

Best practice assessment and approval processes for uranium development: key conclusions and recommendations

The Australian Uranium Association has undertaken a case study research project to identify 'best practice' in uranium assessment and approval processes with a view to informing its own Members and the Commonwealth and the States involved in assessment and approval. The research was conducted as a case study review among Association Members. The draft report was discussed with Commonwealth and State authorities and amended following discussion.

On the basis of the research and discussion, the Association has drawn the following conclusions and makes the following recommendations:

- The assessment and approval process for uranium projects embodies elements of 'best practice' on the part of both proponents and authorities
- 'Best practice' is not, however, evident across the board; neither is poor practice
- Uranium is neither the only commodity whose project assessment and approval process contains examples of 'best practice'; nor the only commodity whose project assessment allows room for improvement
- The assessment process is right to be sensitive to community concerns about radiation issues; but those sensitivities should not be the cause of special treatment of uranium project assessments; uranium project assessment should be conducted on merit
- The research suggests 'best practice' assessment of uranium projects should be based on the following:
 - Operating ideally through a single point of contact between the company and authorities and regardless of how many governments and authorities are involved, authorities engage with the company as far as possible with a unified approach, notwithstanding the different legislative and political conditions under which they may operate
 - Science and environmental merit as the core pillar of assessment
 - Establish upfront expectations about the roll out of the process
 - Companies and authorities to establish dedicated teams with necessary expertise to work through the process
 - Companies to prepare thoroughly for the assessment and approval process, make applications and present them for assessment against criteria; thoroughly understand the economic, environmental and social impact of their projects before embarking on the assessment and approval process; comprehensively assess risk (especially environmental risk) and provide sufficient information of an appropriate standard to demonstrate how risks are to be managed; engage with stakeholder communities to build their social licence to operate during the development process;
 - In managing the technical assessment and approval process, authorities to employ sufficient technical expertise, acquire knowledge of the project under consideration, clarify the internal decision-making authorities, frame requirements reflecting the specific properties of uranium in the context of the particular project under consideration

- The role of ministers is to identify and operate in the public interest, make informed decisions on the basis of advice and then make decisions known to all stakeholders including the public
- Companies and authorities to capture and share knowledge gained in the process
- These findings and conclusions could be adopted via the following process:
 - Endorsement by the Uranium Council.
 - The Council to commend these findings and conclusions to the Standing Committee on Energy and Resources for adoption by State and Commonwealth resources Ministers
 - The findings and conclusions will be adopted by the Australian Uranium Association as a 'best practice' and shared with other resource industry representative bodies
 - Joint reviews following the completion of project assessments will be conducted and shared through the Uranium Council; and any recommendations considered for general application with the aim of continuous improvement.

Background

The Australian uranium industry is going through a relatively rapid development phase as the demand for nuclear power and uranium increases.

While uranium mining has taken place in Australia for many years, many new projects have gone through the assessment and approval process during the last five years.

The current development phase has renewed the attention being given to the assessment and approval processes that are being applied to the uranium industry. Uranium companies have also been seeking to learn the lessons from their engagements with those processes with a view to improving their own performance in future.

The industry as a whole has an interest in the processes: Australia's uranium industry has to have the confidence of the community in order to be competitive with the uranium industry in other countries if it is to match its share of world uranium supply with its share of the world's uranium endowment.

Obstacles that add unnecessarily to the complexity, elapsed time and cost of assessment and approval will reduce the speed to market and competitiveness of Australian uranium producers. On the other hand, fit-for-purpose and efficient processes – 'best practice' – will give Australian producers a potential advantage in a competitive market; or, at least, remove a source of competitive disadvantage .

During the recent phase of development, uranium businesses have encountered examples of both good and poor practice in the administrative processes for approval of uranium projects; and they have learned what matters to the effectiveness of their own engagement with the environmental assessment and approval system.

With that in mind, the Australian Uranium Association has undertaken a case study research project to identify 'best practice' with a view to informing its own Members and the Commonwealth and the State involved in the assessment and approval process.

