

Chapter 1

Introduction

Establishment

1.1 On 11 October 2016, the Senate established the Select Committee on Red Tape (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, with particular reference to:

- a. the effects on compliance costs (in hours and money), economic output, employment and government revenue, with particular attention to industries, such as mining, manufacturing, tourism and agriculture, and small business;
- b. any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
- c. the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;
- d. the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;
- e. the adequacy of current institutional structures (such as Regulation Impact Statements, the Office of Best Practice Regulation and red tape repeal days) for achieving genuine and permanent reductions to red tape;
- f. alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
- g. how different jurisdictions in Australia and internationally have attempted to reduce red tape; and
- h. any related matters.¹

1.2 The committee decided to conduct its inquiry by focusing on specific areas. This interim report presents the committee's findings and conclusions about the effect of red tape on environmental assessment and approvals (environmental inquiry).

Conduct of the environmental inquiry and acknowledgement

1.3 The committee advertised the environmental inquiry on its website and wrote to a number of organisations, inviting submissions by 9 June 2017. The committee continued to accept submissions after this date. In total, the committee received 14 submissions, which are listed at Appendix 1.

1 *Journals of the Senate*, No. 9–11 October 2016, pp. 290–291.

1.4 The committee held a public hearing in Perth on 22 August 2017. The witnesses who appeared before the committee are listed at Appendix 2.

1.5 The committee thanks the organisations who made submissions and who gave evidence to assist the committee with its environmental inquiry.

Scope of the report

1.6 Chapter one provides broad background information to set the regulatory context for the environmental inquiry. Chapter two then examines some of the evidence presented to the committee, which may be drawn upon in the committee's final report.

Regulatory framework for environmental assessment and approvals

1.7 The Commonwealth, states and territories regulate environmental assessment and approvals. The following section outlines the main features of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), which is the Commonwealth's primary environmental legislation. The section also outlines the state/territory environmental assessment and approval process, and the Australian Government's recent initiative to streamline these two regulatory processes (the One Stop Shop initiative).

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

1.8 The EPBC Act aims to provide a national scheme of environment and heritage protection and biodiversity conservation. The legislation focuses on the protection of nine 'matters of national environmental significance' (MNES). Actions that have, or are likely to have, a 'significant impact' on a MNES must be approved by the Minister for the Environment (Minister).²

