



Australian Government
Productivity Commission

Major Project Development Assessment Processes

Productivity Commission
Issues Paper

February 2013

The Issues Paper

The Commission has released this issues paper to assist individuals and organisations to prepare submissions to the Commissioned Study. It contains and outlines:

- the scope of the Commissioned Study
- the Commission's procedures
- matters about which the Commission is seeking comment and information, and
- how to make a submission.

Participants should not feel that they are restricted to comment only on matters raised in the issues paper. The Commission wishes to receive information and comment on issues which participants consider relevant to the terms of reference.

Key study dates

Receipt of terms of reference:	7 December 2012
Due date for submissions:	25 March 2013
Release of draft report:	July 2013
Final report to Government:	6 December 2013

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au) or by contacting Media and Publications on (03) 9653 2244 or email: maps@pc.gov.au

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1 What has the Commission been asked to do?

The Productivity Commission has been asked to undertake a study to benchmark Australia's major project development assessment and approvals (DAA) processes against international best practice. The Commission is to make recommendations to improve Australia's DAA processes.

Background to the study

The genesis of the study is a discussion paper by the Business Council of Australia (BCA) which was considered by the Business Advisory Forum (BAF) to the Council of Australian Governments (COAG) in April 2012.

The BCA considers that inefficient and duplicative regulatory arrangements are imposing unnecessary costs, and called for the Commission to benchmark Australia's major project DAA processes against international best practice. Heads of Treasuries were tasked with scoping the BCA's proposal, and concluded that further work is warranted.

Terms of reference for the study were received on 7 December 2012 (attachment A). Specifically, the Commission has been asked to:

- examine the regulatory objectives and key features of Australia's major project DAA processes at all levels of government, including the interactions between levels of government, the role of facilitation, the capacities and resources of the institutions involved and significant variations between jurisdictions
- examine the regulatory objectives and key features of major project DAA processes in comparable international systems
- identify critical elements of major project DAA processes and compare these to assess the extent to which different decision-making approaches in Australian jurisdictions and alternative investment destinations overseas have a material impact on costs, timeliness, transparency, certainty and regulatory outcomes
- examine the strategic planning context for major project DAA processes in Australia and in comparable international systems
- identify best practice and against this benchmark evaluate jurisdictional approaches, such as one-stop shops and statutory timeframes

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- assess mechanisms for ‘scaling’ regulatory requirements relative to project size and the expected benefits against the potential environmental, social, economic and other impacts
 - compare the efficiency and effectiveness with which Australian DAA processes achieve the protection of social, economic, heritage, cultural and environmental assets compared with comparable international systems
 - make recommendations on how to improve Australia’s major project DAA processes.

The Commission is to report its findings within 12 months.

In undertaking this study the Commission will adopt a community-wide framework, as required by the *Productivity Commission Act 1998*. The Commission will assess options to improve Australia’s major project DAA processes, having regard to their regulatory objectives and their net benefit to the wider community.

The purpose of this issues paper is to provide background information regarding the study, describe some of the issues the Commission has identified at this early stage and assist contributions by stakeholders and participants. While the Commission has posed a number of questions, it is not necessary to answer these particular questions, or limit comments to the issues raised. The Commission encourages submissions — supported by sound evidence wherever possible — on any of the issues that are considered relevant to the study’s terms of reference.

The Commission is especially interested in receiving submissions from those stakeholders who have direct, first-hand experience in complying with relevant DAA processes for major projects. The Commission has a strong preference for public submissions so the material is fully available for use in Commission reports, but will accept confidential information where necessary. Where appropriate, participants might want to submit evidence given to related studies or inquiries, including the Commission’s current inquiry into ‘Non-financial barriers to mineral and energy resource exploration’.

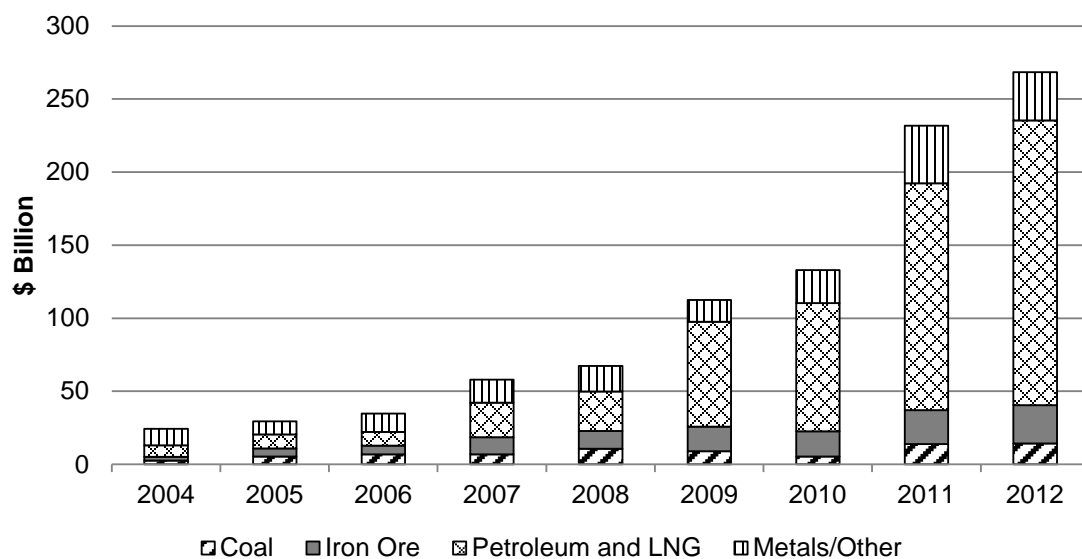
Attachment B provides further information on how to make a submission.

