

Business
Council of
Australia



submission

Submission to the Department
of the Environment regarding
the Draft Queensland Assessment
Bilateral Agreement

DECEMBER 2013

*Working to achieve
economic, social
and environmental
goals that will benefit
Australians now and
into the future*

The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

About this submission

This submission to the Department of the Environment provides the BCA's comments on the draft assessment bilateral agreement between the Commonwealth and Queensland Governments.

It also explores the reasons why the BCA thinks that streamlined environmental approvals processes can be good for business and the economy, as well as improving ecological outcomes.

Key points

- The BCA supports the draft Queensland assessment bilateral agreement, which will extend the matters of national environmental significance that can be assessed under an accredited process, and puts in place mechanisms to better coordinate conditions imposed upon approved projects.
- The need to remove double-handling of environmental assessments and approvals between the Commonwealth and state governments has been identified by several independent studies and reports. Most recently the Productivity Commission noted need to streamline the environmental assessment and approvals system for major projects and recommended a 'one project, one assessment, one approval' framework for major projects.
- If implemented effectively, the Australian Government's policy to streamline environmental assessments and approvals whilst maintaining environmental outcomes will foster investment and put downward pressure on business and consumer costs
- The BCA supports the Commonwealth and states developing robust environmental standards as part of the process of streamlining environmental assessments and approvals. By clearly defining and then adopting robust environmental standards the process of reducing regulatory burden should also support better environmental outcomes.
- A streamlined process also offers the prospect of freeing up more resources for strategic environmental assessments and the collection of environmental baseline data – both of which are critical to maintaining or restoring threatened species and ecological communities.
- Steps outlined in the agreement to improve the efficiency and effectiveness of the individual Commonwealth and Queensland Government processes are welcome. These steps should be supported by a robust performance framework for the environmental regulators and be implemented in a way that does not impose additional overall reporting requirements on project proponents
- The draft agreement should include a structured process to ensure that the assessment processes in the Queensland and Commonwealth Governments, triggered by referrals from proponents, commence at the same time.
- The draft agreement should also provide for a single, consolidated approvals and conditions document to be issued (which consolidates approvals provided by the Commonwealth and the state).
- The BCA encourages the parties to the draft agreement to proactively consult with the proponents of major projects on the design of transition arrangements.

Key recommendations

- The Commonwealth should explore harmonising the objects of the Queensland bilateral agreement with the objects of the draft New South Wales agreement (and any other bilateral agreements with other states).
- The meaning of clause 11(f), which references 'project control', should be further clarified.
- An additional clause, 11(g), should be inserted that commits the parties to developing government reporting mechanisms that demonstrate the costs of compliance for proponents, environmental outcomes achieved and other key regulatory performance indicators of the agreement.
- The draft agreement (or its administrative arrangements) should detail a structured process to ensure that a project referral to a Queensland government agency or to the Federal Environment Department automatically triggers the referral process in the other government.
- The draft agreement should allow the Queensland Government to provide proponents with a single, consolidated approvals document, which includes the Commonwealth approval and any Commonwealth conditions.
- The BCA encourages the parties to proactively consult with the proponents of major projects on the design of transition arrangements. The design and execution of current projects should not be retrospectively affected by new regulatory arrangements in a negative way.

Introduction

Duplication of environmental assessments can lead to delays, costs and uncertainty for proponents of projects for no environmental gain. The BCA has long supported greater streamlining of assessment and approvals processes, whilst maintaining environmental standards.¹ The draft assessment bilateral agreement is an important step in the Commonwealth and Queensland Governments' aspirations to remove duplication in environmental assessments and approvals and is strongly supported by the BCA.

The BCA supports an integrated approach to removing double-handling between governments by:

- making better use of existing bilateral agreements which accredit state government assessment processes
- the Commonwealth accrediting state government approval processes that meet the required environmental standards under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)
- greater use of strategic environmental assessments under the EPBC Act (such as the Melbourne Urban Growth Boundary Strategic Assessment) that provide for complying projects to proceed without further assessment or approval.

The draft Queensland assessment bilateral agreement will extend the matters of national environmental significance that can be assessed under an accredited process, and puts in place mechanisms to better coordinate conditions imposed upon approved projects. The BCA supports the draft agreement as an important step towards removing duplication of environmental assessments and approvals between the Commonwealth and Queensland Governments.

1. See Business Council of Australia, *Pipeline or Pipe Dream: Securing Australia's Investment Future*, 2012.

The need for reform

The need to remove double-handling of environmental assessments and approvals between the Commonwealth and states has been identified by several independent studies and reports.

