Australian Taxpayers' Alliance
P.O. Box A2208
Sydney South NSW 1235
www.taxpayers.org.au
enquiries@taxpayers.org.au
(02) 8964 8651

fighting tax, regulation & waste

Red Tape Committee
Department of the Senate
PO Box 6100
Canberra ACT 2600

Inquiry into Environmental assessment and approvals

Submission of the Australian Taxpayers' Alliance

Introduction

1. The Australian Taxpayers' Alliance (ATA) welcomes the decision by the Senate to launch an inquiry into the effect of red tape on environmental assessment and approvals on the Australian economy and expresses thanks for the opportunity to present the following submission to the Red Tape Committee.

2. The ATA is a grassroots, free-market advocacy group, consisting of over 40,000 members. The ATA stands for the principles of an effective enforcement of regulations, responsibility and fairness for individual taxpayers and an efficient governing system that has the confidence of the Australian public in its execution and the related government departments.

3. The ATA acknowledges that the Senate has established the Red Tape Committee to inquire on the effect of restrictions and prohibitions on businesses and that this particular inquiry occurs within a broader context of understanding the effect of red tape in Australia. The ATA understands that there is a particular reference to the impact on compliance costs for burdensome, complex and redundant regulations and the Committee has decided to conduct its inquiry into areas regarding, alcohol, tobacco, retail trading and small business compliance.

4. The ATA submits that further action is required to promote productivity and reduce red tape in relation to environmental assessment and approvals. The ATA would also

recommend that the One Stop Shop system ought to be reconsidered and implemented to reduce the duplication that occurs during the assessment and approval process. The ATA submits that Section 487 of the *Environment Protection and Biodiversity Conservation Act*[1] (hereafter "*EPBC Act*") be amended to deter and reduce the frivolous litigation attempts that has significantly reduced productivity and economic activity in Australia.

One Stop Shop

5. Currently, there is a dual system of regulation which require businesses to submit their projects proposals to Commonwealth and relevant state or territory authorities. Consequently this has led to the concerns by the business community regarding the increased administrative costs and project delays.[2]

6. The One Stop Shop for environmental approvals would streamline the process as a separate Commonwealth assessment and approval will no longer be required where an accredited state or territory process has taken place.[3] This would reduce delays and be a more cost effective and speedier approval process while maintaining environmental standards. This would allow businesses to have a single point of contact and would therefore improve the productivity of the regulatory system. The One Stop Shop proposal would accredit state and territories to undertake the Commonwealth assessment and approval processes through a bilateral agreement under the *EPBC Act*.[4] Removing the duplication that would have required an assessment and approval by the Australian Government and the states and territories will streamline this process.

7. The ATA supports the implementation of the One-Stop Shop as estimates in 2014 projected that it would save businesses around $426 million a year by reducing costs

[1] 1999 (Cth).
[2] For example: National Farmers' Federation, Submission 9, p. 8; Urban Taskforce Australia (UTA), Submission 23, pp. 1–2; Australian Petroleum Production and Exploration Association (APPEA), Business Council of Australia, Minerals Council of Australia (MCA), Submission 24, pp. 3–4.
[3] Australian Government Department of Environment and Energy, *One-Stop Shop for environment approvals* <http://www.environment.gov.au/epbc/one-stop-shop>.
[4] Australian Government Department of Environment and Energy, *Fact sheet 1: What is the One-Stop Shop?* (2014) <http://www.environment.gov.au/resource/fact-sheet-1-what-one-stop-shop>.

associated with delays to project approvals and administration.[5] The $426 million a year saving for businesses can be broken down into the $9 million for reduced administrative costs as businesses will only need to complete one application for approval.[6] The faster approvals rather than waiting on the various government departments for their approval will save businesses $417 million a year as they will not need to wait for separate Commonwealth approval after state and territory approvals are granted.[7] Creating a single environmental assessment and approval process for nationally protected matters will simplify the administration and lead to quicker, cheaper decisions and improve the climate for investment in Australia while ensuring high environmental standards are maintained.

8. One Stop Shop may be used as an overarching body that passes projects through a regulatory labyrinth and may add to the layer of bureaucracy. The ceding of Commonwealth powers as approvals will be granted to the respective State and Territory authorities is a clear step forward that reduces the compliance burden. Previously, the Abbott Government had attempted to implement the One Stop Shop for environmental approvals and assessments and bilateral agreements had been signed with all states and territories while six jurisdictions had released their agreements for public comment. Since then, the current status is not proceeding as it lapsed at prorogation. Although the One Stop Shop did not proceed under the Abbott Government, the ATA submits that the Red Tape Committee support the reintroduction of the legislative amendments so that it may be implemented.

