



## **Submission to the House of Representatives Environment Committee Inquiry Into Streamlining Environmental Regulation, 'Green Tape', and One-Stop-Shops**

**Joint submission by the Australian Petroleum Production and Exploration Association, the Business Council of Australia and the Minerals Council of Australia**

**April 2014**

This is a joint submission by the Australian Petroleum Production and Exploration Association, the Business Council of Australia and the Minerals Council of Australia to the House of Representatives inquiry into streamlining environmental regulation, 'green tape' and one-stop-shops.

We are making this submission because we think that there does not need to be a trade-off between environmental outcomes and economic growth and industry development. Sensible reforms to current legislative and regulatory arrangements can reduce the regulatory burden while delivering equivalent or enhanced levels of environmental protection. Reforms need to occur at every level of government.

Since 1959, the Australian Petroleum Production and Exploration Association (APPEA) has been the peak national body representing the upstream oil and gas exploration and production industry. APPEA has more than 85 member companies that explore for and produce Australia's oil and gas. In addition, APPEA's more than 270 associate member companies provide a wide range of goods and services to the industry.

The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

The Minerals Council of Australia (MCA) represents over 85 per cent of minerals production in Australia. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

Over a number of years our organisations have published reports and provided submissions to numerous Senate and parliamentary inquiries into environmental regulation that demonstrate the inefficiencies and duplication inherent in how governments seek to regulate the environment.

This submission highlights the key issues around environmental regulatory reform of which we think the inquiry should be cognisant in forming its recommendations. While strongly supporting the Australian Government's leadership in establishing a 'one-stop-shop' for environmental approvals, it also highlights other areas that we consider warrant urgent attention and reform.

### **Recommendations**

#### ***One-stop-shops***

- The Commonwealth Government and state and territory governments should, as a priority, continue to develop bilateral agreements under the Environment Protection and Biodiversity Conservation Act (EPBC Act), which accredit state government assessment and approvals processes that meet the required environmental standards.
- Bilateral agreements should be accompanied by an assurance framework that demonstrates the agreements are being adhered to, environmental outcomes are being achieved, and that the regulatory burden on project proponents is lower than is currently the case.

- Risk and outcome-based regulation should be used to allow the states and territories flexibility in how they achieve the standards within the requirements of the EPBC Act.
- Should conditions on approvals and offsets be required, they should be consolidated into a single document covering both Commonwealth and state requirements.
- Should conditions on approvals be required, they should be outcomes based and determined on the basis of established science and risk and related only to the nature and scale of the activity and its potential impact on the environments.
- Additional measures should be implemented to ensure greater certainty and timeliness for decisions under the EPBC Act, including the use of statutory timeframes, clarification regarding the application of 'stop-the-clock' provisions and other measures to reduce the likelihood of appeals on decisions, including vexatious appeals.
- The EPBC Act should be immediately amended to allow bilateral agreements to include Section 24D, 'the water trigger'. Consideration should also be given to removing the water trigger, given its inconsistency with the broader objectives of the Act.
- A Regulatory Impact Statement (RIS) should be developed for the water trigger, as recommended by the Productivity Commission in its study on major project approvals processes. The government should make appropriate amendments to the EPBC Act based on this RIS.
- Definitions contained in the EPBC Act water trigger around 'large coal mining' and significant impacts are vague and continue to risk capturing all coal mining activities. The capture of the water trigger should be further tightened to ensure that only those activities with a genuine significant impact on a material water resource trigger the Act.
- We support the Commonwealth's effort to establish a one-stop-shop for environmental approvals for offshore oil and gas developments. The Australian Government should further promote actions to streamline jurisdictional issues in Australia's offshore jurisdiction.
- Better utilisation should be made of existing provisions under the EPBC Act, including the use of decision on referral for brownfields projects and expansions at existing projects. This should be further supported by subsequent amendment of this provision in the Act to include the ability to negotiate an environmental offset.

### ***Energy efficiency schemes***

- Further efforts should be made to rationalise energy efficiency schemes. With the development of the emissions reduction fund which also includes a focus on energy efficiency the question must be asked as to why other energy efficiency related programs should be continued.
- While COAG made some gains on this issue in 2012–13 more effort should be made.

### ***Broader regulatory reform***

- The inquiry should establish a process to systematically review all environmental legislation and regulations against the principles outlined in the Australian Government Guide to Regulation. This review should be based on industry sectors, which are differentially impacted by environmental regulation.
- The Commonwealth Government should lead a COAG process to develop a joint response to the key findings and recommendations of the Productivity Commission's report on major project approvals, which includes a number of matters relating to environmental regulation.
- The review should also focus on ensuring the closer alignment between the regulatory effort and those actions which are key threats to Australia's terrestrial and marine environment as identified in the State of the Environment reporting.