Why this study is important

The development of major projects is an important part of economic activity and employment in Australia. New engineering construction expenditure — a proxy for most major project investment — represents around a quarter of all investment in Australia (ABS 2012).

While the type, scale and complexity of major projects vary considerably, the resources sector accounts for a significant share of total development activity. Investment in this sector has grown markedly in recent years in response to the mining boom (figure 1) and the Bureau of Resources and Energy Economics estimates an investment ‘pipeline’ of around \$660 billion, the bulk of which is LNG projects (Barber et al. 2012).

Figure 1 **Committed resource projects in Australia**



Source: Barber et al. (2012).

Proponents of major projects are subject to a wide range of DAA processes. The economic rationale underpinning these processes is the presence of externalities. Major projects can impose costs on others in the community, such as damage to the environment, reductions in community amenity and demands on existing (and for new) infrastructure. Accordingly, DAA processes play an important role in balancing competing public policy interests and delivering good regulatory outcomes for the community.

However, excessive, overlapping and poorly administered regulations could impose a significant and unnecessary burden on Australian businesses and consumers. For example, a previous Commission study into the upstream petroleum sector estimated:

... expediting the regulatory approval process for a major upstream petroleum project by one year could increase the net present value of returns by 10–20 per cent, simply by bringing forward income streams. (PC 2009b, p. XXV)

Major project proponents in Australia continue to raise concerns about lengthy, duplicative, uncertain and complex DAA processes. The BCA recently cited the case of a member company seeking approval for a major resource project:

The environmental assessment for the project was done under Australian Government and state legislation. The assessment took more than two years, involved more than 4000 meetings, briefings and presentations across interest groups, and resulted in a 12 000 page report ... When approved, more than 1500 conditions — 1200 from the state and 300 from the Commonwealth — were imposed. These conditions have a further 8000 sub-conditions attached to them. In total, the company invested more than \$25 million in the environmental impact assessment. (BCA 2012b, p. 56)

This study aims to identify, and recommend how to overcome, any unnecessary regulatory burdens faced by those engaged in the development of major projects without comprising the achievement of good regulatory outcomes.

2 What is the scope of the study?

Major project DAA processes

The terms of reference are explicit that the study should cover major projects:

- across a broad range of development categories
- in urban and regional areas
- in Australia and in ‘comparable international systems’ and ‘alternative investment destinations’.

However, ‘major project’ is not defined in the terms of reference, and there is no widely-accepted definition of a major project within Australia. Individual jurisdictions and government agencies use a range of criteria to determine whether a development proposal attains major project status (box 1).

The Commission considers that ‘major projects’ — for the purposes of this study — should include large-scale private and public sector initiated projects and is interested in projects across a range of industry sectors, including resources, infrastructure and large commercial developments. The Commission, however, does not consider it practical to propose a threshold capital expenditure value, as the impacts of a development also depend on the nature of the project (for example, location or the type of development).

Box 1 Major project definitions

There is variation in the criteria used to define a major project among Australian jurisdictions and government agencies.

- To access the Australian Government's Major Project Facilitation Program, a project must either:
 - significantly boost Australian industry innovation
 - have significant net economic benefit for regional Australia
 - have an estimated investment in excess of \$50 million and make a significant contribution to economic growth, employment and/or infrastructure.
- The threshold for inclusion in the Bureau of Resources and Energy Economics listing of major resources projects is \$50 million. 'Mega' projects are those with a cost of over \$5 billion.
- In New South Wales, projects declared as State Significant Developments or State Significant Infrastructure must meet a number of criteria, and typically require capital investment of at least \$30 million, depending on the nature and site of the investment (with the expenditure threshold for many projects being \$10 million).

Sources: Barber et al. (2012); DIT (2012); Hazzard (2011).

The focus of this study is on addressing the unnecessary burdens — that is, where the objectives of the regulation could be achieved with lower compliance costs — that are placed on the proponents of major project developments.

Such unnecessary burdens could arise in a number of ways, including through:

- poorly articulated or inconsistent regulatory objectives (within and between jurisdictions)
- excessive regulatory coverage
- overlap or duplication of, or inconsistency between, regulatory regimes (within and between jurisdictions)
- unwieldy approval processes and conditions
- poorly targeted, overly complex or prescriptive measures
- excessive reporting requirements
- creation of perverse incentives
- lack of transparency in regulatory processes.

Unnecessary regulatory burdens could arise in one or several major project DAA processes that relate to the environmental, social, economic, heritage, cultural and

health and safety impacts of major projects. Processes administered at all levels of government are in scope.

For the purposes of this study, the Commission considers that DAA processes related to the following matters are relevant:

- land use and access (zoning)
- development planning
- infrastructure and services use and requirements
- land acquisition
- the environment (this includes pollution, waste management, habitat and biodiversity, fauna and flora, threatened species, noise and vulnerable areas (national parks, wetlands and marine reserves))
- social, cultural and heritage (Indigenous, historical and natural) issues
- native title
- public health and safety.

