are essentially to accredit state and territory processes. Rather than change all the state and territory processes, it is about accrediting existing state and territory processes, provided that they meet the standards that are set out in the EPBC Act that are designed to protect environmental outcomes. So, the time frames we talked about that apply in the state and territory processes would be the ones that continue to apply.

Answer:

New South Wales

The following table outlines key statutory timeframes in relation to assessment processes and approval decisions under the relevant NSW authorisation processes proposed to be accredited by the draft NSW approval bilateral agreement. The relevant legislation includes:

- *Environmental Planning and Assessment Act 1979 (EP&A Act)* including the EP&A Regulations;
- *Threatened Species Conservation Act 1995 (TSC Act)*; and
- *Fisheries Management Act 1994 (FM Act)*.

Please note that this is not an exhaustive list.

Activity	Details of activity	Statutory timeframe	Legislative provision
<i>Transitional Part 3A approvals under Part 3A, EP&A Act</i>			
Public exhibition and comment period	Reference to the end of the public consultation period for a project or concept plan is a reference to the end of the period of 30 days.	30 days	S8A(2)(a) EP&A Regulations
Notification of environmental assessment requirements	The time within which the Director-General is to notify the proponent of environmental assessment requirements with respect to a project or concept plan is 28 days after the proponent requests the Director-General to prepare those requirements	28 days	S8C(a) EP&A Regulations

Deemed refusal period (including modification applications)	A application is taken to be refused if a consent authority has not determined application within the deemed refusal period	30-120 days	S8E(2) EP&A Regulations
State Significant Development under Part 4, EP&A Act			
Public exhibition period	Public exhibition of the application and any accompanying information for a period of not less than 30 days	30 days	S89F EP&A Act
Deemed refusal period	A development application is taken to be refused if a consent authority has not determined application within the deemed refusal period	90 days	S113(1)(c), EP&A Regulations
Integrated and Designated Development under Part 4, EP&A Act			
Public exhibition and comment period	<p>Integrated development: for nominated integrated development or threatened species development, in any other case the period is 14 days</p> <p>Designated development: public exhibition of the application and any accompanying documents for a period of not less than 30 days</p>	30 days	<p>Integrated development: S89(3)(a) EP&A Regulations</p> <p>Designated development: S79(1)(a) EP&A Act</p>
Deemed refusal period	A development application is taken to be refused if a consent authority has not determined the application within the deemed refusal period	60 days	<p>Integrated development: S113(1)(b), EP&A Regulations</p> <p>Designated development: S113(1)(b)(i) EP&A Regulations</p>
State Significant Infrastructure under Part 5.1, EP&A Act			
Public exhibition and comment period	30-day period to publicly exhibit an environmental impact statement	30 days	<p>S113 EP&A Act</p> <p>S115Z(3) EP&A Act</p>
Completion of assessment report	Director-General's environmental assessment report is to be completed within 90 days after the end of the public exhibition period for the relevant EIS.	90 days	S195, EP&A Regulations
Copies of	A determining authority shall, as	21 days	S113 EP&A Act

submissions to Director-General	<p>soon as practicable and not less than 21 days before carrying out an activity or granting an approval in relation to an activity, being an activity referred to in section 112 (1), furnish to the Director-General a copy of any</p> <p>submissions made to it under subsection (2) with respect to the activity.</p>		
<i>Granting licence under Part 6, Threatened Species Conservation Act 1995</i>			
Place application on register	The Director-General must, within 7 days after receiving a licence application, cause a copy of the application to be placed on the register.	7 days	S96(2), TSC Act
Public exhibition and comment period	If the licence application is accompanied by a species impact statement or a species impact statement is provided in response to a notification from the Director-General that a statement is required, written submission period of not less than 28 days.	28 days	S96(5)(c), TSC Act
Determination	The Director-General must make a decision about an application within 120 days after receipt of a species impact statement or within such further period as may be agreed with the applicant.	120 days	S99(2), TSC Act
Deemed approval	If the Director-General fails to grant, but does not refuse, a licence application within 120 days, or of any extension of that period agreed to by the Director-General and the applicant, the application is taken to have been granted.	120 days	S107(2), TSC Act
<i>Granting licence under Part 7A, Fisheries Management Act 1994</i>			
Public exhibition and comment period	If the licence application is accompanied by a species impact statement or a species impact statement is provided in response to a notification from the Director-General that a statement is required, written submission period of not less than 30 days.	30 days	S221(c), FM Act

Determination	The Director-General must make a decision about an application within 120 days after receipt of a species impact statement or within such further period as may be agreed with the applicant.	120 days	S221B(2), FM Act
Deemed approval	If the Director-General fails to grant, but does not refuse, a licence application within 120 days, or of any extension of that period agreed to by the Director-General and the applicant, the application is taken to have been granted.	120 days	S221C, FM Act

Queensland

The following table outlines key statutory timeframes in relation to assessment processes and approval decisions under the relevant Queensland authorisation processes proposed to be accredited by the draft Queensland approval bilateral agreement. The relevant legislation includes:

- *Environmental Protection Act 1994* (EP Act); and
- *State Development and Public Works Organisation Act 1971* (SDPWO Act).

Authorisation processes may also be subject to non-statutory timeframes, which are not reflected in the table.

Please note that this is not an exhaustive list of statutory timeframes.