## The impact of poor regulation

Our organisations are committed to growing the prosperity of Australians. Prosperity can only be sustained by continuing to attract investment, which grows the economy and provides jobs. But this growth must be well managed, including by developing the economy in a way that uses natural resources efficiently and protects Australia's natural and cultural assets that enrich and sustain life.

Too often there is perceived to be a trade-off between environmental outcomes and economic growth. This has led to a regulatory environment that limits sensible economic development without achieving any specific improvement in environmental outcomes, causing project delays and higher costs as well as otherwise viable projects being cancelled.

The inquiry provides a valuable opportunity to identify regulatory arrangements that cause delays and unnecessary costs and which do not clearly relate to achieving agreed environmental outcomes.

Broadly, there are four sources of cost, delay and uncertainty in environmental regulation. These are where processes are (1) inefficient, (2) unnecessarily duplicative between and within governments, (3) due to their open-ended nature or by being poorly defined, introduce uncertainty into project delivery and (4) accompanied by unduly complex and prescriptive, often open-ended, conditions.<sup>1</sup>

**Efficiency:** The total cost of completing studies for the approvals process, such as Environmental Impact Statements (EISs), obtaining approvals and complying with conditions can be extremely large, and it is essential that the costs of this process are commensurate with the risks and likely benefits.

In recent years, the required scope of EISs have increased dramatically, driven by regulators seeking more information about more matters. This has resulted in significant costs for industry and the production of enormous EIS reports, many thousands of pages long. This can lead to disengagement by community stakeholders and distracts from an understanding of the actual risks posed by a development. Accordingly, there is a clear need for EIS requirements to be risk based to ensure effort is proportionately focused on the material issues.

An example of an inefficient process revealed by an Environmental Impact Assessment for the Santos GLNG project, was 13,500 pages of general and technical information. It took more than two years to write and another one-and-a-half years to review. It took four days to print and, weighing 65 kilograms, a wheelbarrow was needed to move it.

In the case of major mining developments, the estimated costs to develop EISs and then provide supplementary assessments can range from \$3 to \$15 million for new developments or \$1.5 to \$12 million for an amendment to an existing environmental approval. These costs do not include the often significant application fees, which can exceed \$500,000.

**Duplication:** Governments need to ensure that there is no double-handing in the assessment or approvals processes required at different levels of government and within governments. That is, the Commonwealth and state governments should not duplicate information requirements, or be seeking to regulate the same planning or environmental issues.

Duplication of robust regulatory processes does not improve environmental outcomes. In fact, duplication, particularly in environmental assessments and approvals, can draw resources away from compliance, enforcement and remediation functions, which could otherwise go to improving environmental outcomes or improving public confidence in the regulatory system.

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1. Business Council of Australia, *Securing Investment in Australia's Future: Report of the Project Costs Task Force*, Melbourne, August 2013.

The experience of a BCA member company in seeking approval for a major resources project provides an illustrative example of the complexities of the government approvals process. The environmental assessment for the project was done under Australian Government and state legislation. The assessment took more than two years, involved more than 4,000 meetings, briefings and presentations across interest groups, and resulted in a 12,000-page report. The assessment was advertised widely across Australia for comment and resulted in about 40 submissions. When approved, more than 1,500 conditions – 1,200 from the state and 300 from the Commonwealth – were imposed. These conditions have a further 8,000 sub-conditions attached to them.

In another example, an MCA member company was required to refer their project to both the Western Australian and Commonwealth Governments. The assessment was carried out under an assessment bilateral agreement, whereby the Western Australian process was accredited by the Commonwealth. Despite both state and federal agencies being involved in the assessment process, the then Commonwealth Minister extended the timeframe for decision three times, requiring additional information on matters already addressed and conditioned by the state in their approval of the project. In response, the company was required to rewrite documents provided in the original environmental assessment for submission to the Commonwealth. This process resulted in an eight-month delay after the state government had completed its assessment and approved the project.

A key factor in this case was the failure of the Commonwealth to recognise the requirements of the Western Australian regulatory regime. Specifically, during the Commonwealth's eight-month delay in consideration of approval, recommendations for project conditions were made which duplicated and even contradicted Western Australian approval conditions aimed at addressing the same issues. This occurred despite these concerns being raised by the Western Australian Government.