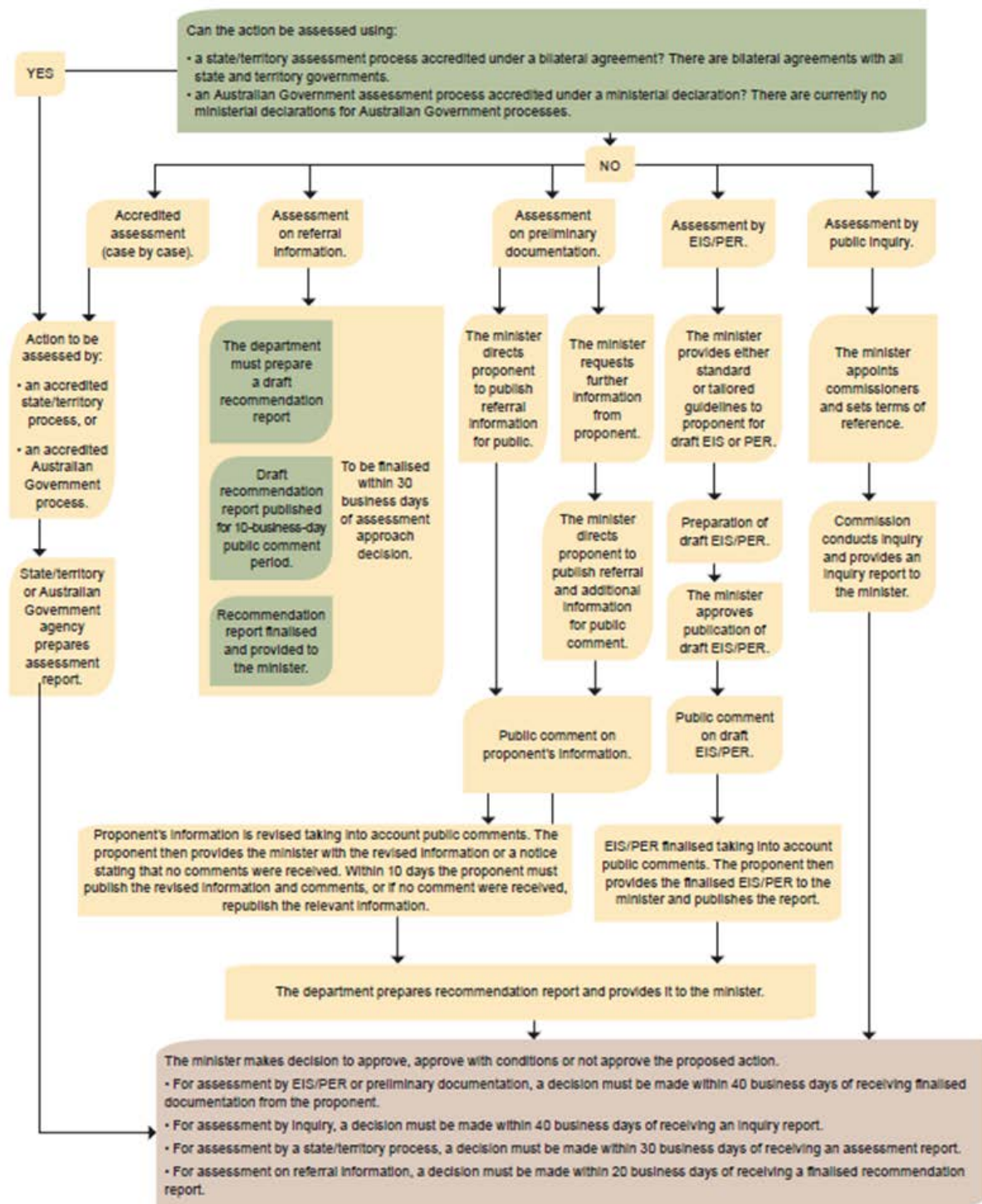
1.9 The Commonwealth's environmental assessments and approvals process is set out in Chapter 4 of the EPBC Act. There are two key stages: Referral (to determine whether a proposed action requires approval from the Minister); and Assessment (to determine whether a proposed action is approved outright, approved with conditions or not approved).

1.10 If a proposed action requires approval from the Minister, and is likely to significantly impact a MNES, it will proceed to the Assessment stage. There are five different methods of assessment, one of which is 'accredited assessment'. Under this method, an accredited Commonwealth, state or territory process can be used to assess the action. Once assessed, the Minister makes an approval decision.³

2 Department of the Environment and Energy, 'What is protected under the EPBC Act?', <http://www.environment.gov.au/epbc/what-is-protected> (accessed 17 October 2017).

3 A useful flowchart of all the key steps can be found at: Department of the Environment and Energy, 'Environment assessment process', <http://www.environment.gov.au/epbc/publications/environment-assessment-process-flowchart> (accessed 17 October 2017).

Figure 1: EPBC Act environmental assessment process



Source: Department of the Environment and Energy, <http://www.environment.gov.au/epbc/publications/environment-assessment-process-flowchart> (accessed 17 October 2017).

1.11 Section 522A of the EPBC Act requires the Minister to initiate an independent review of the Act at intervals of not more than 10 years. The review examines the operation of the Act and the extent to which its objects have been achieved.

1.12 In 2008, the Minister commissioned the first review of the EPBC Act, which was undertaken by Dr Allan Hawke AC. Dr Hawke's report was released on 21 December 2009. It described the EPBC Act as 'a product of its time', with scope to build on the framework for national environmental regulation for future generations. The report proposed a comprehensive package of reforms (71 recommendations),⁴ to which the Australian Government responded on 24 August 2011.⁵ Chapter two discusses recommendations and government responses that are relevant to this inquiry.