Further, sector-specific legislation that is triggered by certain types of projects will be examined. Examples relevant for particular projects may include the *Mineral Resource Act 1989 (Qld)* and natural resource management regulations, such as those pertaining to fisheries and water.

The terms of reference also ask the Commission to consider the ‘strategic planning context’ for major project DAA processes. This is interpreted as any broader (that is, urban, regional or jurisdiction-wide) policies and plans that provide a framework within which DAA processes are applied.

Relevant existing and ongoing work

As part of this study, the Commission is to have regard to related work, including the:

- 2009 report by Infrastructure Australia, *Building Australia’s Future*
- COAG Reform Council’s review of capital city strategic planning systems
- work on development assessment processes by individual jurisdictions, such as the NSW Planning System Review
- work led by the Commonwealth Department of the Prime Minister and Cabinet to agree bilateral arrangements for accreditation of State and Territory Government environment assessments and approvals processes.

The Commission is also currently undertaking an inquiry into ‘Non-financial barriers to mineral and energy resource exploration’. Issues associated with DAA processes that apply to major projects, which includes resource sector projects, will be covered by this study.

3 The Commission’s approach to benchmarking major project DAA processes

What is benchmarking?

Benchmarking involves the collection of data on a set of indicators or measures from different sources to enable comparisons. Indicators can either be quantitative or qualitative. Benchmarking can be used as a tool for identifying and adopting more efficient or effective practices (PC 2008; Productivity Commission and Forum of Federations 2012).

Previous Commission work has highlighted the potential benefits of benchmarking:

Benchmarking can promote ‘yardstick’ competition across jurisdictions (or levels of government) and, through this competition, foster ongoing improvement in the regulatory environments of those jurisdictions. This increased transparency and accountability also places incentives on policy makers to improve their regulatory regimes and, in turn, to reduce unnecessary burdens on business. To the extent that gaps between current and better practices can be identified and made transparent, benchmarking can promote the accountability of regulators for moving to the better regulatory practices. (PC 2009a, p. 57)

There are practical challenges to consider in internationally benchmarking complex and diverse DAA processes, for example:

- it is not usually possible to benchmark all aspects of assessment and approvals processes in a quantitative way
- governments often have different regulatory objectives, and in some cases governments enact regulatory instruments (including matters within the control of the proponent) to fulfil a number of objectives simultaneously
- the characteristics of major projects vary greatly.

These challenges can to some extent be managed. Differences in policy objectives and project characteristics can often be controlled for and where this is not feasible, appropriate caveats and qualifications can be noted. In this way, and provided the qualifications and caveats are not too numerous, quantitative benchmarking can expose areas where amelioration is needed and help set targets for improvement.

The Commission's proposed approach to benchmarking

In light of these challenges, the Commission proposes to examine DAA processes in individual jurisdictions against a set of qualitative criteria (or principles) that relate to the design, implementation and performance of the regulatory processes. Where it is possible, the Commission will supplement its qualitative analysis with quantitative benchmarking.

The Commission is confident that this method will reveal both 'good' and 'poor' practice approaches to major project assessment and approval. These insights will inform the Commission's guidance and recommendations on how DAA processes in Australia could be improved.

Is a mainly qualitative approach to benchmarking appropriate for this study?

Are there specific aspects of DAA processes that can be benchmarked in a quantitative way? If so, what data should be used?

Proposed criteria for evaluation

The Commission has sought to identify criteria to evaluate where jurisdictional DAA processes are consistent with, or deviate from, commonly-used principles of good governance and regulatory design (Australian Government 2010; PC 2008, 2009b; Regulation Taskforce 2006). Regulation that is designed, administered and enforced in a manner that is consistent with these principles is less likely to impose *unnecessary* burdens on business.

The Commission's proposed assessment criteria include:

- Clear, justifiable regulatory objectives
- Consistency with other regulations
- Cost-effectiveness
- Proportionate and flexible regulatory requirements
- Clear and predictable processes
- Open and transparent processes
- Appropriate opportunities for public participation and review of decisions
- Clarity in roles and responsibilities
- Accountable decision-makers

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- Appropriately skilled and resourced institutions
 - Regulatory outcomes consistent with objectives
 - Regular review and evaluation.

Are these appropriate assessment criteria for benchmarking major project DAA processes in Australia and international jurisdictions? Are additional criteria relevant?

Should these assessment criteria be weighted in evaluating the efficiency and effectiveness of assessment and approvals processes in different jurisdictions? If so, how should trade-offs between assessment criteria be managed?

Which international jurisdictions should be considered?

There are several ways of identifying the peer group of countries against which DAA processes are benchmarked. One approach is to identify those countries that have a similar structure of government, policy objectives and level of economic development. By comparing as far as possible ‘like with like’ the number of caveats and qualifications on the benchmarking data is limited, which strengthens the robustness of the findings. Another method is to identify those economies which compete with Australian businesses. This puts greater emphasis on identifying countries which may have a competitive advantage that is linked to more efficient and effective DAA processes.

Canada is one country which would be identified under either approach. It has a ‘comparable international system’ and is an ‘alternative investment destination’, given it is a developed, resource-rich country with a federal system of government. Further, Canada and Australia are party to similar international obligations, have comparable legal and judicial systems and share similar community expectations about the protection of environmental, cultural and social assets.

