Chapter 2

Key issues

2.1 Submitters and witnesses told the committee that environmental assessment and approval is over-regulated at all levels of government, with adverse economic consequences.[1] Governments have acknowledged the need to reduce red tape in their jurisdiction and have implemented some red tape reduction initiatives. However, the committee heard that further action is needed.[2] As submitted by Roy Hill Holdings Pty Ltd (RHH):

> Crucially, Australia must simplify and improve the regulatory regime operating for the [resources] industry at all levels of government. The RHH experience of Australia's regulatory regime is of duplication, overlap, complexity and redundancy. While government's [sic] at all levels are making efforts to reform their regulatory regime much more needs to be done and greater coordination between all levels of government is required.[3]

2.2 This chapter focuses on Commonwealth, state and territory environmental regulation, and discusses the following matters:

- value to the Australian economy;
- review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act);
- reform of environmental assessment and approval processes;
- risk-based approach to environmental regulation;
- Commonwealth environment law; and
- state/territory environmental assessment processes.

Value to the Australian economy

2.3 The Institute of Public Affairs (IPA) estimated that red tape reduces Australia's economic output by $176 billion each year (11.0 per cent of Gross

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1 For example: Roy Hill Holdings Pty Ltd, *Submission 6*, p. 2; Minerals Council of Australia, *Submission 14*, p. 1, which supported minimum effective regulation.

2 For example: Simon Bennison, Chief Executive Officer, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, pp. 16–17; Stedman Ellis, Chief Operating Officer (WA), Australian Petroleum Production and Exploration Association, *Committee Hansard*, 22 August 2017, p. 31; David Stoate, Chairman, Kimberley Pilbara Cattlemen's Association, *Committee Hansard*, 22 August 2017, p. 36.

3 Roy Hill Holdings Pty Ltd, *Submission 6*, Attachment 1, p. 2. The submission supported 'minimum effective regulation' (as defined). Also see: Association of Mining and Exploration Companies, *Submission 7*, p. 3 (for similar comments in respect of mining and mineral exploration); Minerals Council of Australia, *Submission 14*, p. 13.

Domestic Product (GDP)). Its submission argued that environmental regulation is a significant factor in lost economic output.[4]

2.4 Other submitters and witnesses described particularly the importance of the resources, pastoral and agricultural industries to the Australian economy, and agreed that environmental regulation is impeding innovation, investment, growth and productivity in these industries.[5] These factors are discussed throughout this chapter.

2.5 Several submitters specifically commented that excessive regulation is making Australia unattractive for capital investment. The IPA submitted, for example:

> Australia is operating in an internationally competitive marketplace where capital is highly mobile between jurisdictions. By adding to the cost base of operating in Australia, red tape discourages businesses setting up projects and operations in Australia. This is a key reason why business investment in Australia is lower today (12.2 per cent of GDP) than the average of the economic crisis levels of the Whitlam era (13.7 per cent).[6]

2.6 RHH and the Association of Mining and Exploration Companies (AMEC) said that investment in the exploration and mining industries is adversely affected by over-regulation.[7] The Chief Executive Officer of AMEC, Simon Bennison, advised that there is a trend toward offshore investment in initial public offerings.[8] The Minerals Council of Australia (MCA) referred to the Fraser Institute's *Annual Survey of Mining Companies*,[9] which ranked only one state (Western Australia (WA)) in the top 10 jurisdictions for policy attractiveness in 2016.[10]

2.7 In the pastoral and agricultural industries, the Kimberley Pilbara Cattlemen's Association (KPCA) highlighted that primary producers and related businesses also feel the impact of excessive regulation:

> Our region has changed dramatically over the last five years with a number of large corporate operators, family owned enterprises, indigenous pastoral businesses and foreign investors seeing the growth and development potential in our region…Several investors are actively looking at other

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4 Institute of Public Affairs, *Submission 2*, p. 2 and Attachment 1, p. 2.

5 For example: East Kimberley Chamber of Commerce and Industry, *Submission 4*; Stedman Ellis, Chief Operating Officer (WA), Australian Petroleum Production and Exploration Association, *Committee Hansard*, 22 August 2017, p. 30; Roy Hill Holdings Pty Ltd, answer to questions on notice (received 12 September 2017).

6 Institute of Public Affairs, *Submission 2*, p. 3.

7 Roy Hill Holdings Pty Ltd, *Submission 6*, Attachment 2; Association of Mining and Exploration Companies, *Submission 7*, p. 3.

8 Simon Bennison, Chief Executive Officer, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, pp. 17–18

9 This survey ranks jurisdictions globally for geologic and policy attractiveness: Fraser Institute, *Annual Survey of Mining Companies, 2016*, February 2017, https://www.fraserinstitute.org/categories/mining (accessed 17 October 2017).

10 Minerals Council of Australia, *Submission 14*, p. 6.

> states and countries to invest their money. They have invested in WA in good faith to develop our industry. They have the cash and desire to grow the region's economy, but have found it very difficult to move forward at anything other than snail's pace, if at all.[11]

Review of the EPBC Act

2.8 The EPBC Act was reviewed in 2008–2009 by Dr Allan Hawke AC. Dr Hawke was guided by the Australian Government's policy objectives (term of reference 3), including the Deregulation Agenda 'to reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards'.[12]

2.9 Dr Hawke found that two things are necessary to achieve these objectives:

- the regulatory environment must be reformed so that unnecessary regulation is removed and more efficient approaches are adopted; and
- administration must be funded so that early investments can be made in the things that will make the regulatory system work smoothly.[13]

2.10 In this inquiry, submitters and witnesses picked up on some of the issues considered by Dr Hawke, including the water trigger and nuclear actions (including uranium mining) which are matters of national environmental significance (MNES)).

Matters of national environmental significance

2.11 The EPBC Act focuses on the protection of MNES. Dr Hawke reported that relatively few submissions to the 2008–2009 review concerned existing MNES. Instead, many submissions called for the creation of new MNES. Dr Hawke commented that the 'inclusion of a new matter of NES must be justified and limited to environmental matters that are nationally significant'.[14]

The water trigger

2.12 In 2013, the EPBC Act was amended to include the ninth MNES: 'a water resource, in relation to coal seam gas development and large coal mining development' (the water trigger).[15]

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11 Kimberley Pilbara Cattlemen's Association, *Submission 10*, p. 5.

12 Department of the Environment and Energy, 'Terms of reference', http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/epbc-review-2008/about-review-0 (accessed 17 October 2017).

13 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, p. iii.

14 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, p. 20.

