



Australian Government

Australian Government response to the Senate Select Committee on
Red Tape Interim Report:

Effects of red tape on environmental assessment and approvals

July 2018

Introduction

On 11 October 2016, the Senate established the Select Committee on Red Tape (the committee) to inquire into and report on the effect of restrictions and prohibitions on business (red tape) on the economy and community, by 1 December 2017.

On 18 October 2017, the committee tabled its interim report, which presents the committee's findings and conclusions about the effect of red tape on environmental assessment and approvals.

The Australian Government welcomes the opportunity to respond to this interim report.

The Australian Government has considered the recommendations of the committee's report and has provided the responses below.

Response to recommendations

Recommendation 1

2.1 The committee recommends that the Australian Government expedite its review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), as required under section 522A of that Act, by bringing it forward to 2018.

Government response

Noted.

The next statutory review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is due to commence by October 2019.

Recommendation 2

2.2 The committee recommends that the 'water trigger' be removed from the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Government response

Not agreed.

The EPBC Amendment Act 2013 (known as the 'water trigger') was passed by the Australian Parliament on 19 June 2013 and came into effect on 22 June 2013. The amendment added the protection of water resources from coal seam gas and large coal mining developments as an additional matter of national environmental significance under the EPBC Act.

The effectiveness of the water trigger legislation was independently reviewed in 2017. The review concluded that the water trigger is an appropriate public policy response to the potential risks associated with coal seam gas and large coal mining, and did not recommend any legislative changes.

Recommendation 3

2.3 The committee recommends that uranium mining not be included as part of the 'nuclear actions' matter of national environmental significance in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Government response

Noted.

All mining operations pose some level of environmental risk. Currently, any new uranium mine, or significant alteration to an existing mine, requires a whole-of-environment assessment under the EPBC Act to ensure environmental risks and impacts are appropriately managed. This includes a site-specific assessment of risks and mitigation strategies appropriate to the environment in which the mine is located and the method used to extract the ore.

This regulatory framework is based on internationally-recognised standards and fulfils obligations under treaties and conventions that Australia has ratified.

Recommendation 4

2.4 The committee recommends that the Australian, state and territory governments re-commit to the One Stop Shop initiative.

Government response

Noted.

The One-Stop Shop reform remains Australian Government policy. Also see Recommendation 5.

Recommendation 5

2.5 In the context of a One Stop Shop approach, the committee recommends that the Australian Government investigate ways in which environmental assessment and approval processes could be consolidated into the remit of a single regulator.

Government response

Noted.

Substantial benefits have already been achieved under the One-Stop Shop reforms, with assessment bilateral agreements in place with every jurisdiction. These agreements allow the Commonwealth and each state and territory to assess proposals using a single set of project documentation.

Further work to reduce regulatory duplication and improving coordination with the states and territories is ongoing.

Recommendation 6

2.6 The committee recommends that, if not already implemented, the Council of Australian Governments pursue the adoption of a risk-matrix based on international standards, with capacity to incorporate general risks and specific risks.

Government response

Noted.

The Australian Government supports a risk based approach to developing and implementing regulatory responses, whereby regulatory responses are consistent, efficient and proportionate to the risk.

For example, the EPBC Act *Environment Assessment Manual 2012* sets out a risk-based approach for determining an appropriate assessment pathway, which includes considering the number of protected matters that are affected; the scale and nature of the impacts; and the extent to which potential relevant impacts have already been assessed under state legislation.

Similarly, the EPBC Act *Outcomes-based Conditions Policy 2015* outlines the Australian Government's approach to using outcomes-based conditions under section 134 of the EPBC Act. Outcomes-based conditions can be applied to projects that are deemed low risk. They specify the environmental outcomes that must be achieved by an approval holder without prescribing how that outcome should be achieved. They give approval holders the flexibility to be innovative and achieve the desired environmental outcomes in the most effective and efficient manner.

Recommendation 7

2.7 The committee recommends that the Australian Government re-introduce legislation to repeal section 487 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Government response

Noted.