The Australian Government's policy of negotiating bilateral agreements with states and territories to establish one-stop-shops for environmental approvals is an important first step to reducing duplication in assessment and approvals processes without lowering environmental standards.

**Certainty:** Once approvals have been obtained, it is critical that project proponents are able to plan and execute projects with certainty. Approvals and conditions should only be varied in the most extreme cases. Late changes to conditions on approvals can lead to changes to construction scope and schedule, which can have costly impacts on the overall construction costs. Such changes can also reduce the willingness of international companies and boards to commit capital to direct investments.

Requirements to obtain secondary approvals from consent authorities, or to obtain further authorisations following primary approval also introduce uncertainty and additional costs.

Regulatory uncertainty at the state level is also impacting on the viability of existing mining projects. One MCA member in New South Wales which is looking to expand its operations to ensure operational continuity, is having its future viability put at risk by delays in planning approval processes. Should the delays cause the project to be halted, hundreds of local jobs would be put at risk, which would have serious adverse impact on the local economy.

**Conditioning:** Conditions placed upon approvals are an essential part of the approvals process. They assist the government to monitor how the project is implemented, and guide the development of complex projects where there is uncertainty in the final form of the project. However, conditions should not be so onerous that they make projects unviable. They must also be relevant to the environmental footprint of the project and proportional to the potential impact of the development.

An example of conditioning leading to unnecessary costs can be found in a mining project in New South Wales that has experienced significant delays created by conflicting New South Wales and Commonwealth requirements for the development of environmental offsets. After six months of negotiations between the two levels of government, a common position could not be reached. As a result, the company involved was required to negotiate two separate agreements on offsets for the proposed project. This unnecessary delay put at risk 100 jobs and significant economic and social benefits to the local community.

In addition to the examples above, several government and industry reports have identified examples of duplication, inefficient assessment and approval processes and onerous conditions that create real costs for project proponents:

- The Productivity Commission found that cost of delaying an average-sized Australian oil and gas extraction project, valued at \$17 billion by one year, could range from \$300 million to \$1.3 billion.<sup>2</sup>
- A BCA member advises that duplication between the Commonwealth and states, and within both governments, delayed operations at a cost of around \$1 million per day.<sup>3</sup>
- There are examples of quadruple-handling of assessments and approvals, as various Commonwealth and state regulators considered ostensibly the same environmental issues arising from a seismic study.
- A report to the MCA estimates that Australian coal projects take 1.3 years longer to approve than their overseas equivalents.<sup>4</sup>
- A report by URS commissioned by the MCA found an enormous increase in regulation affecting mining approvals over recent years.<sup>5</sup> This included the enactment of six new pieces of legislation relating to environmental regulation, six replacement Acts and more than 60 sets of major amendments to primary legislation, and amendments to a large range of subordinate legislation.
- APPEA provided nine detailed case studies of duplication between and within Commonwealth and state governments.<sup>6</sup>
- A report on eastern Australia's domestic gas notes that regulatory regimes that generate unnecessary delays can lead to significant adverse impacts on the community.<sup>7</sup>
- The Productivity Commission found that to remove barriers to exploration, governments should ensure that their regulatory agencies only set requirements relating to exploration that are the minimum necessary to meet their policy objectives, and proportionate to the impacts and risks associated with the nature, scale and location of the proposed exploration activity.<sup>8</sup>

### **What should be done: response to the terms of reference**

The top priority must be for all governments – Commonwealth, state and territory – to deliver on their commitments to establish approval bilateral agreements under the EPBC Act, within the agreed timeframe (Victoria has agreed to put in place a bilateral agreement by December 2014, and all other states and territories have agreed to put in place an agreement by September 2014).

It is incumbent on all states and territories to work constructively with the Commonwealth Government to ensure these agreements are in place within the agreed timeframes.

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2. Productivity Commission, *Major Project Development Assessment Processes*, Draft Research Report, Canberra, 2013.

3. BCA, *Report of the Project Costs Task Force*, Melbourne, August 2013.

4. Port Jackson Partners, 2012, *Opportunity at Risk – Regaining Our Competitive Edge in Minerals Resources*, 2012.

5. Update of National Audit of Regulations Influencing Mining Exploration and Project Approval Processes, URS, 2013.

6. APPEA, *Cutting Green Tape*, 2013.

7. Department of Industry, 2014, *Eastern Australia Domestic Gas Study*, Canberra, 2014.

8. Productivity Commission, *Mineral and Energy Resource Exploration*, Research Report, Canberra, 2013.

### **Jurisdictional arrangements, regulatory requirements and the potential for deregulation**

The need to remove double-handling of environmental assessments and approvals between the states has been identified by several independent studies and reports.

