

SUBMISSION TO THE EPBC ACT REVIEW

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Name

Rhys Thomas

Organisation

Australian Energy Council

State or Territory

Victoria

Attachment provided?

Yes

Do you give permission for your submission to be published?

Yes – with my name and/or organisation

SUBMISSION RESPONSES

This submission was provided as an attachment only. The attachment is provided on the following pages of this document.

Professor Graeme Samuel AC
Chair
Independent Review of the EPBC Act

Submitted online via: <https://environment.au.citizenspace.com/epbc-review/epbc-act-review-submission-discussion-paper/consultation/>

17 April 2020

Dear Mr Samuel,

Independent Review of the EPBC Act: Discussion Paper

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Commonwealth Government's *Independent Review of the EPBC Act: Discussion Paper* ('Discussion Paper').

The AEC is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia, sell gas and electricity to over ten million homes and businesses, and are major investors in renewable energy generation.

The *Environment Protection and Biodiversity Conservation Act 1999* ('EPBC Act') has provided the Commonwealth with a robust legislative framework for protecting Australia's environment. Since its inception, the EPBC Act has grown exponentially alongside growing community awareness towards environmental outcomes. Today, it is broken up into two volumes to accommodate the 1,120 pages of regulation contained within. The enormity of regulation contained within the EPBC Act has unfortunately resulted in regulatory inefficiency and project delays for little to no environmental gain in return.

This statutory review is therefore timely. It serves as an opportunity to streamline the EPBC's complex regulatory regime while still maintaining strong environmental outcomes. The AEC submits that the EPBC Act should remain the cornerstone of the Commonwealth's environmental responsibilities. However, there is room, consistent with Australia's federal governance structure, for delegating some obligations, such as the EPBC's assessment and approval obligations, to the states, which have more developed environmental regulatory apparatuses and localised knowledge of prospective projects. A coordinated approach to delegation should minimise the levels of duplication between Commonwealth and state regulations while ensuring better regulatory oversight.

Energy Sector and the EPBC Act

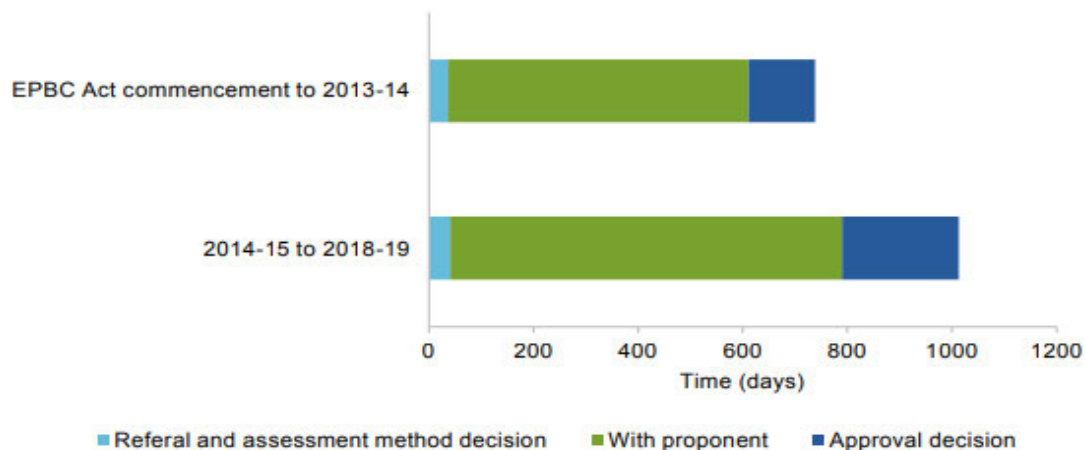
The Australian Constitution does not mention the environment as a Commonwealth duty meaning the states and territories have historically held primary responsibility for regulating its protection. As a result, the energy sector has typically engaged with the states to manage environmental issues relating to electricity and gas generation. The introduction of the EPBC Act into Parliament in 1999 represented the Commonwealth's intent to enshrine its international environmental treaty obligations into domestic legislation, a necessary step to maintain Australia's reputation as a responsible international citizen. From a regulatory perspective, it meant environmental responsibilities were now split across the Commonwealth and states creating a dual and more complex system of environmental regulation. For electricity and gas generators, issues such as monitoring air quality and noise remained a state responsibility while new projects, such as a site upgrade or developing a gas storage facility, required referral to the EPBC Act.

