B Benchmarking and good regulatory practice

Box 1.2 (chapter 1) set out 13 regulatory principles that constitute a benchmark of good regulatory governance and conduct. This appendix describes these principles.

## Regulator governance

Governance frameworks provide a structure through which the objectives of regulators are set and the means of attaining these objectives and monitoring performance are determined. Governance principles, such as those outlined below, should provide incentives for regulators to pursue objectives that will lead to broader community benefits and build confidence in the operation of the regulatory system.

### Clear, well‑defined regulatory objectives

Development assessment and approval (DAA) processes address situations where the private and social costs and benefits of development diverge, by imposing conditions on projects that are intended to remove, or at least reduce, this divergence. However, regulation in this (or any) area can be over used or poorly directed. This is less likely to happen when regulatory objectives have been clearly defined through a process that has established a robust rationale for intervention. Such a process should specify precisely the problem that regulation is intended to address and identify why there is a role for government to address that problem.

Having clear objectives has other benefits, as it:

* diminishes regulators’ discretion to extend their activities beyond what Parliament intended (known as regulatory creep)
* reduces uncertainty about how regulation will be interpreted and what is needed for compliance
* establishes the basis for assessing the performance of regulators and holding them accountable
* provides a focus for regulators and so guides their resource allocation and development of expertise (Victorian Competition and Efficiency Commission 2010).

### Clarity in roles and responsibilities

With objectives clearly defined, there needs to be clarity about who is responsible for delivering them. All levels of government, and different agencies within each level of government, can be involved in DAA processes. This creates scope for problems such as:

* overlap and shared responsibilities between different agencies
* conflicts between the roles performed by different agencies
* conflicts of interest in the roles performed by an agency.

These problems are less likely to be present when the roles and responsibilities of all entities involved in DAA processes are set out clearly. For example, it may be useful if statutory referrals are set out in one document and specify the role of the referral agency (Development Assessment Forum 2009).

### Accountable decision makers

When decision makers have clear objectives and their roles and responsibilities have been well specified, there is a basis for accountability. The prospect of being held to account creates incentives to carry out roles and responsibilities in line with specified requirements.

The accountability of participants in DAA processes is strengthened when there is clear specification of authority for:

* assessors to make recommendations
* approval authorities to make decisions based on those recommendations.

If decision making is delegated, accountability can be diminished, unless the conditions under which delegation is made and the scope of the authority that is devolved, are both carefully specified.

The last major step in the DAA process is the approval decision, which is typically made by a Minister or delegate and involves regulatory agencies, government departments, project proponents and other stakeholders. While a Minister is often ultimately accountable for the approval decision, other entities may have roles and responsibilities in the process for which they are accountable. If the process leads to a decision that is seen to be deficient, it is simplistic to hold only the Minister to account for this. Applying the accountability criterion requires defining the responsibilities for which participants in the process can be held to account.

### Appropriately independent regulators

While Ministers often make approval decisions, regulators may manage the assessment process and enforce approval conditions. The OECD (2013) points out that regulators’ decisions need to be ‘objective, impartial, consistent and expert’ and that having decisions made by an independent regulator rather than a Minister or officer of the Ministry should be considered where:

* there is a need for the regulator to be seen to be independent, to maintain public confidence in the objectivity and impartiality of decisions;
* both government and non‑government entities are regulated under the same framework and competitive neutrality is therefore required; or
* the decisions of the regulator can have a significant impact on particular interests and there is a need to protect its impartiality (OECD 2013, p. 33).

Independence is never absolute but is rather a matter of degree. Even separately constituted regulators with statutory independence normally depend on government funding. On the other hand, regulators located within departments can have arrangements that provide some independence from ministerial direction. The amount of independence that a regulator has will depend on factors such as the extent to which a Minister can direct it; its staffing flexibility; and the processes for appointment, termination of appointments of board members and the personal character of the individual concerned. The regulator’s independence from those it is regulating is also important, and may be managed by, for example, mandatory time gaps or cooling‑off periods between leaving a regulator and working in the regulated industry (OECD 2013).

### Suitably skilled and resourced institutions

It is unreasonable to hold institutions accountable for their contribution to DAA processes if they have insufficient resources to develop and maintain the skills to perform their responsibilities. The adequacy of resourcing influences whether the DAA process will lead to desired outcomes. Funding levels need to be:

adequate to enable the regulator, operating efficiently, to effectively fulfil the objectives set by government, including obligations imposed by other legislation. (OECD 2013, p. 58)

### Opportunities for public participation and review of decisions

DAA processes allow evidence to be sought from interested parties that informs the assessment of the project. Public participation, involving some form of dialogue between the public and the state, can generate evidence and identify options for addressing problems. It also promotes transparency by exposing the merits of decisions, assumptions and the analysis used to make those decisions.

Participation is important in all stages of the DAA process. Amelia Thorpe suggested:

… Public participation can offer many benefits, including improving the content of decision‑making by providing decision makers with information about potential benefits and impacts of projects, possible alternatives, and the different perspectives of the many groups that form the public. Participation can increase the legitimacy of decision‑making, thus reducing opposition to projects and making implementation easier. Participation is also valuable for its educative potential, as a means to raise awareness among the public about the tradeoffs involved in planning for the future. (sub. 16, p. 4)

In the application stage, consultation helps to identify the issues that need to be addressed, while in the assessment stage it provides evidence about these issues. Further consultation may be needed in the approval stage if there are gaps in the information that the decision maker needs. How much consultation may be needed at this stage depends on the effectiveness of consultation earlier in the process.

Participation is more likely to be effective if:

* public input has a real impact on decision‑making
* information is given in a wide range of formats
* a variety of forums are used
* it occurs when there is still scope to affect the outcomes
* there is clarity about the consultation process
* the process is accessible to those it is intended to reach
* feedback is provided to those who have made an input (Cabinet Office (UK) 2012); sub. 16, p. 5).

The choice of participation methods is evolving, reflecting the fact that the internet has reduced the cost of new forms of engagement, such as electronic polling, deliberative polls, and online tools that can illustrate the consequences of choices, and engage a wider cross‑section of the community and draw out tacit community opinion.

### Consistency with other regulations and higher level planning strategies

Major developments require approvals under different Acts and regulations. When they have different objectives or impose dissimilar approval processes, this can increase both the cost of securing approval and the probability of inconsistent decisions that do not achieve regulatory outcomes. Consistency is enhanced by integrating objectives in different Acts and regulations or by governments providing guidance on how different priorities should be weighted, where conflicting objectives are unavoidable.

### Regular review and evaluation

DAA processes operate within competing pressures that continually adjust as the nature and number of projects change, as technology develops, and as community expectations evolve. Approaches to regulation also develop as there is more experience with, for example, outcome‑based regulation or self‑accreditation. Evaluating current practices and looking for ways to improve them can:

* indicate whether regulations are working as intended and, if they are not, suggest ways to address problems
* keep regulation up to date when technological or social forces change
* improve legislation, because the knowledge that legislation will be formally reviewed may increase the quality of initial drafting
* improve the allocation of responsibilities for regulation, if it demonstrates weaknesses and suggests improvements
* build stakeholder support for regulation, if regulators demonstrate a willingness to learn from experience (Victorian Competition and Efficiency Commission 2008).

Good practice regulatory frameworks normally build in evaluation procedures and mechanisms for building on the lessons from these reviews.

## Regulator conduct

Governance frameworks leave considerable discretion as to how regulators administer regulation. Participants in this study had diverse views about how this discretion is exercised, but agreed that the impacts could be considerable. The Minerals Council of Australia (sub. 33), for example, cited a survey that found monitoring or enforcement regimes were either impractical or unduly focused on dictating process rather than outcomes. On the other hand, the Nature Conservation Society of South Australia (sub. 37) considers that the interpretation of criteria under the *Environment Protection and Biodiversity Conservation* *Act 1999* (EPBC Act) has not been sufficiently rigorous and cautious. The Commission has found that regulator conduct has a significant impact in other areas as well (box B.1).

|  |
| --- |
| Box B.1 The impact of regulator conduct: examples from other areas |
| In its study into regulator engagement with small business, the Commission concluded:  … The way regulations are implemented is often as important to small business and to compliance outcomes as the content of the regulations themselves. (2013, p. 3)  The Council of Small Business of Australia noted in its submission to that study that the majority of small business respondents to its survey reported that regulator behaviour is just as important as the design of regulation in contributing to compliance costs:  … respondents [business] indicated that they overwhelmingly considered BOTH regulatory design and regulator behaviour contributed equally to regulatory compliance cost. (2013, p. 3)  Similarly, Business SA submitted:  … it is often the approach and behaviour of regulators that can have a direct impact on how onerous or not the regulation and reporting requirements are for small business. (2013, p. 1)  And in an urban planning context, the Australian Hotels Association has argued:  … it is most often the interpretation of planning laws, rather than the laws themselves, that are the source of obstruction to the desirable improvement of licensed premises which serve the local community. (2010, p. 4) |
|  |
|  |

This section outlines five criteria, which identify conduct by regulators that lead to more efficient and effective outcomes.

### Clear and predictable processes

Clear and predictable processes build confidence in the legitimacy of the regulatory framework and reduce the costs of engaging with it. Given that tradeoffs between competing objectives are the focus of DAA processes, there needs to be clear and predictable processes for managing these tradeoffs. Regional Development Australia Far North Queensland and Torres Strait (sub. 26, p. 5) submitted that ‘providing certainty of processes and relevant industry policy is critical to securing investment and economic development’. Business SA (sub. 4) considered that DAA regulation and processes need to be predictable, transparent and easy to understand; and there should be certainty about information requirements.

Clarity and predictability are more likely to be achieved when regulators use decision criteria that are stable, well understood and lead to decisions that could have been predicted on the basis of the evidence that is available. When more than one regulator is involved, clarity is assisted if they use the same set of decision criteria. Predictability does not mean that criteria never change. However, changes to criteria should be limited to those that are a logical development of existing methodologies or could have been predicted on the basis of new evidence.

### Regulatory outcomes consistent with objectives

This criterion is significant because applying it seeks to reveal the extent to which the DAA process delivers intended outcomes. For example, it would be expected that Commonwealth environmental decisions will be made in accordance with the principles of ecologically sustainable development as set out in section 3 of the EPBC Act.

In addition, by focusing on the link between objectives and outcomes, this criterion directs attention to compliance. For example, there is little to be gained in regulating projects through conditions that are not capable of being enforced. Regulatory outcomes are more likely to be consistent with objectives when approval conditions are in line with the objectives of regulation, are enforceable and are enforced.

### Open and transparent processes

Open and transparent processes increase accountability and lead to decisions that more closely reflect community preferences. Such processes also mitigate concerns that regulators may be captured by regulated entities. Transparency is enhanced by opportunities for public participation and review and by publishing the reasons for approval decisions. Publication:

* strengthens incentives for decisions to be evidence‑based and rigorous
* is consistent with procedural fairness
* demonstrates how decision makers have balanced competing priorities.

### Proportionate and flexible regulatory requirements

Regulation uses government authority to change behaviour. It typically imposes costs on entities that are regulated, as well as delivering benefits through the consequent change in behaviour. There are usually many different ways to bring about that change in behaviour.

Proportionality is present when:

* alternatives to a particular regulatory approach have been considered and the option that yields the largest community benefits has been chosen
* there are no unnecessary obligations
* regulatory decisions, including conditions that are imposed before approval is given, impose costs that are proportionate to the impacts they are intended to address.

A risk‑based approach to regulation can be a proportionate approach when it is well designed.

The case for a risk‑based approach to regulation can be easily made on efficiency and effectiveness grounds. Regulation should be proportionate to the problem that it seeks to address; therefore a risk‑based approach would be underpinned by scientific evidence and a robust decision methodology. This is necessary if governments are to balance the tension towards reactive regulation to public responses to risk. (Bounds 2010, p. 23)

### No unnecessary costs

Administering and participating in approval processes imposes costs on government departments, regulators, the project proponent, and other participants (as well as creating benefits). Types of costs include:

* the costs of administering the process, such as determining the scope of the assessment, preparing impact assessments and running participation processes
* the costs of complying with conditions and offsets that are imposed through approval decisions, and which are borne in the first instance by project proponents
* delay costs that arise if the process delays project planning and implementation, which may take the form of additional holding costs, lost profits and lost interest on foregone profits. Delay costs may not be confined to the project in question. (The Hunter Valley Coal Chain Coordinator (sub. 56) pointed out that because projects in the coal chain are interdependent, the capacity benefits of other infrastructure projects cannot be fully realised until a delayed project is commenced.)

Comparing jurisdictions draws attention to potentially unnecessary regulatory burdens, given policy objectives, by identifying:

* differences between jurisdictions in regulatory requirements for achieving similar objectives
* the extent of regulatory duplication and inconsistency
* poor practice in the design, administration or enforcement of regulation.

Costs that exceed those that are needed for an effective approval process are wasteful. Such costs are less likely to occur in a regulatory framework that exhibits the other criteria outlined in this appendix, where there are clearly specified objectives linked to outcomes, and the process is run by skilled and accountable regulators, who operate transparently and adopt a proportionate approach to administering regulatory requirements.

C Australian DAA arrangements

This appendix summarises development assessment and approval (DAA) arrangements for major projects in each jurisdiction. Section C.1 describes the arrangements in each jurisdiction. Section C.2 contains a series of tables on assessment and approval authorities, compliance and enforcement responsibilities, and legislation relevant to DAA processes.

Unless otherwise indicated, the material in this appendix is based on Commission analysis of legislation in each jurisdiction, or the Commission’s correspondence with individual agencies.

## Overview of major project DAA arrangements by jurisdiction

### Commonwealth

Major projects that are likely to have a significant impact on a matter of national environmental significance (MNES), or that are undertaken on Commonwealth land, or by a Commonwealth agency, may be subject to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Under the EPBC Act, there are no assessment and approval pathways of the type existing under State and Territory arrangements, although actions that are likely to have a significant impact on an MNES must be referred to the relevant Commonwealth Minister to determine whether the action is ‘controlled’ by the Act. If an action is controlled, the Minister determines what assessment process should be used.

The Minister can decide that the action is: unacceptable (and cannot proceed as planned); a controlled action (subject to the full assessment and approval process under the EPBC Act); not a controlled action (provided the action proceeds in the manner specified by the Minister); or not a controlled action (no further action required under the EPBC Act). For actions deemed ‘unacceptable’, the proponent is notified and may withdraw the action, modify and resubmit, or request the Minister reconsider the decision.

For controlled actions, the next step is to determine the assessment approach. There are seven possible options open to the Minister:

* an assessment under a State or Territory bilateral assessment agreement accredited under the EPBC Act
* an assessment under a State or Territory assessment process accredited under the EPBC Act on a case‑by‑case basis
* assessment on referral information (that is, assessment is undertaken solely on the information provided on the referral form)
* assessment on preliminary documentation (this includes information on the referral form and any other relevant material identified by the Minister as being necessary to adequately assess a proposed action)
* assessment by environmental impact statement (EIS)
* assessment by public environment report (PER)
* assessment by public inquiry.

