

Streamlining environmental regulation, 'green tape' and one stop shops.

Submission to House of Representatives Standing Committee on the Environment
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The Australia Institute

Research that matters.

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As we begin the 21st century, new dilemmas confront our society and our planet. Unprecedented levels of consumption co-exist with extreme poverty. Through new technology we are more connected than we have ever been, yet civic engagement is declining. Environmental neglect continues despite heightened ecological awareness. A better balance is urgently needed.

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Introduction

The Australia Institute welcomes the opportunity to make a submission to the House of Representatives Standing Committee on the Environment's inquiry into *Streamlining environmental regulation, 'green tape' and one stop shops*. The Australia Institute has a considerable experience assessing environmental regulation.

In 2009 the Australia Institute and the Minerals Council of Australia jointly supported research into the *Environment Protection and Biodiversity Conservation Act* (EPBC act).¹ Key findings were:

- Proponent costs can be substantial, but are highly variable
- There is duplication of regulatory effort
- Environmental effectiveness is only low to moderate and regulators have struggled to monitor conditions
- Mixed opinions on the fairness of processes
- General support for EPBC act's participatory processes.

Since that time the Australia Institute has had extensive experience engaging with environmental regulation, particularly in relation to major project assessment in New South Wales and Queensland. We believe these findings are still reflective of the general state of environmental regulation in Australia. There is room for reform which could improve environmental and economic outcomes. Reforms must focus on improving the quality of regulation, rather than merely reducing it. Some recent reforms at a state level provide examples of where reforms have reduced the quality of assessment, particularly in relation to economic assessment.

The generally low quality application of economics in environmental regulation is a key concern. A lack of understanding of environmental economics and economic assessment seems pervasive throughout state and federal regulators and many decision makers. This leads to further concerns regarding potential reforms to environmental regulation, "green tape" and "one stop shops". We outline the following points in this submission:

- Inefficiency of "one stop shops"
- Creation of conflicts of interest for state regulators
- Environmental regulation in economic context.

Economics in environmental assessment

Economics has generally played a minor role in assessment of projects and policies that impact on the environment. Federal assessments rarely touch on economics and at a state level economic assessment usually appears as a late appendix to environmental impact statements (EIS).

For example, the proposed Bengalla Continuation Project, a coal mine in the Hunter Valley, has economics as Appendix S to its EIS, behind appendices relating to *Stygofauna* (Appendix P) or *Aboriginal Archaeology and Cultural Heritage* (Appendix M).² While stygofauna and archaeological impacts are no doubt important considerations at an advanced stage of the assessment process, it seems inappropriate that the first time the question of "is this project in the public's economic interest" is asked so late.

¹ (Macintosh, 2009).

² http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5170

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The lack of focus on project economics from a public perspective reflects long held assumptions, entrenched in environmental regulation at all levels, that all development is economically beneficial. This is not always the case. Where the benefits to Australia, or smaller community, do not outweigh the costs of the development, it should be rejected.

An example of a development which received thorough economic assessment far too late is the Warkworth Coal Project, also in the Hunter Valley. That project's economic assessments (Appendices O&P) were heavily flawed and had received scant attention from early reviews by planners and decision makers. It was only when a community group appealed to the NSW Land and Environment Court found in 2013 that the project's economics received the attention it deserved. After hearing evidence from no less than six expert economists the judge found:³

I am not satisfied that the economic analyses provided on behalf of Warkworth support the conclusion urged by both Warkworth and the Minister, namely that the economic benefits of the Project outweigh the environmental, social and other costs.

This judgement was appealed by the NSW state government and proponents Rio Tinto. The Supreme Court rejected their appeal and strongly endorsed the Land and Environment Court's judgement including its treatment of economic evidence.⁴

The response of the NSW government to these judgements has been to pass legislation which focuses more attention on economic benefits of mining projects.⁵ Disappointingly, proponents have not followed this lead and in a recent application for a smaller extension of the Warkworth project, failed to provide any economic assessment at all.⁶ Decision makers noted this lack of assessment and the Land and Environment Court's judgement, but approved the extension all the same, likely against the economic interests of NSW.⁷

While economics plays a late and insufficient role in NSW environmental regulation, the committee should note that the situation in Queensland is worse still. We know of no major project in Queensland that has been subject to cost benefit analysis, despite Queensland Government guidelines that call for this.⁸

Instead most projects are assessed through "input output" modelling. Using input output models for project assessment is inappropriate as it was never intended to be used for this purpose and is mathematically certain to overstate positive impacts. For this reason it is described as "biased" by the ABS, "deficient" by the NSW Land and Environment Court and considered to be widely "abused" by the Productivity Commission and other economists.⁹ An example of a project assessed with this methodology is the Kevin's Corner Coal Project in the Galilee Basin.¹⁰

The inability of state government planning departments to enforce their own guidelines for economic assessment or to adequately review assessments that proponents commission is a key reason why attempts to set up a "one stop shop" will not produce improved environmental regulation or economic outcomes.