15 *Environment Protection and Biodiversity Conservation Amendment Act 2013* (Cth)

2.13 Some submitters and witnesses questioned whether the water trigger should be a MNES. The Institute of Public Affairs argued that the water trigger is 'based on a political agenda with no environmental dividend'.[16] The MCA and AMEC said that the water trigger is regulatory duplication, as state/territory assessment and approval processes already manage water resources.[17] The Chief Executive of MCA, Brendan Pearson, said:

> When we are doing a state level approval, impacts on water are fully assessed and we have found in practice, since the operation of that extra top-up regulatory hurdle, we are not identifying any new shortcomings in state approvals processes with that extra layer. In other words, we have completely introduced a duplicate level, which in many cases delays processes.[18]

2.14 AMEC added that, in addition to being duplicative, the water trigger potentially applies throughout the resources industry, and creates another level of uncertainty for investment and business decision-making.[19]

Nuclear actions (including uranium mining)

2.15 Dr Hawke reported that 'nuclear actions' are considered a MNES due to their potentially significant impacts on public and environmental health, as well as community concern. However, Dr Hawke questioned why the MNES includes uranium mining compared to other forms of mining. He suggested that the Australian Government should explore the scope of the 'nuclear actions' MNES.[20]

2.16 In this inquiry, some submitters and witnesses echoed Dr Hawke's comments and told the committee that this is another example of regulatory duplication. For example, Mr Pearson from MCA said:

> …uranium mines are in most cases no different to any other mine, but it has to go through a special number of hoops which, in our view, are unnecessary and have proven to be unnecessary…even the recent South

16 Institute of Public Affairs, *Submission 2*, p. 5. Also see: Simon Bennison, Chief Executive Officer, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, p. 12; Stedman Ellis, Chief Operating Officer (WA), Australian Petroleum Production and Exploration Association, *Committee Hansard*, 22 August 2017, p. 35.

17 Association of Mining and Exploration Companies, *Submission 7*, p. 7; Minerals Council of Australia, *Submission 14*, p. 14.

18 Brendan Pearson, Chief Executive, Minerals Council of Australia, *Committee Hansard*, 22 August 2017, p. 32.

19 Association of Mining and Exploration Companies, *Submission 7*, p. 7.

20 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, pp. 99–100.

> Australian royal commission into nuclear matters opined on this and also concluded that it was unnecessary.[21]

2.17 Representatives from AMEC drew attention to the consequences of this additional burden for mining projects. Mr Bennison explained that the lead time for uranium projects far exceeds that of a base metal or coal-type assessment. AMEC's National Policy Manager, Graham Short, elaborated that the Commonwealth involvement then potentially adds one to two years to the state approval process.[22]

2.18 MCA recommended:

> …removing uranium mining, milling, decommissioning and rehabilitation from the definition of nuclear actions. Where significant environmental risks are presented, these are already addressed through comprehensive state and territory assessment and approval processes.[23]

Australian Government's position on the water trigger

2.19 In 2014, the Australian Government sought to amend the EPBC Act, to allow states/territories to be accredited for water trigger approval decisions.[24] The proposed legislation lapsed in the Senate on the prorogation of the 44th Parliament. Subsequently, an independent review into the operation of the water trigger legislation found:

> …as a matter of principle, scope should exist within the legislation for bilateral approval agreements between the Australian Government and state governments to include decisions under the water trigger.[25]

Committee view

2.20 The committee understands that the Department of the Environment and Energy is currently undertaking preliminary work for a 2019 review of the EPBC Act.[26] Given the number of concerns expressed throughout the inquiry, the committee considers that this review should be expedited and brought forward to 2018.

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21 Brendan Pearson, Chief Executive, Minerals Council of Australia, *Committee Hansard*, 22 August 2017, p. 33. Also see: Nuclear Fuel Cycle Royal Commission, *Nuclear Fuel Cycle Royal Commission Report*, May 2016, p. xiv, https://yoursay.sa.gov.au/pages/nuclear-fuel-cycle-royal-commission-report-release/ (accessed 17 October 2017).

22 Simon Bennison, Chief Executive Officer, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, p. 13.

23 Minerals Council of Australia, *Submission 14*, p. 3. Also see: Simon Bennison, Chief Executive Officer, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, p. 13.

24 Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014, Explanatory Memorandum, p. 2.

25 Stephen Hunter, *Independent Review of the Water Trigger Legislation*, April 2017, p. 10, http://www.environment.gov.au/system/files/resources/905b3199-4586-4f65-9c03-8182492f0641/files/water-trigger-review-final.pdf (accessed 17 October 2017).

26 Roy Hill Holdings Pty Ltd, *Submission 6*, p. 5.

Recommendation 1

2.21 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.

2.22 The committee notes that, until introduction of the water trigger, the Australian Government was not involved in environmental assessments and approvals for water resources. The committee heard that state/territory processes are well established and understood by the resources industry, and that the Australian Government's involvement duplicates these processes. Further, the Australian Government recently supported delegating its responsibilities under the EPBC Act to the states/territories. With these considerations in mind, the committee recommends that the water trigger be removed from the EPBC Act.

Recommendation 2

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

2.24 On the basis of information provided by the resources industry, and Dr Hawke's comments, the committee considers that the inclusion of uranium mining as part of a MNES in the EPBC Act is duplicative and unnecessary. The committee notes that only three states/territories—Northern Territory, South Australia and Queensland—permit uranium mining in their jurisdiction, and have well-established assessment and approval processes to which Commonwealth involvement adds little value, if any.

Recommendation 3

2.25 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).

Reform of environmental assessment and approval processes

2.26 The first review into the operation of the EPBC Act recommended that the Commonwealth, states and territories collaborate to improve the efficiency of the assessment regime under the EPBC Act.[27] The committee particularly examined one suggested measure: the accreditation of state/territory processes where they meet appropriate standards.

One Stop Shop

2.27 The Australian Government reached assessment bilateral agreements with all jurisdictions in 2013–2014, allowing states/territories to assess project proposals. However, the second stage of the initiative—approval bilateral agreements—was not concluded, meaning that states/territories conduct environmental assessments and

27 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, Recommendation 4, p. 28.

propose conditions of approval, which must then be approved by both the state/territory and the Commonwealth under the EPBC Act.

2.28 Submitters and witnesses expressed concern that this dual regulation perpetuates duplication, inconsistencies, high implementation costs and extended delays.[28] MCA reiterated that these factors have economic consequences, for example:

> One of the biggest drags on the international competitiveness of Australia's minerals industry is lengthy and costly delays in securing project approvals.[29]

2.29 AMEC submitted that the states/territories already effectively regulate the environment, rendering Commonwealth involvement unnecessary:

> **All** assessment and approval processes are fully managed and administered through robust State and Territory legislative and regulatory regimes. This process can take several years before a decision is made…There is no need for the Commonwealth to be duplicating existing State and Territory Government regulatory regimes.[30]

2.30 Many submitters and witnesses argued that the states/territories should be responsible for environmental regulation. The IPA described this as 'environmental federalism', which enables state/territory governments to test their own regulatory systems and develop rules appropriate for their jurisdiction, which balance economic growth and environmental conservation.[31] Alternatively, Environmental Defenders' Offices of Australia (EDOA) submitted:

> While most environmental decision-making happens at the state level…the Australian Government must retain a leadership and approval role in environmental assessments and approvals of matters of national environmental significance.[32]

2.31 The committee notes that there is also some contention as to whether the One Stop Shop would operate as an efficiency measure. For example, the Australian Chamber of Commerce and Industry (ACCI) argued that the initiative would actually increase the complexity of environmental regulation:

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28 For example: Australian Taxpayers' Alliance, *Submission 3*, p. 2; ACT Government, *Submission 11*, p. 1.

29 Minerals Council of Australia, *Submission 14*, p. 13. Also see: Association of Mining and Exploration Companies, *Submission 7*, p. 6.

30 Association of Mining and Exploration Companies, *Submission 7*, p. 6 (emphasis in the original). Also see: ACT Government, *Submission 11*, p. 1.