The Australian Government remains committed to ensuring an appropriate balance is struck between protecting the rights of affected parties under the EPBC Act, while discouraging the use of the courts to pursue ‘disrupt and delay’ lawsuits.

Recommendation 8

2.8 The committee recommends that the Australian Government amend the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) to remove Land Councils' ability to veto applications for exploration and/or mining licences.

Government response

Not agreed.

The Government supports the longstanding right of traditional Aboriginal land owners, to control Aboriginal land use within the framework provided by the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act).

In December 2015, the *Investigation into Indigenous Land Administration and Use Report to the Council of Australian Governments* recommended that the Commonwealth work with the Northern Territory Government, Northern Territory Land Councils and industry to assess whether the exploration and mining provisions of the Land Rights Act can operate more effectively and efficiently. This included an assessment of the appropriateness of implementing the recommendations of the 2013 *Report on Review of Part IV of the Aboriginal Land Rights (Northern Territory) Act 1976* (the Review Report).

The Review Report did not recommend abolishing the right of traditional Aboriginal owners to veto the grant of an exploration licence by refusing to consent to it, as provided by section 42(6)(a) of the Land Rights Act. A Working Group consisting of Commonwealth, Northern Territory Government and Land Council representatives has been established to develop an agreed package of reforms to the exploration and mining provisions of the Land Rights Act. The Working Group expects to consult this year with peak industry bodies on potential reforms.

Recommendation 9

2.9 The committee recommends that, if not already implemented, Commonwealth, state and territory governments should develop guidelines to assist proponents to clearly identify the costs/benefits of proposed projects, including shared economic benefits such as royalties, to landowners and other stakeholders.

Government response

Noted.

Under section 136(1)(b) of the EPBC Act, the Australian Government Environment Minister is required to consider ‘social and economic matters’ when deciding whether or not to approve the taking of an action, and what conditions to attach to an approval. The Department of the Environment and Energy guides proponents in relation to the type of information that is useful to consider in the context of seeking an EPBC Act approval.

Many state and territory government agencies have economic and social impact assessment guidelines available on the internet.

Recommendation 10

2.10 The committee recommends that, in conducting their next review of land access, state and territory governments consider a statutory right to royalties for freehold landowners whose permission is sought for environmental assessment and approval purposes.

Government response

Noted.

This is a matter for state and territory governments.

Recommendation 11

2.11 The committee recommends that state and territory governments review land access policy, legislation and regulation:

- to identify opportunities to facilitate the conversion of leasehold title to freehold title; and/or
- to remove regulatory oversight of activities on leasehold land, to put it on the same basis as freehold.

Government response

Noted.

This is a matter for state and territory governments.

Recommendation 12

2.12 The committee recommends that the Australian Government initiate an independent review into the impact of the Deregulation Agenda on the Department of the Environment and Energy.

Government response

Not agreed.

The Australian Government tracks the Regulatory Reform Agenda periodically through its annual reports on the agenda, which are publically available.

Recommendation 13

2.13 The committee recommends that state and territory governments explore options for facilitating reasonable access to existing Aboriginal heritage surveys.

Government response

Noted.

This is a matter for state and territory governments.

Recommendation 14

2.14 The committee recommends that Commonwealth, state and territory governments review departmental policies and budgets to support the conduct of site inspections by decision-makers during the environmental assessment process.

Government response

Noted.

The Minister for the Environment and Energy and senior Departmental officials frequently conduct site visits during the EPBC Act assessment process to inform the decision-making process. Expenditures for these activities are reviewed regularly as part of the annual budget cycle.

Departmental policies and budgets at the state and territory level are a matter for the relevant state or territory government.

Recommendation 15

2.15 The committee recommends that Commonwealth, state and territory governments investigate options for the greater utilisation of local knowledge and experience, including through the employment of local decision-makers.

Government response

Noted.

In conducting EPBC Act assessments, the Department of the Environment and Energy regularly engages with local experts and community members. The EPBC Act also provides multiple opportunities for local community input during assessments. As part of the One-Stop Shop reform the Department has also improved coordination and data sharing with state and territory agencies.

The conduct of state and territory assessment processes is a matter for the relevant state or territory government.