

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 IN WRITING RECEIVED 7 JULY 2014

Environmental Impact Assessments under the EPBC Act—General issues

Question 1: The Environment Institute of Australia and New Zealand (EIANZ) has proposed that documentation for environmental impact assessments be required to be certified by 'suitably qualified and experienced persons'.

- a. Does the Department have a view on whether a certification process like the one suggested by the EIANZ would provide any practical benefits?
- b. Can the Department foresee any potential difficulties with the implementation of such a proposal? Are there likely to be any additional costs or delays for project proponents?

Answer

- a. It is fundamentally the responsibility of a project proponent to determine the most effective way to ensure the adequacy of their environmental impact assessment. The department therefore would suggest that proponents are best positioned to decide whether to engage assessors.
- b. See a.

Question 2: The Committee has received evidence to the effect that assessments carried out under the EPBC Act require proponents to report on a long list of issues, and that low impact, low risk matters are required to be assessed as thoroughly as high impact, high risk matters.

- a. How are the terms of reference for an environmental impact assessment determined?
- b. Is the Department able to tailor the terms of reference for environmental impact assessments to ensure that only high impact, high risk issues are addressed? Is this routinely done? If not, why not?
- c. Is a risk assessment carried out, up front, to help inform the contents of the terms of reference, with a view to enabling proponents to direct their resources in the most efficient and effective manner? If not, why not? And could this sort of approach provide practical benefits?

Answer

- a. Terms of Reference for an environmental impact assessment are based on the level of assessment determined as the most suitable to assess the impacts of a proposed action on matters of national environmental significance and are developed in accordance with the EPBC Regulations (Schedule 4).
- b. Terms of reference are aimed at providing information on the controlling provisions likely to be impacted and the nature and extent of impacts, proposed mitigation and/or offset measures and their likely effectiveness. Tailored terms of reference are developed as required to investigate specific matters of concern, but must contain the information required by Schedule 4 of the EPBC Regulations.

c. See above.

Question 3: Some evidence to the Committee has suggested that Departmental officers do not appear to be adequately familiar with state assessment and approval processes (including offsets), which is resulting in duplication or inconsistencies between the state and federal assessment processes.

- a. Does the Department have staff who specialise in the assessment processes of each state and territory? For example, would the Department have dedicated officers who deal only with projects being carried out in, for example, Victoria?
- b. What sort of training do Departmental officers receive in state assessment and approval processes? Is there ongoing contact and information sharing between departmental officers at state and federal levels?

Answer

- a. Yes. Assessment teams are organised by jurisdiction.
- b. Yes. Assessment officers are regularly in contact with state and territory officers. Where proposed actions are assessed under assessment bilateral agreements, federal and state officers utilise administrative arrangements that provide guidance to the assessment process.

One Stop Shop for environmental assessments and approvals

Question 4: Can you provide the Committee with an update on the progress made with the establishment of a 'one stop shop' for environmental assessments and approvals?

Answer

The One-Stop Shop is being implemented through a three stage process with each willing state/territory:

1. Signing a Memorandum of Understanding on the key principles, and confirming co-operation on achieving a single process. Memoranda of Understanding were signed with each state and territory in 2013.
2. Agreeing or updating an assessment bilateral agreement. As of 16 July 2014, new or updated assessment bilateral agreements have been signed with Queensland, New South Wales and the Australian Capital Territory. Draft assessment bilateral agreements with South Australia, the Northern Territory, Tasmania and Western Australia have been released for statutory consultation. Negotiations are continuing with other states.
3. Statutory consultation on the draft approval bilateral agreements with Queensland and New South Wales concluded on 13 June 2014. Negotiations with other states are ongoing.

Question 5: The Committee has heard from some witnesses who accept the need for a 'one stop shop', but advocate the role being carried out by the Commonwealth rather than the States.

- a. Why has the decision been taken to establish the 'one stop shop' at state level rather than at the federal level?
- b. What are the barriers to the Commonwealth carrying out this role exclusively?

Answer

- a. The One-Stop Shop uses existing provisions under Part 5 of the *Environment Protection and Biodiversity Conservation Act 1999*, which enable the Minister to accredit state and territory processes, where the Minister is satisfied the requirements under the *Environment Protection and Biodiversity Conservation Act 1999* have been met.
- b. Environmental approvals under the EPBC Act cover only a small proportion of the planning and development approvals granted each year under state and territory legislation. State and territory laws cover a broad range of local environmental and planning issues, whereas the Commonwealth is focussed on regulating matters of national environmental significance as these matters are internationally and nationally important. In addition, there are constitutional limitations on the scope of environmental regulation by the Commonwealth.

Question 6: Is the Department aware of the argument (which has been put to the Committee) that the Commonwealth, in light of its obligations under international agreements, could open itself up to legal liability issues by delegating approval powers to States?

- a. What is the Department's view on these claims?
- b. Has the Department taken any steps to satisfy itself that the Commonwealth will not be subject to legal action as a result of the establishment of one stop shops?

Answer

Under the one shop stop reform, the Australian Government will remain accountable for its obligations under national environmental law, including its international obligations.

Countries take different approaches to implementing international obligations in their individual domestic legal systems. In Australia, Commonwealth, state or territory legislation may be relied upon to implement international treaty provisions.

The EPBC Act sets out standards that must be met for the protection of matters of national environmental significance and the Australian Government has set out the standards that are relevant to this reform in the *Standards for Accreditation of Environmental Approvals under the EPBC Act* (March 2014).

The Australian Government has conducted an initial due diligence, against EPBC Act requirements and standards, for each state process proposed for accreditation under the draft approval bilateral agreements with Queensland and New South Wales. The draft agreements are not finalised and therefore the statutory decision on the accreditation of state processes cannot be pre-empted.