- In 2009 the Hawke review recommended that the Commonwealth Government should 'give full faith and credit to state and territory systems that are proven to provide good environmental outcomes'.<sup>9</sup>
- In 2011 the Productivity Commission found that existing assessment bilateral agreements were not being utilised sufficiently, with only 24 per cent of the matters determined to be controlled actions proceeding under an assessment approach set out in a bilateral agreement in the year 2009–10.<sup>10</sup>

More recently, another Productivity Commission study reaffirmed that existing assessment bilateral agreements were being underutilised.<sup>11</sup> The commission noted the need to streamline the environmental assessment and approvals system for major projects and recommended a 'one project, one assessment, one approval' framework for major projects. Within that framework, the commission recommended greater use of existing assessment bilateral agreements and the establishment of approval bilateral agreements.

Accordingly, we support the Commonwealth Government's efforts to negotiate bilateral agreements with each state and territory government in order to accredit environmental assessments and approvals that are made by state governments. This will remove one of the largest areas of overlap between the Commonwealth and state governments.

### **Standards and assurance mechanisms**

In negotiating bilateral agreements, we support risk and outcome-based regulation to allow the states and territories flexibility in proposing how they would achieve the standards within the requirements of the EPBC Act.

It is important that the Commonwealth and states develop robust environmental standards as part of the process of streamlining environmental assessments and approvals. By clearly defining and then adopting robust environmental standards, a reduced regulatory burden on proponents should support better environmental outcomes.

Equally, project proponents must be assured that bilateral agreements will deliver on their intended objectives, namely a reduction in regulatory burden without any degradation in existing environmental standards.

Accordingly, we recommend the development of an assurance framework that clearly demonstrates the agreements are being adhered to, environmental outcomes are being achieved, and that the regulatory burden on project proponents is lower than is currently the case.

### **One-stop-shop for offshore petroleum activities**

In a similar vein, our organisations support the one-stop-shop for environmental approvals for offshore oil and gas developments, implemented by way of a strategic assessment under the EPBC Act and administered by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

There remains, however, challenges to seamlessly integrating the approach taken by the Commonwealth and states where projects cross jurisdictional waters. A number of offshore petroleum activities cross-jurisdictional boundaries and will continue to require both state and Commonwealth government approvals.

9. Australian Government, *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, Canberra, 2009.

10. Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment*, Research Report, Canberra, 2011.

11. Productivity Commission, *Major Project Development Assessment Processes*, Draft Research Report, Canberra, 2013.

For example, an operator of a pipeline crossing Commonwealth and state waters needs to submit a safety case and environment plan to NOPSEMA for the pipeline section in Commonwealth waters as well as submitting separate approvals to state authorities for the pipeline section in coastal waters. Similar dual-track approval processes are required for activities such as seismic surveys or oil pollution emergency planning.

Significant differences and inconsistencies often exist in legislative requirements between the jurisdictions, resulting in increased regulatory burden for industry and increased administrative burden for regulators. There is clear scope for improvement.

Under the Offshore Constitutional Settlement (1979) dealing with federal and state jurisdiction in the waters to the edge of the territorial sea, the states agreed to align their respective legislation and regulations with that of the Commonwealth. Among other things, it was recognised that this would provide consistency to operators. The Commonwealth's Offshore Petroleum and Greenhouse Gas Storage Act 2006 contains mechanisms for the states and Northern Territory to confer environmental functions (as well as Occupational Health and Safety and structural integrity matters) in designated coastal waters (generally the first three nautical miles seaward of the territorial sea baseline) to NOPSEMA. However, these have not been fully utilised. In most cases, no conferrals have occurred or they have since lapsed.

As such, the Australian Government should further promote actions to streamline jurisdictional issues in Commonwealth waters.

## **The balance between regulatory burdens and environmental benefits**

### ***State and local government regulation***

Within Australia's current regulatory system the collective industry groups consider that there does not need to be a trade-off between regulatory burden and environmental benefits. The regulatory burden can be reduced through sensible process improvements at no cost to the environment, and indeed at potential gain for the environment.

The Productivity Commission's *Report on Major Project Approvals Processes* provides a good starting point for assessing the regulatory burdens imposed by all levels of government. We encourage all governments to progress its recommendations. The Australian Government should initiate a process at a forthcoming meeting of COAG to consider the Productivity Commission's report and make progress on its implementation.

### ***Energy efficiency schemes***

COAG should also examine red tape related to energy and carbon schemes, which is imposing significant costs on business and reducing the productivity of the Australian economy.

