Senate Select Committee on Red Tape

Environment, Planning and Sustainable Development Directorate Submission

Thank you for the opportunity to make a submission in relation to the effect of red tape on environmental assessment and approvals.

Noting the terms of reference, the ACT makes the following submissions.

The effects on compliance costs (in hours and money), economic output, employment and government revenue

1. Environmental approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) often result in conditions of approval that are subsequently duplicated by mandatory ACT statutory requirements under the *Planning and Development Act 2007* (PD Act). The Territory and private developers are hence often put to the task of having to comply with additional and often duplicative conditions of approval.
2. Additional sets of environmental approvals can be confusing, difficult to interpret and sometimes inconsistent. They can also result in duplicative reporting requirements.
3. For example, both the Molonglo Valley and Gungahlin suburban developments were subject to both ACT and Commonwealth approvals. Although strategic assessments were used to streamline the Commonwealth approvals process, strategic assessments take a substantial period of time to complete, which can have implications for land release.
4. In addition, strategic assessment cannot be varied once approved, which can raise challenges for implementation.
5. In a jurisdiction such as the ACT, where there is a wealth of local knowledge available to the ACT Government, the additional red tape associated with having ACT and Commonwealth approval processes can result in less efficient and effective outcomes.
6. The ACT's assessment and approval processes take into account all Commonwealth listed matters. In addition, the ACT Government has access to a wealth of local knowledge to inform the most appropriate and feasible conditions for ACT and Commonwealth listed species to achieve positive conservation outcomes.
7. Additional requirements for environmental assessment and approval under the EPBC Act can delay the ACT Land Release Program, and thus result in a direct impact on the main revenue source for the Territory.

Any specific areas of red tape that, are particularly burdensome, complex, redundant or duplicated across jurisdictions

8. The ACT considers that environmental approvals under the EPBC Act are generally duplicative and create regulatory burden on development in the Territory.
9. With the exception of development on Commonwealth Land, as defined under the EPBC Act, and development on declared National Land, all development in the ACT must first get development approval under the PD Act.

10. For development that is likely to have a significant impact on a protected matter (including both EPBC Act matters of national environmental significance and also ACT protected matters), an environmental impact statement must first be prepared.
11. If the development is likely to be a controlled action under the EPBC Act and also likely to enliven ACT triggers, the ACT/Commonwealth bilateral assessment agreement would be used.
12. However, this arrangement only extends to environmental assessment. Separate Commonwealth approval is still required.
13. It is submitted that this separate Commonwealth approval is unnecessary, particularly given the ACT already has an effective regulatory framework for assessing and approving development that is likely to have a significant impact on any protected matters.
14. The ACT submits that a bilateral approvals agreement, as previously contemplated in the 'one stop shop' negotiations, would remove this regulatory burden and duplication. This argument is strengthened by the previous amendments made by the ACT to the PD Act conferring legislative protection to matters of national environmental significance (MNES) through the ACT framework.
15. These amendments included the creation of an ACT offsets policy (which incorporated in full the Commonwealth offsets policy), formal incorporation of MNES into ACT law and independent regulatory oversight in relation to MNES through the conservator of flora and fauna. A development relating to MNES cannot be inconsistent with the Conservator's advice. This ensures that MNES are given appropriate consideration, irrespective of Commonwealth approvals. They also included a requirement for any development application that would likely result in significant impacts on MNES to be referred to the Commonwealth Minister for advice before a decision could be made.

The effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;

16. The proposed 'one stop shop' arrangement was strongly supported by the ACT. The ACT made legislative amendments to support a one stop shop.
17. Cost recovery, which was introduced during one stop shop negotiations, is not supported, particularly when timeframes are usually delayed and protracted.
18. With the overarching regulatory role of the Department of the Environment and Energy consistency in decision making is required to ensure effective and efficient regulation of development across Australia. There appears to have been some lack of consistency, particularly following the reduction in staff numbers around the time a one stop shop was being negotiated.

Alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation

19. In the ACT there are a number of land types which are regulated differently. For example, Commonwealth land, declared national land and Territory land are all subject to different assessment and approvals. This has resulted in inconsistent approaches, which can affect outcomes and result in time delays. Creating greater synergy between the regulatory processes applied to these types of land could have positive outcomes for the environment.

How different jurisdictions in Australia and internationally have attempted to reduce red tape

20. The ACT is ready to enter into an approval bilateral agreement. Although this has not eventuated, ACT Government officials have worked with counterparts in the Commonwealth government to ensure the assessment and approval process is streamlined. This includes working together to ensure one consistent set of conditions is applied to a proposal, and to ensure assessment and approval processes are done as quickly as possible.
21. The amendments to the PD Act to reduce red tape and streamline environmental assessment processes, also positioned the ACT Government to enter into a one stop shop. Without a one stop shop in place, the true benefits of these amendments cannot be realised.
22. The use of strategic assessments in the ACT has streamlined the environmental assessment process for large estates removing the requirement for many individual project referrals. This is an effective mechanism to streamline approvals however, the strategic assessment process can often be subject to substantial delays due to changes in staff and competing priorities at the Department of the Environment and Energy. Consideration could be given to making the strategic assessment process more efficient and flexible (for example, allowing corrections to be made after an approval is granted) and to ensuring continuity of approach when staff changes occur.
23. The ACT has also worked collaboratively with the Commonwealth and other jurisdictions to develop and implement a Common Assessment Methodology for the listing of threatened species for the purpose of aligning threatened species listings. This has provided further streamlining of environmental assessments.