- In 2009 the Hawke review recommended that the Commonwealth Government should ‘give full faith and credit state systems that are proven to provide good environmental outcomes’.²
- In 2011 the Productivity Commission found that existing assessment bilateral agreements were not being utilised sufficiently, with only 24 per cent of the matters determined to be controlled actions proceeded under an assessment approach set out in a bilateral agreement in the year 2009–10.³

More recently, another Productivity Commission study reaffirmed that existing assessment bilateral agreements were being underutilised.⁴ The Productivity Commission noted the need to streamline the environmental assessment and approvals system for major projects and recommended a ‘one project, one assessment, one decision’ framework for major projects. Within that framework the Productivity Commission recommended greater use of existing assessment bilateral agreements and the establishment of approval bilateral agreements.

The BCA supports the Commonwealth and states developing robust environmental standards as part of the process of streamlining environmental assessments and approvals. By clearly defining and then adopting robust environmental standards, reducing regulatory burden on proponents should support better environmental outcomes.

A streamlined process also offers the prospect of freeing up more resources for strategic environmental assessments and the collection environmental baseline data – both of which are critical to maintaining or restoring threatened species and ecological communities.

Removing double-handling between levels of government should not come at the expense of the environment. Academic research has found that where duplication between the Commonwealth and states exist, there is little environmental gain of any significance but that there are significant costs to proponents. For example, a survey conducted by the Australian National University⁵ of proponents who had their projects referred under the EPBC Act between 2000 and 2009, found that:

- 73 per cent of the respondents agreed with the statement, ‘The EPBC Act process duplicated other regulatory processes without significantly improving environmental outcomes’. 41 per cent of respondents strongly agreed with this statement
- 81 per cent of respondents whose actions were subject to conditions under the EPBC Act and state/territory planning and environment permits reported some or substantial overlap in the conditions
- 59 per cent of respondents whose actions were subject to conditions under the EPBC Act and other federal laws reported some or substantial overlap in the conditions.

The same survey found that “the estimated average proponent cost associated with projects that have received final approval under the EIA [Environmental Impact Assessment] regime is between \$660,000 and \$2.2 million. For particular manner projects, the estimated average proponent cost is \$130,000–\$275,000.”

This is likely to be an underestimate of the total costs – the experience of the BCA members’ companies is that the assessment phase of the obtaining project approvals imposes smaller costs

2. Australian Government, *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, 2009.

3. Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment*, Research Report, 2011.

4. Productivity Commission, *Major Project Development Assessment Processes*, Draft Research Report, 2013.

5. Andrew Macintosh, *The EPBC Survey Project: Final Data Report*, Australian National University, 2009.

relative to secondary approvals and to complying with conditions and offsets that are imposed at the Commonwealth and state level.

Several government and industry reports have identified examples of duplication, inefficient assessment and approval processes and onerous conditions which create real costs for project proponents:

- The Productivity Commission found that cost of delaying an average-sized Australian oil and gas extraction project, valued at \$17 billion by one year could range from \$300 million to \$1.3 billion.⁶
- A BCA member advises that duplication between the Commonwealth and states, and within both governments, delayed operations at a cost of around \$1 million per day.⁷
- There are examples of quadruple handling of assessments and approvals, as various Commonwealth and state regulators considered ostensibly the same environmental issues arising from a seismic study.
- A report to the Minerals Council of Australia estimates that Australian coal projects take 1.3 years longer to approve than their overseas equivalents.⁸
- The Australian Petroleum Production and Exploration Association provided nine detailed case studies of duplication between and within Commonwealth and state governments.⁹

Benefits of less duplication

Greater investment certainty

Removing double-handling between governments should reduce regulatory uncertainty, which can deter investors and project proponents from backing new projects.

Infrastructure

Double-handling of assessments and approvals can cause delays and drive up costs for project proponents. This is a particular issue for transport infrastructure projects that can extend over wide geographic areas and often require extensive assessment.

Reduced costs to businesses and consumers

Where efforts to reduce duplication have been successful, such as through the Strategic Environmental Assessment of the Melbourne Urban Growth Boundary, BCA members have reported reduced operating and project costs. Ultimately these savings will be passed on to consumers.

Environment

Less duplication between governments should ensure that all environmental, heritage, social and economic matters are considered holistically. No issues should fall through the cracks between governments and conditions of project approvals will better serve the interests of the environment. A streamlined process also offers the prospect of freeing up more resources for strategic environmental assessments and the collection environmental baseline data – both of which are critical to maintaining or restoring threatened species and ecological communities.

6. Productivity Commission, *Major Project Development Assessment Processes*, Draft Research Report, 2013.

7. Business Council of Australia, *Report of the Project Costs Taskforce*, 2013.

8. Port Jackson Partners, 'Opportunity at Risk – Regaining Out Competitive Edge in Minerals Resources', 16 September 2012.

