Senate inquiry into environmental assessment and approvals

June 14, 2017

Recommendations

- Law should be streamlined, less complex and written in easy to understand language. The volume of laws in its totality must be substantially reduced.

- Should conditions on approvals be required, they should be outcomes based and determined on the basis of established science and risk and related only to the nature and scale of the activity and its potential impact on environments.

- Additional measures should be implemented to ensure greater certainty and timeliness for decisions under the EPAC Act, including the use of statutory timeframes, clarification regarding the application of 'stop-the-clock' provisions and other measures to reduce the likelihood of appeals on decisions, including vexatious appeals.

- A regulatory impact statement (RIS) should be developed for the water trigger, as recommended by the Productivity Commission in its study on major project approvals processes. The government should make appropriate amendments to the EPAC Act based on this RIS.

- Definitions contained in the EPAC Act water trigger around 'large coal mining' and significant impacts are vague and continue to risk capturing all coal mining activities. The capture of the water trigger should be further tightened to ensure that only those activities with a genuine significant impact on a material water resource trigger the Act.

- Cross-boundary problems will prove problematic under a bilateral agreement process. There is risk of adding complexity and costs to a dense set of environmental laws and regulations. For consistency cross-boundary environmental issues should be referred at the federal level.

- The One-stop shop agenda is actually a series of eight 'shops' with the number of approval pathways more than likely to increase and fragment rather than simplify and converge. Alternative approaches in line with international best practice should be considered.

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

The first publication of environmental laws in 1971 was 57 pages. This has since grown to approximately 5000 pages representing an 80-fold increase.

The dense and complex nature of environmental legislation is a major burden for business, particularly for small and medium sized business who already face significant compliance costs elsewhere. In the Chamber's view, it is impractical for businesses to be across voluminous and complex legislation, particularly when there are constant and continued changes in the rules.

The Institute of Public Affairs (IPA) has estimated that unnecessary environmental regulations are costing the national economy $176 billion each year[1]. In addition, IPA found that legal challenges cost approximately $1.2 billion in investment over recent years.

There is broad consensus within industry that there are four major sources of cost, delay and uncertainty in environmental regulation including:

- Inefficiencies in relation to the approvals process such as Environmental Impact Statements (EIS), approvals and compliance. For example, costs associated with major mining developments can cost up to $15 million for new developments and up to $12 for amendments
- Rules that are poorly defined and open to interpretation leading to uncertainty into project delivery
- Complex and prescriptive conditions and;
- State and federal duplication.

It is suggested that the One-stop shop could mean 'regulatory savings to business of over $426 million a year'[2]. However the report has some significant limitations and assumptions and likely underestimates the savings available from reform.

First, the report predicts very limited direct regulatory savings, such as only having to deal with one regulator ($9m a year). The public costs to agencies and others negotiating and implementing the reforms – now in their fourth year – is not estimated.

Second, the vast majority of estimated savings were 'reduced delay costs' that boosted the net present value of relatively few large projects. Critically, the report does not consider whether the additional scrutiny provided by these 'delays' is justified. The Act's effectiveness or efficiency cannot be judged on approval timeframes alone. More important is whether the system delivers sustainable outcomes in the public interest. Without this recognition, the logic of 'assessment as delay' could be extended to state processes also (notwithstanding that they assess different impacts). In any case, the report notes 'delay costs are difficult to estimate because they depend on many project-specific factors'. Less than 20 projects a year were considered reliable enough to meet the criteria for calculating 'delay savings'. Despite this, the One-stop shop would hand over as many approvals as possible.

Third, the Government's report didn't weigh up the benefits of alternative reform options that retain federal approval powers. Alternatives would include savings from improved guidance to proponents, clearer definition of significant impacts, better coordination of state and federal assessments and

[1] http://www.theaustralian.com.au/national-affairs/climate/green-tapes-80fold-explosion-costing-176m-a-year/news-story/d9ea11387e48ae9aa02ec3cefb88476d
[2] Department of Environment, Regulatory Cost Savings under the one-stop shop for environmental approvals 2014

conditions, a harmonised national threatened species list, and better use of regulatory cost recovery. Many such efficiencies have been identified in the Hawke Review and other reports since then.

Fourth, the Government's report assumed the One-stop shop wouldn't increase state approval times or procedures. Yet the states will have to act in place of the Federal Government – assessing national impacts, seeking further information from developers and consulting with federal agencies and advisory bodies. It is unrealistic to claim the states could undertake the additional work required to do the Federal Department's job without allocating additional time, resources, expertise and compliance oversight.

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

In September 2013 the Abbott Government committed to establishing a One-stop shop for project assessments and approvals within a year of winning office. This plan had three stages. First, memoranda of understanding were signed with each state and territory in December 2013. Second, new or revised bilateral agreements to delegate certain *EPBC Act* assessments were agreed by December 2014.