31 Institute of Public Affairs, *Submission 2*, Attachment 1, p. 6. Also see: Association of Mining and Exploration Companies, *Submission 7*, p. 7; Brendan Pearson, Chief Executive, Minerals Council of Australia, *Committee Hansard*, 22 August 2017, p. 34, who considered that there is a lack of trust between federal/state regulators.

32 Environmental Defenders' Offices of Australia, *Submission 13*, p. 4.

> 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.[33]

Committee view

2.32 The committee notes that streamlining Commonwealth, state and territory environmental assessment and approval processes has been previously considered. In addition to Dr Hawke's review, the Productivity Commission and the Senate Environment and Communications Legislation Committee have supported the establishment of a One Stop Shop.[34] More importantly, the Australian Government agreed with these findings and proceeded to implement 'assessment bilateral agreements' in each jurisdiction. Partial implementation of the initiative does not fully achieve its stated objectives and the committee therefore supports completion of the One Stop Shop initiative.

Recommendation 4

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

National Offshore Petroleum Safety and Environmental Management Authority

2.34 The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the national regulator for safety, well integrity and environmental management of offshore petroleum activities in Commonwealth and some state waters. Its assessment and approval processes are accredited under the EPBC Act.[35]

2.35 The Chief Executive Officer, Stuart Smith, told the committee that, if all states and the Northern Territory were to confer responsibilities on NOPSEMA, it would create a national framework for the assessment and approval of offshore petroleum projects, with significant red tape reductions:

> …the benefits would be eliminating discrepancies across boundaries that currently exist and reducing the volume of required permission documents that currently industry has to complete. It would improve consistency. It would ensure the maintenance of robust environmental outcomes and it

33 Australian Chamber of Commerce and Industry, *Submission 9*, p. 1. Also see: Environmental Defenders' Offices of Australia, *Submission 13*, Attachment 1, p. 1.

34 Productivity Commission, *Major Project Development Assessment Processes*, November 2013, Recommendation 7.1, https://www.pc.gov.au/inquiries/completed/major-projects/report (accessed 17 October 2017); Senate Environment and Communications Legislation Committee, *Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 and Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014*, June 2014, p. 37, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/EPBC_Bilats_and_cost_recovery_Bills (accessed 17 October 2017).

35 Stuart Smith, Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority, *Committee Hansard*, 22 August 2017, p. 24.

> would also expand access to world leading practices and critical mass of regulatory experts.[36]

2.36 Mr Smith explained the practical operation of an application for approval:

> If you have an offshore oil and gas facility that might have wells in both Commonwealth and state waters that are producing and they then have a pipeline running to onshore, whether it be in the Northern Territory or on state waters, for a situation like that you currently have four regulators that would be responsible for offshore oil and gas approvals, for environmental approvals alone. That would be the relevant state Department of Mines or Primary Industries, the state EPA. They would also need Commonwealth Department of Environment and Energy approval under the EPBC Act for those activities in state waters, and we would grant approval as well. If they were to streamline the process by conferring their environmental powers on us, industry would just need one approval from us as the regulator for the same activity, irrespective of whether they confer.[37]

2.37 Mr Stedman Ellis, Chief Operating Officer (WA) of the Australian Petroleum Production and Exploration Association (APPEA), said that the NOPSEMA model was a significant improvement for the petroleum exploration and production industry:

> APPEA strongly supports the leadership that the Commonwealth and COAG have taken in establishing NOPSEMA as a single agency for offshore health, safety and environmental approvals including under the EPBC Act. The objective based regulation within which NOPSEMA operates is internationally recognised as the most appropriate regulatory regime for dealing with potentially high hazard industries like oil and gas activities.[38]

2.38 Mr Ellis described the model as 'very successful' and expressed the view that conferrals by states/territories would 'further reduce duplication and regulation of the industry'. He noted:

> …the pathway to get where we have got to in regulation of the offshore industry began, to some extent, in 2009 with the Productivity Commission report which found that Australia was potentially losing billions of dollars a year from its potential value of its oil and gas resources through duplication inefficiency, ultimately leading to the Commonwealth, in 2004, deciding to agreeing to accredit NOPSEMA and remove the Department of Environment under the EPBC Act. A review needs to look at what is

36 Stuart Smith, Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority, *Committee Hansard*, 22 August 2017, p. 24.

37 Stuart Smith, Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority, *Committee Hansard*, 22 August 2017, p. 24.

38 Stedman Ellis, Chief Operating Officer (WA), Australian Petroleum Production and Exploration Association, *Committee Hansard*, 22 August 2017, p. 30.

> working well; we would say NOPSEMA is a good example of something that is working well and could be built on.[39]

Committee view

2.39 The committee accepts that state/territory governments could achieve red tape reductions for offshore petroleum projects with a conferral of power on NOPSEMA. In this regard, the committee notes that NOPSEMA would effectively become an agent of the state/territory, subject to the usual rules of agency.[40]

2.40 The committee also notes that the Council of Australian Governments (COAG) has previously agreed to examine the benefits of consolidating regulatory functions, including through the amalgamation of regulators.[41] However, since 2014, the COAG Energy Council does not appear to have given much attention to environmental regulation of offshore petroleum projects.[42]

2.41 In view of NOPSEMA's evidence, the committee considers that there is scope to adapt its model for onshore projects. The committee suggests that the Australian Government investigate ways in which a single regulator could have responsibility for environmental assessment and approval processes.

Recommendation 5

2.42 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.

Risk-based approach to environmental regulation

2.43 Several submitters and witnesses urged Commonwealth, state and territory governments to adopt a risk-based approach to environmental regulation.[43] MCA, for example, argued that governments' increasingly risk-averse approach has resulted in unnecessary and lengthy environmental assessments, whose information requirements have no regard to materiality or level of risk:

> A large environmental impact assessment…can cost many millions [of] dollars and take a number of years to complete. A recent draft

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39 Stedman Ellis, Chief Operating Officer (WA), Australian Petroleum Production and Exploration Association, *Committee Hansard*, 22 August 2017, p. 35. Also see: p. 30.

40 Stuart Smith, Chief Executive Officer, National Offshore Petroleum Safety and Environmental Management Authority, *Committee Hansard*, 22 August 2017, p. 28.

41 Council of Australian Governments, Meeting Communiqué, 2 May 2014, https://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-2-may-2014 (accessed 17 October 2017).

42 COAG Energy Council, Meeting Communiqué, 1 May 2014, http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/EC%201.%20Energy%20Council%20Communique%20-%20Final%20-%201%20May%202014.pdf (accessed 17 October 2017).