The Association and its Members are seeking good public policy practice: efficient, cost-effective, technical- and merit-based, consistent assessment and approval processes. We believe that is also what governments and their authorities are seeking.

How the research was carried out

The purpose of the project is to identify best practice in assessment processes with a view to normalising them across the industry.

The research did this by identifying good administrative practice and why it occurs; as well as the strengths and weaknesses with which the industry engages the approvals processes. The Association does not consider there is currently a 'best practice' model being applied, though there are good practices.

The project also tested the hypothesis that there are obstacles adding unnecessarily to the complexity, elapsed time and cost of approval and ongoing regulation which reduces the speed to market and competitiveness of Australian uranium producers.

The project took as its starting point the formal and explicit Commonwealth and State/Territory approval and regulatory processes for uranium projects.

During December 2011 and January 2012, interviews were conducted by the Association with a number of its Members who had had recent experience of assessment and approval of uranium development projects. Interviews were conducted along the lines of an interview guide (attached). Companies were asked in advance to identify their experiences and views before the interview so that the interview could be conducted efficiently.

Interviews were followed up for further inquiries.

A draft report and recommendations were prepared, discussed with the participating Members and amended where necessary.

The amended draft was then discussed with Commonwealth and State officials and changes made on the basis of their feedback.

The final report and its conclusions and recommendations are the result.

Findings from the interviews

An interview template was used to guide the interviews. The template is attached (Attachment 1).

The nature of the projects

Interviews were conducted among companies that had developed between them eight projects during the course of the last decade. The projects varied in size, scale, setting and complexity. Interviewees stressed that it was those features - size, scale, setting, complexity – which distinguished the assessment of each project submitted for approval.

The assessment and approval process applied to the projects

With the exception of one project, which was assessed and approved under the Environment Protection (Impact of Proposals) Act, all projects were dealt with under the Environmental Protection and Biodiversity Conservation Act. Other Commonwealth and State legislation applies to the projects and they were required to meet those legislative obligations as well.

In some cases, there was a unified process (with one government assigned the assessment task); in other cases, more than one government was involved and efforts were made to coordinate the activities of the respective governments.

At both Commonwealth and State level, efforts were made to coordinate the activities of authorities involved in assessment and approval.

In some cases, there was also a requirement to consult locally.

What did companies expect of the process? And what did they experience?

Companies expected the process to run to plan, with reasonable guidance from authorities about what was expected of them.

There was an expectation that the authorities involved would have a reasonable knowledge of existing company operations and that the lessons learned from earlier assessment and approvals would be applied.

Companies expected that there would be a convergence of expectations between them and the authorities about how the process would unfold.

In all cases, discussions took place between the company and the authorities prior to, during and, in some cases, after the process.

These discussions differed in nature and scope, in part prompted by the differences in size, scale, setting and complexity of the respective projects.

Engagement took several forms that included:

- Early and constant liaison to build relationships and ensure 'no surprises' and consistency; and to build mutual expectations of the process
- Relationship building with the relevant officials as well as with ministerial staff and ministers themselves
- Company-initiated workshops with authorities to align expectations about process and content.

The companies reported that they and the authorities understood the formal process, which was based on the EPBC Act in all but one case. Experiences differed, however, about the extent to which companies and authorities were able to reach common expectations regarding the process in practice. In some cases, expectations converged; in other cases they did not or, at least, not fully.

There were some issues raised about the mandated process under the EPBC Act; for example, that it was assumed, wrongly, that all uranium projects would potentially have an impact of 'national environmental significance', which some companies saw as misplaced both legislatively and environmentally. However, companies identified no fundamental flaws in the process.

The case studies tested whether the information obligations placed on companies were more onerous because uranium was involved. This did not arise at a technical level, when authorities are employing the right expertise; and where it did, was often justifiable because of the unique properties of uranium. There were, however, instances, where 'uranium politics' (see below) tended to lead authorities to require more of companies than if some other resource were involved.

What authorities were involved and were their expectations aligned?