Table C.1 shows State and Territory processes accredited for EPBC Act purposes.

Table C.1 Accredited State and Territory assessment processes

|  |  |  |
| --- | --- | --- |
| Jurisdiction | Accredited processes | Legislation |
| New South Walesa | This agreement has expired | *‑* |
| Victoria | Environmental effects statement | *Environment Effects Act 1978* |
|  | Assessment by an Advisory Committee or a joint Advisory Committee/Panel | *Planning and Environment Act 1987* |
|  | Assessment by permit application | *Planning and Environment Act 1987* |
|  | Works approval application | *Environment Protection Act 1970* |
|  | Bulk water entitlement assessment | *Water Act 1989* |
| Queensland | Environmental impact statement for coordinated projects | *Sustainable Planning Act 2009*  *State Development and Public Works Organisation Act 1971*  *Environment Protection Act 1994* |
| South Australia | Environmental impact statement, public environment report or development report for ‘major projects’ | *Development Act 1993* |
| Western Australia | Assessment by public environmental review | *Environment Protection Act 1986* |
| Tasmania | Integrated assessment process for projects of state significance | *State Policies and Projects Act 1993* |
|  | Assessment of development proposal and environmental management plan | *Environmental Management and Pollution Control Act 1994* |
|  | Assessment process for projects of regional significance | *Land Use Planning and Approvals Act 1993* |
| Northern Territory | Assessment by environmental impact statement public environmental review | *Environmental Assessment Act* |
|  | Assessment by inquiry | *Northern Territory Inquiries Act* |
| ACT | Environmental impact statement | *Planning and Development Act 2007* |

a The New South Wales agreement expired in 2012. The Australian and New South Wales Governments have indicated that this agreement will be renewed by 2014.

A major project can also be subject to a range of other Commonwealth regulations requiring assessment and approval relating to environment, heritage, native title and land rights protections, as well as some regulations specific to offshore petroleum extraction and pipeline construction (table C.2).

Table C.2 Commonwealth legislation affecting major projects

|  |  |  |  |
| --- | --- | --- | --- |
|  | Act | Agency | Process/approvals |
| **Environment** | *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* | Dept of the Environment | Under the EPBC Act, there are two ways of achieving approval for actions that are likely to have a significant impact on a matter of national environmental significance (MNES):  ***Assessment of individual actions***  An individual action that will have, or is likely to have, a significant impact on a MNES (or any action that will have a significant impact on the environment on Commonwealth land or which is taken on Commonwealth land or by a Commonwealth agency that is likely to have a significant impact on the environment) must be referred to the Minister to determine if it requires assessment and approval under the EPBC Act.  ***Strategic assessments***  These examine the potential impacts of actions under a policy, plan or program (for example, local government plans, regional plans and infrastructure plans). The Minister may endorse the plan and/or approve actions under the plan.  The EPBC Act provides several other ways to strategically protect MNES including:   * conservation agreements * bilateral agreements * providing the Ministers advice in relation to particular activities (s. 160) * bioregional planning * World and National Heritage plans. |
|  | *Great Barrier Reef Marine Park Act 1975* | Dept of the Environment | Permits are required for particular activities undertaken in the Great Barrier Reef Marine Park. |
|  | *Environment Protection (Sea Dumping) Act 1981* | Dept of the Environment | Permits are required for sea dumping activities undertaken in Commonwealth waters. |
|  | *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* | DIRD/ AMSA | This Act sets standards for sea pollution/discharge and imposes fines and penalties for breaches of those standards. |
|  | *Sea Installations Act 1987* | Dept of the Environment | Permits are required to construct sea installations in Commonwealth waters. |
|  | *Environment Protection (Alligator Rivers Region) Act 1978* | Dept of the Environment | This Act imposes requirements on proponents of uranium mining projects in the Alligator Rivers region. |

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Table C.2 Commonwealth legislation affecting major projects (continued)

|  |  |  |  |
| --- | --- | --- | --- |
|  | Act | Agency | Process/approvals |
| **Heritage** | *Australian Heritage Council Act 2003* | Dept of the Environment | This Act establishes the Australian Heritage Council, which advises the Minister responsible for heritage matters (including the significance of heritage places being considered for listing by the Minister under the EPBC Act). |
|  | *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* | Dept of the Environment | World Heritage properties and National Heritage places are identified as MNES under the EPBC Act. Accordingly, any action that will have, or is likely to have, a significant impact on the heritage values of these places must be referred to the Minister to determine if it requires assessment and approval under the EPBC Act. |
|  | *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* | Dept of the Environment | The Minister can make a declaration to protect an area or object of Indigenous heritage from a threat of injury or desecration if a request is made by an Aboriginal or Torres Strait Islander person. |
|  | *Protection of Movable Cultural Heritage Act 1986* | AGD | Permits are required to export items of cultural heritage from Australia. |
|  | *Historic Shipwrecks Act 1976* | Dept of the Environment | Permits are required to damage or disturb historic shipwrecks or relics, to enter a protected zone around an historic shipwreck site, to transfer possession of an historic shipwreck relic and to remove an historic shipwreck relic from Australia. |
| **Petroleum and pipelines** | *Offshore Petroleum and Greenhouse Gas Storage Act 2006* | Dept of Industry/ NOPSEMA | Authorisation is required to conduct petroleum exploration and recovery operations, and to construct and operate petroleum and greenhouse gas pipelines, in Commonwealth waters. Authorisations (titles) are granted by the Joint Authority. Petroleum projects undertaken in Commonwealth waters are regulated by NOPSEMA. Approvals and requirements under this regime include an environment plan (including an oil spill contingency plan), a well operations management plan, well activity approvals and a safety case. |
|  | *Offshore Minerals Act 1994* | Dept of Industry | This Act applies to (non-petroleum) mining projects undertaken in Commonwealth waters. There are five different mining authorisations that can be granted by the Joint Authority. |

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Table C.2 Commonwealth legislation affecting major projects (continued)

|  |  |  |  |
| --- | --- | --- | --- |
|  | Act | Agency | Process/approvals |
|  | *Petroleum (Timor Sea Treaty) Act 2003* | Dept of Industry | Petroleum production activities in the Joint Petroleum Development Area (JPDA) (an area in the Timor Sea in which Australia and Timor‑Leste jointly manage exploration and development of petroleum resources) are subject to approvals by the Autoridade Nacional do Petroleo (the ANP) (the Timor-Leste National Petroleum Authority) which regulates operations in the JPDA on behalf of both Australia and Timor-Leste. |
|  | *Submarine Cables and Pipelines Protection Act 1963* | DIRD | Permits are required for activities that may impact on cables and pipelines in Commonwealth waters. |
| **Native title and land rights** | *Native Title Act 1993* | DPM&C | This law allows for recognition of the native title rights of Indigenous people through a claims and mediation process. Determinations are made by the Federal Court of Australia. Other processes are administered by the Native Title Tribunal. |
|  | *Aboriginal Land Rights (Northern Territory) Act 1976* | DPM&C | This Act provides for the transfer of land in the Northern Territory to Aboriginal people, who are represented by Aboriginal Land Councils. Permits are required to access land held under inalienable freehold title. |
| **Others** | *Airports Act 1996* | DIRD | Masters Plans, Environment Strategies and Major Development Plans are subject to approval by the Commonwealth Transport Minister. |
|  | *Fisheries Management Act 1991* | Dept of Agriculture/  AFMA | Permits are required for taking fish and using boats and equipment in Commonwealth fisheries. |

DIRD = Department of Infrastructure and Regional Development. NOPSEMA = National Offshore Petroleum Safety and Environmental Management Authority. DPM&C = Department of Prime Minister and Cabinet. AGD = Attorney‑General’s Department. AFMA = Australian Fisheries Management Authority. AMSA = Australian Maritime Safety Authority.

### New South Wales

The NSW *Environmental Planning and Assessment Act 1979* (EPA Act) currently establishes two pathways for major project assessment in NSW:

* the state significant development pathway (SSD) (under Part 4.1 of the EPA Act) is primarily for large-scale private sector projects usually greater than $30 million
* the state significant infrastructure pathway (SSI) (under Part 5.1 of the EPA Act) is primarily for large public infrastructure projects where a government agency is the proponent.

The NSW State Environmental Planning Policy (State and Regional Development) 2011 sets out a range of criteria defining the types of projects that must be subject to the SSD or SSI pathway. A proponent who believes that their project meets the SSD or SSI criteria typically lodges a preliminary online development application with the NSW Department of Planning and Infrastructure (the Department). The Department makes a preliminary assessment of the project against the criteria and confirms whether the proposal qualifies.

In certain circumstances, the Minister for Planning (the Minister) can ‘declare’ or ‘call-in’ projects that do not meet the criteria as a SSD or SSI. For example, the Minister can ‘call-in’ a project as a SSD, but only after the Minister has obtained, and made public, advice from the Planning Assessment Commission about the state or regional planning significance of the development.

Development applications are processed and assessed within the Department. Once the pathway is confirmed, the Department begins the process for determining the Director-General’s Environmental Assessment Requirements (DGRs) for the project. These specify the scope of issues and other information requirements that must be addressed in the project’s environmental impacts statement (EIS). In setting the DGRs, the Department seeks input from the referral agencies and public authorities (including local councils) that would normally have statutory regulatory and approval responsibilities for the proposed project.

While the Minister is technically the consent authority for SSD and SSI applications, in practice the Department has delegation to make decisions where:

* there are less than 25 objections
* there is local council support
* a reportable political donation has not been made.

The Planning Assessment Commission has delegation to make decisions on applications made by proponents as follows (excluding applications made by, or on behalf of, a public authority):

* there are more than 25 objections
* the local council has objected, or
* a reportable political donation has been made.

A declaration of SSI means certain permits or approvals are not required by proponents, such as:

* an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*
* an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*
* an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act repealed by that Act) to clear native vegetation or State protected land.

A declaration of SSI also means there are some permits or approvals which, while proponents still need to obtain them, cannot be refused by agencies because their refusal would be inconsistent with the development consent. These include:

* an aquaculture permit under section 144 of the *Fisheries Management Act 1994*
* an approval under section 15 of the *Mine Subsidence Compensation Act 1961*
* a mining lease under the *Mining Act 1992*
* a production lease under the *Petroleum (Onshore) Act 1991*
* an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*
* a licence under the *Pipelines Act 1967*.

The Minister can also declare any SSI project as critical state significant infrastructure (CSSI) if he or she considers it is essential for economic, environmental or social reasons. A CSSI declaration means a development application can be lodged without the consent of landowners, exempts the development application from additional environmental laws, and restricts the availability of merits review. The EPA Act prohibits ministerial delegation of CSSI projects.

The NSW Government is seeking to implement a number of reforms to the NSW planning system. The Planning Bill 2013 is before the NSW Parliament at the time of completion of this report (and has passed the Legislative Assembly). The proposed reforms seek to place greater reliance on strategic planning, reduce assessment times for straightforward applications, simplify the planning process and reduce the costs associated with planning decisions. Proposed reforms continue the existing major project pathways (SSD and SSI), while introducing a new pathway for infrastructure projects identified by the State Government as ‘essential’ (Public Priority Infrastructure).

Under the proposed reforms, projects can be declared Public Priority Infrastructure by a published ministerial order containing reasons for the declaration. Once declared, such projects will not require further planning approval, and will not be subject to a number of other provisions of the proposed Act (including the environmental impact assessment requirements). However, a project definition report is required to be made public. The report must set out a description of the development, the measures that the proponent will take to avoid, minimise or mitigate any adverse impacts of the development, and the monitoring, auditing and reporting that the proponent will undertake in relation to the environmental impacts of the development.

The Planning Bill 2013 will repeal the EPA Act if passed by both houses of parliament in its current form.

### Victoria

A major project in Victoria can be assessed and approved under a range of regular and designated major project pathways depending on the characteristics of the project and the requirements under the *Planning and Environment Act 1987* (Planning and Environment Act) and other legislation. In particular, the DAA processes for a given project will depend on:

* whether it requires a planning permit, an amendment to a local planning scheme, or a Ministerial Permit under the Planning and Environment Act
* whether the ‘responsible authority’ under the Planning and Environment Act — the authority in charge of administering a planning scheme and granting permits — is a local government, the Minister for Planning (through use of ‘call‑in’ powers or Ministerial Permits), or some other authority
* what other DAA processes are required under other state legislation (such as for mining projects under the *Mineral Resources (Sustainable Development) Act 1990*)
* whether an environmental assessment is required under the *Environment Effects Act 1978* (Environment Effects Act).

For major projects that require a planning permit, a project proponent lodges a planning permit application with the local council which assesses and approves the application in accordance with a local planning scheme following processes set out in the Planning and Environment Act.

A major project may also require an amendment to a local planning scheme to allow a planning permit to be approved by a local government. The amendment can be requested by a project proponent, the local government or another planning authority, but must be decided by the Minister for Planning following processes set out in the Planning and Environment Act.

The Minister for Planning can call-in a planning permit application that would otherwise be assessed and approved by a local government (under Section 97 of the Planning and Environment Act) or an application to amend a planning scheme (under processes laid out in the Planning and Environment Act, *Heritage Act 1995* and *Victorian Civil and Administrative Tribunal Act 1998*). The criteria for exercising this call-in power include where a project is of State or regional significance.

Certain large-scale developments or developments in specified areas require a Ministerial Permit from the Minister for Planning. This pathway has been used frequently in recent years, predominantly for large commercial and residential buildings in the City of Melbourne and its surrounds and developments in the State’s alpine areas.

Environmental impacts are assessed under a separate environmental assessment process established under the Environment Effects Act. Any responsible authority (local government, Minister or other) that believes a project they are assessing may have significant effects on the environment must refer the planning permit application to the Minister for Planning for a decision on whether an environment effects statement (EES) is required. Where the Minister determines an EES is required, the proponent must prepare and submit the EES to the Minister for assessment under processes set out in the Environment Effects Act. The Minister’s assessment report is sent to the relevant decision making authority to inform them in making a final decision on whether or not to approve the project.

Major transport projects in Victoria are assessed under a dedicated DAA pathway. They must be declared by the Governor under a process set out in the *Major Transport Projects Facilitation Act 2009*.

A project is eligible to be declared if it is: road infrastructure; rail infrastructure; infrastructure that can be used for the movement of persons or goods; a port; a facility at which goods can be loaded or unloaded or temporarily stored; or any project that incorporates one of these types of infrastructure.

The Premier must prepare, and publish in the Government Gazette, project declaration guidelines which are used to determine whether the project is of economic, social or environmental significance to the State or a region.

The Premier, in consultation with the Minister for Planning, assesses the project against the guidelines and if they find it to be of significance, the Premier can recommend declaration to the Governor, who then formally declares the project a major transport project.

Once the project has been declared, the process depends on the level of assessment. For impact management plans, the Minister for Planning assesses and approves the development. For comprehensive impact statements, a committee assesses the development, and the Minister for Planning approves it.