The Canadian Government has also recently enacted a range of reforms to major project DAA processes that could provide valuable insights (box 2).

Box 2 **Recent reforms in Canada**

The Canadian Government has recently implemented reforms to major project development assessment and approvals processes, including:

- establishing a lead agency for major project DAA processes (the Major Project Management Office)
- reducing the number of federal departments undertaking environmental assessments from 40 to 3
- imposing strict timelines for environmental assessments, ranging from 12 to 24 months
- implementing bilateral agreements between federal and provincial governments such that provincial assessments can be used to satisfy federal requirements in certain circumstances
- introducing formal processes for consulting with Aboriginal communities on major project development issues.

Source: Canadian Government (2012).

How should the choice of ‘peer’ countries for benchmarking be determined? How important is it to focus on countries with similar community preferences, levels of economic development and legal and government systems? Are other criteria, such as those countries that compete with Australia, relevant?

Should the choice of ‘peer’ countries vary across economic activities? For example, are the most relevant jurisdictions for benchmarking DAA processes for major mining projects different to those for major infrastructure projects?

Which countries (or sub-national jurisdictions) do you see as particularly successful at designing and administering efficient DAA processes for major projects? What aspects of their arrangements are especially attractive? Do you have direct experience with, or can you provide evidence on, DAA processes in other countries that work well?

Information sources

The Commission intends to draw on a range of information and data sources to evaluate jurisdictional DAA processes against the criteria described above. This includes:

- evidence submitted by study participants

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- information gathered through stakeholder visits and roundtables
 - existing reviews, studies and literature in this area
 - the Commission's own research and analysis
 - case-studies.

The Commission is interested in participant views on the usefulness of these information sources, especially on the choice of case studies, for analysing the efficiency of major project DAA processes.

Is there other information or data that the Commission could draw on in undertaking this study?

Which case studies examined as part of other reviews provide useful insights? What sorts of new case studies should the Commission undertake?

4 Key features of major project DAA processes

In each State and Territory, responsibility for assessing the impacts of proposed major project developments is typically shared by multiple agencies across a range of portfolios. Authority for granting approvals is less dispersed, and usually falls to either:

- the responsible Minister (and in most cases, the Planning Minister)
- the State or Territory planning commission (if relevant)
- the relevant Local Government Authority.

In most jurisdictions, relevant Ministers have the power to 'call in' major project development applications in various circumstances. For example, under the *Planning and Development Act 2007* (ACT), the Minister can call in an application where approval or refusal of the application would provide a 'substantial public benefit'.

Major project proposals may also go through a preliminary assessment (or 'sifting') process to classify the project, and/or to determine whether particular DAA processes apply. For example:

- in Victoria, the Minister administering the *Environment Effects Act 1978* decides whether an Environmental Effects Statement is required
- in New South Wales, the *Environmental Planning and Assessment Act 1979* establishes two separate assessment pathways for major projects:

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- State Significant Development: primarily large-scale developments (usually greater than \$30 million)
 - State Significant Infrastructure: major infrastructure proposals (particularly linear infrastructure, such as roads, railway lines or pipes which often cross a number of council boundaries)
 - in Western Australia, projects are assessed into three categories depending on their size, complexity or environmental, economic or social impacts.

Major project DAA processes involve multiple steps. Processes usually begin with an initial scoping exercise to identify the issues and end with the possibility of an appeal. The ways in which these processes are constructed can have a significant impact on their cost, duration and effectiveness.

Many jurisdictions have streamlined or coordinated DAA processes for major project developments through, for instance, lead agency arrangements. These facilitative arrangements, among other things, are intended to ease the regulatory burden on major project proponents. Section 6 of this issues paper considers these approaches in more detail.

Several State and Territory Governments are currently implementing reforms to DAA processes. Examples include the creation of taskforces for major projects, streamlined processes for low-impact developments and consideration of ‘risk-based’ approaches to assessment (BAF 2012). The Commission will take stock of the progress of these reforms as the study proceeds.

How do ‘call in’ powers for government Ministers operate in practice? In what circumstances do these powers apply? How does this differ across jurisdictions?

How do preliminary assessment (or ‘sifting’) mechanisms operate in practice? How is responsibility for these assessments assigned? Does this vary between jurisdictions and between levels of government?

Interactions between processes at different levels of government

The most notable example of Australian Government involvement in major project proposals is via the assessment and/or approvals processes that are required under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The EPBC Act requires that actions that would have (or are likely to have) a significant impact on one or more matters of national environmental significance to

be approved by the Minister for Sustainability, Environment, Water, Population and Communities. Assessment and approvals may also be required if:

- proposed actions are situated on, or may impact on, Commonwealth land
- Commonwealth agencies are proposing to take an action.

Bilateral agreements between the Australian and State and Territory Governments can reduce duplication in environmental assessment and approval processes. These agreements are discussed in more detail in section 6 of this issues paper.

Local governments also play some role in major project DAA processes, particularly in relation to land use and access (zoning) and planning. The degree of involvement depends on the location and type of project, including whether the project's 'footprint' affects more than one local government area.

5 What are the impacts of the current arrangements?

Stakeholders are concerned that major project DAA processes are imposing unnecessary costs on proponents, and may not be achieving their desired regulatory outcomes. This section considers the nature and magnitude of these costs and the factors that could be contributing to unnecessary delays and compliance costs.