The Australian Government has also developed an assurance framework that is reflected in the draft approval bilateral agreements. This will enable the Government to be confident of the effective operation of the approval bilateral agreements, without being involved in onerous or detailed oversight of state activities.

Question 7: Currently, under the EPBC Act, there are four different methods for assessing a project, with a public inquiry being the most rigorous method. Will this continue to be the case under the 'one stop shop' process?

Answer

Projects covered under the one stop shop will be assessed under the relevant accredited state or territory process.

The EPBC Act sets out standards that must be met for the protection of matters of national environmental significance and the Australian Government has set out the standards that are relevant to this reform in the *Standards for Accreditation of Environmental Approvals under the EPBC Act* (March 2014).

States and territories will need to demonstrate that their processes deliver these standards and so are consistent with the requirements of the EPBC Act in order to be accredited under an approval bilateral agreement.

Question 8: The Committee has heard about the duplication of heritage issues at the state and federal levels. Will heritage matters be included in the 'one stop shop' agreements?

Answer

Yes. The Australian Government is pursuing the broadest scope for accreditation of state and territory processes that is possible under national environmental law. The EPBC Act states that the Minister may enter into arrangements with state or territory governments which relate to a declared World Heritage property if he is satisfied that it is not inconsistent with Australia's obligations under the World Heritage Convention and that the agreement will promote the management of the property in accordance with the Australian World Heritage Management Principles.

Question 9: According to some of the evidence received by the Committee, the Commonwealth Environment Department will need to have a very strong monitoring and auditing role in relation to the manner in which the EPBC Act requirements are carried out by the states.

- a. Does the Department accept this view?
- b. What level of staffing will the Department require to carry out this auditing and monitoring role?
- c. Will the Department's staffing levels decrease compared to current levels, once assessment and approval bilateral agreements are established with all states and territories? If so, will the Commonwealth require state and territory to increase their staffing levels to respond to the increased workload involved in meeting the requirements of the EPBC Act, particularly given that the Committee has heard from industry stakeholders who are already concerned at current low levels of capacity within state bureaucracies?
- d. Will the Commonwealth provide any capacity building to state and territory bureaucracies to ensure these jurisdictions are able to administer the EPBC Act effectively?

Answer

- a) Yes. It is appropriate that the Australian Government maintains oversight – including through monitoring and auditing – in order to ensure commitments under any bilateral approval agreement continue to be met.
- b) The Department is undergoing a whole-of-departmental process of aligning our staffing numbers with our tasking and priorities. Auditing and monitoring are two components of the One-Stop Shop assurance framework, as set out in the draft approval bilateral agreements that have been released for statutory consultation. Resourcing needs cannot be accurately determined until the approval bilateral agreements are finalised.
- c) The Department is undergoing a whole-of-departmental process of aligning our staffing numbers with our tasking and priorities. The One-Stop Shop policy is about reducing duplication, not transferring work from the Commonwealth to the states. The Minister is able to accredit existing state and territory processes where these processes meet the standards set out in the EPBC Act.

- d) The Australian Government has agreed to provide transitional support to States and Territories to ensure the implementation of approval bilateral agreements occur as smoothly and as quickly as possible

State governments

Question 10: Of the referrals made under the EPBC Act each year, what proportion of projects has a State government agency or State owned enterprise as the proponent? Can you also provide figures for Local and Commonwealth government agencies and government-owned enterprises.

Answer

The following table represents both the total number of referrals received under the EPBC Act and identifies the subset of the total of referrals received from Commonwealth, State and local government agencies from 2001-01 to 2012-13.

Agencies	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
TOTAL RECEIVED.	297	312	262	381	368	353	359	418	438	422	428	412	439
Commonwealth Government	4	7	12	15	10	7	1	7	10	4	4	3	3
State Government	18	22	10	16	15	24	28	26	35	35	25	31	29
Local Government	10	17	18	14	15	13	16	15	21	24	41	31	41

Number of referrals by level of government and by year.

Question 11: The Committee has heard from several stakeholders about the difficulties presented by different environmental regulations in each state and territory. For example, regulations relating to fuel standards. Is the Department involved in any processes to improve harmonisation of state environmental regulation, for example through COAG?

Answer

The Department of the Environment is leading a National Review of Environmental Regulation, working with each state and territory. This follows the Meeting of Environment Ministers on 29 April 2014, at which jurisdictions agreed to further discuss opportunities to reform environmental regulation across all states and territories, with a focus on identifying unworkable, contradictory or incompatible regulation, and seek opportunities to harmonise and simplify regulation, where it is cost effective and beneficial to do so.

Local governments

Question 12: Local governments engage in environmental regulation through their administration of planning schemes, and their responsibility for issues such as water management, vegetation and weed control, waste management, and air quality.

- What will be the role of local governments in the administration of the 'one stop shop' for environmental assessments and approvals?
- How will the Commonwealth ensure that local governments have sufficient resources and adequate capacity to take on a possibly greater role in environmental regulation, through the delegation of environmental assessments and approvals to the state and territories?

Answer

The EPBC Act sets out standards that must be met for the protection of matters of national environmental significance and the Australian Government has set out the standards that are relevant to this reform in the *Standards for Accreditation of Environmental Approvals under the EPBC Act* (March 2014).

The EPBC Act allows the Minister to accredit state processes under bilateral agreements where they meet the national standards for accreditation. This may include state processes where the approval decision is made by a local government if that process meets these high standards.

Under the draft approval bilateral agreements with Queensland and New South Wales, local governments will not have a role in the administration of the one stop shop.

In New South Wales, the draft approval bilateral agreement expressly precludes local councils from being decision-makers ('consent authorities') for the purposes of the proposed accredited processes.

In Queensland, local governments are not responsible for approval decisions in any of the processes under consideration for accreditation.