The Victorian Parliament recently passed an Act amending these processes, the *Major Transport Projects Facilitation (East West Link and Other Projects) Act 2013*. This Act, among other things, provides increased flexibility to proponents (for example, with regard to allowing variations to project designs); allows some early works to commence sooner; shortens statutory timelines; provides for more risk-based assessment processes and streamlines administrative arrangements (Napthine 2013).

### Queensland

Major projects in Queensland can be assessed and approved under various designated pathways under the *State Development and Public Works Organisation Act 1971* (SDPWOA). These pathways include the following:

* *Coordinated projects:* developments with complex approval requirements, that are of strategic significance, or that have significant environmental effects, or significant infrastructure requirements (for example, large LNG and mining projects, industrial installations, resorts, ports and transport infrastructure).
* *Prescribed developments*: mineral or energy projects of major economic significance, or that require provision of infrastructure which would place an excessive financial burden on the State, or that significantly affect provision of services and facilities by the Government.
* *prescribed projects*: coordinated projects, projects in a state development area, or projects considered to be economically or socially significant to Queensland or the region in which the project is to be undertaken, or that affect an environmental interest of Queensland or a region, can be declared prescribed projects by the Minister for Planning.
* *Projects in declared state development areas*: clearly defined areas of land established by the Coordinator-General to promote economic development in Queensland (for example, industrial hubs for large-scale, heavy industry, multi‑user infrastructure corridors and major public infrastructure sites).
* *Private infrastructure facilities:* projects that are of economic or social significance and have economic or social benefits to a region, or that satisfy an identified need or demand for services (for example, road, railway, bridge or other transport infrastructure, electricity generation, transmission or distribution facilities, oil or gas storage, transmission or distribution facilities).

Major projects with a ‘state interest’ can be called-in and assessed by the Minister for Planning under the *Sustainable Planning Act 2009*. Major urban developments in priority development areas can be assessed under processes set out in the *Economic Development Act 2012.*

Under the SDPWOA, a project might be declared a coordinated project if it has:

* complex approval requirements, involving local, State and Australian Governments
* significant environmental effects
* strategic significance to the locality, region or State, including for the infrastructure, economic and social benefits, capital investment or employment opportunities it may provide
* significant infrastructure requirements.

The Coordinator-General can make a declaration in response to an application from a proponent or can declare any project he or she considers justified.

When an environmental impact statement (EIS) is required under the SDPWOA, terms of reference must be developed. The Queensland Government has recently reformed this process by developing shortened, standardised terms of reference for the EIS and by reducing state agency input into the draft terms of reference.

Once the EIS has been conducted, the EIS report is publicly exhibited and public submissions can be made. The Coordinator-General is responsible for evaluating the EIS, taking into account public submissions and other material, before preparing an assessment report, which is also made public. The proponent may propose changes, which if substantial may prompt the Coordinator-General to require a further EIS assessment with public notice period. The Coordinator-General will then prepare a ‘Change Report’ which is also made public.

The Coordinator-General provides an assessment report to the decision maker (ordinarily the Department of Environment and Heritage Protection (DEHP)) that recommends whether or not the project should proceed, sets out conditions and offsets for the development approval, and can also recommend conditions that should be imposed on subsequent environmental authorities/permits. DEHP is also responsible for granting some environmental authorities and permits, and imposing conditions on these permits. DEHP can only decide whether or not the project should proceed. If the development is approved, DEHP must accept all the conditions recommended by the Coordinator-General. Any additional conditions it imposes must be consistent with these conditions.

Coordinated projects are also required to conduct a social impact assessment. Recent reforms mean proponents are no longer required to prepare a social impact management plan, instead the focus is on outcomes-based commitments and mitigation strategies.

Coordinated project proponents are still required to obtain all other secondary development approvals and licences from local authorities and State Government agencies.

On 1 July 2013, Queensland established the State Assessment and Referral Agency (SARA) to create a central point for development applications, resulting in one application and one response from Government. The reform means the Department of State Development, Infrastructure and Planning (as the SARA) will coordinate assessment and referrals across government (but this will not apply to the Coordinator-General’s processes).

The Queensland Government is also developing a ‘Common Resources Act’ to replace the State’s current resources legislation (*Mineral Resources Act 1989*; *Petroleum and Gas (Production and Safety) Act 2004*; *Petroleum Act 1923*; *Greenhouse Gas Storage Act 2009*; *Geothermal Energy Act 2010*), which will be implemented in stages and finalised by 2016. This is to simplify resources industry regulation to bring it into line with comparable jurisdictions. (For example, the Queensland Government suggests that Alberta, Canada has 27 per cent of Queensland’s regulatory volume (DNRM 2013).

### South Australia

The two pathways for assessing major projects in South Australia are set out in the *Development Act 1993*:

* the major development or project pathway (under section 46). Major development proposals include a range of private and some publicly funded projects including the desalination plant, port facilities, commercial and residential buildings, and mining operations
* the Crown development and public infrastructure pathway (under section 49). These provide for the streamlined assessment of public infrastructure projects (advanced by either public or private proponents). The Crown development and public infrastructure pathway is used primarily for government infrastructure projects but is also available for private projects that are sponsored by a Government agency.

The major developments process is accredited under the Commonwealth EPBC Act bilateral assessment agreement (although the Crown development and public infrastructure pathway process is not). Once a proposal has been declared a ‘major development’ by the Minister under section 46, the development application is referred to the Development Assessment Commission (DAC) — a statutory body established under the *Development Act 1993*.

The DAC then determines which of three levels of further detailed assessment is required:

* an environmental impact statement (EIS) for the most complex proposals, where there are a wide range of issues to be investigated in depth
* a public environmental report (PER) where the issues surrounding the proposal need investigation in depth but are narrower in scope and relatively well known
* a development report (DR), the least complex level of assessment, which relies principally on existing information.

Typically where an EIS is required, the proponent would prepare the EIS and the Department would prepare an assessment report for the Minister, ahead of a decision on the development application by the Government (although some decisions could be delegated to a Minister or the DAC). For Crown development and public infrastructure, the DAC assesses all applications and provides a report to the Minister for Planning, who makes the final decision. If the Minister approves a development that the DAC considers to vary significantly from the local development plan, or if the local council objects, the Minister must submit a report on the matter to Parliament. There are no merit appeal rights for the major developments or Crown development and public infrastructure pathways.

Where a project includes one or more activities of environmental significance (*Environmental Protection Act 1993* Schedule 1), assessment documents must be referred to the Environment Protection Authority (EPA) for deliberation and comment. Where such an activity is not proposed, assessment documents may still be referred to the EPA should the assessment authority decide such a referral is necessary to fully understand the potential impacts of a proposal. The EPA also issues environmental permits (although after a development approval has been obtained under section 46, the EPA cannot refuse a required permit).

In South Australia, case management facilitates access to regulatory agency personnel on behalf of the proponent, enabling regulatory agencies to be aware of the potential project and to assign resources from the beginning of the assessment process. Case managers typically have established networks within the relevant regulatory agencies.

In February 2013, South Australia announced the formation of an Expert Panel on Planning Reform to review the State’s planning system. While focused on South Australia’s planning legislation, it will also look carefully at all legislation that intersects with planning, and other factors that impact on the planning system. Final recommendations are scheduled for December 2014.

### Western Australia

Major projects[[1]](#footnote-1) in Western Australia can be assessed and approved as a:

* development that must be approved by Development Assessment Panels (DAPs)
* development for which the proponent may elect to have the DAPs or another body determine it
* development that is not eligible to be determined by the DAPs, in which case it will be assessed and approved by the local council and/or the Western Australian Planning Commission (WAPC).

With some exceptions (such as single dwellings), applications for which the estimated cost of development is $7 million or more ($15 million or more in the City of Perth) are mandatory DAP applications. There are 15 DAPs, each dealing with a specific region. DAPs comprise a mix of local government representatives and technical experts. Local government representatives are nominated by the relevant local government, and appointed by the Minister. Specialist members are appointed by the Minister.

A project subject to an ultimate approval decision by a DAP may be assessed by the local council, the WAPC, or both, depending on the provisions of the regional planning scheme.

The local government and/or the WAPC assesses the application in accordance with the relevant local or regional planning scheme, including public advertising of the application (if required) and referral to internal and external departments and agencies. The local government and/or the WAPC prepares a ‘responsible authority report’ containing its recommendations on how the DAP application should be determined and provides it to the DAP. This is intended to be a technical report by their planner, and not an expression of a council’s view as to whether they think the application should be approved.

The DAP is required to determine applications in accordance with the provisions of the relevant planning instrument. The DAP is required to determine the application within 60 days (if the application does not require public advertising) or within 90 days (if the application does require public advertising) from the date the DAP development application was received and acknowledged by the local government. The DAP must have regard to, but is not bound to give effect to, the recommendations included in the report. However, the planning scheme applies to the DAP as to other bodies. The meeting at which the DAP makes its decision is public.

The applicant can seek a review of the DAP’s decision by the State Administrative Tribunal. If there is an application before the State Administrative Tribunal, the Minister may call-in this application and determine it him or herself. The Minister is not bound by planning considerations but may make the determination having regard to any other matter, including the public interest, and this decision is not appellable.

The assessment manager (WAPC or the local council) does not conduct the environmental impact assessment associated with major projects. These are the responsibility of the Environmental Protection Authority (EPA) in Western Australia. The EPA processes are separate from the development approval process.

Once a significant or strategic proposal has been referred, the EPA has 28 days to decide whether or not to assess it. When it completes an assessment, it will provide a report to the Minister and the decision making authority. The report is also made public. The Minister for the Environment will then consult with relevant Ministers (for example, Planning and Mining) and if possible, agree with them on whether, and how, the proposal should be implemented. If the Ministers cannot agree, the matter is referred to Cabinet, and its decision cannot be appealed.

Western Australia has adopted a Lead Agency Framework to assist in facilitating the approval of major projects. This means one government agency, such as the Department of Mines and Petroleum for a mining project, assists with or coordinates approvals for a project proposal.

The lead agency is responsible for:

* providing proponents with information on statutory requirements through agency guidelines and referrals
* case-managing and coordinating approvals applications across government for proposals, where appropriate
* assisting proponents to identify the potential impacts of the proposal on matters such as infrastructure, the environment and regional communities, as well as the social considerations that arise from the proposal.

### Tasmania

Tasmanian legislation establishes three main pathways for major projects:

* projects of state significance (under the *State Policies and Projects Act 1993*)
* projects of regional significance (under the *Land Use Planning and Approvals Act 1993*)
* major infrastructure development projects (under the *Major Infrastructure Development Approvals Act 1999*), used primarily for large public infrastructure projects such as roads, railways or power lines.

If a project is declared a project of state significance, the Environment Protection Authority (EPA) will not conduct an environmental impact assessment. Instead, the Tasmanian Planning Commission (TPC) conducts an integrated assessment of all the environmental, social, economic and community issues relevant to that project, as well as any other issues as may be prescribed by the Minister. The TPC reports to the Minister ‘as soon as practicable’ on whether the project should proceed and under what conditions. This report is publicly available.

The Minister must make a decision, which can differ from the TPC’s recommendation, within 28 days of receiving the report. There are no criteria in legislation to guide decisions. However, they need to be approved by both Houses of Parliament to take effect. The TPC can subsequently specify additional conditions in a report (which also must be publicly available). The Minister must respond to this report within 28 days. If the new decision diverges from the previous one, it must be provided to both Houses of Parliament.

If a project is declared as a project of regional significance, the TPC appoints a Development Assessment Panel (DAP) to undertake the assessment, including the setting of the scope of the environmental assessment (the Assessment Guidelines), and also refers the project to the EPA. A DAP comprises a representative from the TPC, a person nominated by relevant councils and a person considered to be an expert by the TPC. The DAP (and the Minister) receive advice from the EPA on whether the project will be assessed under the *Environmental Management and Pollution Control Act 1994*, the class of assessment required, and the scope of the Assessment Guidelines. The DAP must make a decision about whether to grant a development permit for the project (and under what conditions) as soon as practicable.

If the Minister decides to declare a project to be a major infrastructure project (a decision which is disallowable by Parliament), a combined planning authority is then set up with representatives from relevant planning authorities. It assesses the project and decides whether to grant permits to the project and under what conditions. The role of the EPA is the same as for projects of regional significance.

### Northern Territory

Approval procedures for major projects in the Northern Territory are consistent with the approval process operating more generally in the Territory. There are major project teams in the Department of Business and the Department of the Chief Minister, that perform a ‘lead agency’ role facilitating approvals through government (but not doing assessments or providing approvals directly).

The NT *Planning Act* defines activities requiring a ‘development consent’. Divisions of the Development Consent Authority assess and approve development applications within their division area. Outside of these areas, the consent authority is the Minister. The Minister may also ‘call-in’ applications.

The Planning Minister can also grant Exceptional Development Permits to allow projects that would otherwise be a prohibited development under the Planning Scheme, and this instrument has been used for some major projects.

Zoning maps show the zoning of land in the Northern Territory, and there is a defined range of uses permitted for each zone under the Planning Scheme. Uses in a particular zone may be permitted without the consent of the consent authority, permitted with the consent of the consent authority, or prohibited. There are large areas of the Northern Territory that are unzoned. In the unzoned areas, development provisions of the Planning Scheme do not apply, although land use controls sometimes do.

Environmental assessments are overseen by the NT Environment Protection Authority. Where a project is likely to have a significant impact on the environment, some form of environmental assessment is required. This will take the form of either an environmental impact statement (EIS) or public environmental report (PER), depending on the scale, complexity and impact of the project. The PER process is more limited than for an EIS except where the proposal is being assessed under the bilateral assessment agreement between the Northern Territory and Australian Governments.

The NT EPA assesses the PER or EIS and makes recommendations to the Environment Minister, who passes on the NT EPA’s assessment and recommendations to the responsible portfolio Minister, who makes the final decision. In providing it to the responsible Minister, the Environment Minister may make comment on the NT EPA’s assessment report. If the comment is contrary to the assessment report, the Environment Minister must provide notice to the NT EPA of the comment and the reason for it, and table this notice in the Legislative Assembly.

If the responsible Minister makes an approval decision that is contrary to the NT EPA’s assessment report, he or she must provide notice to the NT EPA of the decision with reasons and table this notice in the Legislative Assembly.

Mining projects are regulated under the *Mining Management Act*. For mining projects, following an environmental impact assessment that takes place in the same way as for non-mining projects, all proposed disturbance to the environment must be assessed and approved through a Mining Management Plan overseen by the Department of Mines and Energy. The plan includes responses to recommendations of the environmental impact assessment.

### Australian Capital Territory

Under the [*Planning and Development Act 2007*](http://www.comlaw.gov.au/Details/C2012C00719/Download), the requirements for assessing development depend on which assessment track the development falls under. When an application for development is made, it can fall under one of three assessment tracks: code track, merit track or impact track.

The code track is the least onerous. Development proposals are approved if they comply with the rules that apply to the proposal.

Development applications in the merit track are considered by the Planning and Land Authority which must consider:

* the objectives for the zone in which the development is proposed to take place
* the suitability of the land for the proposed development
* each representation received in relation to the development
* the advice of any entity to which the application was referred
* any management plan for public land
* the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts.