³ (Preston, 2013) p155.

⁴ (NSW Supreme Court, 2014).

⁵ (NSW Minister for Planning and Infrastructure, 2013).

⁶ (TAI, 2014).

⁷ (NSW PAC, 2014).

⁸ (Qld DIP, 2011).

⁹ (ABS, 2011; Denniss, 2012; Gretton, 2013; Layman, 2002; Preston, 2013).

¹⁰ (Economic Associates, 2011).

A “one stop shop” will be inefficient

State government planners and decision makers lack the capacity to review economic assessments. This was emphasised by the NSW Planning and Assessment Commission in their assessment of the state-owned Cobbora Coal Project:¹¹

The Commission considers that Treasury is best placed to examine the project's costs and benefits at the state level and its economic justification, in tandem with its consideration of any alternatives available, as part of the business case development process. Consequently the Commission has not undertaken a detailed assessment of the economic impacts of the project at a state level.

Treasury's assessment of the project was unambiguous:¹²

The final feasibility study for the Cobbora coal mine has confirmed that around \$1.5 billion of capital expenditure is required to develop the Cobbora coal mine until it produces first coal. Forecast cash flows are insufficient to cover subsequent capital and operating expenditure over the life of the mine. The total loss to the Government, if arrangements are unchanged, would be in excess of \$1.5 billion.

Such hopelessly economic projects, supported by biased and misleading economic assessments, being recommended by planning departments emphasises the difficulty in a single organisation being able to assess a project. Not until the project was taken to public submissions and to Treasury were the economics given any real attention. This is not only the case for economic assessment – other aspects of planning are just as specialised – environmental, social, impacts on infrastructure and other industries –and require expertise from many departments.

This is also the opinion of the Productivity Commission and a key reason why it opposes the establishment of a “one stop shops”.¹³

The Commission considers that the one-stop shop approach for all regulatory approvals is impractical for the broad class of major projects in Australia. Major projects are not limited to a single sector or activity and a vast amount of legislation would need to be modified to give authority to a one-stop shop. Moreover, establishing a single agency with the requisite skills and expertise to assess and approve a diverse range of project types and impacts would be very challenging. It would also create overlap with agencies that regulate regular-sized developments and risk 'regulatory capture'.

We concur with the Commission that while reforms that bring about better coordination between agencies could improve regulation, a “one stop shop” approach is impractical and unlikely to have the capacity to assess complex projects requiring specialist knowledge across many different fields.

We also agree with the Commission that such an agency would be at risk of ‘regulatory capture’ or having conflicted interests, inviting corruption. Such examples are already evident.

¹¹ (NSW PAC, 2013) p51.

¹² (NSW Treasury, 2013) pp9-11.

¹³ (Productivity Commission, 2013) p24.

Potential conflicts of interest

Devolution of responsibility for environmental decisions to state governments creates a clear conflict of interest. State governments are the primary beneficiaries of many environmentally destructive projects, while impacts on local communities and economies are borne by local governments or, where environmental impacts affect matters of national environmental significance, the nation as a whole.

Mining projects are a good example. State governments are the main financial beneficiaries as they receive any mineral royalties. Local governments often face costs relating to these projects as roads and other civil infrastructure come under pressure for which they are not adequately compensated. This is particularly common where large fly-in-fly-out or drive-in-drive-out (FIFO-DIDO) workforces add to pressure on local government infrastructure, but are not counted as residents, which reduces local government funding. Local governments are at a disadvantage in negotiating “voluntary planning agreements” with major resource companies backed by state governments.

Examples of this include the Stratford Coal Project and Wallarah 2 coal project.

North of the Hunter Valley, NSW, Gloucester Shire Council had extensive engagement with the community and proponents, Yancoal, over approval conditions for the Stratford Extension Project. The council was initially supportive of the project subject to a voluntary planning agreement, conditions on operating hours, mine plan and final landforms. These concerns were dismissed by the state government planning department, causing the council to shift its position from qualified support to outright opposition.¹⁴

The Wallarah 2 coal project on the Central Coast of NSW has also been strongly opposed by the Wyong Shire Council based on impacts on water resources. The project would mine underneath drinking water catchment which serves 300,000 people and many people's homes. While mining royalties would accrue to the state government, any damage to water resources or other assets through subsidence would leave a mix of council, individuals and catchment management authorities to pay or pursue the miners for compensation.