43 For example: Australian Chamber of Commerce and Industry, *Submission 9*, p. 1.

> environmental impact statement in the Northern Territory involved the production of over 8,500 pages of documentation, weighing 43 kilograms.[44]

2.44 Accordingly, MCA recommended that governments place greater emphasis on risk-based approaches when determining assessment pathways and information requirements.[45] Similarly, RHH submitted:

> Environmental approvals and reporting should reflect the risk of the activity it seeks to monitor, rather than simply requiring routine reporting for no material benefit to the State or agencies.[46]

2.45 The committee heard that there are areas in which governments have adopted risk-based approaches. For example, MCA referred to the Great Barrier Reef Marine Park Authority's *Environmental Assessment and Management Risk Management Framework*,[47] and RHH referred to the Department of Mines and Petroleum (WA).[48] The East Kimberley Chamber of Commerce and Industry (EKCCI) said that 'there has been movement towards outcomes-based [conditions of approval] in recent years, which is promising'.[49]

2.46 John Wynne, Manager of Environment and Approvals at RHH, emphasised that a standardised risk matrix would enable project proponents to manage low, medium and high risks:

> …rather than have a generalised standard condition or many conditions over a project we would be able to assess the risk using a standardised risk matrix of low, medium or high risks. High risks, obviously, would account for your larger management or tighter management measures, whereas low risk issues can be dealt with as just day-to-day issues rather than being put down as a condition.[50]

2.47 Mr Pearson from MCA agreed:

> 'Let's identify what the primary risks are in various assessments and approvals and focus on those, and focus on a less prescriptive approach,' …we would certainly support such an approach.[51]

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44 Minerals Council of Australia, *Submission 14*, p. 2. Also see: Institute of Public Affairs, *Submission 2*, p. 7.

45 Minerals Council of Australia, *Submission 14*, p. 19.

46 Roy Hill Holdings Pty Ltd, *Submission 6*, p. 4.

47 Minerals Council of Australia, *Submission 14*, p. 20.

48 Julian Hill, Senior Legal Counsel and Head of External Affairs, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 2.

49 East Kimberley Chamber of Commerce and Industry, *Submission 4*, p. 10.

50 John Wynne, Manager, Environment and Approvals, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 3. Also see: Brendan Pearson, Chief Executive, Minerals Council of Australia, *Committee Hansard*, 22 August 2017, p. 34.

51 Brendan Pearson, Chief Executive, Minerals Council of Australia, *Committee Hansard*, 22 August 2017, p. 33.

2.48 David Stoate, Chairman of KPCA, said that, in the agricultural and pastoral industries also, the environmental assessment process can be 'way out of proportion to the potential environmental impact'.[52]

2.49 In discussions with the committee, witnesses indicated that existing risk matrices have been developed by government/industry based on national/international standards. Mr Wynne in particular agreed that these matrices could be used as a template for environmental regulation.[53] In one example, the committee noted that the matrix encompasses mandatory statutory conditions of approval (to address general risk) and case-by-case conditions (to address specific risks).[54]

Committee view

2.50 Although the concept of a risk-based approach to environmental regulation is not novel, it appears to be underutilised. The committee sees merit in the broader adoption of this approach as a means to reduce unnecessary, expensive and burdensome red tape.

2.51 COAG has previously agreed to explore adopting trusted international standards or risk assessment processes.[55] It is not clear the extent to which states/territories have fulfilled this commitment but the committee supports this approach. The committee heard that it would be beneficial to use a risk-matrix based on international standards, with capacity to incorporate general and specific risks

Recommendation 6

2.52 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.

Commonwealth environment law

2.53 In 2009, Dr Hawke reported that 'many people, including professionals, find the [EPBC] Act hard to understand and navigate'. He described the Act as 'repetitive, lengthy, unnecessarily complex, often unclear and, in some areas,

52 David Stoate, Chairman, Kimberley Pilbara Cattlemen's Association, *Committee Hansard*, 22 August 2017, p. 34.

53 John Wynne, Manager, Environment and Approvals, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 3.

54 Australian Pesticides and Veterinary Medicines Authority, 'Conditions of Approval or registration and label approval', https://apvma.gov.au/node/989 (accessed 17 October 2017).

55 Council of Australian Governments, Meeting Communiqué, 10 October 2014, https://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-10-october-2014 (accessed 17 October 2017). Also see: Cameron Grebe, Head of Division, Environment, National Offshore Petroleum Safety and Environmental Management Authority, p. 29, who discussed 'objective based regulation'.

overly prescriptive'.[56] Dr Hawke considered that the simplest solution would be to repeal and replace the EPBC Act.[57]

2.54 In response, the Australian Government agreed to legislative amendments to clarify, simplify and streamline provisions.[58] However, the committee heard that Commonwealth environmental law is still too excessive and complicated.

Volume and complexity of regulation

2.55 According to the IPA, one reason for this complexity and burden is the significant growth in federal environmental law since 1971, together with its associated bureaucracy. Its submission argued that these factors have contributed to the 'red tape problem', leading to examples such as:

- the Roy Hill iron ore project in the Pilbara requiring more than 4000 licences, approvals and permits for its pre-construction phase; and
- the Adani coal mine in central Queensland spending seven years in the approvals process, fighting more than 10 legal challenges and having to prepare a 22 000 page Environmental Impact Statement.[59]

2.56 Michael Anstey, General Manager of People and Health, Safety and Environment at RHH, told the committee that RHH has so many compliance obligations:

> …we carry a software product that enables us to track the quite literally thousands of obligations…not all of those obligations require a lot of effort but some do…we carry a substantial number of people in our business whose role almost exclusively is to do compliance type work and write reports.[60]

2.57 The committee notes that the states/territories also have a high volume of complex environmental law.[61] MCA provided the following example:

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56 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, p. 14.

57 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, Recommendation 1, p. 27.

58 Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the Report of the independent review of the Environment Protection and Biodiversity Conservation Act 1999*, 2011, p. 7.

59 Institute of Public Affairs, *Submission 2*, p. 2. Also see: Roy Hill Holdings Pty Ltd, *Submission 6*, Attachment 2, p. 4; Australian Chamber of Commerce and Industry, *Submission 9*, p. 2; Minerals Council of Australia, *Submission 14*, pp. 1 and 10.

60 Michael Anstey, General Manager, People and Health, Safety and Environment, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 7. Also see: Roy Hill Holdings Pty Ltd, *Roy Hill Environmental Reporting Timeframes*, tabled document (received 22 August 2017).

61 See for example: National Farmers' Federation, *Submission 8*, Attachment 1, pp. 1 and 3–4.

> In New South Wales the mining industry has been subject to 109 separate policy and regulatory changes since March 2011 – a continuous stream of changes across many portfolios, often with poor consultation and leading to increasing compliance and regulatory costs. While not all of these changes relate specifically to environmental assessment and approvals, they underline the significant regulatory burden challenge that faces the minerals industry at the state level.[62]

2.58 EDOA submitted that the large body of federal environmental law could be better drafted.[63] MCA agreed, adding that the 'federal government should redouble efforts to reduce the stock and complexity of existing environmental legislation wherever possible'.[64] ACCI said:

> 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…it is impractical for business to be across voluminous and complex legislation, particularly when there are constant and continued changes to the rules.[65]

Section 487 of the EPBC Act

2.59 Section 487 in the EPBC Act extends the legal standing provided in section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The extension enables organisations or associations to seek judicial review of a decision made under the EPBC Act, provided they meet certain criteria.[66]

2.60 Some submitters and witnesses argued that environmental red tape heightens the potential for activists to challenge assessments and approvals, thereby imposing significant burdens on project proponents.[67] The IPA estimated that this 'ideological anti-development activism' has caused delay and disruption valued at more than $1.2 billion over the past 17 years. Further:

> Holding projects up in court reduces profitability, employment, investment and government revenue and royalties. Some projects never go ahead due to heightened risk of legal challenges and consequent higher capital costs.[68]

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62 Minerals Council of Australia, *Submission 14*, p. 11.