Delays

Lengthy DAA processes could increase costs and uncertainty for project proponents, and may even compromise the commercial viability of a major project. A previous Commission study into the upstream petroleum sector found that delays in gaining approvals can 'reduce flexibility in responding to market conditions, impede financing of projects, and defer production and revenues' (PC 2009b, p. XXIII).

Delays also impact on the wider community, for example, through lower tax revenue. The BCA estimates:

At a coking coal price of \$200 tonne, a 12-month delay to a 10 million tonne per annum export coking coal mine in Queensland could reduce Queensland royalty revenue by \$170 million. (BCA 2012a, p. 1)

Furthermore, unnecessarily lengthy DAA processes could diminish Australia's attractiveness as an investment destination. Analysis commissioned by the Minerals Council of Australia estimates that for thermal coal projects, the average Australian

project experiences an additional 1.3 years of delay relative to those elsewhere (Ergas and Owen 2012).

There are valid reasons why major project assessment processes take time, particularly for complex projects. However, an issue for this study to consider is whether inefficiencies in the current arrangements are causing *unnecessary* delays in project assessment and approval.

How has the timeframe involved in major project DAA processes in Australian jurisdictions changed over time? How does it compare with the international experience? Has it led to better regulatory outcomes?

Are major project DAA processes subject to unnecessary delays? If so, what factors or regulatory processes are contributing to unnecessary delays? What costs do unnecessary delays impose?

Does the timeliness of DAA processes for public and private sector initiated projects differ?

Is the time that it takes to complete a DAA process predictable? If not, what are the impacts of, and factors contributing to, a lack of predictability? Are there ways to shorten the duration and improve the predictability of DAA processes while still meeting regulatory objectives?

Compliance costs

Compliance costs are a feature of any regulatory system. However, concerns have been raised that the current arrangements are leading to *unnecessary* compliance costs.

Costs associated with Environmental Impact Assessment (EIA) processes have been identified as a particular issue. The BCA contends:

The costs and delays associated with environmental impact assessments are significant. An Australian National University study estimated a direct cost to all industries of up to \$820 million over the life of the EPBC Act. Further, the referrals process under the EPBC Act is resource and cost-intensive, with referrals ranging from \$30 000 to \$100 000. (BCA 2012a, p. 1)

Previous Commission work considered the resource requirements associated with achieving regulatory compliance in the upstream petroleum sector, and found:

Project proponents have to commit significant resources to approval processes as a result of complex compliance requirements. This is confirmed by the resource requirements in a selection of case studies ... For example, the LNG project in case study 2 required involvement of up to 90 people at various stages of the approval process, and incurred significant consultancy costs for processing approval applications. (PC 2009b, p. 199)

Do major project DAA processes impose unnecessary compliance costs? How significant are these costs? Can you provide evidence of this? Have compliance costs been increasing or decreasing in recent years? How do compliance costs associated with DAA processes compare with the international experience and across jurisdictions in Australia?

Are particular processes or areas of regulation especially costly? For example, compliance costs associated with offset provisions, or post-approval conditions? How can unnecessary costs be eliminated or reduced while still meeting regulatory objectives?

Possible causes of unnecessary costs

Unclear and inconsistent regulatory objectives

Overlapping, vague or inconsistent regulatory objectives can impose costs on major project proponents and the economy. Infrastructure Australia concluded that one of the reasons why the length and cost of DAA processes has increased is fragmented processes that contain disparate approvals with differing objectives at all levels of government (2009).

Are the regulatory objectives of major project DAA processes at all levels of government clearly defined? Are there specific examples of inconsistent or contradictory regulatory objectives within or across jurisdictions? How have regulators sought to balance competing policy objectives?

Unclear governance and institutional arrangements

DAA processes typically involve multiple government agencies and sometimes more than one level of government. In these situations there is a risk of duplication, overlap and inconsistency between regulatory institutions. This could impose unnecessary costs, create confusion and uncertainty for project proponents and reduce transparency and accountability.

Are the roles and responsibilities of agencies involved in assessing and approving major projects clear? Is there overlap in the functions agencies perform?

What is the appropriate role for Local Government in major project DAA processes?

How do DAA processes at different levels of government interact? Are DAA processes administered by separate agencies well-coordinated? If not, what are the key problems? What costs does this impose?

Resourcing and behaviour of regulators

The resourcing and behaviour of regulatory institutions is another factor that could impose an excessive compliance burden on major project proponents and result in poor regulatory outcomes. For instance, inadequate budgetary resources and capability within government agencies that administer DAA processes could lead to unnecessary delays. Reports have also raised concerns about high staff turnover, inadequate participation by senior staff in key meetings, lack of professionalism and regulatory capture. Appropriate rules governing the behaviour of decision-makers serve to preclude inefficient and improper conduct.

What is your assessment of how well regulators perform their functions? Are regulatory agencies well-coordinated? If not, can you provide evidence and specific examples?

Are regulatory agencies adequately resourced with skilled and experienced staff to efficiently assess and approve major projects? Has the amount of resources dedicated to DAA processes evolved in line with the number and complexity of major project development applications? Is resourcing of regulatory agencies more of an issue in some jurisdictions than others?

Is there evidence or specific examples to suggest that regulator behaviour is contributing to unnecessary compliance costs? What mechanisms are in place to guard against improper regulator behaviour and to ensure regulators are accountable for their decisions?