Since then, the Government has been working on the final stage – approval bilateral agreements. Draft agreements went on mandatory public exhibition in all jurisdictions (except Victoria and the NT) but these have since stalled. The one-stop shop has stalled amid complexity and controversy, with no clear public benefit and no positive consensus on national environmental goals or direction.[3] A major stumbling block for the Abbott Government's one-stop shop was the water trigger.

The benefit of assessment bilaterals is that they still give the Federal Minister the final nod or refusal. In contrast, Approval bilaterals 'switch off' the EPBC Act for accredited classes of project approvals, such as mines, dams, ports and freeways. So instead of the Federal Minister giving the final nod or refusal, it is up to each state government for sign-off on national environmental impacts, and for compliance and enforcement against future breaches or environmental harm.

The Australian Chamber would suggest then that Approval bilaterals require further scrutiny –as they could further complicate an already complex process and create uncertainty. For instance, the Bilaterals Bill would allow state and territory policies and guidelines to replace the legal protections in the EPBC Act – repealing current safeguards that say EPBC protections must be reflected in state laws. Legal protections are markedly different to policies (even policies or instruments made 'under' a law). This could also add to complexity and inconsistency. If this approach is to go forward, states should harmonise their approach.

Allowing the Federal Government to accredit state and territory policies, instead of laws, would seriously weaken the EPBC Act's bilateral agreement provisions. Accreditation should be used to raise and harmonise state assessment standards.

Leaders and policymakers need to demonstrate good faith in restoring national environmental policy to an even keel, properly engaging stakeholders and readying Australia's environment, economy and communities to respond to challenges of inevitable change.

The EPBC Act protects Australia's most iconic natural and cultural heritage. While most environmental decision-making happens at the state level, federal oversight of matters of NES is vital because:

[3] Impact Enivronmental law journal 'Australia's environment: Breaking the One-stop shop deadlock' Issue 97, 2016

- Only the Federal Government can provide consistency in national leadership on national environmental issues, strategic priorities and increased consistency;
- The Federal Government is responsible for our international obligations, which the EPBC Act implements;
- State governments often have conflicting interests – as a proponent, sponsor or beneficiary of the projects they assess.

These are important responsibilities. Yet over the last three and a half years, a central plank of national environmental policy has been to hand over federal powers to protect Australia's environmental icons to state planning ministers.

If the One-stop shop reforms continue as proposed, state planning departments will be solely responsible for assessing and approving projects that impact on matters of NES.

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

The EU experience provides lessons for Australia

Strategic environmental assessment

The EU Commission is carrying out an implementation report to assess the application and effectiveness of Directive 2001/42/EC on the assessment of the effects of certain plans and programs on the environment. The implementation report will also assess the potential for simplification.

Waste policy

In 2015, the Commission adopted an ambitious Circular Economy Package, which included revised legislative proposals on waste, to boost competitiveness, foster sustainable economic growth and generate new jobs.

The Commission has proposed to reduce administrative burden and simplify reporting requirements by setting clear targets for reduction of waste and established a credible long-term path for waste management and recycling. Key elements of the proposal include:

- The adoption of a common EU target for recycling
- A binding landfill target
- Simplified and improved definitions and harmonised calculation methods for recycling rates throughout the EU
- Administrative burden reduction by simplifying reporting requirements on Member States saving an estimated 280 man-days per year and exemptions for establishments collecting or transporting small amounts of non-hazardous waste.

The Commission has also recommended action be taken to implement a common harmonised reporting and registration system for waste electrical and electronic equipment.

Environmental impact assessment (EIA)

The Directive on Environmental Impact Assessment simplifies procedures mainly through:

- The establishment of a mandatory one-stop shop with a view to streamlining the various environmental assessments
- The introduction of time-frames for specific stages of the EIA process
- The simplification of the screening process

Specific time-frames for some steps of the decision-making to be set at EU level (especially maximum time-frames) could not be agreed although they would have made the EIA process more streamlined and efficient and would have provided better legal certainty to industry and business.

Fisheries policy

The EU Common Fisheries Policy (CFP) started in 2011 and continues to simplify and reduce unnecessary burdens.

Major benefits of this include the simplification of the implementation procedures of the CFP covering from conservation of marine biological resources through market organisation to aquaculture; switch-over from a common to a regional approach of fisheries management (regionalisation) that aims to reduce regulatory burden and increase flexibility, acceptance and ownership by operators and thus better compliance.

The introduction of a regional approach to management through the decentralisation and empowerment of stakeholders is expected to increase compliance. The regulation will set only the general principles, overall targets and timeframes. Member states will decided in cooperation with the local industry, the measures to achieve targets on deadlines. This approach is aimed to reduce regulatory burden and increase flexibility, acceptance and ownership by operators and thus better compliance.

About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country,

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