Merit track applications must also be referred to a number of other agencies as prescribed by the Territory Plan (the key statutory planning document in the ACT), unless their endorsement has been lodged with the development application.

In addition to decision requirements that apply to merit track assessments, development applications in the impact track must include a completed environmental impact statement (EIS). However, the Minister may exempt an application from having to complete an EIS where he or she is satisfied that the expected environmental impact of the development proposal has already been sufficiently addressed by another study. An EIS is also not required if the ACT Conservator of Flora and Fauna or the ACT Heritage Council provides advice that the proposal is not likely to have a significant adverse environmental impact. Where an EIS is required from a proponent, the Planning and Land Authority must prepare an assessment report responding to the EIS.

If a development application is in the impact track, The Planning and Land Authority must refer the application to a number of other agencies, and must take into account any advice received from entities to which the application was referred. Development approval must not be given if this would be inconsistent with any advice given by a referral entity, unless the person approving the application is satisfied that the approval is consistent with the objects of the Territory Plan and that other options, design solutions and alternatives have been considered.

The Territory Plan usually dictates which track the application will fall into, but the application can be allocated to the impact track regardless of what the Territory Plan dictates, if:

* the Minister with planning responsibilities makes a declaration under section 124
* the Health Minister makes a declaration under section 125
* the development is not prohibited or exempt and the Territory Plan does not specify which track is applicable
* the development is a controlled action under the EPBC Act and a bilateral agreement allows the proposal to be assessed by the Territory.

The Minister may call-in any decision if, in the Minister’s opinion:

* the application raises a major policy issue
* the application seeks approval for a development that may have a substantial effect on the achievement or development of the object of the Territory Plan
* the approval or refusal of the application would provide a substantial public benefit.

## Jurisdictional tables

The following tables highlight key aspects of the assessment and approval process.

Table C.3 provides information about the assessment and approval authorities in each jurisdiction.

Table C.4 details the Commission’s analysis of responsibility for compliance and enforcement of approval conditions in each jurisdiction.

Table C.5 lists the legislation most likely to impact on major projects. This list is not intended to be fully comprehensive. Importantly, the table highlights legislation potentially affecting any major project, and should not be read as being representative of the regulatory burden affecting any one project.

Table C.3 Assessment and approval authorities

Selected pathways, by jurisdiction

|  |  |  |  |
| --- | --- | --- | --- |
| Jurisdiction | Assessment manager | Approval authority | Is the assessor also the approval authority? |
| **New South Wales** |  |  |  |
| State significant developments | Department of Planning | Minister delegates to the Planning Assessment Commission or Department of Planninga | Sometimes |
| State significant infrastructure | Department of Planning | Minister delegates to the Planning Assessment Commission or Department of Planninga | Sometimes |
| Critical state significant infrastructure | Department of Planning | Minister for Planning | No |
| **Victoria** |  |  |  |
| Ministerial call-in | Minister for Planning | Minister for Planning | Yes |
| Major transport projects | Assessment committee or Minister for Planning | Minister for Planning  (on advice from the EPA) | Sometimes, depending on the pathway |
| **Queensland** |  |  |  |
| Coordinated projects | Department of Environment and Heritage Protection is the assessment manager. However, in practice, the Coordinator-General, as a concurrence agency, conducts the environmental impact assessment and imposes conditions which, if the project is approved, bind the approval authority.b | Department of Environment and Heritage Protection | In practice, no |
| Urban development | Minister for Economic Development | Minister for Economic Development | Yes |
| **South Australia** |  |  |  |
| Major development | Minister | Government, but may delegatec | Sometimes |
| Crown development and public infrastructure | Development Assessment Commission | Minister | No |

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Table C.3 Assessment and approval authorities (continued)

|  |  |  |  |
| --- | --- | --- | --- |
| Jurisdiction | Assessment manager | Approval authority | Is the assessor also the approval authority? |
| **Western Australia** | |  |  |
| Development Assessment panel (DAP) projectsd | Local government/ Western Australian Planning Commission | Development Assessment Panel | No |
| **Tasmania** |  |  |  |
| Projects of state significance | Tasmanian Planning Commission | Minister and both Houses of Parliament | No |
| Projects of regional significance | Development Assessment Panel | Development Assessment Panel | Yes |
| Major infrastructure projects | Combined Planning Authority | Combined Planning Authority | Yes |
| **Northern Territory** | |  |  |
| Development permits | Development Consent Authority | Development Consent Authority | Yes |
| Exceptional Development Permits (EDPs)e | Minister for Planning | Minister for Planning | Yes |
| Ministerial call-inf | Minister for Planning | Minister for Planning | Yes |
| **ACT** |  |  |  |
| Ordinary development | ACT Planning and Land Authority | ACT Planning and Land Authority | Yes |
| Ministerial call-in | Minister for Planning | Minister for Planning | Yes |
| **Commonwealth** |  |  |  |
| Matters of national environmental significance (Dept of the Environment) | Secretary of the Department of the Environment | Minister for the Environment | No |

a While section 23 of the *Environmental Planning and Assessment Act 1979* (NSW) allows the Minister to delegate to the Planning Assessment Commission, the Director-General of the Planning Department, or any other public authority, in practice the Minister for Planning has issued two instruments of delegation clarifying when this delegation will occur. The Department of Planning has delegation to make decisions on state significant development or state significant infrastructure applications where there are less than 25 objections, the local council has not objected, and a reportable political donation has not been made. <http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=5ILFYmn9OAY%3d&tabid=514&language=en-US>. The Planning Assessment Commission makes decisions on applications for state significant infrastructure or state significant development made by private proponents where there are more than 25 objections, a local council has objected, or a reportable political donation has been made, <http://www.pac.nsw.gov.au/Portals/0/Documents/instrument_of_delegation_pac.pdf>. Delegation of critical state significant infrastructure projects is prohibited. b The approval authority cannot impose any conditions that are inconsistent with the conditions imposed by the Coordinator General. c May delegate to Minister or Development Assessment Commission below size limits specified in the *Development Act 1993* (SA)*.* d A development application with an estimated cost of $7 million or more (and $15 million or more in the City of Perth), unless an exclusion, must be determined by a DAP. e EDPs can be granted when a development application is inconsistent with a planning scheme. f Ministerial call‑in operates when the Minister gives a direction to the consent authority, after which the Minister becomes the consent authority.

Table C.4 Monitoring of compliance and enforcement responsibilities by jurisdiction

|  |  |
| --- | --- |
| Area of responsibility | Agencies involved |
| **New South Wales** |  |
| Approvals from Planning Department or Minister | Department of Planning and Infrastructure |
| Mining and petroleum approvals | Division of Resources and Energy |
| Heritage | Office of Environment and Heritage  Department of the Environment (Cwlth) |
| Indigenous heritage | Office of Environment and Heritage |
| Crown Land access | Division of Crown Lands |
| Transport infrastructure | Roads and Maritime Services |
| Environmental works approvals | Environment Protection Authority |
| Threatened species | Office of Environment and Heritage |
| Environment approval conditions and offsets | Office of Environment and Heritage |
| Explosives and dangerous goods | Environment Protection Authority |
| Water licences | Office of Water |
| Noise pollution | Environment Protection Authority |
| **Victoria** |  |
| Mining and petroleum approvals | Department of Environment and Primary Industries |
| Heritage | Heritage Victoria  Department of Transport, Planning and Local Infrastructure  Department of the Environment (Cwlth) |
| Indigenous heritage | Department of Transport, Planning and Local Infrastructure  Department of the Environment (Cwlth) |
| Environmental works approvals | Environment Protection Authority |
| Threatened species | Department of Environment and Primary Industries |
| Environment approval conditions and offsets | Environment Protection Authority  Department of the Environment (Cwlth) |
| Explosives and dangerous goods | Worksafe Victoria |
| Water licences | Department of Environment and Primary Industries |
| Noise pollution | Environment Protection Authority |
| **Queensland** |  |
| Coordinator-General Approvals | Department of State Development, Infrastructure and Planning |
| Mining and petroleum approvals | Department of Natural Resources and Mines  Department of Environment and Heritage Protection |
| Heritage | Department of Environment and Heritage Protection  Department of the Environment (Cwlth) |
| Indigenous heritage | Department of Environment and Heritage Protection  Department of the Environment (Cwlth) |
| Environmental works approvals | Department of Environment and Heritage Protection |

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Table C.4 Monitoring of compliance and enforcement responsibilities by jurisdiction (continued)

|  |  |
| --- | --- |
| Area of responsibility | Agencies involved |
| Threatened species | Department of Environment and Heritage Protection |
| Environment approval conditions and offsets | Department of Environment and Heritage Protection  Department of the Environment (Cwlth) |
| Explosives and dangerous goods | Department of Transport and Main Roads  Department of Natural Resources and Mines |
| Water licences | Department of Natural Resources and Mines |
| **South Australia** |  |
| Mining and petroleum approvals | Department for Manufacturing, Innovation, Trade, Resources and Energy |
| Heritage | Department of Environment, Water and Natural Resources  Department of the Environment (Cwlth) |
| Indigenous heritage | Aboriginal Affairs and Reconciliation Division, Department of the Premier and Cabinet  Department of the Environment (Cwlth) |
| Crown Land access | Department of Environment, Water and Natural Resources |
| Environmental works approvals | Environment Protection Authority |
| Threatened species | Department of Environment, Water and Natural Resources |
| Environment approval conditions and offsets | Environment Protection Authority  Department for Manufacturing, Innovation, Trade, Resources and Energy  Department of Environment, Water and Natural Resources  Department of Planning, Transport and Infrastructure  Department of the Environment (Cwlth) |
| Explosives and dangerous goods | SafeWork SA |
| Water licences | Department of Environment, Water and Natural Resources |
| **Western Australia** |  |
| Mining and petroleum approvals | Department of Mines and Petroleum |
| Heritage | State Heritage Office  Department of the Environment (Cwlth) |
| Indigenous heritage | Department of Aboriginal Affairs  Department of the Environment (Cwlth) |
| Crown Land access | State Land Services |
| Environmental works approvals | Department of Environment and Conservation |
| Threatened species | Department of Environment and Conservation |
| Environment approval conditions and offsets | Environmental Protection Agency  Department of the Environment (Cwlth) |
| Explosives and dangerous goods | Department of Mines and Petroleum |
| Water licences | Department of Water |
| Local content | Department of State Development |

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Table C.4 Monitoring of compliance and enforcement responsibilities by jurisdiction (continued)

|  |  |
| --- | --- |
| Area of responsibility | Agencies involved |
| **Tasmania** |  |
| Mining and petroleum approvals | Mineral Resources Tasmania |
| Heritage | Tasmanian Heritage Council  Department of the Environment (Cwlth) |
| Indigenous heritage | Aboriginal Heritage Tasmania  Department of the Environment (Cwlth) |
| Crown Land access | Department of Primary Industries, Parks, Water & Environment |
| Environmental works approvals | Environment Protection Authority |
| Threatened species | Department of Primary Industries, Parks, Water & Environment |
| Environment approval conditions and offsets | Environment Protection Authority  Department of Primary Industries, Parks, Water & Environment  Department of the Environment (Cwlth) |
| Explosives and dangerous goods | Workplace Standards |
| Water licences | Department of Primary Industries, Parks, Water & Environment |
| **Northern Territory** |  |
| Mining and petroleum approvals | Department of Mines and Energy |
| Heritage | The Northern Territory Heritage Council  Department of Lands, Planning and the Environment  Department of the Environment (Cwlth) |
| Indigenous heritage | The Aboriginal Areas Protection Authority  Department of the Environment (Cwlth) |
| Crown Land access | Land and Planning Services |
| Environmental works approvals | Northern Territory Environment Protection Agency |
| Threatened species | Department of Land Resource Management |
| Environment approval conditions and offsets | Northern Territory Environment Protection Agency  Department of the Environment (Cwlth) |
| Explosives and dangerous goods | NT WorkSafe |
| Water licences | Department of Land Resource Management |
| **Australian Capital Territory** |  |
| Heritage | ACT Heritage  Department of the Environment (Cwlth) |
| Indigenous heritage | ACT Heritage  Department of the Environment (Cwlth) |
| Environmental works approvals | Environment Protection Authority |
| Threatened species | Environment and Sustainable Development Directorate |
| Environment approval conditions and offsets | Environment and Sustainable Development Directorate  Environment Protection Authority  Department of the Environment (Cwlth) |
| Explosives and dangerous goods | WorkSafe ACT |
| Water licences | Environment and Sustainable Development Directorate |

*Source*: Commission analysis.