Most projects involved both the Commonwealth and State governments, including more than one State government in one case; and multiple authorities in most cases.

Experiences varied from examples where the respective authorities had clearly prepared thoroughly beforehand; to a case where the respective authorities did not share the same expectations and where they did not appear fully confident in each other; to a case where the respective authorities did seek alignment but did so in a way that increased the requirements on the company to the sum of the requirements of all the authorities involved.

Assessment and approval in practice

In practice, the best cases were those which had some of the following features:

- Multiple authorities working through a single point of contact with the proponent, under the auspices of agreement about how the process would unfold with thorough preparation on both sides
- Clarity about the authorities' data and other information requirements, time tables and schedules
- Clarity about the roles of companies, authorities and ministers in the process
- Understanding by authorities of the technical aspects of projects and project history
- Understanding by proponents of the pressures on ministers and authorities
- Mechanisms for resolving problems and issues that arose during the process
- Clarity about the criteria on which approval will be based
- Consistency from project to project.

This 'best practice' model, which the industry does not believe is being applied wholly, is elaborated below.

It is necessary here to outline the model briefly in order to document in an understandable way the factors that account for departures from it.

From the companies' point of view, there are some key 'structural' features of the process that will make it best practice. The most important of those is that governments and authorities bring a unified approach to their engagement with a proponent. Operating ideally through a single point of contact between the company and authorities and regardless of how many governments and authorities are involved, companies believe 'best practice' occurs when those multiple organisations engage with the company and treat with the company as far as possible with a unified approach, notwithstanding the different legislative and political conditions under which they may operate.

The unified approach and single point of contact is not mere coordination of multiple governments and authorities. It embodies a core leadership function which sees as best practice the management of the whole process within the government machinery for the purpose of defining a whole-of-government decision having actively collated and filtered the inputs of the various authorities involved in assessment and approval to arrive at a single, coherent government position.

Companies believe that if that could be achieved, if the organisation of those internal relationships between authorities can be clarified, and if there is thorough preparation by both the proponent and

by authorities with shared expectations, the departures from shared expectations would be minimised.

The interviews enabled the participating companies to identify those 'in practice' issues which detracted from this kind of approach. Not all cases demonstrated these issues; and not all issues arose in every case.

The issues include:

- Failure to meet timetables
- The lack of specific assessment guidelines for a project
- 'Last minute changes' and additional requirements late in the process
- Timetabling that suits authorities with no consideration for the proponent
- Authorities not raising issues at the earliest possible time, even given the opportunity
- Lack of a unified view among authorities
- Requirement to submit revised documents and revisions of them as staff changed within authorities
- Having to supply data and meet tests that were outside environmental assessment; for example, economic benefit
- Late involvement by authorities prompted by lack of prior preparation by them rather than by needs related to insufficient project information
- Lack of coordination between agencies not all of whom have direct involvement in environmental assessment but see their work as connected to it
- Requiring responses to unproven allegations by opponents of a project or to issues that are not material
- Approval requirements, documents and decisions to be as comprehensive as necessary (and only within the scope of the authorising legislation) but no more than necessary to meet the tests of efficiency, cost-effectiveness, technical- and merit-based and consistency.

These approaches have costs for proponents including denial of access to the available resource beyond what is necessary; increased consultancy costs; additional management time; increased engineering costs; uncertainty; miss potential market windows etc.

There is also a learning process for authorities, especially in first or early projects. The cost of the authorities' learning is effectively borne by the proponent.

What could companies have done better?

Companies identified a number of opportunities to make more efficient their own performance in submitting and managing project applications:

- Companies to explain better the commercial drivers of their proposed timetables
- Explain why a particular requirement is not appropriate
- Clarify the business case for both the company and the authorities – the better a company understands the project, the better it will fare in the process; the later in the process it prepares the EIS, the better it can prepare the EIS
- Before the start of the approvals process, ensure the scope of the project is very well-defined; expect delays to approval if the scope changes
- Better adherence to timeframes

- Better understanding of the collection of government stakeholders who are involved and engage them
- Be prepared to draw attention to departure from timetables and criteria
- Assign a dedicated team
- Avoid distraction by operating incident-free
- Conduct reviews of the company's performance within the process
- Understand better what drives authorities' caution in the process
- Understand the political pressures on governments and respond to that.

