

Resources Sector regulation: Productivity Commission Issues Paper Submission: The Wilderness Society

Introduction

The Wilderness Society is pleased to provide this submission in response to the Productivity Commission Issues Paper: Resources Sector Regulation.

The Wilderness Society (TWS) is an independent environmental advocacy organisation supported by around 30,000 members and 500 000 supporters.

TWS is a leading member of the Places You Alliance which is seeking a new generation of effective national environment laws and institutions, including the reform of assessments and approvals process for the resource sector.

In response to the issues paper we note that it appears that the objective of the Issues Paper is to understand the impact of regulation on investment in the resources sector with specific reference to:

- Developing a better understanding of the nature of the complexity of regulation between layers of Government;
- Identifying the means to meet environmental and community standards and expectations;
- Identifying effective regulatory approaches;
- Identifying options to maintain robust protection for the environment;
- Examples of effective community engagement;
- Understanding genuine impediments to investment in the resources sector.

Response

The findings of the most recent Australian Government State of the Environment report make it clear that our existing approach to environmental protection and sustainable development is failing.

Most key environmental indicators are in decline and this direction is likely to be accelerated by the biophysical impacts of climate change.

It is also clear that the community concerns about the environmental impacts associated with Australia's resource sector continue to be significant and have grown over the past several years.

Over the past several years, and in response to the worsening health of environment, it would appear that there is an emerging area of agreement between industry, Government and environment groups that the existing national environment laws, including those components that relate to project assessments and approvals, are failing and are in urgent need of reform.

The existing Commonwealth Government development approvals process is regulated either directly through the *Environment Protection and Biodiversity Protection Act 1999* (EPBC), or delegated through independent regulators such as the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

The EPBC is Australia's national environment law.

It gives domestic legal expression to our significant international legal, and broader moral, obligation to protect Australia's unique biodiversity.

The core object of the EPBC is to protect our natural environment, particularly nationally significant native species and natural places. The EPBC notes that to achieve this objective, legislation should enable Australia to:

- 2(i): protect native species (and in particular prevent the extinction, and promote the recovery of threatened species) and ensure the conservation of migratory species; and
- 2(iii): protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures;
- 2(iv): identify processes that threaten all levels of biodiversity and implement plans to address these processes.

However, the decline in environmental indicators has made it clear that existing Commonwealth environmental legislation is simply not up to the task of preventing the decline and extinction of Australia's threatened species.

In response, The Places You Love Alliance have proposed that the EPBC Act be replaced with new generation national environment laws and institutions.

At the heart of this proposal is the recommendation that it is essential to enshrine federal government leadership in all environmental matters of national or international importance, including in response to climate change policies and actions and in response to assessment and approval processes.

This means that the Australian Government must act to lead and coordinate the system of environmental protection and regulations, including the approval of projects that will have a significant impact upon the environment.

This clear leadership role would see the Australian Government be tasked with harmonising and best practice standardising assessment and approvals process at all levels of government in which the protection and improvement in the health of our declining environment is paramount, measurable and transparent.

This will require a whole of government approach across all jurisdictions, federal, state and local. One clear and coherent system of independent and trusted assessments and approvals processes, led by the Australian Government, and bound by consistent standards and methods across all jurisdictions would significantly reduce complexity and confusion for both the resource sector and the community.

The creation of the new national system of assessment and approvals processes should be overseen by an independent National Environment Protection Authority that would:

- Conduct environmental assessments for matters of national and international significance and importance;
- Make final decisions on approvals or make final clear recommendations to the relevant Minister for approval or rejection of a development proposal on environmental grounds;
- Have responsibility for monitoring and compliance of all approval conditions against agreed environmental national standards.

The National Environmental Protection Authority would operate at arm's length from government to conduct transparent environmental assessments, monitoring, compliance and enforcement and could be the final decision maker.

To provide clear assessment tools and criteria for the proposed National Environment Protection Authority to assess and decide, an expanded and clear set of rigorous and enforceable national environmental standards would be developed which would replace the existing ad hoc and often unenforceable list of matters of national environment significance (NMES).

These standards would be binding and enforceable and will directly inform the decision to ultimately approve, amend or reject an approval application.

A new Australian Government led approvals system must also be directly related to international commitments entered into by the Australian Government including the Convention on Biological Diversity, the Paris Climate Change Treaty and adherence and consistency with Sustainable Development Goals.

Assessment and approvals processes under this system would also identify climate change emissions impacts of the development, both on site and in relation directly to the shared global objectives of the Paris Climate Change Treaty.

Approvals given as the result of an independent, accountable and transparent process must also demonstrate how the development will contribute to continuous environmental improvement across all jurisdictions and against agreed standards and outcomes.

Community support for a robust assessments and approvals system requires high levels of public accountability and transparency.

A new and independent system must enshrine the communities right to information and to enable participation in decision making processes, including third party legal standing and the ability to undertake merits based challenges to decision making.

Closing

Australia has significant international obligations to prevent the extinction of Australia's animal species and protect areas of internationally significant biodiversity. We are also morally, ethically, intergenerationally and practically obliged to protect our natural wealth. Ensuring that the activities of the resources sector are not at odds with these fundamental obligations to protect our environment must always remain the core object of Australian environmental regulation.

A nationally led, independent and consistent assessments and approvals process which directly supports the ongoing protection and improvement of the state of Australia's

environment, together with increased avenues for community involvement, decision making and engagement, are essential to deliver a clear, consistent and modern approach to environmental regulation of the resources sector.

The reforms outlined above will contribute significantly to this outcome.

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