Impact of s487 on Environmental Assessment and Approvals through the court system

9. Section 487 of the *EPBC Act* has had a profound impact on the assessment and approval of development as businesses are forced to wait for certain litigation proceedings to be resolved. This disruption to businesses and employment has slowed down productivity and economic activity in the Australian economy. Section 487 of the *EPBC Act* allows for environmental activists to take advantage of the provisions

[5] Australian Government Department of Environment and Energy, *Fact sheet 2A: Economic Benefits of the One-Stop Shop*, (2014) <http://www.environment.gov.au/epbc/publications/fact-sheet-2a-economic-benefits-one-stop-shop>.
[6] Ibid.
[7] Ibid.

that have facilitated this active disruption of development and job creation. Their legal challenges to development projects have ranged from the building of roads to coalmines and are estimated to have cost the Australian up to $1.2 billion due to these vexatious and frivolous claims.[8]

10. The 32 legal challenges under these environmental law resulted in developers spending a cumulative 7500 days or 20 years in court with 28 of the cases struck down.[9] Only 4 have been successful, with 3 having minor changes that were subsequently re-approved by the minister with minor variations to the conditions of the original approval.[10] There was only one leading to a substantial alteration to the original Ministerial approval regarding an underlying requirement that needed to be considered by the Minister when approving a dam to conduct further research into the flow of effects from the agricultural use of the water made possible by the dam.[11]

11. The reality is that 87% of their cases have failed at court, demonstrating the frivolous nature aimed to merely increase risk and stymie future Australian investment and opportunity. Activist environmental groups delay and disrupt the development of industries that underpin the prosperity of the nation.

12. These challenges by environmentalists are aimed to reduce the profitability and attractiveness of investing in Australia by driving up the costs from the legal fees and time delays aimed at being a nuisance to developers and increasing uncertainty. Holding projects up in court reduces the profitability, increases risk which acts as a deterrent for future investments, impacts employment and government revenue. The heightened risk of legal challenges and the higher capital cost means that some potential projects have not gone ahead.

13. The laws were intended to be used for genuine environmental concern but have been exploited by environmental group who are merely unhappy and disapprove of certain

[8] Daniel Wild, 'Section 487 of the Environment Protection and Biodiversity Conservation Act: How Activists Use Red Tape to Stop Development and Jobs' (2016) *An Institute of Public Affairs Research Essay*, 7.
[9] Ibid 16.
[10] Ibid 11.
[11] Ibid.

development projects. Section 487 has been abused by green groups rather than allowing for the genuine interests of those aggrieved. Ironically, the green groups are not aiming to improve the environmental conditions of the project and are not trying to ensure the project is done in a manner which adheres to environmental law. Rather they are using litigation as a tool to delay, to increase risk and prevent projects from being undertaken in Australia.

14. Judges have observed the propensity for activist groups to launch legal proceedings due to their unhappiness when ‘‘ultimately, the Northern Inland Council for the Environment’s argument amounts to no more than an expression of dissatisfaction with approval of the project by the Minister.’[12] Judge Dowsett also noted ‘the applicant’s case is really based upon the assertion that greenhouse gas emission is bad, and that the Australian government should do whatever it can to stop it including, one assumes, banning new coal mines in Australia.’[13] The judiciary’s observations about the frivolous claims by environmentalist groups highlights the change that is required to ensure that the Section 487 in the *EPBC Act* is only used for genuine concerns regarding environmental regulation.

15. Calculations by the Productivity Commission found that a one-year delay to a major project could reduce the net present value of a project by $26 million to $59 million.[14] BAEconomics stated that reducing these project delays of one year would add $160 billion to national output by 2025 and an additional of 69,000 jobs across the economy with many of them in rural and regional areas.[15] A report in 2012 found that capital costs for iron ore projects were made 30% more expensive than the global average. [16]

[12] Northern Inland Council for the Environment Inc v Minister for the Environment [2013] FCA 1418.
[13] Wildlife Preservation Society of Queensland Proserpine/Whitsunday Branch Inc v Minister for the Environment & Heritage & Ors [2006] FCA 736.
[14] Productivity Commission, Major Project Development Assessment Process December 2013.
[15] BAEconomics, The Economic Gains from Streamlining the Process of Resource Approvals Projects July 2014 pg. 4
[16] Port Jackson Partners, Opportunity at Risk: Regaining our Competitive Edge in Minerals Resources, September 2012, pg. 27

16. The issue with Section 487 is that activist environmentalist groups know that even when they have little chance of success, that there is no actual environmental grounding for their arguments but are forcing companies to delay their operations as they wait for the outcomes of the judiciary. This tactic of fear and increased risk in investment results in companies not wanting to invest in Australia, resulting in reduced economic activity, employment and growth.