Table C.5 Legislation relevant to major project DAA processes**a**

| Scope | Legislation | Responsible department/agency |
| --- | --- | --- |
| ***Energy and minerals*** | | |
| **Minerals** | | |
| NSW | *Mining Act 1992* | NSW Trade and Investment |
|  | *Coal Industry Act 2001* | NSW Trade and Investment |
|  | *Mine Subsidence Compensation Act 1961* | NSW Trade and Investment |
| Vic | *Gas Industry Act 2001* | Department of Environment and Primary Industries |
|  | *Mineral Resources (Sustainable Development) Act 1990* | Department of Environment and Primary Industries |
| Qld | *Mineral Resources Act 1989* | Department of Natural Resources and Mines |
|  | *Greenhouse Gas Storage Act 2009* | Department of Natural Resources and Mines |
|  | *Offshore Minerals Act 1998* | Department of Natural Resources and Mines |
| SA | *Mining Act 1971* | Department of Manufacturing, Innovation, Trade, Resources and Energy |
|  | *Offshore Minerals Act 2000* | Department of Manufacturing, Innovation, Trade, Resources and Energy |
|  | *Opal Mining Act 1995* | Department of Manufacturing, Innovation, Trade, Resources and Energy |
| WA | *Mining Act 1978* | Department of Mines and Petroleum |
|  | *Offshore Minerals Act 2003* | Department of Mines and Petroleum |
|  | *Mining on Private Property Act 1898* | Department of Mines and Petroleum |
| Tas | *Gas Act 2000* | Department of Infrastructure, Energy and Resources |
|  | *Mineral Resources Development Act 1995* | Department of Infrastructure, Energy and Resources |
|  | *Mining (Strategic Prospectivity Zones) Act 1993* | Department of Infrastructure, Energy and Resources |
| NT | *Mineral Royalty Act 1982* | Department of Treasury and Finance |
|  | *Mineral Titles Act 2010* | Department of Mines and Energy |
|  | *Mining Management Act 2001* | Department of Mines and Energy |
|  | *Mineral Titles Act 2010* | Department of Mines and Energy |
| **Petroleum and pipelines** | | |
| NSW | *Petroleum (Offshore) Act 1982* | NSW Trade and Investment |
|  | *Petroleum (Onshore) Act 1991* | NSW Trade and Investment |
|  | *Pipelines Act 1967* | NSW Trade and Investment |
| Vic | *Offshore Petroleum and Greenhouse Gas Storage Act 2010* | Department of Environment and Primary Industries |
|  | *Petroleum (Submerged Lands) Act 1982* | Department of Environment and Primary Industries |
|  | *Petroleum Act 1998* | Department of Environment and Primary Industries |
|  | *Pipelines Act 2005* | Department of Environment and Primary Industries |
| Qld | *Petroleum Act 1923* | Department of Natural Resources and Mines |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency |
| --- | --- | --- |
| **Petroleum and pipelines** | | |
| Qld | *Petroleum (Submerged Lands) Act 1982* | Department of Natural Resources and Mines |
|  | *Petroleum and Gas (Production and Safety) Act 2004* | Department of Natural Resources and Mines |
| SA | *Petroleum (Submerged Lands) Act 1982* | Department of Manufacturing, Innovation, Trade, Resources and Energy |
|  | *Petroleum and Geothermal Energy Act 2000* | Department of Manufacturing, Innovation, Trade, Resources and Energy |
| WA | *Barrow Island Act 2003* | Department of Mines and Petroleum |
|  | *Petroleum and Geothermal Energy Resources Act 1967* | Department of Mines and Petroleum |
|  | *Petroleum (Submerged Lands) Act 1982* | Department of Mines and Petroleum |
|  | *Petroleum Pipelines Act 1969* | Department of Mines and Petroleum |
| Tas | *Gas Pipelines Act 2000* | Department of Infrastructure, Energy and Resources |
|  | *Mineral Resources Development Act 1995* | Department of Infrastructure, Energy and Resources |
|  | *Petroleum (Submerged Lands) Act 1982* | Department of Infrastructure, Energy and Resources |
|  | *Petroleum Products Emergency Act 1994* | Department of Infrastructure, Energy and Resources |
| NT | *Energy Pipelines Act 1983* | Department of Mines and Energy |
|  | *Petroleum Act 1984* | Department of Mines and Energy |
|  | *Petroleum (Submerged Lands) Act 1981* | Department of Mines and Energy |
|  | *Geothermal Energy Act 2009* | Department of Mines and Energy |
| Cwlth | *Offshore Petroleum and Greenhouse Gas Storage Act 2006* | Department of Industry |
|  | *Petroleum (Timor Sea Treaty) Act 2003* | Department of Industry |
| **Energy** | | |
| Vic | *Geothermal Energy Resources Act 2005* | Department of Environment and Primary Industries |
|  | *Victorian Renewable Energy Act 2006* | Essential Services Commission |
| Qld | *Clean Energy Act 2008* | Department of Energy and Water Supply |
|  | *Geothermal Energy Act 2010* | Department of Natural Resources and Mines |
| WA | *Energy Coordination Act 1994* | Office of Energy |
| **Nuclear** | | |
| NSW | *Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986* | NSW Trade and Investment |
|  | *Mining Legislation Amendment (Uranium Exploration) Act 2012* | NSW Trade and Investment |
| Vic | *Nuclear Activities (Prohibitions) Act 1983* | Department of Environment and Primary Industries |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency |
| --- | --- | --- |
| **Nuclear** | | |
| Qld | *Nuclear Facilities Prohibition Act 2007* | Department of Energy and Water Supply |
| SA | *Radiation Protection and Control Act 1982* | Environment Protection Authority |
|  | *Nuclear Waste Storage Facility (Prohibition) Act 2000* | Environment Protection Authority |
| WA | *Radiation Safety Act 1975* | Department of Health |
|  | *Nuclear Activities Regulation Act 1978* | Department of State Development |
|  | *Nuclear Waste Storage and Transportation (Prohibition) Act 1999* | Department of Health |
| Cwlth | *Atomic Energy Act 1953* | Department of Industry |
|  | *Uranium Royalty (Northern Territory) Act 2009* | Department of Industry |
|  | *Nuclear Non-Proliferation (Safeguards) Act 1987* | Australian Safeguards and Non‑Proliferation Office |
|  | *Australian Radiation Protection and Nuclear Safety Act 1998* | Australian Radiation Protection and Nuclear Safety Agency |
|  | *Environment Protection (Alligator Rivers Region) Act 1978* | Department of the Environment |
| ***Transport projects*** | | |
| NSW | *Transport Administration Act 1988* | Roads and Maritime Services |
|  | *Roads Act 1993* | Roads and Maritime Services |
| Vic | *Major Transport Projects Facilitation Act 2009* | Department of Transport, Planning and Local Infrastructure |
|  | *Major Transport Projects Facilitation (East West Link and Other Projects) Act 2013* | Department of Transport, Planning and Local Infrastructure |
|  | *Road Management Act 2004* | VicRoads |
| Qld | *Transport Infrastructure Act 1994* | Department of Transport and Main Roads |
|  | *Airport Assets (Restructuring and Disposal) Act 2008* | Queensland Treasury |
| WA | *Main Roads Act 1930* | Commissioner of Main Roads |
|  | *Transport Coordination Act 1966* | Department of Transport |
| Tas | *Highways Act 1951* | Department of Infrastructure, Energy and Resources |
|  | *Rail Infrastructure Act 2007* | Department of Infrastructure, Energy and Resources |
| ACT | *Public Roads Act 1902* | ACT Planning and Land Authority |
| Cwlth | *Airports Act 1996* | Department of Infrastructure and Regional Development |
| ***Local government*** | | |
| NSW | *Local Government Act 1993* | Department of Premier and Cabinet |
| Vic | *Local Government Act 1989* | Department of Transport, Planning and Local Infrastructure |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency |
| --- | --- | --- |
| ***Local government*** | | |
| Qld | *Local Government Act 1993* | Department of Local Government, Community Recovery and Resilience |
| SA | *Local Government Act 1999* | Office for State/Local Government Relations |
| WA | *Local Government Act 1995* | Department of Local Government and Communities |
| Tas | *Local Government Act 1993* | Department of Premier and Cabinet |
| NT | *Local Government Act* | Department of Local Government |
| ***Development assessment, planning and zoning*** | | |
| Vic | *Planning and Environment Act 1987* | Department of Transport, Planning and Local Infrastructure |
|  | *Regional Development Victoria Act 2002* | Department of Transport, Planning and Local Infrastructure |
|  | *Urban Renewal Authority Victoria Act 2003* | Places Victoria |
|  | *Project Development and Construction Management Act 1994* | Department of Treasury and Finance |
| Qld | *State Development and Public Works Organisation Act 1971* | Department of State Development Infrastructure and Planning |
|  | *Sustainable Planning Act 2009* | Department of State Development, Infrastructure and Planning |
|  | *Integrated Planning Act 1997* | Department of State Development, Infrastructure and Planning |
|  | *Economic Development Act 2012* | Minister for Economic Development |
| SA | *Development Act 1993* | Department of Planning, Transport and Infrastructure |
| WA | *Planning and Development Act 2005* | Department of Planning |
| Tas | *Land Use Planning and Approvals Act 1993* | Department of Justice |
|  | *Tasmanian Planning Commission Act 1997* | Department of Justice |
|  | *State Policies and Projects Act 1993* | Department of Premier and Cabinet; Department of Justice |
|  | *Approvals (Deadlines) Act 1993* | Department of Justice |
| NT | *Lands, Planning and Mining Tribunal Act 1998* | Department of Justice |
|  | *Planning Act 1993* | Department of Lands, Planning and the Environment |
|  | *Northern Territory Environment Protection Authority Act 2012* | Department of Lands, Planning and the Environment |
|  | *National Environmental Protection Council (Northern Territory) Act 1994* | Department of Lands, Planning and the Environment |
| ACT | *Planning and Development Act 2007* | ACT Planning and Land Authority |
|  | *Australian Capital Territory (Planning and Land Management) Act 1998* | ACT Planning and Land Authority |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency |
| --- | --- | --- |
| ***Crown Land access*** | | |
| NSW | *Crown Lands Act 1989* | Department of Primary Industries |
|  | *Crown Lands (Continued Tenures) Act 1989* | Department of Primary Industries |
|  | *Western Lands Act 1901* | Department of Primary Industries |
| Vic | *Land Act 1958* | Department of Environment and Primary Industries |
| SA | *Crown Land Management Act 2009* | Department for Environment, Water and Natural Resources |
|  | *Pastoral Land Management and Conservation Act 1989* | Department for Environment, Water and Natural Resources |
| WA | *Land Administration Act 1997* | Department of Lands |
| Tas | *Crown Lands Act 1976* | Department of Primary Industries, Parks, Water and Environment |
| NT | *Crown Lands Act 1992* | Department of Lands, Planning and the Environment |
|  | *Pastoral Land Act 1992* | Department of Land Resource Management |
| ***Native title, land rights and land acquisition*** | | |
| **Native title** | | |
| NSW | *Native Title (NSW) Act 1994* | Department of Attorney General and Justice |
| Vic | *Land Title Validation Act 1994* | Land Titles Office |
| Qld | *Native Title (Queensland) Act 1993* | Department of Natural Resources and Mines |
| SA | *Native Title (SA) Act 1994* | Attorney‑General’s Department |
| WA | *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* | Department of the Attorney General |
| Tas | *Native Title (Tas) Act 1994* | Department of Premier and Cabinet |
| NT | *Validation (Native Title) Act 1994* | Department of the Attorney-General and Justice |
| Cwlth | *Native Title Act 1993* | Department of the Prime Minister and Cabinet |
| **Land rights/access** | | |
| NSW | *Aboriginal Land Rights Act 1983* | Office of Communities, Aboriginal Affairs |
| Vic | *Aboriginal Lands Act 1970* | Department of Transport, Planning and Local Infrastructure |
|  | *Aboriginal Lands Act 1991* | Department of Transport, Planning and Local Infrastructure |
|  | *Aboriginal Land (Manatunga Land) Act 1992* | Department of Transport, Planning and Local Infrastructure |
| Qld | *Aboriginal Land Act 1991* | Department of Natural Resources and Mines |
|  | *Land Act 1994* | Department of Natural Resources and Mines |
|  | *Torres Strait Islander Land Act 1991* | Department of Natural Resources and Mines |
|  | *Sugar Industry Act 1999* | Department of Agriculture, Forestry and Fisheries |
| SA | *Aboriginal Lands Trust Act 1966* | Department of the Premier and Cabinet |
|  | *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* | Department of the Premier and Cabinet |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency | |
| --- | --- | --- | --- |
| **Land rights/access** | | | |
| SA | *Maralinga Tjarutja Land Rights Act 1984* | Department of the Premier and Cabinet |
| WA | *Regional Development Commissions Act 1993* | Department of Regional Development | |
|  | *Land Administration Act 1997* | Department of Lands | |
|  | *Aboriginal Affairs Planning Authority Act 1972* | Department of Aboriginal Affairs | |
|  | *Aboriginal Communities Act 1979* | Department of Aboriginal Affairs | |
| Tas | *Aboriginal Lands Act 1995* | Department of Premier and Cabinet | |
| NT | *Aboriginal Land Act 1978* | Department of Lands, Planning and the Environment | |
|  | *Coburg Peninsula Aboriginal Land, Sanctuary and Marine Park Act 1981* | Parks and Wildlife Commission of the Northern Territory | |
|  | *Nitmiluk (Katherine Gorge) National Park Act 1989* | Parks and Wildlife Commission of the Northern Territory | |
|  | *Parks and Reserves (Framework for the Future) Act 2004* | Parks and Wildlife Commission of the Northern Territory | |
|  | *Minerals (Acquisition) Act 1953* | Department of Mines and Energy | |
|  | *Crown Lands Act 1992* | Department of Lands, Planning and the Environment | |
|  | *Northern Territory Land Corporation Act 1995* | Department of Lands, Planning and the Environment | |
| ACT | *Community Title Act 2001* | ACT Planning and Land Authority | |
| Cwlth | *Aboriginal Land Rights (Northern Territory) Act 1976* | Department of the Prime Minister and Cabinet | |
|  | *Aboriginal Land Rights (Lake Condah and Framlingham Forest) Act 1987* | Department of the Prime Minister and Cabinet | |
|  | *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* | Department of the Prime Minister and Cabinet | |
|  | *Ashmore and Cartier Islands Acceptance Act 1933* | Department of Infrastructure and Regional Development | |
| **Land acquisition** | | | |
| NT | *Lands Acquisition Act 1979* | Department of Lands, Planning and the Environment | |
| ACT | *Lands Acquisition Act 1994* | ACT Planning and Land Authority | |
| ***Indigenous heritage*** | | | |
| Vic | *Aboriginal Heritage Act 2006* | Department of Transport, Planning and Local Infrastructure | |
| Qld | *Aboriginal Cultural Heritage Act 2003* | Department of Aboriginal and Torres Strait Islander and Multicultural Affairs | |
|  | *Torres Strait Islander Cultural Heritage Act 2003* | Department of Natural Resources and Mines | |
| WA | *Aboriginal Heritage (Marandoo) Act 1992* | Department of Aboriginal Affairs | |
|  | *Aboriginal Heritage Act 1972* | Department of Aboriginal Affairs | |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency | |
| --- | --- | --- | --- |
| ***Indigenous heritage*** | | | |
| SA | *Aboriginal Heritage Act 1988* | Department of the Premier and Cabinet |
| Tas | *Aboriginal Relics Act 1975* | Department of Primary Industries, Parks, Water and Environment | |
| NT | *Northern Territory Aboriginal Sacred Sites Act* | Minister for Regional Development | |
| Cwlth | *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* | Department of the Prime Minister and Cabinet | |
| ***Heritage*** | | | |
| NSW | *Heritage Act 1977* | Office of Environment and Heritage | |
| Vic | *Heritage Rivers Act 1992* | Department of Environment and Primary Industries | |
|  | *Heritage Act 1995* | Heritage Victoria | |
| Qld | *Queensland Heritage Act 1992* | Department of Environment and Heritage Protection | |
|  | *Cape York Peninsula Heritage Act 2007* | Department of Environment and Heritage Protection | |
| SA | *Heritage Places Act 1993* | Department for Environment, Water and Natural Resources | |
|  | *Historic Shipwrecks Act 1981* | Department for Environment, Water and Natural Resources | |
| WA | *Heritage of WA Act 1990* | Heritage Council of Western Australia | |
|  | *Maritime Archaeology Act 1973* | Western Australian Museum | |
| Tas | *Historic Cultural Heritage Act 1995* | Department of Primary Industries, Parks, Water and Environment | |
| NT | *Heritage Act 2011* | Department of Lands, Planning and the Environment | |
| ACT | *Heritage Act 2004* | ACT Planning and Land Authority | |
| Cwlth | *Historic Shipwrecks Act 1976* | Department of the Environment | |
| ***Environmental protection and impact assessment*** | | | |
| NSW | *Environmental Planning and Assessment Act 1982* | Department of Planning and Infrastructure | |
|  | *Protection of the Environment Operations Act 1997* | Environment Protection Authority | |
| Vic | *Environment Protection Act 1970* | Environment Protection Authority | |
|  | *Victorian Environmental Protection Council Act 2001* | Department of Environment and Primary Industries | |
|  | *Environment Effects Act 1978* | Department of Transport, Planning and Local Infrastructure | |
|  | *Environment Protection Act 1978* | Environment Protection Authority | |
|  | *Planning and Environment Act 1987* | Department of Transport, Planning and Local Infrastructure | |
| Qld | *Environment Protection Act 1994* | Department of Environment and Heritage Protection | |
|  | *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* | Department of Environment and Heritage Protection | |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency | |
| --- | --- | --- | --- |
| SA | *Environment Protection Act 1993* | Environment Protection Authority |
| WA | *Environmental Protection Act 1986* | Department of Environment Regulation |
| ***Environmental protection and impact assessment*** | | | |
| Tas | *Environmental Management and Pollution Control Act 1994* | Department of Primary Industries, Parks, Water and Environment | |
| NT | *Environmental Assessment Act 1982* | Department of Lands, Planning and the Environment | |
|  | *Environmental Offences and Penalties Act 1996* | Department of Lands, Planning and the Environment | |
| Cwlth | *Environment Protection and Biodiversity Conservation Act 1999* | Department of the Environment | |
| **Natural resource management** | | | |
| NSW | *National Parks and Wildlife Act 1974* | Office of Environment and Heritage | |
|  | *Threatened Species Conservation Act 1995* | Office of Environment and Heritage | |
|  | *Water Act 1912* | NSW Trade and Investment | |
|  | *Water Management Act 2000* | NSW Trade and Investment | |
| Vic | *Conservation, Forests and Lands Act 1987* | Department of Environment and Primary Industries | |
|  | *Wildlife Act 1975* | Department of Environment and Primary Industries | |
|  | *Flora and Fauna Guarantee Act 1988* | Department of Environment and Primary Industries | |
|  | *Parks Victoria Act 1998* | Department of Environment and Primary Industries | |
| Qld | *Nature Conservation Act 1992* | Department of Environment and Heritage Protection; Department of National Parks, Recreation, Sport and Racing | |
|  | *Fisheries Act 1994* | Department of Agriculture, Forestry and Fisheries | |
|  | *Wild Rivers Act 2005* | Department of Environment and Heritage Protection | |
|  | *Strategic Cropping Land Act 2011* | Department of Natural Resources and Mines | |
|  | *Recreation Areas Management Act 2006* | Department of National Parks, Recreation, Sport and Racing | |
|  | *Biodiscovery Act 2004* | Department of Environment and Heritage Protection | |
|  | *Plant Protection Act 1989* | Department of Agriculture, Forestry and Fisheries | |
|  | *Vegetation Management Act 1989* | Department of Natural Resources and Mines | |
|  | *Fisheries Act 1994* | Department of Agriculture, Forestry and Fisheries | |
|  | *Forestry Act 1959* | Department of Agriculture, Forestry and Fisheries | |
|  | *Land Protection (Pest and Stock Route Management Act) 2002* | Department of Agriculture, Forestry and Fisheries | |
|  | *Animal Care and Protection Act 2001* | Department of Agriculture, Forestry and Fisheries | |
|  | *Soil Conservation Act 1986* | Department of Natural Resources and Mines | |
| SA | *Adelaide Dolphin Sanctuary Act 2005* | Department for Environment, Water and Natural Resources | |
|  | *River Murray Act 2003* | Department for Environment, Water and Natural Resources | |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency | |
| --- | --- | --- | --- |
| **Natural resource management** | | | |
| SA | *Wilderness Protection Act 1992* | Department for Environment, Water and Natural Resources |
| SA | *Public and Environmental Health Act 1987* | Department of Health | |
|  | *National Parks and Wildlife Act 1972* | Department for Environment, Water and Natural Resources | |
|  | *Natural Resources Management Act 2004* | Department for Environment, Water and Natural Resources | |
| WA | *Soil and Land Conservation Act 1945* | Department of Agriculture and Food | |
|  | *Parks and Reserves Act 1895* | Department of Lands | |
|  | *Reserves (National Parks and Conservation Parks) Act 2004* | Department of Parks and Wildlife | |
|  | *Reserves (National Parks, Conservation Parks, and Other Reserves) Act 2004* | Department of Parks and Wildlife | |
|  | *Reserves (National Parks, Conservation Parks, Nature Reserves and Other Reserves) Act 2004* | Department of Parks and Wildlife | |
|  | *Reserves and Road Closure Act 1977* | Department of Lands | |
|  | *Conservation and Land Management Act 1984* | Department of Parks and Wildlife | |
|  | *Wildlife Conservation Act 1950* | Department of Parks and Wildlife | |
|  | *Land Drainage Act 1925* | Department of Water | |
|  | *Rights in Water and Irrigation Act 1914* | Department of Water | |
| Tas | *Natural Resource Management Act 2002* | Department of Primary Industries, Parks, Water and Environment | |
|  | *National Parks and Reserve Management Act 2002* | Department of Primary Industries, Parks, Water and Environment | |
|  | *Forest Practices Act 1985* | Department of Infrastructure, Energy and Resources | |
|  | *Forestry Act 1920* | Department of Infrastructure, Energy and Resources | |
|  | *Living Marine Resources Management Act 1995* | Department of Primary Industries, Parks, Water and Environment | |
|  | *Water Management Act 1999* | Department of Primary Industries, Parks, Water and Environment | |
| NT | *Fisheries Act 1988* | Department of Primary Industry and Fisheries | |
|  | *Weeds Management Act 2001* | Department of Land Resource Management | |
|  | *Waste Management and Pollution Control Act 1998* | Department of Lands, Planning and the Environment | |
|  | *Soil Conservation and Land Utilisation Act 1969* | Department of Land Resource Management | |
| **Marine and coastal environment** | | | |
| NSW | *Marine Parks Act 1997* | Office of Environment and Heritage | |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency | |
| --- | --- | --- | --- |
| **Marine and coastal environment** | | | |
| NSW | *Coastal Protection Act 1979* | Office of Environment and Heritage |
|  | *Marine Pollution Act 1987* | Roads and Maritime Services |
|  | *Land and Environment Court Act 1979* | Department of Attorney General and Justice | |
| Vic | *Catchment and Land Protection Act 1994* | Department of Environment and Primary Industries | |
|  | *Coastal Management Act 1995* | Department of Environment and Primary Industries | |
|  | *Pollution of Waters by Oil and Noxious Substances Act 1986* | Environment Protection Authority | |
|  | *Marine (Drug, Alcohol and Pollution Control) Act 1988* | Transport Safety Victoria | |
| Qld | *Marine Parks Act 2004* | Department of National Parks, Recreation, Sport and Racing | |
|  | *Coastal Protection and Management Act 1995* | Department of Environment and Heritage Protection | |
|  | *Transport Operations (Marine Pollution) Act 1995* | Maritime Safety Queensland | |
|  | *Wet Tropics World Heritage Protection and Management Act 1993* | Wet Tropics Management Authority | |
|  | *Marine Parks Act 2004* | Department of Environment and Heritage Protection | |
|  | *River Improvement Trust Act 1940* | Department of Natural Resources and Mines | |
|  | *Water Act 2000* | Department of Environment and Heritage Protection  Department of Natural Resources and Mines | |
| SA | *Coast Protection Act 1972* | Department for Environment, Water and Natural Resources | |
|  | *Marine Parks Act 2007* | Department for Environment, Water and Natural Resources | |
|  | *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987* | Department of Planning, Transport and Infrastructure | |
| WA | *Pollution of Waters by Oil and Noxious Substances Act 1987* | Department of Transport | |
|  | *Western Australian Marine (Sea Dumping) Act 1981* | Department of Transport | |
|  | *Western Australian Marine Act 1982* | Department of Transport | |
|  | *Marine and Harbours Act 1981* | Department of Transport | |
| Tas | *Pollution of Waters by Oil and Noxious Substances Act 1987* | Department of Primary Industries, Parks, Water and Environment | |
| NT | *Marine Pollution Act 1999* | Department of Lands, Planning and the Environment | |