In the Wallarah 2 case, the obvious conflict of interests has led to allegations of corruption. The project, proposed by Korean energy company Kores, was opposed by then NSW Liberal leader Barry O'Farrell when in opposition, promising the project would not proceed under his government. Once in government however, Mr O'Farrell's position changed. It is alleged Mr O'Farrell met several times with a lobbyist for Kores, Nick Di Girolamo. Mr Di Girolamo also worked for Australian Water Holdings and is the subject of a current inquiry by the NSW Independent Commission Against Corruption (ICAC).¹⁵

The Australia Institute also found an unexplained difference of over \$1 billion in economic assessments of the Wallarah 2 project in a recent submission to the NSW Planning and Assessment Commission (PAC).¹⁶ In another concerning conflict of interest at the state level, the chair of the PAC overseeing the Wallarah 2 project is Dr Neil Shepherd, who also chairs Coal Innovation NSW.¹⁷

¹⁴ <http://www.abc.net.au/news/2013-12-18/nsw-planning-accused-of-ignoring-gloucester-concerns-about-mine/5163346>

¹⁵ <http://www.smh.com.au/nsw/barry-ofarrell-accused-of-lying-about-wallarah-2-coal-project-meetings-20140227-33mfs.html>

¹⁶ <http://www.tai.org.au/content/submission-wallarah-2-coal-project>

¹⁷ http://www.resourcesandenergy.nsw.gov.au/_data/assets/pdf_file/0006/512475/Review-of-the-Coal-Innovation-Administration-Act-Information-Paper.pdf

While the difference of interests between state governments' benefits and local governments' costs is immediate, a similar disconnect occurs with state government decisions that affect matters of national environmental significance. State governments may be motivated to pursue immediate revenue streams, placing environmental assets valued by all Australians at greater risk.

Costs of environmental regulation in context

Earlier research supported jointly by The Australia Institute and the Minerals Council of Australia presents a range of values for the likely costs to proponents of between \$270---\$820 million in nominal terms. While this may seem like a large sum of money when taken in isolation, when considered in the appropriate economic context, these sums are small. According to the Business Council of Australia:¹⁸

there are around \$900 billion of committed and prospective investment opportunities in large-scale projects, mostly in resources and economic infrastructure.

As such, the costs of the EBPC act over its first nine years as estimated by Macintosh (2009) represent just 0.03 per cent to 0.09 per cent of the value of the current investment pipeline for large-scale projects in Australia. Estimates of similar cost of state regulation or of potential savings from reduced duplication are not available, but are likely to be of similar magnitude. Major changes to environmental regulation or "green tape" will not have major impacts on the economics of major projects in Australia. The sources of concerns about high development costs are far broader than environmental regulation.

A similar point is made by the Productivity Commission in their recent report on Major Project Development Assessment Processes:¹⁹

The costs of developing major infrastructure, natural resources projects, and commercial and public-purpose buildings in Australia are high and rising. This is driving concerns about Australia's competitiveness, productivity and future prosperity. The sources of higher costs include: wage and other labour costs; restrictive work practices; competition for construction services from elsewhere in the economy; skilled labour shortages; the increased complexity of projects; the higher community valuation placed on protecting amenity, heritage and environmental assets; and the efficiency of DAA regulations. It is the last of these that the Commission has been asked to review.

Placing undue emphasis on reforming environmental regulation in Australia is unlikely to achieve significant economic improvement and could place environmental assets at risk. While improvements can no doubt be made, these are of little relevance to the wider economic issues of Australia's future.

¹⁸ (BCA, 2012) p5.

¹⁹ (Productivity Commission, 2013) p3.

Conclusion

Our experience suggests that there are areas of environmental regulation that can be improved and need reform. In particular, the standard of economic assessment in environmental decision making is very poor. State government departments and decision making bodies lack the capacity to evaluate economic assessments. As most of these assessments are commissioned by development proponents they tend to portray proponents' projects in a favourable light – they overstate the benefits that the project may bring and understate the economic costs on other industries, communities and the environment.

This lack of capacity on the behalf of planning agencies suggests that a “one stop shop” approach is impractical. No single agency is likely to be able to house the expertise needed for technical assessment across many different disciplines. Such capacity is essential in major project assessment.

Furthermore, such an agency, likely a state government agency, is likely to face many conflicts of interest, as state governments receive many benefits from development, but costs are often transferred to local governments or smaller communities. Examples can be found of conflicts of interest and allegations of corruption in state government planning in NSW at the moment.

Finally, in the context of the wider economy, the costs of environmental regulation are not great. While some reforms may be desirable, these will have at best a marginal impact on Australia's economic challenges.

We would welcome the opportunity to expand on this submission either in writing or in person.

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