63 Environmental Defenders' Offices of Australia, *Submission 13*, p. 2, which cautioned that 'assessing the role of environmental law is not about number of pages' but the purpose of the legislation.

64 Minerals Council of Australia, *Submission 14*, p. 2.

65 Australian Chamber of Commerce and Industry, *Submission 9*, p. 2.

66 For example, a criterion is that the organisation or association has engaged in a series of protection, conservation or research activities within the preceding two years.

67 For example: Institute of Public Affairs, *Submission 2*, p. 3–5; Association of Mining and Exploration Companies, *Submission 7*, p. 8; Minerals Council of Australia, *Submission 14*, p. 21.

68 Institute of Public Affairs, *Submission 2*, Attachment 2, p. 7.

2.61 EDOA argued that 'there is a strong public policy rationale for retaining broad standing provisions that allow conservation groups and individuals ('third parties') to seek judicial review'.[69] MCA agreed that judicial review processes are important but suggested that any deliberate misuse of section 487 should be curtailed:

> Weaknesses in the EPBC Act that allow the minister's approval to be challenged on a technicality but not the substance of the decision can be addressed without weakening environmental protection.[70]

2.62 Simon Breheny, Director of Policy at IPA, insisted that the 'special legal privilege' granted by section 487 should be repealed. In addition to existing state/territory avenues for appeal, Mr Breheny argued that the common law test of standing would still apply and appropriately limit the right of appeal to those with substantive grounds for challenge.[71]

Committee view

2.63 The committee acknowledges that there is a public policy rationale for enabling third parties to challenge decisions made under the EPBC Act. However, the committee heard that section 487 is being misused with consequent and unjustified effect on—among others—project proponents. Further, legislative and judicial processes already provide an avenue for appeal at the state/territory level. The committee considers that section 487 is duplicative and if not for the prorogation of the 44th Parliament, the Australian Government may have repealed that provision in the previous parliament.[72]

Recommendation 7

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

Impact of native title

2.65 Some submitters and witnesses highlighted that it can be difficult to undertake assessment and obtain approval for proposed projects that encompass native title land. For example, AMEC contended that economic development on Aboriginal land is not being achieved, as intended by Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth):

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69 Environmental Defenders' Officers of Australia, *Submission 13*, p. 3. Also see: Attachment 2.

70 Minerals Council of Australia, *Submission 14*, p. 3. Also see: Simon Bennison, Chief Executive Officer, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, p. 13.

71 Simon Breheny, Director of Policy, Institute of Public Affairs, *Committee Hansard*, 22 August 2017, p. 44. Also see: Graham Short, National Policy Manager, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, pp. 12–13, who commented also on the extensive use of state/territory appeal processes.

72 Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015, Explanatory Memorandum, p. 1.

> …there is too much power held by Land Councils to simply stop development. The power of veto for five years is considered to be too strong and absolute. This has led to a situation where it is widely recognised that economic development and the welfare of Aboriginal people on Aboriginal land is in a poor state.[73]

2.66 Mr Bennison from MCA said that project proponents can spend 'an inordinate amount of money trying to get access to those lands for exploration purposes, let alone any further development'.[74] Mr Short provided this illustration:

> One of our members recently advised us that they were exposed to this piece of legislation. They went through the negotiation process. They organised a meeting. The meeting cost them $85,000. It lasted three minutes…to be told, 'We're exercising the power of veto.'[75]

2.67 Tony Seabrook, President of the Pastoralists and Graziers Association of WA, told the committee that the agricultural industry also experiences complications when proposing development that includes native title land, for example:

> The Harris family own Gogo Station. They have identified some very good soil types and water there for centre-pivot irrigation and there is a large tract of country there that could be almost dry land farmed on the basis that if it gets wet enough it will produce a crop. This has gone through the state parliament where the minister got to his feet about six or seven months ago and said, 'Every obstacle that the government has in place now has been covered. It's now yours to go ahead. There's only thing you need to do, to negotiate an Indigenous land use agreement with the local communities.' Now, I understand there were three communities on the property. They do not like one another very much and this is a hurdle of such monumental proportions. The proposal, as I understand it, was that they were asking for the freeholding of, I believe, 10,000 hectares. One-quarter of it was to be owned by the local communities, leased back by the consortium that was going to do the irrigation work there and then employing local people in that process so it gave a continuous stream of income, both from the lease and the ongoing proposal.[76]

2.68 The committee notes that, in the context of coal seam gas developments, 'coexistence is being achieved and economic benefits are being shared'.[77] The committee also notes the evidence of Darcy Allen, Research Fellow at IPA,

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73 Association of Mining and Exploration Companies, *Submission 7*, p. 10.

74 Simon Bennison, Chief Executive Officer, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, p. 14.

75 Graham Short, National Policy Manager, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, p. 14.

76 Tony Seabrook, President, Pastoralists and Graziers Association of WA, *Committee Hansard*, 22 August 2017, p. 38.

77 Stedman Ellis, Chief Operating Officer (WA), Australian Petroleum Production and Exploration Association, *Committee Hansard*, 22 August 2017, p. 32.

that 'not everyone values environmental amenity equally, and we think the principle should hold that those who value it more should pay for that process'.[78]

Committee view

2.69 The committee recognises that it is more challenging to conduct environmental assessments and obtain approvals for proposed projects that encompass native title land. It is not clear why Land Councils have a five-year 'power of veto' but the committee is not persuaded that, in this regard, native title land should be treated any differently than other forms of land ownership. It does not appear to be consistent with the economic objectives of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

Recommendation 8

2.70 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.

2.71 The committee considers that economic development does not exclusively benefit project proponents. However, based on evidence to the inquiry, mutual benefit in the context of environmental assessment and approval does not appear to be widely acknowledged or understood. Accordingly, the committee considers that Commonwealth, state and territory governments should have guidelines to assist with the clear identification of the costs/benefits of proposed projects to landowners and other stakeholders.

Recommendation 9

2.72 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.

2.73 In this regard, the committee notes the evidence of Mr Ellis to the effect that Queensland landholders have negotiated $238 million compensation as at 30 June 2015 for land access by the onshore gas industry.[79] The committee accepts that this demonstrates industry's ability to compromise and co-exist with landholders. The committee suggests that there is merit in state and territory governments considering whether a statutory right to compensation in the form of royalties might facilitate environmental assessment and approval.

78 Darcy Allen, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 22 August 2017, p. 45. Also see: Simon Breheny, Director of Policy, Institute of Public Affairs, *Committee Hansard*, 22 August 2017, p. 45, who illustrated this principle in the context of native vegetation.

79 Stedman Ellis, Chief Operating Officer (WA), Australian Petroleum Production and Exploration Association, *Committee Hansard*, 22 August 2017, p. 32.

Recommendation 10

2.74 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.

State/territory environmental assessment processes

2.75 Commonwealth, state and territory governments are responsible for environmental assessments and approvals. In 2015–2016, the majority of environmental assessments were conducted by the Commonwealth (48) in accordance with processes set out in the EPBC Act. A smaller number of assessments (19) were made by the states/territories in accordance with assessment bilateral agreements.[80]

2.76 Many submitters and witnesses focussed on state/territory environmental assessment processes, telling the committee that these processes are problematic. Some of the matters discussed in this section of the report include: timeliness; land tenure; duplication and lack of coordination; and remote projects and staff in regulatory departments/agencies.