(Continued next page)

Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency | |
| --- | --- | --- | --- |
| **Marine and coastal environment** | | | |
| Cwlth | *Great Barrier Reef Marine Park Act 1975* | Great Barrier Reef Marine Park Authority |
|  | *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* | Australian Maritime Safety Authority |
|  | *Seas and Submerged Lands Act 1973* | Attorney-General’s Department |
|  | *Environment Protection (Sea Dumping) Act 1981* | Department of the Environment | |
| ***Occupational health and safety*** | | | |
| NSW | *Work Health and Safety Act 2011* | Department of Finance and Services | |
|  | *Coal Mine Health and Safety Act 2002* | NSW Trade and Investment | |
|  | *Mine Health and Safety Act 2004* | NSW Trade and Investment | |
|  | *Explosives Act 2003* | Department of Finance and Services | |
|  | *Dams Safety Act 1978* | Department of Primary Industries | |
|  | *Dangerous Goods (Road and Rail Transport) Act 2008* | Department of Finance and Services | |
| Vic | *Rail Safety Act 2006* | Transport Safety Victoria | |
|  | *Dangerous Goods Act 1985* | WorkSafe Victoria | |
|  | *Marine Safety Act 2010* | Transport Safety Victoria | |
|  | *Occupational Health and Safety Act 2004* | WorkSafe Victoria | |
|  | *Equipment (Public Safety) Act 1994* | WorkSafe Victoria | |
| Qld | *Work Health and Safety Act 2011* | Workplace Health and Safety Queensland | |
|  | *Coal Mining Safety and Health Act 1999* | Department of Natural Resources and Mines | |
|  | *Mining and Quarrying Safety and Health Act 1999* | Department of Natural Resources and Mines | |
|  | *Transport (Rail Safety) Act 2010* | Department of Transport and Main Roads | |
|  | *Explosives Act 1999* | Department of Natural Resources and Mines | |
|  | *Gene Technology Act 2001* | Department of Science, Information Technology, Innovation and the Arts | |
|  | *Biological Control Act 1987* | Department of Agriculture, Forestry and Fisheries | |
|  | *Waste Reduction and Recycling Act 2011* | Department of Environment and Heritage Protection | |
|  | *Public Health Act 2005* | Department of Health | |
| SA | *Dangerous Substances Act 1979* | SafeWork SA | |
|  | *Work Health and Safety Act 2012* | SafeWork SA | |
|  | *Mines and Works Inspection Act 1920* | Department of Manufacturing, Innovation, Trade, Resources and Energy | |
|  | *Explosives Act 1936* | Department of Manufacturing, Innovation, Trade, Resources and Energy | |
| WA | *Jetties Act 1926* | Department of Transport | |
|  | *Port Authorities Act 1999* | Department of Transport | |
|  | *Rail Safety Act 2010* | Department of Transport | |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency | | |
| --- | --- | --- | --- | --- |
| ***Occupational health and safety*** | | | | |
| WA | *Contaminated Sites Act 2003* | | Department of Environment Regulation |
|  | *Mines Safety and Inspection Act 1994* | | Department of Mines and Petroleum |
|  | *Gas Standards Act 1972* | | Department of Commerce |
|  | *Energy Safety Act 2006* | | Department of Commerce |
|  | *Dangerous Goods Safety Act 2004* | Department of Mines and Petroleum | | |
|  | *Carbon Rights Act 2003* | Department of Environment Regulation | | |
|  | *Occupational Health and Safety Act 1984* | Department of Commerce | | |
| Tas | *Port Companies Act 1997* | Department of Infrastructure, Energy and Resources | | |
|  | *Irrigation Clauses Act 1973* | Department of Primary Industries, Parks, Water and Environment | | |
|  | *Drains Act 1954* | Department of Primary Industries, Parks, Water and Environment | | |
|  | *Dangerous Goods (Road and Rail Transport) Act 2010* | Department of Justice | | |
|  | *Work Health and Safety Act 2012* | Workplace Standards Tasmania | | |
| NT | *Dangerous Goods Act 1998* | Department of Business | | |
|  | *Work Health and Safety (National Uniform Legislation) Act 2011* | Department of Business | | |
|  | *Radioactive Ores and Concentrates (Packaging and Transport) Act 1980* | Department of Business | | |
|  | *Waste Management and Pollution Control Act 1998* | Department of Lands, Planning and the Environment | | |
|  | *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act 2010* | Department of Business | | |
|  | *Marine Act 1981* | Department of Transport | | |
| ACT | *Work Health and Safety Act 2011* | Chief Minister and Treasury Directorate | | |
|  | *Dangerous Substances Act 2004* | Chief Minister and Treasury Directorate | | |
|  | *Machinery Act 1949* | Chief Minister and Treasury Directorate | | |
| Cwlth | *Occupational Health and Safety Act 1991* | ComCare | | |
|  | *Work Health and Safety Act 2011* | ComCare | | |
| **Other** | | | | |
| Qld | *Queensland Competition Authority Act 1987* | Queensland Competition Authority | | |
|  | *Electricity Act 2004* | Department of Energy and Water Supply | | |
|  | *Gas Supply Act 2003* | Department of Energy and Water Supply | | |
|  | *Queensland Reconstruction Act 2011* | Queensland Reconstruction Authority | | |
| SA | *AustralAsia Railway (Third Party Access) Act 1999* | Essential Services Commission of South Australia | | |
| WA | *Railways (Access) Act 1998* | Economic Regulation Authority | | |

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Table C.5 Legislation relevant to major project DAA processes**a** (continued)

| Scope | Legislation | Responsible department/agency | |
| --- | --- | --- | --- |
| Cwlth | *Australian Maritime Safety Authority Act 1990* | Australian Maritime Safety Authority |
|  | *Coastal Waters (Northern Territory Powers) Act 1980* | Attorney‑General’s Department |
|  | *Coastal Waters (Northern Territory Title) Act 1980* | Attorney‑General’s Department |
|  | *Coastal Waters (State Powers) Act 1980* | Attorney‑General’s Department |
| **Other** | | | |
| Cwlth | *Coastal Waters (State Title) Act 1980* | Attorney‑General’s Department | |
|  | *Competition and Consumer Act 2010* | Australian Competition and Consumer Commission | |
|  | *Clean Energy Act 2011* | Clean Energy Regulator | |
|  | *Customs Act 1901* | Department of Immigration and Border Protection | |
|  | *Defence Act 1903* | Department of Defence | |
|  | *Energy Efficiency Opportunities Act 2006* | Department of Industry | |
|  | *Fair Work (Building Industry) Act 2012* | Department of Employment | |
|  | *Fair Work Act 2009* | Department of Employment | |
|  | *Foreign Takeovers and Acquisitions Act 1975* | Foreign Investment Review Board | |
|  | *Maritime Transport and Offshore Facilities Security Act 2003* | Department of Infrastructure and Regional Development | |
|  | *National Greenhouse and Energy Reporting Act 2007* | Department of the Environment | |
|  | *Navigation Act 1912* | Department of Infrastructure and Regional Development | |
|  | *Quarantine Act 1908* | Department of Agriculture | |
|  | *Submarine Cables and Pipelines Protection Act 1963* | Australian Maritime Safety Authority | |

a This list is not intended to be fully comprehensive.

*Sources*: ComLaw; State and Territory legislation databases; various departmental websites.