Building a Simpler Regulatory Regime

The Current Regulatory Burden

The EPBC regime has continued to evolve over time to the point where it now contains 1,120 pages of regulation for industry to comply with. This is a considerable amount, especially in the context of states retaining primary responsibility for environmental regulation. The AEC therefore supports the direction of the Discussion Paper to encourage ‘more efficient and effective regulation and administration’.¹ We agree that the EPBC Act, as it stands now, is ‘repetitive, complex, unclear in some areas and overly prescriptive in others’.² More importantly, the abundance of regulation does not appear to be producing better environmental outcomes. Rather, as the Productivity Commission concluded in its review of *Resources Sector Regulation*, the regulatory inefficiency of the EPBC Act has substantially increased the number and length of delays for resource projects (see figure 5 below).³

Figure 5 Environmental approvals can take years to secure
Average time taken for environmental approval decisions for resources projects under the EPBC Act



The Productivity Commission goes on to explain that ‘the cost of delays can dwarf other regulatory costs’ and is not actually leading to better environmental outcomes.⁴ Cumbersome and confusing regulation has other negative consequences that extend beyond costs. For communities, their ability to engage in consultation is frustrated leading to reduced confidence in the EPBC Act. This undermines a core objective of the Act, being to improve collaboration between government, industry and the community.⁵ The social licence that some companies rely on to operate is subsequently impacted.

Some Simple Solutions

There are opportunities to improve regulatory efficiency by minimising regulatory duplication between the Commonwealth and states. Some efforts have already been made in this regard with the Commonwealth entering into bilateral assessment agreements with the states, which allows the proponent to prepare one set of assessment documentation for both the Commonwealth and State decision-maker for projects that trigger the EPBC Act. The AEC supports this process, but believes bilateral agreements could be extended to cover the approvals process.

¹ Commonwealth of Australia, ‘Independent Review of the EPBC Act: Discussion Paper’, November 2019, p15.

² Id at 18.

³ Productivity Commission, ‘Resources Sector Regulation: Productivity Commission Draft Report’, March 2020, p10-11.

⁴ Id at 11-12.

⁵ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s(3)(1)(d).

We see this as consistent with the EPBC Act's objective to 'strengthen intergovernmental co-operation, and minimise duplication, through bilateral agreements',⁶ especially in light of the Productivity Commission's finding that 'over half of all projects referred under the EPBC Act do not ultimately require Commonwealth approval'.⁷ If providing state regulators with the power to act as the authorised Commonwealth decision-maker is not desirable, we nonetheless believe state regulators should be trained in the interpretation of EPBC Act requirements to reduce the likelihood of inconsistent approval conditions between the Commonwealth and states.

Other Considerations

Supporting an Orderly Transition

The EPBC Act is and should remain the centrepiece of the Commonwealth's regulatory framework for protecting the environment. Given its status, it is not unexpected that some stakeholders want climate change to be included as a trigger for new projects to be assessed under the EPBC Act.⁸ The AEC would, however, caution against the inclusion of such a trigger because it is an inappropriate instrument to facilitate the necessary de-carbonisation of the Australian economy. De-carbonisation requires a whole-of-economy approach that encourages all sources, existing and new, to internalise the costs of carbon pollution into their business. Attempting to regulate carbon emissions at the approval stage will lead to inefficient, confusing and potentially counter-productive outcomes.

Consider the need for an orderly transition away from coal as an electricity source. Most of Australia's coal-fired power stations will be phased out over the next two decades. Renewable sources of energy, supported by storage options, will replace most of the energy produced by these stations. However, these sources are intermittent and cannot, based on current technologies, reliably supply power at all times of the day and night. For this reason, gas is viewed as a viable option to support the variability of solar and wind energy. As an example, the Australian Energy Market Operator's *Gas Statement of Opportunities 2020* expects gas 'to continue to provide a reliability and security role to complement variable renewable generation' in the medium to long term.⁹ There is a risk then that the inclusion of a climate trigger will substantially delay the progress of new gas projects. This could cause a disorderly transition with potential reliability and/or price shocks, or even have the perverse effect of prolonging the life of coal-fired power stations to maintain the reliability of the electricity grid.

Any questions about this submission should be addressed to Rhys Thomas, by email to

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Yours sincerely,



Ben Skinner

General Manager, Policy & Research
Australian Energy Council

⁶ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s(3)(2)(b).

⁷ Productivity Commission, 'Resources Sector Regulation: Productivity Commission Draft Report', March 2020, p39.

⁸ *Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2020*.

⁹ Australian Energy Market Operator, 'Gas Statement of Opportunities', March 2020, p5.