17. The issue with green tape is the excessive regulation which delays decision making through unnecessary administrative burdens on businesses without any associated improvement to protecting the environment. The ATA also submits that there should be a deterrent for vexatious and frivolous litigations to ensure any challenges under s487 that had little prospect for success will face a penalty. Other potential alternatives would be to require litigants to have a bond posted, which may also go towards the penalty if their claims are found to be vexatious and frivolous. Given that 87% of Section 487 challenges have been rejected in Court, there requires a greater deterrence against frivolous claims and punitive measures should be implemented to ensure this.

Health and Safety

18. The effect of such burdensome regulations in Australia has an impact on health and safety, a concern that was noted by the Red Tape Committee. It is recognised that Australia has cleaner coal compared to the rest of the world and reducing supply from the coal mines in Australia results in more coal mines being established overseas. These coal mines that are found overseas do not have the best practices that is found in Australia and consequently will lead to a lower quality environment. Reducing the compliance costs in Australia will lead to better health and safety.

19. Australian thermal coals 'contain substantially lower levels of arsenic, mercury and boron.'[17] In India, 1.5 tonnes of local coal is required to generate the same amount of energy compared to one tonne of Australian coal. A report by the Federal Department

[17] Dale, Les (2006), Trace Elements in Coal, The Australian Coal Association Research Program, October 2006. Available at http://www. acarp.com.au/Media/ACARP-WP-3-TraceElementsinCoal.pdf

of Industry's 2015 report on Coal in China has recognized that 'the ash content of coal can range between 3–50 per cent. Australian coal is typically at the lower end of this spectrum and is usually washed prior to export. Washing reduces ash and improves the overall quality of the coal' and that Australian coal is typically low in sulphur.[18]

20. It is observed that the 'power stations would burn the same amount of thermal coal and produce the same amount of greenhouse gases whether or not the proposed Alpha Mine proceeded' which demonstrates the impact of the foregone production of Australian coal due to the impact of excessive approval and assessment procedures from the vexatious litigious proceedings that businesses must endure. [19] Consequently, these legal challenges have led to worse outcomes for the environment as they forego the opportunity to utilise Australian coal for their needs. The effect of red tape on environmental assessment and approvals has significant implications on the economic opportunity as well as negative impacts on the environment as it deters investment into the best practices that is found in Australian businesses.

Miscellaneous

21. The abolition of the Carbon Tax has eased the administrative burden on taxation compliance for 75,000 businesses.[20] The Abbott government's abolition of the carbon tax has reduced the compliance burden and lower administrative costs that would have been associated with the monitoring and reporting obligations.

22. An example of red tape reform in Western Australia that changed the environmental licensing by improving the efficiency.[21] Licenses that were usually granted between one and three years were now being implemented to be granted for the long term for up to 20 years. This implementation change results in more certainty for license

[18] Office of the Chief Economist (2015), Coal in India, The Department of Industry, Innovation and Science, Commonwealth Government of Australia.
[19] Coast and Country Association of Queensland Inc v Smith & Ors [2016] QCA 242.
[20] The Australian Government Annual Deregulation Report 2014. Available at https://www.dpmc.gov.au/sites/default/files/publications/ausgov_annual_dereg_report_2014.pdf
[21] Government of Western Australia, *Environmental licensing changes aid red tape reform* (13 October 2016) <https://www.mediastatements.wa.gov.au/Pages/Barnett/2016/10/Environmental-licensing-changes-aid-red-tape-reform.aspx>.

holders and has reduced the lengthy processing times. This also has allowed the government departments to focus on regulation and regulatory tasks rather than administrative roles. Ultimately it is this principle that business and investors are pursuing, to provide stability, consistency and peace of mind knowing that their undertakings will not be halted due to arbitrary environmental reasons.

Conclusion and Recommendations

23. Businesses in Australia face numerous hurdles regarding the assessment and approval procedures that is required from them. The implementation of the One Stop Shop would significantly reduce the delays from the administrative inefficiency of waiting for various government departments to access and approve their proposals.

24. Amending Section 387 would also ensure that activist green groups are not exploiting the legislation beyond its purpose by launching proceedings in court as a strategy to delay development and growth in the Australian economy. Ultimately, this would provide greater stability for businesses and investment in Australia as it would reduce the vexatious litigation attempts, resulting in greater opportunity for economic activity and the development of jobs for the Australian people. The ATA thanks the Committee for the opportunity to present our submission and welcome the opportunity to appear before he committee at a formal hearing to discuss our submission.

Brendon Zhu
Research Associate
Australian Taxpayers' Alliance