Timeliness

2.77 The committee heard that delays in environmental assessment and approval processes are having economic impacts.[81] Some submitters referred to BAEconomics' modelling which estimated that Australia's real GDP would increase by 1.5 per cent ($160 billion) if the average delay in project approvals were to decrease one year by 2025.[82] BAEconomics noted also Price Waterhouse Coopers' modelling which identified:

> …a delay of 12 months as a tipping point at which up to a third of planned mining projects would be cancelled, leading to significant reduction in creation of jobs, investment, revenue and royalties.[83]

2.78 MCA stated that project delays and uncertainty affect Australia's international competitiveness, as well as potentially incurring significant costs.[84] RHH illustrated

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80 Department of the Environment and Energy, *Annual Report 2015–2016*, 2016, p. 263, http://www.environment.gov.au/system/files/resources/a20f84e9-22c0-4d18-b834-807c737895ad/files/annual-report-2015-16-full.pdf (accessed 17 October 2017).

81 For example: East Kimberley Chamber of Commerce and Industry, *Submission 4*, pp. 3 and 4–9; ACT Government, *Submission 11*, p. 1.

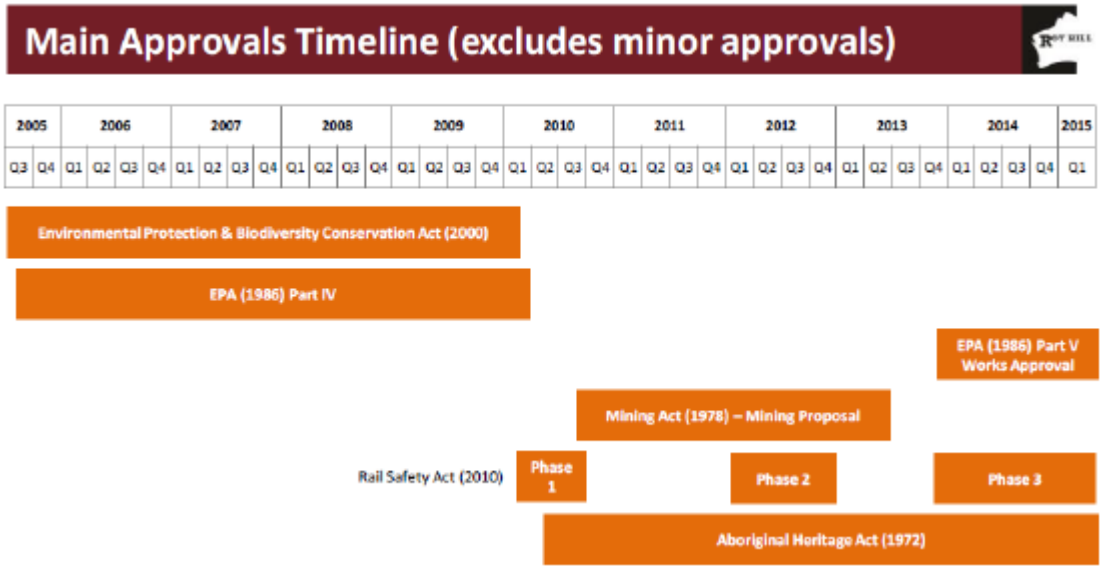
82 BAEconomics, *The economic gains from streamlining the process of resource projects approval*, July 2014, p. 3, http://www.baeconomics.com.au/wp-content/uploads/2014/10/Gains-from-reduced-delays-7Aug14.pdf (accessed 17 October 2017). The report noted that concurrently this would also create more than 69 000 jobs: p. 4.

83 BAEconomics, *The economic gains from streamlining the process of resource projects approval*, July 2014, p. 5, http://www.baeconomics.com.au/wp-content/uploads/2014/10/Gains-from-reduced-delays-7Aug14.pdf (accessed 17 October 2017).

84 Minerals Council of Australia, *Submission 14*, p. 7.

this argument with reference to the main approvals timeline for its Roy Hill project (Figure), which it estimated to have cost $75 million prior to project operations.[85]

Figure: Roy Hill project, approvals timelines, 2005–2015



Source: Roy Hill Holdings Pty Ltd, Submission 6, p. 4.

2.79 Mr Wynne from RHH considered that a deemed approval process could work to reduce timeframes, particularly if used in conjunction with a risk matrix that enabled project proponents to understand and mitigate all risks.[86] Another representative from RHH added that there are governance principles—including protection of the environment—that apply to all publicly listed companies.[87]

2.80 KPCA provide the following example in relation to the agricultural industry:

Case Study: Proposed agricultural project (WA), response time

On the 16th of December 2016 Kimberley Agriculture Investment (KAI) applied for a clearing permit on Carlton Hill Plain to develop 12 000 ha of irrigated farm land, this was declined because they must go through a referral process run by the Environment Protection Authority that will take up to two years to complete and cost $5–$10 million to implement. This response took 177 days to be delivered and was only delivered on the 12th of June this year.

85 Roy Hill Holdings Pty Ltd, *Submission 6*, p. 4. Concerns about regulatory delays extended also to significant variations on proposed projects: Julian Hill, Senior Legal Counsel and Head of External Affairs, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 2; Michael Anstey, General Manager, People and Health, Safety and Environment, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 5.

86 John Wynne, Manager, Environment and Approvals, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, pp. 4 and 9.

87 Michael Anstey, General Manager, People and Health, Safety and Environment, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 9.

Delays as significant as this are fundamentally impeding employment and economic growth, negatively impacting the people in the East Kimberley. This is exactly what prevents jobs and growth in the regions and business growth in WA. This decision puts at risk KAI's objective to increase from 70 to 300 employees (with a total of 700 jobs including indirect employment) over the next 5–10 years. Instead, they are trying to maintain the existing workforce, while desperately trying to resurrect the project.

Source: KPCA, Submission 10, p. 8.

2.81 To address issues of timeliness, ACCI suggested:

> Additional measures should be implemented to ensure greater certainty and timeliness for decisions under the EPBC 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.[88]

2.82 A RHH representative said that legislation sometimes prescribes timeframes but these are 'out of sync with the requirements that we have as a business'.[89] In addition, Julian Hill, Senior Legal Counsel and Head of External Affairs for RHH, observed that regulatory timeframes are sequential.[90]

2.83 The Treasurer of the KPCA, Emma Salerno, suggested that a wide range of reforms is needed, including a change of policy:

> …the departments are dealing with a policy that views themselves as having a role in sustainably managing land, so changing that policy to effectively economically developing land, and sustainably.[91]

2.84 Representatives from IPA agreed that broad reforms are needed to incentivise the provision of more timely assessments and approvals. One idea proposed by Mr Allen was a change in approach to how project proposals are assessed:

> At the moment much of our environmental approvals system is based on the idea that you should approve a project before it happens with a number of conditions based on future potential harms that might happen. That is only one way to achieve an environmental objective. If we agree on an environmental objective, for instance, instead of doing this process, which is an ex ante process that you do before approval, we would prefer to move towards having clearly stated laws where you have the positive obligation to report the breaches of those laws, so instead of doing these massive

88 Australian Chamber of Commerce and Industry, *Submission 9*, p. 1

89 Michael Anstey, General Manager, People and Health, Safety and Environment, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 4.