9. Australian Petroleum Production and Exploration Association, 2013, *Cutting Green Tape*.

Draft Queensland Assessment Bilateral Agreement: specific comments

The government has indicated that it will achieve its policy to remove duplication and improve efficiency of environmental regulation through a three stage process:¹⁰

1. Signing a Memorandum of Understanding with each of the willing states on the key principles and confirming co-operation on achieving a single process.
2. Agreement on bilateral assessments and updating those which have already been in place with willing states.
3. Agreement on bilateral approvals within 12 months with willing states.

The government has also indicated that it will look to increase the use of strategic environmental assessments, including to remove duplication in legislation administered by the Commonwealth National Offshore Petroleum Safety and Environmental Management Agency and the Commonwealth Department of the Environment.

The BCA supports this three stage process but notes that recent amendments to the EPBC Act, which prohibit accreditation of state government approvals in relation to coal seam gas or major coal projects, will limit the benefits of future approval bilateral agreements. The BCA supports the government amending the EPBC Act to remove this prohibition.

This section provides the BCA's specific comments on the draft Queensland assessment bilateral agreement, which is being updated as part of the second stage of the government's reform process.

Aims and objectives of bilateral agreements

The BCA supports bilateral agreements that are tailored to reflect differing state government environmental regulatory arrangements, however the objects of bilateral agreements (clauses 1 to 5 in the draft Queensland bilateral agreement) struck between the Commonwealth Government and the various state governments should be substantively the same.

This will facilitate an assurance regime that allows comparison across the jurisdictions.

In this regard the BCA recommends that the Commonwealth explore harmonising the objects of the Queensland bilateral agreement with the objects of the draft New South Wales agreement (clauses C to G), which is also available for public comment.

Steps to improve efficiency of individual processes

The BCA supports the intent of clause 11, which outlines steps to improve the efficiency and effectiveness of the individual Commonwealth and Queensland Government processes.

The BCA recommends that the meaning of sub-clause 11(f), which references 'project control', should be further clarified.

We also recommend the inclusion of an additional sub-clause 11(g) that commits the parties to developing government reporting mechanisms that demonstrate the costs of compliance for proponents, environmental outcomes achieved and other key performance indicators of the agreement and individual government regulatory processes. This will be essential to tracking the effectiveness of the agreement against its objects detailed in clause 5.

The BCA supports increased data sharing across governments and provisions of industry data from Environmental Impact Assessment to the public. However, this should be implemented in a way that does not increase the overall reporting burden on project proponents as they currently stand.

10. Minister for the Environment, 'One-stop-shop Approved by the Government', News Release, 16 October 2013.

Integrating the referrals process and better working relationships

The commitment to second staff and to develop strong administrative procedures is welcome. One of the issues identified by both the Productivity Commission and the Hawke review is a lack of understanding between the Commonwealth and state government agencies, which contributed to the relatively low usage of existing bilateral agreements. For example, the Hawke review noted ‘the main issue with the assessment bilateral agreements is the breakdown in relations between state and territory agencies and Commonwealth assessors’.¹¹

Seconding staff between relevant Commonwealth and Queensland agencies will allow both governments to develop a better understanding not only of their respective assessment processes and expectations, but also when a project is likely to require an assessment.

This latter point will be crucial to increasing the number of projects assessed under the assessment bilateral agreement. If a proponent does not refer a project to the federal Environment Minister to determine if it is a controlled action under the EPBC Act until well after a state government assessment process has commenced, it can be difficult to utilise provisions for a joint assessment.

To the extent possible, the state and Commonwealth referral processes should be joined up. The BCA recommends that the draft agreement (or its administrative arrangements) detail a structured process to ensure that a referral to a Queensland government agency or to the Federal Environment Department automatically triggers the referral process in the other government.

Integrating conditions and approval documentation

The BCA supports the objectives of imposing a single set of outcome-focused conditions for an approval (clause 21(c)) – subject to consultation and agreement with industry – and avoiding additional Commonwealth conditions (clause 21(d)).

Arrangements should be developed to support the realisation of these objectives. To this end consideration should be given to the draft agreement providing for the Queensland Government to provide proponents with a single, consolidated approvals document, which includes the Commonwealth approval and any Commonwealth conditions.

Transition arrangements

Many of the resources and energy projects undergo several assessment and approval phases at the state and Commonwealth level often over many years. Transition arrangements should be developed for this agreement and the subsequent approval bilateral to provide maximum regulatory certainty for the proponents of these projects.

Transition arrangements should ensure that project design and execution is not retrospectively affected by new regulatory arrangements.

The BCA encourages the parties to proactively consult with the proponents of major projects on the design of transition arrangements.

11. Australian Government, *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999, 2009.*

BUSINESS COUNCIL OF AUSTRALIA

42/120 Collins Street Melbourne 3000 T 03 8664 2664 F 03 8664 2666 www.bca.com.au

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