For example, the need for the Energy Efficiency Opportunities (EEO) program to continue in its current form needs to be questioned. Energy is a significant input cost to the businesses that are required to report under the EEO. These businesses already have the means and incentives to manage their energy efficiency, and will adopt measures that business deem viable. The EEO program is an added regulatory burden, and the benefits from continuing to apply this burden on participants are not apparent.

The emissions reduction fund currently under development by the commonwealth government includes consideration of energy efficiency bringing into question the need for additional programs such as the EEO program as currently designed.

The Productivity Commission identified around 230 greenhouse gas emissions and energy efficiency policies and regulations at the Australian, state and territory government levels in 2011, with many imposing material costs on the community for little or no apparent benefit. It is unclear the extent of progress to remove or rationalise these measures. We encourage the Australian Government to commit to work with its state and territory counterparts to remove this costly red tape.

The inquiry should establish a process to systematically review all environmental legislation and regulation against the principles outlined in the Australian Government Guide to Regulation.

### **Areas for improved efficiency and effectiveness of the regulatory framework**

Data collection and access to data is an area that would lead to improved efficiencies and better outcomes.

Industry strongly supports the full use of sound science and credible information in land use decision-making processes. While a significant body of environmental/land use information currently exists, it may be held by a variety of land managers and regulators, including natural resource management bodies, industry, conservation organisations and state regulators.

To support land use decision-making, industry considers that environmental and land use information should be captured in a systematic and centralised manner. Specifically:

- environmental/land use datasets should be consolidated into a single location that is accessible to proponents and other land users
- these datasets used at all levels of assessment should be consistent and integrated.

While industry supports the collation and sharing of environmental/land use information, data collection should be targeted and undertaken in an efficient and non-duplicative way.

### **Legislation governing environmental regulation, and the potential for deregulation**

#### ***The water trigger***

In June 2013, amendments were introduced to the EPBC Act to introduce a new matter of National Environmental Significance (NES) in relation to coal seam gas and large coal mining activities (the 'water trigger'). The water trigger is a clear area of unnecessary legislation that was introduced based on political reasons rather than environmental ones. There was no clear policy failure warranting the introduction of the water trigger, and we endorse statements made by the Coalition during debate on the amendment that the legislation was "driven completely by the politics of the [then] government and not science." The water trigger has created an additional unnecessary layer of approval, imposing a preventable regulatory burden on industry and the resources of the Australian Government.

The water trigger should be repealed from the EPBC Act. However, while the water trigger remains in place, there is no policy rationale for prohibiting the Commonwealth from accrediting state government approvals processes for major coal mines and coal seam gas operations, where those state processes satisfy the standards for assessment and approval under the EPBC Act. As such the EPBC Act should at least be amended to allow bilateral agreements to include Section 24D, 'the water trigger'. The water trigger duplicates other Commonwealth and state regulatory processes and the requirements of the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development.<sup>12</sup> This double-handling costs project proponents and the government time and money without offering any improvement in environmental outcomes.

Repealing the provision of the EPBC Act that prevents the Commonwealth from accrediting relevant state approval processes that meet the standards of the EPBC Act would allow the water trigger to be covered by the one-stop-shops for environmental approvals currently being negotiated with each jurisdiction – providing for environmental outcomes to be at least maintained while streamlining the approvals process.

The Productivity Commission recommended in its *Report on Major Project Approvals Processes* that the water trigger should be subject to a RIS. We support this – a RIS should be conducted and appropriate amendments made based on the findings of the RIS.

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<sup>12</sup> [www.federalfinancialrelations.gov.au](http://www.federalfinancialrelations.gov.au)

Further, definitions contained in the EPBC Act 'water trigger' around 'large coal mining' and significant impacts are vague and risk capturing all coal seam gas and coal mining activities. It is the experience of mining companies that this ambiguity is leading to unnecessary referrals by the department to the Independent Scientific Advisory Committee.

For the period that the water trigger is in operation, there is a need to further clarify its scope to ensure that only those activities with a genuine significant impact on a material water resource trigger the Act. Clarity in this regard would reduce unnecessary referrals and assessment processes under the Act.

## **Glossary**

APPEA	Australian Petroleum Production and Exploration Association
BCA	Business Council of Australia
COAG	Council of Australian Governments
EEO	Energy Efficiency Opportunities
EPBC Act	Environment Protection and Biodiversity Conservation Act
NES	National Environmental Significance
MCA	Minerals Council of Australia
NOPSEMA	National Offshore Petroleum Safety and Environmental Management Authority
RIS	Regulatory Impact Statement

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