D International DAA processes

This appendix provides an overview of development assessment and approval (DAA) processes for major projects in Canada, the United Kingdom, the United States and New Zealand. These countries were chosen because they have similar political systems to Australia, are at roughly equivalent stages of development, and face broadly equivalent challenges in making tradeoffs between commercial, environmental and heritage concerns.

## Canada

### Jurisdictional overview

Under the *Constitution Act, 1867*, there are three levels of government in Canada with different areas of regulatory responsibility for activities related to major projects (box D.1). Responsibility for areas, such as the environment, is not specifically identified and assigned to a level of government under the Act. It may be addressed under various federal and provincial legislative powers depending on the nature or scope of the issue.

The jurisdictional division of regulatory powers means that major projects wholly within a Canadian province are typically assessed and determined using provincial government processes. Projects beyond the boundaries of a province, or that are deemed likely to have significant adverse environmental effects, may also be subject to a federal environmental assessment and approval process.

Major projects in Canada can require a wide range of permits, licences, agreements and approvals from federal, provincial and municipal regulatory bodies and other stakeholders (including Indigenous peoples and landholders and users). This section gives an overview of key federal and provincial DAA processes applying to major projects with a focus on environmental assessments.

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| Box D.1 Division of regulatory powers in Canada |
| Canada has three levels of government — federal, provincial and municipal — with different areas of legislative responsibility under the *Constitution Act, 1867*.  Federal Government regulatory powers relevant to the assessment and approval of major projects include those relating to:   * navigation/shipping * sea coast and inland fisheries * ferries (interprovincial and international) * Indians/Indian reserves * works connecting provinces; beyond boundaries of one province; within a province but to the advantage of Canada or more than one province.   Provincial Governments’ regulatory powers relevant to the assessment and approval of major projects include those relating to:   * natural resource uses * management of public lands belonging to a province * property and civil rights * municipalities.   In addition to 10 provinces, there are three territories with limited regulatory responsibilities granted to them by the Federal Government.  Municipal Governments receive authority from Provincial Governments to enable the provision of a range of local services such as libraries, parks, community water systems, local police, and roads.  Across Canada there are also ‘band councils’, which govern First Nations communities. These elected councils are similar to municipal councils and make decisions that affect their local communities. |
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### Features of federal processes for major projects

#### Federal environmental assessments

Any project in Canada classified as a ‘designated project’ can require a federal environmental assessment (EA) and approval before it can proceed. Designated projects include:

* projects of a type listed in the Regulations Designating Physical Activities
* projects declared by the Federal Minister of the Environment (CEAA 2013).

Regulations Designating Physical Activities made under the *Canadian Environmental Assessment Act 2012* list project types that are likely to have significant adverse environmental effects and therefore may be subject to a federal EA. These project types include: electrical generating stations or transmission lines; dams, oil or gas facilities or pipelines; mines or mills; marine terminals, railway lines, public highways, aerodromes or runways; and waste management facilities. The Federal Minister of the Environment may also ‘designate’ a project not identified in the regulations if he or she believes the project may cause adverse environmental effects or if there are public concerns about such effects (CEAA 2013).

There are three statutory bodies that can undertake a federal EA for a designated project.

* The Canadian Environmental Assessment Agency (CEAA) administers the EA process for designated projects subject to the *Canadian Environmental Assessment Act 2012* (the CEA Act). The CEAA prepares an EA report for the Minister for the Environment who makes the final determination.[[2]](#footnote-2)
* The National Energy Board (NEB) undertakes EAs for designated projects involving activities regulated under the *National Energy Board Act 1959* (the NEB Act) or the *Canada Oil and Gas Operations Act 1985* (box D.2).
* The Canadian Nuclear Safety Commission (CNSC) undertakes EAs for designated projects involving activities regulated under the *Nuclear Safety and Control Act 2000* (CEAA 2013).

##### Direction of reforms to federal environmental assessments

The Canadian Parliament legislated a range of reforms to federal EA processes in June 2012 through the *Jobs and Growth Act, 2012*, which narrowed the scope of the types of projects that could face a federal EA. Key changes include:

* narrowing the definition of lakes and waterways upon which a federal EA can be required
* expanding the types of works that can be pre‑approved, allowing more ‘low risk’ works (such as docks and boathouses) to proceed without further assessment and approval (Parliament of Canada 2013).

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| Box D.2 National Energy Board of Canada |
| The National Energy Board (NEB) — an independent federal statutory agency established under the *National Energy Board Act, 1959* — regulates international and interprovincial aspects of the oil, gas and electric utility industries in Canada, including assessments and approvals for interprovincial and international pipelines and power lines. Projects wholly within a province are not regulated by the NEB.  Key features of the National Energy Board process  Proponents wishing to develop a project must apply to the NEB for an assessment and determination. This process includes a number of steps.   * A ‘planning and pre‑application’ phase, which aims to improve proponents’ and other stakeholders’ understanding of the regulatory processes and requirements before an application is lodged. Pre‑application meetings give stakeholders and the regulator the opportunity to: share and process information and establish contacts; discuss application requirements; and identify resources relevant to the process. * A range of public consultation requirements across the regulatory stages including at the project design, construction, operation and maintenance, and abandonment stages. Some proposed projects also require the NEB to hold public hearings. * An environmental impact assessment undertaken by the NEB (this replaces the environmental assessment process normally undertaken by the Canadian Environmental Assessment Agency). * A determination of whether a project is denied or can proceed, and if any terms or conditions must be applied. In making a decision, the NEB considers the economic, technical and financial feasibility, and the environmental and socioeconomic impacts of the project. * Monitoring and enforcement of conditions the NEB attaches to a project from approval to decommissioning stages (including auditing and inspecting construction activities, maintenance and monitoring procedures during operation, and procedures during cessation). |
| *Sources*: NEB (2013a, 2013b, 2013c, 2013d). |
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Further reforms legislated in December 2012 through the *Jobs, Growth and Long‑term Prosperity Act, 2012* established a new truncated federal EA process. Key changes include:

* reducing the possible levels of review for an EA from three to two
* allowing the CEAA to screen designated projects to determine whether they require an EA at all[[3]](#footnote-3)
* reducing the number of government agencies involved in carrying out federal EAs from approximately 40 to three — the CEAA, the NEB and the CNSC
* focusing federal EAs on federal aspects of designated projects by limiting the statutory definition of ‘environmental effects’
* imposing statutory time limits for EAs. Most standard EAs must be completed in one year, while panel reviews — the alternative federal EA pathway — are limited to two years
* authorising the Minister of the Environment to establish a committee to conduct regional environmental assessment for regions that are entirely composed of federal lands (discussed in appendix F)
* allowing (in prescribed circumstances) all or part of the federal EA to be delegated to, or substituted for, a provincial EA, and allowing (in prescribed circumstances) federal approval authority to be delegated to a provincial decision maker (see section on delegation, substitution and equivalency below) (Parliament of Canada 2013).[[4]](#footnote-4)

##### Reforms to National Energy Board processes

A range of reforms to the NEB processes was initiated in 2012 through the *Jobs, Growth and Long‑term Prosperity Act, 2012* and through amendments to the NEB Act*.* Key reforms include:

* establishing time limits of 18 months for most NEB applications. This includes 15 months from the date the NEB determines an application is complete until it completes its assessment
* requiring both approvals and denials of projects to go to the Governor in Council (the federal cabinet) for a decision. The NEB’s report on a project must also include any conditions to be attached to an approval
* requiring that, for projects identified by the CEA Act, the NEB must conduct an EA pursuant to that Act. For projects not covered under the CEA Act, the NEB will continue to conduct EAs under the NEB Act
* making hearings for gas export licences no longer mandatory. In deciding whether to issue a gas export licence, the NEB can no longer consider environmental matters in export applications (Parliament of Canada 2013).

#### Delegation, substitution and equivalency for federal environmental assessments

The delegation, substitution and equivalency provisions in the CEA Act aim to reduce duplication in regulatory processes where a single project requires more than one EA under federal law and provincial law or under an environmental impact assessment regime established under an Aboriginal land claims agreement.

* *Delegation* allows the responsible federal authority to delegate to a province the carrying out of any part of the federal EA (apart from the final decision making).
* *Substitution* (similar to an Australian bilateral assessment agreement) allows the Federal Minister for the Environment to substitute a provincial EA process for a federal EA if:
* requested to do so by a province, and
* the Minister is of the opinion that the provincial process is an appropriate substitute for a federal EA under the CEA Act, and that conditions contained in the CEA Act regarding factors to be considered, public participation and the submission of an EA report will be fulfilled (CEAA 2013).
* *Equivalency* (similar to an Australian bilateral approval agreement) allows the Governor in Council (the Federal cabinet), on the recommendation of the Minister for the Environment, to exempt a designated project from the CEA Act, if the Governor in Council is satisfied that:
* after completion of the assessment, the provincial government will determine whether the designated project is likely to cause significant adverse environmental effects, taking into account appropriate mitigation measures
* the provincial government will ensure that mitigation measures and a follow‑up program are implemented
* any other conditions that the Minister of the Environment establishes will be met (Parliament of Canada 2013).

Under the equivalency provision, the province carries out the EA and makes the final determination, including any measures to protect components of the environment under federal authority.

In March 2013, the CEAA entered into a Memorandum of Understanding with the British Columbia Environmental Assessment Office outlining the process by which the Province of British Columbia can substitute its EA process for the federal EA process where a project requires both. As of October 2013, the Federal Minister of the Environment had approved the substitution of the British Columbia EA process for the federal EA process for three projects (a liquefied natural gas export terminal and two coal mines) (Osler Legal 2013).

#### The Major Project Management Office

The Major Project Management Office (MPMO) — established in 2007 — aims to provide overarching project coordination, management and accountability for ‘major resource projects’ operating within the federal regulatory review process (Government of Canada 2012).

Major resource projects eligible for MPMO assistance are defined (under a Federal Cabinet Directive) as large resource projects that are subject to a comprehensive study, a panel review, or a large or complex multi‑jurisdictional screening, as defined under the CEA Act. Typically, these projects involve extracting, processing, refining, producing, distributing, or disposing of natural resources, as well as decommissioning and reclaiming sites used for any of these activities (Government of Canada 2012).

The MPMO’s main roles and responsibilities are to:

* provide a single point of entry into the federal regulatory system for proponents of major resource projects
* engage in early discussions, distribution of guidance materials and information exchanges with proponents on proposed projects
* develop in collaboration with relevant federal departments and agencies, consensus‑based Project Agreements that articulate the roles and responsibilities of each department and timeline‑based performance targets for delivery of process milestones
* track and monitor the government’s Aboriginal consultation requirements related to the review of major resource projects and maintain the official record of Aboriginal/Crown consultation for the Canadian Government
* implement and manage a transparent monitoring and tracking system for major resource projects as a mechanism by which to monitor and track the progress of any specific project through the regulatory process
* lead collaborative research and policy analysis on short, medium and longer term initiatives to improve the performance of the regulatory system, including legislative options, cost recovery, cumulative effects, energy infrastructure corridors, regional assessment and capacity building initiatives or processes (Government of Canada 2012).

The MPMO process includes the development of a Project Agreement — a coordinating tool between interested federal departments — committing to a timeline and schedule for the completion of the EA, with regular milestones to allow tracking of progress. All agreements contain coordinated work plans that outline the particular roles and responsibilities of federal departments and agencies throughout the entire life cycle of a particular regulatory review process. Agreements can include the following coordinated work plans:

* an Environmental Assessment work plan
* an Aboriginal Consultation and Engagement work plan
* a Permitting, Authorizations and Approvals work plan
* a Follow-Up and Monitoring work plan.

Project Agreements are posted on the internet to promote transparency and the MPMO tracks and reports on the progress of the EA and other regulatory processes, and also assists in the resolution of issues to avoid delays (Government of Canada 2012).

### Features of provincial processes for major projects

Major projects wholly within a Canadian province are typically assessed and determined using provincial level DAA processes, but may also be subject to a federal EA where they meet the ‘designated project’ criteria set out in the Regulations Designating Physical Activities or are declared by the Federal Minister of the Environment (CEAA 2013). This section gives an overview of recent reforms to DAA processes in the Province of Alberta for upstream oil and gas projects.

Until 2012, responsibilities for the assessment and approval of upstream gas and oil projects in Alberta were spread between various bodies.

* *The Energy Resources Conservation Board (ERCB)* — an independent provincial regulator — granted primary approvals for oil and gas projects.
* *The Alberta Ministry of Sustainable Resource Development (SRD)* managed the environmental impact assessment (EIA) process (in parallel with ERCB processes) and granted a range of secondary approvals.
* *The Alberta Ministry of the Environment (Alberta Environment)* developed policies regarding air and water resources and the reclamation and remediation of oil and gas facilities and regulated these areas.
* *The Alberta Ministry of Energy (Alberta Energy)* developed policies regarding energy resources and was responsible for managing Crown mineral rights and royalties (Alberta Energy 2013).

In December 2012, the Alberta Parliament passed the *Alberta Responsible Energy Development Act, 2012* reforming these arrangements (box D.3).

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| Box D.3 Key Alberta reforms (as at October 2013) |
| A new policy coordination office  The Policy Management Office was established to work with existing policy departments (Alberta Environment, Alberta Sustainable Resource Development (SRD), and Alberta Energy) to:   * integrate and align policy in the Province and between Canadian jurisdictions * provide clear and consistent policy direction to proponents, regulators and the public * develop a more effective public consultation process * develop a performance measurement framework to assess the new regulations.   A new single independent regulator  The Alberta Energy Regulator was established with unified responsibility for development assessment and approval (DAA) processes (taking powers held by Alberta Environment, the SRD, and the Energy Resources Conservation Board (ERCB)). Its functions include:   * acting as a single point of contact for assessing and determining applications, including Environmental Impact Assessments * making decisions regarding the disposition of public lands and licensing of water (consistent with public lands and water allocation policies) * post‑approval activities (including variances, compliance and monitoring, overseeing suspension, abandonment, and closure and remediation) (details to be finalised) * establishing a single process for appeals (details to be finalised) * establishing standards for regulatory processes (such as approval timelines) to provide more predictability to applicants (details to be finalised).   Streamlined public engagement processes  A report reviewing the previous system — Enhancing Assurance — found that the effectiveness of public consultation was limited as it was difficult for interested parties to determine when and how to provide input into policy development and policy assurance processes. The new approach aims to address this by having separate processes for stakeholders with a ‘common interest’ and those with a ‘private interest’.   * Common interest stakeholders wishing to influence general policy questions (such as province‑wide land use, water use and environmental management) will be ‘channelled’ into policy development consultations. * ‘Specified parties’ with private interests who stand to be impacted directly by a specific project will be able to provide input during the DAA processes for an individual project. This will help make project‑specific consultations more focused and relevant to the merits of a particular project.   (Continued next page) |
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| Box D.3 (continued) |
| Integrated risk management framework  The Enhancing Assurance report found that the previous system predominantly used prescriptive ‘command and control’ regulations that did not allow for advances in technology or improved industry practices, and that while Alberta Environment, the SRD, Alberta Energy and the ERCB used risk-management processes to varying degrees, they did so in an inconsistent way.  An Integrated Risk Management Framework based on the international ISO 31 000 Risk Management Standard has been developed.   * At the policy development stage, the Framework will be used to evaluate new and existing natural resource policies. It will help assess risks to Alberta’s social, economic and environmental outcomes and assist in determining the best policy approaches to manage those risks. * At the policy assurance stage, the Framework will be used to identify and assess risks associated with specific oil and gas developments. It will guide regulators’ selection of appropriate policy tools to manage those risks, monitor industry compliance and achievement of desired outcomes.   Performance measurement framework  A performance measurement framework with public reporting requirements is being developed to provide feedback about how the reformed system is performing against objectives. The framework will measure and report the performance of the new regulations publicly and will include:   * defined performance measures that consider the economy, society and the environment * system benchmarks established internally and through comparison with other jurisdictions * a system for monitoring and reporting performance measures * establishment of an arm’s length environmental monitoring agency. |
| *Sources*: Alberta Energy (2013); Alberta Government (2010); *Responsible Energy Development Act, 2012 (Alberta).* |
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## United Kingdom

### Major project assessment and approval processes

In the United Kingdom, a separate approval process is used for projects deemed to be nationally significant infrastructure. To qualify, projects must be of a particular type (for example, an airport, harbour, reservoir or various types of land transport and energy infrastructure) and be above a minimum size threshold (for example, gas pipelines must be at least 40 kilometres in length) (Planning Inspectorate (UK) 2012c). In all, there are 16 types of projects that can be deemed nationally significant infrastructure.