Activity	Details of activity	Statutory timeframe	Legislative provision
<i>Environmental Authority for a Resource Activity under Chapter 5 of the EP Act, following preparation of an EIS under Chapter 3 of that Act.</i>			
Notice about application that is not a properly made application	If an application is not a properly made application, the administering authority must give the applicant a notice within 10 business days after receiving the application.	10 business days	S128(2)
Information requests	An information request must be made within 20 business days after the application stage ends.	20 business days	S144
Extension of information response period	If the applicant asks the administering authority to extend the information response period, the administering authority must decide whether to agree to the extension within 5 business days.	5 business days	S145

Non-compliance with requirement to publicly notify application	If the applicant has not complied with the public notice requirements for the application, the administering authority must decide within 10 business days whether to allow the application to proceed as if the noncompliance had not happened.	10 business days	S159(2)
Public comment period on terms of reference	The comment period must not end before 30 business days after the notice is published.	30 business days	S42(3)
Proponent to be given comments on terms of reference	Within 10 business days after the comment period on the terms of reference notice ends, the chief executive must give the proponent a copy of all comments received.	10 business days	S44
Public comment on EIS	The chief executive may fix a minimum period for the making of submissions about the EIS. The period fixed must be at least 30 business days.	Minimum 30 business days	S49
Proponent to be given comments on EIS	Within 10 business days after the comment period on the EIS ends, the chief executive must give the proponent a copy of all comments received.	10 business days	S56
Consideration of EIS	Within 20 business days of receiving from the proponent: a summary of submissions; a statement of the proponent's response to the submissions; and any amendments of the submitted EIS because of the submissions, the chief executive must decide whether to allow the submitted EIS to proceed.	20 business days	S56A(2)
EIS assessment report	The chief executive must give the proponent a report about the submitted EIS within 30 business days following the end of the submission period.	30 business days	S57(2)
Non-compliance with public notice requirements for EIS	If the applicant has not complied with the public notice requirements for the EIS, the administering authority must decide within 10 business days whether to allow the EIS to proceed as if the noncompliance had not	10 business days	S68(1)

	happened.		
Decision-making	A decision must be made within 20 business days after the day the decision stage for the application starts. However, the period may be further extended if the applicant, at any time before the decision is made, gives written agreement to the extension.	20 business days	S168(1)
Notice of decision	Within 5 business days after making a decision, the administering authority must give the applicant and any submitters written notice of the decision.	5 business days	S181(1)
<i>Environmental approval for a coordinated project under Part 4A of the SDPWO Act</i>			
Public comment period	Minimum public comment period for a protected matters report	28 days	S36B(4), SDPWO Regulation

5. STRATEGIC ASSESSMENTS SUMMARY

The witness stated:

Mr Knudson: I have heard that there have been a number of questions around strategic assessments. I would not mind sending in a little prospectus that we have done, which is basically a summary of what has happened under strategic assessments. It gives a good idea of not only the economic benefits but also the environmental benefits that we have achieved for a number of these projects. They are still a relatively new instrument, but I think it is important.

Answer:

The Strategic Assessment prospectus can be downloaded from the Department's website at:
http://www.environment.gov.au/system/files/resources/bef37dfd-6660-46cb-a2d5-996db6261e55/files/strategic-assessment-prospectus_1.pdf

EPBC Act 1999 – Statutory Timeframes for Environmental Assessments and Decisions

Action	Decision	Statutory Timeframe In the Process (Wk Dys)	Statutory Timeframe Decision (Wk Dys)
Decision if a proposed action needs to be referred	1. Proponent provides referral in prescribed form	Nil	
	2. Invite comment on referral	10 days	20 days
	3. Decision on referral	Nil	
	4. Decide assessment approach if CA	Nil	
A. Decision that action is clearly unacceptable	1. Proponent provides referral in prescribed form	Nil	
	2. Invite comment on referral	10 days	
	3. Decision clearly unacceptable	20 days	
	4. Proponent request reconsideration	Nil	
	5. Invite comment on referral	10 days	
	6. Prepare report for Minister	10 days	
	7. Decide if the provisions in Chap 4 apply		20 days
	8. If yes decision		20 days
	9. If no inform proponent		10 days
B. Assessment on Referral Information	1. Proponent provides referral in prescribed form	Nil	
	2. Invite comment on referral	10 days	20 days
	3. Decision on referral		
	4. Decision on assessment approach		30 days
	5. Prepare draft report	Nil	
	6. Invite comments on draft recommendation	10 days	
	7. Finalise report		20 days
	8. Invite public comment	10 days	
	9. Decision		
C. Assessment on Preliminary Documentation	1. Decision on referral	Nil	
	2. Request specify information	10 days	
	3. Proponent to publish information for public	10 days	
	4. Provide final document with summary of comments and publish	10 days	
	5. Publish final document	10 days	
	6. Complete recommendation report	10 days	40 days

	for Minister and invite comments from other Ministers		
	7. Invite public comment on decision (optional)	10 days	
	8. Decision		
D. Assessment by EIS/PER	1. Decision on referral	Nil	
	2. Prepare tailored guidelines and provide to proponent	20 days	
	3. OR Prepare standard guidelines and provide to proponent	20 days	
	4. Prepare draft report	Nil	
	5. Approve publication of draft report	Nil	
	6. Publish report and invite comments	20 days	
	7. Publish final report	10 days	
	8. Complete recommendation report and give to Minister	Nil	40 days
	9. Invite comments from other Ministers and others taking action	10 days	
	10. Invite public comments	10 days	
	11. Decision		
E. Accredited Assessment (case by Case)	1. Decision referral	Nil	
	2. Decisions on accredited assessment process	Nil	
	3. State/Territory assessment process	Nil	
	4. Prepare and provide assessment report	Nil	
	5. Invite comments from other Ministers and others taking action	10 days	30 days
	6. Invite public comments	10 days	
	7. Decision		
F. Assessment Bilateral Agreements	1. Decision on referral	Nil	
	2. State / Territory assessment process	Nil	
	3. Prepare and provide assessment report	Nil	
	4. Invite comments from other Ministers and others taking action	10 days	30 days
	5. Invite public comments	10 days	
	6. Decision		