90 Julian Hill, Senior Legal Counsel and Head of External Affairs, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 8.

91 Emma Salerno, Treasurer, Kimberley Pilbara Cattlemen's Association, *Committee Hansard*, 22 August 2017, p. 37. Also see: Tony Seabrook, President, Pastoralists and Graziers Association of WA, *Committee Hansard*, 22 August 2017, p. 38, who said that commercial arrangements in respect of leased land must be acknowledged.

> approvals beforehand we would rather pursue these objectives in a different way which helps that incentive problem.[92]

2.85 Mr Breheny said that most other areas of law employ this approach, with a positive obligation attaching to legal or regulatory breaches. He indicated that penalties could be determined at a level that encourages project proponents to self-report.[93]

Committee view

2.86 The committee accepts that delays in environmental assessment and approval processes are having adverse economic outcomes. Further, current measures are not sufficiently addressing the concerns of project proponents. Accordingly, the committee urges state and territory governments to revise their current policy to better reflect both economic and environmental objectives. Further, the committee considers that state and territory governments should explore alternative approaches to environmental regulation as part of their deregulation agenda. The committee suggests that one option could be the implementation of deemed approvals where project proponents have addressed environmental factors in line with an agreed risk matrix based on international standards (see Recommendation 6).

Land tenure

2.87 MCA submitted that 'mining is subject to more regulatory requirements than most, if not all other industries in Australia', with regulation covering all stages of mining activity.[94] Other submitters similarly argued that the agricultural industry is over-regulated, including at the early stage of securing land tenure. Mr Stoate from KPCA identified leasehold title as being a key problem for project proponents:

> No-one would have leasehold if they could choose, that is for sure. Certainly the issue of land tenure holds back the development of the north.[95]

2.88 The President of the EKCCI, Jill Williams, explained that leasehold title has more complicated regulatory pathways than freehold title.[96] This was illustrated by Mr Seabrook from the Pastoralists and Graziers Association of WA, who gave an example of a project that would not have proceeded were it located on leasehold title:

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92 Darcy Allen, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 22 August 2017, p. 46.

93 Simon Breheny, Director of Policy, Institute of Public Affairs, *Committee Hansard*, 22 August 2017, p. 46. Also see: Darcy Allen, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 22 August 2017, p. 47.

94 Minerals Council of Australia, *Submission 14*, p. 6.

95 David Stoate, Chairman, Kimberley Pilbara Cattlemen's Association, *Committee Hansard*, 22 August 2017, p. 36.

96 Jill Williams, President, East Kimberley Chamber of Commerce and Industry, *Committee Hansard*, 22 August 2017, p. 21.

> …there is an abattoir that has just been built about an hour's drive east of Broome. Jack Burton has constructed it and it has cost well over $20 million to put it there. He was fortunate enough, on one of his properties, to have a small 50-acre block of freehold and because it was freehold he has built the abattoir. In a conversation I had with Mr Burton a few months ago he said to me that this abattoir that is up and running, state-of-the-art, that would benefit everybody up there, would never have happened if he had not had that piece of freehold land to build it, so the loss of opportunity here is just absolutely staggering.[97]

2.89 Paul Rosair from NAJA Business Consulting Services recently developed a land tenure framework for the Kimberley Regional Group. Among his findings, Mr Rosair concluded that the process of securing land tenure needs to be reformed:

> …it is critical that pastoralists and investors alike are able to secure appropriate land tenure via a transparent, consistent and easily navigable process. It is also imperative that this process be relatively quick to allow a responsive sector that can implement projects in response to emerging market needs and availability of investors. The current eight years to achieve freehold tenure is both unacceptable and unsustainable.[98]

2.90 In evidence, witnesses indicated that landholders would welcome the conversion of leasehold title to freehold title. Ms Salerno said that, although this pathway already exists, it is not widely utilised because of the time and resources necessary to make and sustain an application.[99] Another representative from KPCA pointed out that freehold title extinguishes native title, so governments are reluctant to do anything which might become a future act that triggers native title processes.[100]

Committee view

2.91 The committee understands that proponents are finding it difficult to pursue development proposals on land held under leasehold title. The committee acknowledges that potential native title issues might be affecting governments' approach to security of land tenure. However, the committee agrees with submitters and witnesses that current arrangements are not conducive to economic and employment objectives. In the committee's view, it would be beneficial for state/territory governments to review land access policy, legislation and regulation, to identify opportunities to facilitate the conversion of leasehold title to freehold title and/or to place leasehold land on the same footing as freehold land in respect of environmental regulation.

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97 Tony Seabrook, President, Pastoralists and Graziers Association of WA, *Committee Hansard*, 22 August 2017, p. 37.

98 NAJA Business Consulting Services, *Land Tenure Framework, Policy Position Statement*, Kimberley Regional Group, January 2017, p. 12.

99 Emma Salerno, Treasurer, Kimberley Pilbara Cattlemen's Association, *Committee Hansard*, 22 August 2017, p. 40.

100 David Stoate, Chairman, Kimberley Pilbara Cattlemen's Association, *Committee Hansard*, 22 August 2017, p. 40.

Recommendation 11

2.92 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.**

Duplication and lack of coordination

2.93 Information provided to the inquiry indicated that duplication and lack of coordination continues to contribute to over-regulation and its consequent burdens on project proponents. For example, MCA submitted that a lack of coordination results in inconsistent requirements and conditions, duplication, and misaligned timeframes:

Case Study: WA Government and Australian Government, approval process

An MCA member company was required to refer its project to the Western Australian Government and the Commonwealth Government for approval under the EPBC Act. The assessment was carried out under an assessment bilateral agreement, whereby the Western Australian process was accredited by the Commonwealth.

Despite both State and Federal agencies being involved in the assessment process, the then Commonwealth Minister extended the timeframe for decision three times, requiring additional information on matters already addressed and conditioned by the State in its approval of the project. In response, the company was required to rewrite documents provided in the original environmental assessment for submission to the Commonwealth.

One aspect of the project involved designing a tailings storage facility and final landform, the proposal for which was approved by the Western Australian Environmental Protection Authority and other competent authorities. The Commonwealth raised concerns about the design and requested further information, despite those same concerns already being addressed in the WA approved proposal (which was concurrently assessed by both Governments). The Commonwealth then recommended another review of the design and proposed an alternative design option which was inconsistent with Australian design standards and counter to the wishes of the local community.

After rewriting and re-submission of material the Commonwealth accepted the original Western Australia approved proposal. However it conditioned the project by requiring another review by a Commonwealth approved expert, ignoring the independent advice already provided and the role of the Western Australia regulator.

This process resulted in an eight-month delay after the Western Australia Government had completed its assessment and approved the project at significant cost to the proponent.

A key factor in this case was the failure of the Commonwealth to recognise the requirements of the West Australian regulatory regime. Specifically, during the Commonwealth's eight-month delay in consideration of approval, recommendations for project conditions were made that duplicated and even contradicted Western Australia approval conditions aimed at addressing the same issues. This occurred despite these concerns being raised by the Western Australia Government and the proponent.