The Association proposes to conduct a workshop for its Members to cascade these lessons throughout the industry.

What could the authorities have done better?

From companies' perspective, there is also a number of improvement opportunities for authorities to take. These are the obverse of the issues identified as detracting from best practice:

- Clarify guidelines for project documentation and process
- Clarify the decision-making powers of officials and proper delegation of technical authority
- Adhere to statutory timelines and seek to avoid resort to the statutory allowance of extensions; or, at least, identify up front where possible extensions might be necessary
- Avoiding the application of the EPBC Act to uranium projects that are not a significant threat to the environment
- Avoid applying requirements drawn from obligations derived from outside environmental law
- Eliminate the requirement to address issues below regulatory concern; for example, avoid regulating minor changes in operational requirements
- Requisite resourcing, including adequate resourcing for 'first' projects in a State or Territory because the first project will be a learning experience
- Given limited resources, avoid doing unnecessary work
- Resolve issues internal to the management of the authorities involved (e.g. internal reorganisation, staff changes) so that they do not impact on the assessment/approval process
- Draw up a clear assessment/approval 'map' for individual projects.
- Authorities to review their performance and capture lessons so they can apply them in future; do this jointly with the proponent.

A key point is to ensure that the necessary resources are available to governments and authorities to manage the workloads involved in project assessment, recognising that first or early projects will require greater attention and that authorities may have to assess multiple projects simultaneously.

The problem of uranium politics

An issue that impinged frequently on the assessment and approval process was the problem of uranium politics.

Companies perceived a high degree of felt political exposure and sensitivity by the authorities who sometimes appeared hesitant about moving in line with process alone on a project associated with

uranium. Authorities had to respond to a similarly high degree of exposure and sensitivity by the ministers concerned.

A 'first time' uranium project process in a State was likely to be perceived as particularly challenging, especially on radiological issues.

Companies believe that authorities are very sensitive to external critics of the uranium industry and manifested this sensitivity, in anticipation of political sensitivity, by applying tests or making requirements of proponents that are intended to justify their assessments to those critics; rather than applying only reasonable tests required by the assessment and approval process. In other cases, companies believed that authorities felt they had to respond to unsubstantiated claims by critics of the industry.

Companies are not unaware of the potential benefit of an assessment and approval that goes further than is necessary. At the same time, they consider that such 'completeness' serves to separate uranium from the mainstream assessment process, perpetuating lack of confidence in both the uranium industry and in the ability of the process to deal with it.

Companies believe authorities are right to be aware of uranium sensitivities but believe also they should not be overawed by them; and should leave the management of public concerns to the political process.

Possible ways of dealing with this include:

- Separate the 'regulatory' and the 'political': authorities should concern themselves mainly with the assessment and approval process in a technical sense, leaving the management of the 'uranium politics' to the political process
- Political challenge to unjustified or unsubstantiated concerns about 'uranium' directly and publicly rather than have unjustified obligations placed on companies as 'reassurance' for stakeholders.

The findings and conclusions of this research are set out in full in Attachment 2.

How can this research contribute to better best practice in uranium assessment and approval processes?

This research can contribute to better uranium assessment and approval processes by:

- By its endorsement by the Uranium Council.
- The Council to commend the research to the Standing Committee on Energy and Resources for endorsement by State and Commonwealth resources (and possibly other) ministers at the December 2012 meeting of SCER. The Council to receive regular reports from the Uranium Council about the adoption process
- The research will be adopted by the Australian Uranium Association as a 'best practice' obligation and shared with other resource industry representative bodies
- Joint reviews following the completion of project assessments will be conducted and shared through the Uranium Council; and any recommendations will be considered for general application.