Regulatory complexity

There are concerns that major project DAA processes have become overly complicated, onerous, unclear and inflexible. The NSW Planning Review notes:

Over the 32 years since the *Environmental Planning and Assessment Act 1979* was passed, the comparatively simple and clear system it established has been subject to hundreds of amendments. Quite apart from the complexity of the language it uses, the framework of the legislation has become an alphabet soup of section numbers and letters that renders it almost impenetrable for professionals who need to work with it on a daily basis. It is entirely inaccessible to someone reading it for the first time. (Moore and Dyer 2012, p. 6)

Are existing processes cost-effective? If not, what are the primary reasons for this? For example, are existing processes redundant? Too onerous? Too prescriptive? Excessively complex? Unclear? How large are these costs?

The compatibility of DAA processes with the commercial realities of major project development might also be an issue. Proponents often delay certain project design decisions for commercial reasons, meaning that complete information about a project is not available at the assessment stage. Where regulatory processes and information requirements are unnecessarily rigid, this could impose costs on proponents and delay the approvals process.

Do the current regulatory arrangements adequately account for the commercial realities of project development? If not, how could they be improved?

Use of strategic planning

Several reviews (including previous Commission reviews) have found that the efficiency and effectiveness of DAA processes could be enhanced by greater use of higher-level, strategic planning frameworks and policies. For example, the Hawke Review considered that ‘real efficiency and environmental benefits could be gained by moving to greater use of strategic assessments and regional planning tools’ (2009, p. 12). The Australian Government response to the Hawke Review noted:

Strategic approaches also have significant benefits to proponents by increasing certainty and improving investment opportunities at an early stage, and by reducing the need for individual project referrals. (Australian Government 2011, p. 10)

Strategic planning is considered particularly important for bringing forward in time project assessment processes, to separate the project approval process from the strategic context, and for ensuring that the cumulative impacts of major project developments are taken into account.

To what extent are jurisdictions undertaking strategic planning? What are its benefits and costs? Does it assist in reducing the time and cost associated with major project DAA processes? Does it deliver better regulatory outcomes? Can this be demonstrated with examples? Are there good international examples of strategic planning that the Commission should consider?

Where strategic planning is in place, do major project DAA processes take into account the strategic planning objectives? Could existing processes more appropriately incorporate strategic planning? If so, how?

Where strategic planning frameworks are not in place, what are the reasons for this? How could these issues be overcome? How does the absence of broader strategic planning impact on major project DAA processes?

How well are the cumulative impacts of major projects accounted for under the current arrangements?

Effectiveness of current processes

DAA processes seek to ensure that environmental, social and other policy objectives are achieved. The *effectiveness* of the current arrangements in delivering good regulatory outcomes for the community is a key focus of this study. In addition to meeting policy objectives, it is important that major project DAA processes are open and transparent, provide appropriate and meaningful opportunities for public participation, and are subject to regular review and evaluation.

Do major project DAA processes deliver good regulatory outcomes for the community? Do the current arrangements strike the right balance between economic, social and environmental objectives?

Do the current arrangements provide appropriate opportunities for public participation in major project DAA processes? What are the benefits and costs of public involvement in these processes? How can the benefits be enlarged and the costs reduced?

Are major project DAA processes open and transparent? Are appropriate monitoring and enforcement mechanisms in place to ensure compliance with the regulations? Is regulation subject to regular review?

Are there any other impacts or concerns stemming from existing major project DAA processes in Australia that the Commission should consider?

6 Possible measures to improve the efficiency and effectiveness of processes

The Commission has been asked to make recommendations to improve Australia's major project DAA processes. In doing so, the Commission will consider various measures that have been adopted by governments in Australia and internationally.

Measures to coordinate and streamline regulatory processes

A number of Australian jurisdictions have adopted measures to streamline and better coordinate major project DAA processes. Examples of this include the Lead Agency Framework in Western Australia, the Case Management Framework in South Australia, the Queensland Government's Major Projects Office and the Australian Government's Major Projects Facilitation Program.

Some of the services that are typically provided under these arrangements include:

- information and advice to project proponents about regulatory requirements
- coordination of DAA processes across government agencies
- assistance to help proponents identify the potential impacts of development proposals
- a dedicated contact person within government.

Has the establishment of a 'Lead Agency Framework' in some jurisdictions improved the efficiency and effectiveness of DAA processes? Can you provide evidence and examples of where improvements have been achieved? Is there any relevant international experience?

Are there drawbacks or risks associated with adopting a 'Lead Agency Framework' or similar approaches? Does consolidating multiple functions in a single agency pose risks? How material are these risks?

Are there other ways to reduce duplication and improve coordination while still meeting regulatory objectives?

Measures to improve timeliness

Governments have sought to reduce timelines for assessment and approval processes, and provide greater certainty for proponents, by introducing measures such as statutory timeframes for decision making and ‘deemed’ automatic approvals after a certain period.

For example, in Victoria, the *Major Transport Project Facilitation Act 2009* provides statutory timeframes for assessment. Similarly, recent amendments to the *Land Use Planning and Approvals Act 1993* (Tas) provides for declared ‘Projects of Regional Significance’ to be subject to an integrated assessment process with statutory time limits (BAF 2012).

Is it practical to identify statutory time limits for particular assessment and approval processes? What are the benefits and risks of this approach? What has been the experience for regulators and project proponents in those jurisdictions where statutory timelines have been introduced?