Source: MCA, Submission 14, p. 15.

2.94 EKCCI similarly described problems with securing approvals, primarily due to pre-conditions that depend on other approvals, which in turn are pre-conditioned on the first approval.[101] KPCA argued that such matters illustrate the need for more inter-departmental coordination and navigational assistance for project proponents:

> There is little guidance for proponents to navigate the cross-departmental pathways for progressing approvals between unrelated agencies or regulators. This becomes a frustrating and time-consuming web, and is the main source of frustration for proponents directly and the community more broadly at the resultant lack of job opportunities…the approvals process is lengthy and arduous.[102]

2.95 RHH indicated that there should be a lead department/agency in each state/territory, with a central database that enables all regulators to access and coordinate project information in a timely manner:

> A central repository for project information would enable approvals agencies to assess the cumulative impact of each project. The data can also be used to inform policies on acceptable development to strategically manage the approvals process in advance of referrals and applications being lodged.[103]

2.96 Mr Short from AMEC said that cultural heritage clearance processes could also be expedited with an accessible centralised database.[104] Mr Bennison, also from AMEC, explained that state/territory regulators already hold data in relation to sites, objects or places. However, as this is not 'transferable':

> …if you want to go back over that same ground, you then have to negotiate exactly the same heritage survey that the previous company and the previous company before that did.[105]

2.97 The representatives argued that there should be some form of mandatory disclosure, emphasising that the disclosure need not include sensitive information:

> We do not need to know the specifics of what it is or exactly where it is. You can have a buffer zone around it, but disclose it so that at least you know in a particular region it is in the top right-hand corner of the tenement and you can work the rest of the tenement. So, work on the principle of mandatory disclosure so that the state and territory governments can also fulfil their requirements under their respective heritage legislation…and not

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101 East Kimberley Chamber of Commerce and Industry, *Submission 4*, p. 4.

102 Kimberley Pilbara Cattlemen's Association, *Submission 10*, p. 5.

103 Roy Hill Holdings Pty Ltd, *Submission 6*, p. 4. Also see: Julian Hill, Senior Legal Counsel and Head of External Affairs, Roy Hill Holdings Pty Ltd, *Committee Hansard*, 22 August 2017, p. 2; Emma Salerno, Treasurer, Kimberley Pilbara Cattlemen's Association, *Committee Hansard*, 22 August 2017, p. 42.

104 Graham Short, National Policy Manager, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, p. 15.

105 Simon Bennison, Chief Executive Officer, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, p. 16.

> only that, developers—and we are not just talking about the mining industry but any other development—so that they have access.[106]

Committee view

2.98 Throughout the inquiry, the committee heard that environmental assessment and approval processes are voluminous and complex, with convoluted pathways that are poorly understood. The Australian Government's Deregulation Agenda is intended to rectify such matters and COAG has also agreed to 'look closely at improving the performance of regulators'.[107]

2.99 Based on information received, and noting that there has been no independent review of Commonwealth regulation in this area,[108] the committee considers that there remains scope for red tape reduction in environmental assessments and approvals.

Recommendation 12

2.100 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.

2.101 At the state/territory level, the committee accepts that there is a greater need for clearer regulatory pathways and enhanced levels of coordination. If not already under consideration or implemented, the committee urges state/territory governments to review opportunities to better coordinate environmental regulation, including investing a lead department, agency or similar with primary responsibility.

2.102 The committee suggests that cultural heritage clearance processes may be one area for potential reform. Where cultural heritage has been identified and recorded, the committee considers that persons or organisations with a legitimate interest should have reasonable access to that information. This would promote the protection of cultural heritage, as well as balancing the need for cultural protection and economic development.

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106 Graham Short, National Policy Manager, Association of Mining and Exploration Companies, *Committee Hansard*, 22 August 2017, pp. 15–16.

107 Council of Australian Governments, Meeting Communiqué, 2 May 2014, https://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-2-may-2014 (accessed 17 October 2017).

108 See: Australian National Audit Office, *Implementing the Deregulation Agenda: Cutting Red Tape*, Report No. 29 of 2015–2016, 2015, https://www.anao.gov.au/work/performance-audit/implementing-deregulation-agenda-cutting-red-tape (accessed 17 October 2017); Department of the Environment, *Environment Portfolio Deregulation Report 2014*, 2015, http://www.environment.gov.au/about-us/accountability-reporting/deregulation-report (accessed 17 October 2017).

Recommendation 13

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

Remote decision-making

2.104 EKCCI and KPCA expressed concern that government and its bureaucracy can be biased against development in its region, possibly due to a lack of understanding about local conditions.[109] The committee heard that this lack of understanding can also result in requirements that are not suited to the region:

Case Study: Local and regional context, Kimberley region (WA)

The Ord Stage 2 EMP requires detailed three-monthly monitoring of rehabilitation sites. In the Kimberley, rainfall results in substantial natural revegetation. Access issues such as rough terrain, and the scale of development (and rehabilitation) are impediments to meeting these prescribed requirements. Regular, informed observation by air and at ground level indicates very successful natural rehabilitation, usually within one wet season, when topsoil is re-spread. This outcomes-based approach is more relevant at the scale of operations in this region.

Source: EKCCI, Submission 4, pp. 9–10.

2.105 Some submitters and witnesses commented that the loss of experienced and technical staff further complicates environmental regulation. For example, the ACT Government submitted that staff reductions at the Department of the Environment and Energy created inconsistencies on the introduction of the One Stop Shop.[110] In relation to the WA Government, KPCA submitted:

> Retirements or retrenchments, and lack of any related recruitment is continuing to further erode the technical capacity of several Departments involved in supporting environmental approvals. For example, the [Department of Water] has lost a significant portion of their senior staff over the last decade, with remaining junior staff having limited experience in irrigation development, particularly in remote Australia.[111]

2.106 EKCCI emphasised that some concerns of project proponents in regional or remote areas could be addressed:

> There are many examples where regulatory staff either refuse or are not allowed to undertake site visits…because either they do not have budget for it, or it is considered to potentially corrupt their independence. Whatever the reason, this attitude results in staff being asked to assess things they

109 East Kimberley Chamber of Commerce and Industry, *Submission 4*, p. 3; Kimberley Pilbara Cattlemen's Association, *Submission 10*, pp. 11–12.

110 ACT Government, *Submission 11*, p. 2.

111 Kimberley Pilbara Cattlemen's Association, *Submission 10*, p. 10.

> have little or no idea about, and they are often dealing with proponents with decades of on ground experience.[112]

Committee view

2.107 The committee considers that the quality of environmental assessment and approval depends on the knowledge and expertise of regulators. For this reason, the committee supports ongoing learning and development, including the capacity to acquire an appreciation for the local/regional context of proposed projects.

Recommendation 14

2.108 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.

Recommendation 15

2.109 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.

Concluding comment

2.110 The Australian Government's 2013 Deregulation Agenda aims to reduce excessive, unnecessary and complex regulation to lift productivity and boost growth. The committee supports this objective but has found that red tape continues to affect environmental assessment and approvals by Commonwealth, state and territory governments, to the detriment of Australian businesses and the economy.

Senator David Leyonhjelm

Chair

112 East Kimberley Chamber of Commerce and Industry, *Submission 4*, p. 6.