State/territory environmental assessment and approval process

1.13 Proposed projects commonly also require environmental assessment and approval under state/territory legislation. In Western Australia, for example, the Department of Water and Environmental Regulation currently administers eight statutes, with 21 regulations made under its primary legislation alone (the *Environmental Protection Act 1986 (WA)*).⁶

1.14 Each jurisdiction has its own assessment and approval process, a key feature of which is environmental impact assessment (EIA) reports. These reports are used to identify and manage the likely environmental impacts of a proposed project. Once a project has been assessed, the regulator reports and makes recommendations to the relevant minister, who then decides whether to approve the project and on what conditions, if any.⁷

One Stop Shop initiative

1.15 In 2013, the Australian Government approved the framework for delivering a One Stop Shop for environmental approvals. The One Stop Shop aims to accredit

4 Department of the Environment and Energy, 'Independent review of the Environment Protection and Biodiversity Conservation Act 1999', <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/epbc-review-2008> (accessed 17 October 2017); Dr Allan Hawke AC, *The Australian Environment Act, Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009, Department of the Environment Water, Heritage and the Arts.

5 Department of the Environment and Energy, 'Australian Government response to the Report of the independent review of the Environment Protection and Biodiversity Conservation Act 1999', <http://www.environment.gov.au/resource/australian-government-response-report-independent-review-environment-protection-and> (accessed 17 October 2017).

6 Department of Water and Environmental Regulation, 'Legislation', <https://www.der.wa.gov.au/about-us/legislation> (accessed 17 October 2017).

7 An example of a state-based assessment and approval process can be found at: Environmental Protection Authority, 'Step-by-step through the proposal assessment process', <http://www.epa.wa.gov.au/step-step-through-proposal-assessment-process> (accessed 17 October 2017).

state/territory planning systems, to create a single assessment and approval process for MNES.⁸

1.16 The One Stop Shop relies on Chapter 3 of the EPBC Act, which enables the Commonwealth to enter into bilateral agreements with the states and territories. There are two kinds of bilateral agreements relevant to the One Stop Shop:

- assessment bilateral agreements—if a proposed action is covered by an assessment bilateral agreement, then that action is assessed under the accredited state/territory process;
- approval bilateral agreements—if a proposed action is covered by an approval bilateral agreement, then that action is assessed and approved under the accredited state/territory process.

1.17 In 2014, the Department of the Environment (now the Department of the Environment and Energy) estimated that that the One Stop Shop would result in regulatory savings of over \$426 million a year.⁹ However, the initiative has not been fully implemented: while all states/territories have agreed assessment bilateral agreements, there are as yet no agreed approval bilateral agreements.¹⁰

8 The Hon Greg Hunt MP, Minister for the Environment, 'One-stop shop approved by Government', *Media Release*, 16 October 2013, <http://www.environment.gov.au/minister/hunt/2013/pubs/mr20131016.pdf> (accessed 17 October 2017); Department of the Environment and Energy, 'One-Stop Shop for environmental approvals', <http://www.environment.gov.au/epbc/one-stop-shop> (accessed 17 October 2017).

9 Department of the Environment, *Regulatory Cost Savings Under the One-Stop Shop for Environmental Approvals*, September 2014, p. 1, <http://www.environment.gov.au/system/files/resources/c3954859-fca6-4728-a97b-c17f90f6142c/files/regulatory-cost-savings-oss.pdf> (accessed 17 October 2017).

Also see: Australian Chamber of Commerce and Industry, *Submission 9*, p. 2, which argued that the regulatory savings are likely to be far higher than \$426 million.

10 Department of the Environment and Energy, 'One-Stop Shop for environmental approvals', <http://www.environment.gov.au/epbc/one-stop-shop> (accessed 17 October 2017).