Are there other ways to shorten timeframes while still achieving relevant regulatory objectives? How would such measures improve the efficiency and effectiveness of DAA processes? Can you provide evidence and examples of this?

How should trade-offs between timeliness and other characteristics of good regulatory process (such as opportunities for public participation) be managed?

Risk-based regulation

Adopting a more ‘risk-based’ approach to major project assessment and approval has been identified as one possible strategy for improving the efficiency of the current arrangements. This includes mechanisms for ‘scaling’ regulatory requirements relative to project size.

For example, in Western Australia the Environmental Protection Authority elected to adopt a risk-based approach to EIAs following a review of its procedures in 2009. The Victorian Government has also indicated that it is considering a more risk-based approach to EIAs (BAF 2012). Further, the NSW Green Paper (*A New Planning System for New South Wales*) foreshadows that the matching of regulatory requirements to risk will be a key element of approval reforms (NSW Government 2012).

To what extent are risk-based approaches to regulation being used for major project developments? What are the impacts of this?

How can 'scaling' mechanisms enhance the efficiency and effectiveness of DAA processes? Can you provide evidence and examples of this?

What are the risks and drawbacks of adopting a more risk-based approach to regulation? In what ways can these issues be managed?

Do regulatory agencies have the flexibility to adopt 'risk-based' approaches to project assessment and approval?

Reducing duplication between levels of government

Bilateral agreements between governments can reduce (or eliminate) duplication in DAA processes.

For example, bilateral *assessment* agreements for environmental matters are in place between the Australian Government and each State and Territory Government. Where these agreements apply, a single EIA can be used for relevant regulatory processes at the Australian Government level and at the State or Territory level.

COAG is currently considering reforms to implement bilateral *approval* agreements between the Australian Government and State and Territory Governments. A report on improving environmental regulation is due to be considered at the March COAG meeting. Only one bilateral approval agreement (in relation to the Sydney Opera House) is currently in place. Bilateral approval agreements would allow State and Territory Governments to issue approvals that comply with requirements at the Australian Government level and at the State or Territory level.

How have bilateral environmental assessment agreements improved the efficiency and effectiveness of major project DAA processes? Is there a case for extending or expanding these agreements?

Would bilateral approval agreements improve the efficiency and effectiveness of major project DAA processes? How material are these benefits?

Are there other measures or regulatory devices that have been implemented in Australia or overseas that have successfully reduced unnecessary costs? What evidence do you have of their efficacy?

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Attachment A: Terms of Reference

STUDY TO BENCHMARK AUSTRALIA'S MAJOR PROJECT DEVELOPMENT ASSESSMENT PROCESSES

Productivity Commission Act 1998

I, David Bradbury, Assistant Treasurer and Minister Assisting for Deregulation, pursuant to Parts 2 and 4 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake a study to benchmark Australia's major project development assessment processes against international best practice.

Background

Major projects in Australia are subject to a wide range of government regulations and development controls applied at the local, state and/or Commonwealth level. These controls are intended to serve the public interest by delivering desirable regulatory outcomes in a variety of ways including protecting the public from health and safety risks and managing environmental, social and other development-related impacts that may arise from a project.

While the regulations and controls are intended to deliver specific benefits and avoid undesirable impacts, they add a layer of cost to doing business and may be particularly burdensome if they involve unnecessary duplication, or are poorly designed. To the extent that they lead to longer than expected construction times, such processes may impact on the commercial viability of some projects.

The mining boom in Australia has led to a large increase in the number of major projects seeking approval, which has highlighted the need for efficient and streamlined approvals processes. The Business Council of Australia has argued that 'one of the key factors impacting on successful investment in Australia is the efficiency of government development approvals processes, and the related impact of red tape imposed by permits and regulation'.

This was discussed at the Business Advisory Forum (BAF) and it was agreed to further test the premise about the efficiency of the development approvals processes across a broad range of development categories (for example, in industries such as construction and resources) and across a range of locations (including urban and regional areas).

In response to a request from the Council of Australian Governments, Heads of Treasuries have considered the scope of the BAF's proposal to benchmark Australia's major project development assessment processes finding that it would be beneficial to undertake further work to measure Australia's performance relative to international best practice. In conducting further work, there is merit in assessing the effectiveness of approaches to streamline and coordinate development approvals processes which have been adopted by governments, such as a one-stop shop or Lead Agency Framework, as a means for coordinating interaction with the proponent.

Given the broader concerns in the community around the delivery of planned projects, this provides an appropriate time to consider the extent to which development assessment processes across all levels of government affect the costs incurred by business, deliver good regulatory outcomes for the public and provide appropriate transparency and certainty to facilitate business investment.

Scope of the research study

In undertaking the study, the Commission should:

1. examine the regulatory objectives and key features of Australia's major project development assessment processes at all levels of government, including the interactions between levels of government, the role of facilitation, the capacities and resources of the institutions involved and significant variations between jurisdictions
2. examine the regulatory objectives and key features of comparable international systems with respect to major project development assessment processes
3. identify critical elements of development assessment processes and compare these to assess the extent to which different decision-making approaches in Australian jurisdictions and alternative investment destinations overseas (including other federations) have a material impact on costs, timeliness, transparency, certainty and regulatory outcomes
4. examine the strategic planning context for major project approvals in Australia and in comparable international systems (including for example, the pursuit of urban and regional development policies, or broader strategic resource development plans)
5. identify best practice and against this benchmark evaluate jurisdictional approaches, such as one-stop shops and statutory timeframes, to make recommendations to improve Australia's processes, both within and between jurisdictions, by reducing duplication, removing unnecessary complexity and

regulation, and eliminating unnecessary costs or unnecessarily lengthy timeframes for approvals processes

6. assess mechanisms for ‘scaling’ regulatory requirements relative to project size and the expected benefits against the potential environmental, social, economic and other impacts
7. compare the efficiency and effectiveness with which Australian approvals processes achieve the protection of social, economic, heritage, cultural and environmental assets compared with comparable international systems.

In undertaking this study, the Commission should take into account the work being led by the Commonwealth Department of the Prime Minister and Cabinet to agree bilateral arrangements for accreditation of state/territory environment assessments and approvals processes. The Commission should not seek to duplicate this existing work, which COAG has agreed be finalised by March 2013.

In conducting the study, the Commission will also take into account evidence from benchmarking studies and other relevant studies, including the Infrastructure Australia ‘Principles for Assessment’, the COAG Reform Council’s review of capital city strategic planning systems and work on development assessment processes by individual jurisdictions, such as the NSW Planning System Review.

In conducting the study, the Commission should also examine relevant domestic case studies to inform its findings.

The Commission should consult with industry, non-government stakeholders and governments in conducting the study.

The Commission will publicly release a draft report and seek submissions prior to finalising the Report. The final Report should be provided within 12 months of the receipt of these Terms of Reference.

DAVID BRADBURY
Assistant Treasurer

[Received 7 December 2012]

Attachment B

HOW TO MAKE A SUBMISSION

This is a commissioned study and the Commission invites interested people and organisations to make a written submission.

Each submission, except for any information supplied in confidence (see below), will be published on the Commission's website shortly after receipt, and will remain there indefinitely as a public document. Copyright in submissions sent to the Commission resides with the author(s), not with the Commission.

How to prepare a submission

Submissions may range from a short letter outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

This is a public study and all submissions should be provided as public documents that can be placed on the Commission's website for others to read and comment on. However, under certain circumstances the Commission can accept sensitive material in confidence, for example, if it was of a personal or commercial nature, and publishing the material would be potentially damaging. You are encouraged to contact the Commission for further information and advice before submitting such material. Material supplied in confidence should be provided under separate cover and clearly marked 'IN CONFIDENCE'.

How to submit a submission

Each submission should be accompanied by a submission cover sheet. The submission cover sheet is available on the study webpage and a copy is included with this issues paper (attachment C). For submissions received from individuals, all personal details (for example, home and email address, phone and fax number) will be removed (for privacy reasons) before it is published on the website.

The Commission prefers to receive submissions as a Word (.doc) file attachment to an email (see address below). PDF files are also acceptable. To ensure your PDF is as electronically readable as possible, the Commission recommends that it is derived from word processing software (such as Microsoft Word or Lotus notes) and not from a scanner, fax or photocopying machine.

Track changes, editing marks, hidden text and internal links should be removed from submissions before sending to the Commission. To ensure hyperlinks work in your submission, the Commission recommends that you type the full web address (eg <http://www.referred-website.com/folder/file-name.html>).

Submissions can also be accepted by fax or post (see address below).

By email*: major.projects@pc.gov.au

By fax: 03 9653 2199

By post: Major Projects
 Productivity Commission
 Locked Bag 2 Collins Street East
 Melbourne VIC 8003

* If you do not receive notification of receipt of an email message you have sent to the Commission within two working days of sending, please contact the Administrative Co-ordinator.

Due date for submissions

Please send submissions to the Commission by **Monday 25 March 2013**.

Attachment C

Productivity Commission

SUBMISSION COVER SHEET

(not for publication)



Australian Government
Productivity Commission

Please complete and submit this form with your submission to:

Major Project Study
Productivity Commission
LB2 Collins Street East, Melbourne Vic 8003

OR

Facsimile (fax) to:
Delwyn Lanning 03 9653 2199
Email: major.projects@pc.gov.au

You can also register your interest online at the study homepage:
www.pc.gov.au/projects/study/major-projects

Name (first name and surname):

If submitting on behalf of a company or organisation:

Name of organisation:

Position in organisation:

Phone:

Mobile:

Email address:

Street address:

Suburb/City:

State:

P'code:

Postal address:

Suburb/City:

State:

P'code:

Please note:

- Copyright in submissions resides with the author(s), not with the Productivity Commission.
- Following processing, public submissions will be placed on the Commission's website. **Submissions will remain on the Commission's website as public documents indefinitely.**
- As this is a public study, 'in confidence' material can be accepted only under special circumstances. **You should contact the Commission before submitting this material.**
- For submissions made by individuals, only your name and the state or territory in which you reside will be published on the Commission's website. All other contact details will be removed from your submission.

Please indicate if your submission:

☐

Is a public submission, it does NOT contain 'in confidence' material and can be placed on the Commission's website.

☐

Contains SOME material supplied 'in confidence'
(provided under separate cover and clearly marked IN CONFIDENCE).

The Final Report will be available for viewing from the Commission's website – would you like to receive a hardcopy?

☐

No (view online)

☐

Yes (post)