The legislative basis for the planning application process for nationally significant infrastructure projects is the *Planning Act 2008* (as amended by the *Localism Act 2011*). The Planning Actwas introduced to streamline decision making. The Act sets out fixed time frames for the examination and decision making stages of the process.

In April 2012, the Planning Inspectorate became the agency responsible for operating the process in England and, for some types of infrastructure, in Wales (Planning Inspectorate (UK) 2012c). Other arrangements apply in Scotland and Northern Ireland.

Following the Planning Inspectorate’s examination, it makes a recommendation to the appropriate Secretary of State (a Secretary of State is a Cabinet Minister in charge of a government department), who makes the decision to grant or refuse development consent (Barclay 2012). The process is summarised in box D.4.

#### Pre‑application

Before submitting an application to the Planning Inspectorate, the developer is required under the Planning Act to carry out consultation on their proposal. The pre‑application process is considered a crucial part of the overall assessment process (DCLG (UK) 2013a).

Without adequate consultation, the subsequent application will not be accepted when it is submitted. If the Secretary of State determines that the consultation is inadequate, he or she can recommend that the applicant carries out more consultation activity before the application can be accepted. Once a scheme is in examination there is limited scope to make changes to what has been included in the draft Development Consent Order. This is why it is important that issues are made known and explored during the pre‑application consultation … (DCLG (UK) 2013a, p. 5)

##### National Infrastructure Planning Portal

Before carrying out this consultation, the developer notifies the Planning Inspectorate that they intend to submit an application in the future. The Inspectorate will then add the project to the Programme of Projects on the National Infrastructure Planning Portal, a publically accessible website (Planning Inspectorate (UK) 2012c). The Portal is used to record details of the project, application documents, procedural advice given by the Inspectorate in relation to the project, and key project approval milestones.

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| Box D.4 Planning application process for nationally significant infrastructure projects in the United Kingdom |
| Box D.4 Planning application process for nationally significant infrastructure projects. This figure shows the stages for the DAA processes for nationally significant infrastructure projects in the UK, including: pre-application, acceptance, pre-examination, examination, decision, post-decision. |
| *Source*: Planning Inspectorate (2012b) |
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##### Consultation

The Planning Act requires certain bodies and groups of people to be consulted at the pre‑application stage. The Act allows for flexibility in the precise form that consultation may take, depending on local circumstances and the needs of the project itself (DCLG (UK) 2013a). The developer may be required to consult with:

* relevant local authorities
* persons who own, occupy or have an interest in the land in question where the development is proposed, or who could be affected by the project in such a way that they may be able to make a claim for compensation
* local communities that may be affected by the proposed project.

For offshore projects that do not feature any terrestrial development (such as offshore wind farms), there are no statutory requirements to consult specific local authorities. However, applicants for offshore projects should consider and consult with communities in the vicinity of the proposed project about its potential visual, economic and social impacts (DCLG (UK) 2013a).

Before formally consulting people living in the vicinity of the project, the developer is required to prepare a Statement of Community Consultation (SOCC), having first consulted with the relevant local authorities about what it should contain. The SOCC details the consultation the developer intends to undertake with the local community about their project. The developer is required to publish a notice stating where and when the SOCC can be inspected (Planning Inspectorate (UK) 2012c).

The Planning Act provides a minimum 28 days for consultation. However, this period of consultation may be longer for larger or more complex projects. Where responses from those consulted are not received within the set deadline for consultation, the applicant is not obliged to take these responses into account in their application (DCLG (UK) 2013a).

##### Environmental Impact Assessment

Most nationally significant infrastructure projects will fall within the scope of the EIA Directive, and will require an Environmental Statement to be prepared and submitted as part of the application pack. Under the Planning Act, the EIA process is governed by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. These regulations ensure that the pre‑application publicity and consultation requirements for the EIA are consistent with those of the Planning Act (DCLG (UK) 2013a).

#### Acceptance

Acceptance means that an application can proceed to examination. The acceptance stage begins when a developer submits a formal application for development consent to the Planning Inspectorate. There follows a period of up to 28 days for the relevant Secretary of State to consider whether the application meets the standards required for formal examination (Planning Inspectorate (UK) 2012a). Applicants are required to produce a consultation report as part of their application, detailing how they have complied with the consultation requirements of the Planning Act. The Secretary of State will consider this report when deciding whether or not the applicant has complied with the pre‑application consultation requirements, and ultimately, whether or not an application can be accepted (DCLG (UK) 2013a).

#### Pre‑examination

If an application is formally accepted by the Secretary of State, then the pre‑examination phase will commence. The applicant (developer) is required to publicise the fact that their application has been accepted and the arrangements for interested parties to make representations about the proposed development.

At this stage, interested parties must register with the Planning Inspectorate to have their views considered by the Examining Authority. At least 28 days must be provided for people to register. As part of the registration process, parties may provide a written summary of what they agree and/or disagree with in the application. This is known as a ‘representation’. The Examining Authority may disregard representations that are vexatious or frivolous, or deal with the merits of national policy rather than the project under application. The Examining Authority may also disregard representations that relate just to compensation for compulsory acquisition (rather than the justification or need for such acquisition). After the deadline for registration has passed, the Examining Authority has 21 days to review the application and all relevant representations and identify the principal issues for examination. The Planning Inspectorate will publish all relevant representations on the National Infrastructure Portal (Planning Inspectorate (UK) 2012c).

#### Examination

The examination of applications for development consent can be conducted either by a group of three or more appointed persons (‘Inspectors’), or by a single Inspector, depending on the complexity of the project and the level of public interest in the outcome. The Secretary of State makes this decision.

Where it seems likely that evidence to be given about an application will be of a level of complexity outside the normal experience of the persons appointed to examine the application, one or more assessors may be appointed to advise and assist the Inspectors (DCLG (UK) 2012).

The Examining Authority is required to invite the applicant, local authorities and other interested parties to a preliminary meeting to help determine how the application should be examined (DCLG (UK) 2012). The Examining Authority has a statutory duty to complete its examination within six months of the Preliminary Meeting. The examination is a form of legal process, during which consideration is given to relevant matters, including the representations of all interested parties, any evidence submitted and answers provided to questions set out in writing and explained at hearings (Planning Inspectorate (UK) 2012c).

During the examination stage, all interested parties are invited to provide further written evidence, if they wish, about the issues identified in their representations. The Examining Authority is likely to put written questions to the applicant and other interested parties to clarify points made or to seek additional information. All interested parties also have the opportunity to comment on the representations of others, and to respond to any comments made on their representations. While the examination is mainly a written process, in certain circumstances the Examination Authority may decide to hold hearings (Planning Inspectorate (UK) 2012c). It is also common practice for Inspectors to make site visits during this process (DCLG (UK) 2012).

#### Decision

The Examining Authority has three months from the end of the examination to make a recommendation to the Secretary of State. The Secretary of State then has a further three months to take a decision. The Secretary of State does not have to abide by the recommendation of the Examining Authority. The Secretary of State may disagree on any matter of fact mentioned in, or appearing to be material to, a conclusion reached by the Examining Authority, or may consider new evidence or any new matter of fact (DCLG (UK) 2012). For example, recently the Secretary of State for Energy and Climate Change refused approval for a proposed gas storage facility in Lancashire, despite a recommendation for approval from the Planning Inspectorate. Consent was refused on the grounds that the application ‘failed to demonstrate the suitability of the site’s geology’ (BBC 2013).

#### Post‑decision

There is no right of appeal against the Secretary of State’s decision. However, once a decision has been issued, there is a six week period in which an application may be made to the courts for judicial review (Planning Inspectorate (UK) 2012b).

### Views on the performance of the system

#### Time frames are largely being met

The Planning Inspectorate’s 2012‑13 annual report stated:

In 2012‑13, formal applications were submitted on 16 projects and we received notification of 19 pre‑application projects. We issued Environmental Impact Assessment scoping opinions on 30 applications and screening opinions on 2 further cases. 13 applications were accepted for examination (acceptance decisions) and 15 completed the examination — recommendations were submitted to the Secretary of State on 9. All these were within the statutory time limits set down. (Planning Inspectorate (UK) 2013, p. 16)

The report indicates that Secretary of State decisions were also being made within statutory time limits.

Walker (2013a) reported that ‘from the start of the examination until a decision is issued takes up to a year, which is how the regime was intended to work, and should provide comfort to future users of the regime’.

However, judicial review challenges are quite common and this is adding to time frames in some cases. Recent projects subject to judicial review include the Hinkley Point C nuclear power station in Somerset, the Heysham to M6 link road in Lancashire and the Rookery South ‘energy from waste’ project in Bedfordshire. The Hinkley Point decision is being appealed by An Taisce, an Irish heritage charity, on the grounds that the UK Government had not consulted with the Irish people before granting consent (Geoghegan 2013).

#### Environmental and other regulations are imposing relatively high costs

A recent review of major infrastructure projects in the United Kingdom found that the United Kingdom ‘is an expensive place in which to build infrastructure’ (HM Treasury 2010, p. 7), with the United Kingdom consistently ranked among the most expensive countries in Western Europe to build infrastructure. These higher costs are largely due to factors other than higher labour, plant and material input costs:

Comparison of labour, plant and material input costs with Northern European countries indicate the UK is generally comparable and that input costs are not a significant driver of higher infrastructure costs. (HM Treasury 2010, p. 8)

While the report noted that in some instances the higher costs were a result of the United Kingdom’s greater density of population and high land costs, as compared to other European countries, the report also noted that some of the higher costs could be attributed to policy. Specifically, the report cited the United Kingdom’s approach to addressing environmental and ecological concerns, noting that:

[w]hile these systems [compliance and consent regimes] are individually designed to protect the environment, heritage, the rights of citizens and ensure high quality, safe infrastructure, the cumulative cost impact is considerable. (HM Treasury 2010, p. 12)

Compliance with environmental regulations and related third party constraints was estimated to add as much as 10 to 15 per cent to the cost of infrastructure (HM Treasury 2010).

### Recent and prospective reforms

The UK *Planning Act 2008* was introduced to speed up approval processes for key infrastructure following a series of high profile proposals that took several years to be approved. For example, consent for Terminal 5 at Heathrow airport took eight years from the time a planning application was formally lodged (Falconer 2001). The reforms included:

* developing a series of National Policy Statements, that set out in advance government objectives for the development of nationally significant infrastructure in particular sectors
* requiring consultation be undertaken before an application was submitted
* reducing the use of public inquiries and hearings, and relying more on written submissions
* introducing fixed time frames for considering applications
* approval by the examining body, rather than a Minister (Walker 2013b).

The *Localism Act 2011*, reinstated Ministerial approval, but left many other aspects of these reforms unchanged.

Recently, the UK Government published draft regulations that would extend the nationally significant infrastructure regime to cover the most significant business and commercial projects (DCLG (UK) 2013b). Under the regulations, proponents would be able to choose to be subject to the regime, provided their project met certain criteria. Various types of construction projects potentially qualify, including offices, research and development, manufacturing, distribution, sport and tourism, and mining projects.

## United States

### Context

As a federation, most powers related to regulating aspects of major projects are reserved to the states. Planning powers, however, are predominantly applied by local government through the exercise of zoning (which is given effect under the policing head of power reserved for the states but delegated to the municipal level (Cullingworth and Caves 2009, pp. 78–79).

Further, two particular features of United States (US) land ownership are notable for their implications for major project assessment and approval. First, activities on Native American lands can be regulated differently, as tribes are considered ‘domestic dependent nations’ and operate as sovereign governments subject to Federal authority. Second, mineral rights are not always reserved to the State. Individual surface owners often own the subsurface mineral rights (though they may have on‑sold or leased them separately from the surface rights). Mineral rights are also frequently owned by the Federal Government, especially in western states. (The Federal Bureau of Land Management manages around 13 per cent of the total US land surface, mostly in western regions.)

### Key features of assessment and approval processes

The regulatory regimes that can apply to major projects in the US are extraordinarily complex, and can depend on which levels of government are involved (box D.5). The following section focuses primarily on the key environmental assessment processes that may apply.

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| Box D.5 US regulatory complexity — geothermal road mapping project |
| Against the backdrop of uncertainty around the US geothermal permit process, in April 2012 the US Government established a project team to develop working roadmaps of existing relevant permitting processes (for agency, industry and policymaker use).  As of mid‑October 2013, the team had published over 460 different flow charts detailing potential processes or permits that a geothermal project may have to comply with, including:   * 20 general process flow charts (ranging from exploration to water access overviews) * over 40 US Government flow charts (ranging from ‘Tribal Land Leasing’ to ‘Bald & Golden Eagle Permits’) * over 390 state process flow charts (ranging from Alaskan ‘Right of Ways’ to Idaho’s ‘Well Abandonment Process’). In California alone, 31 flowcharts were listed.   These processes just cover the geothermal relevant processes of the US Government and ten largely western states (where most geothermal resources are). Additional or altered processes can apply for non‑geothermal projects. |
| *Source*: US Department of Energy (2013b). |
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#### Key Federal processes

While the States have the most prominent role in regulating major projects, the Federal Government also plays a part in certain circumstances. Most prominently this occurs through the need for a Federal EIA. This can occur where Federal land or any Federal decision maker or agency is involved.

##### The National Environmental Policy Act 1970

A highly influential and much replicated statute, the *National Environmental Policy Act 1970* (NEPA) was legislated to protect and enhance the environment. It established a series of national environmental policies and related action‑forcing provisions, and created the Council of Environmental Quality (CEQ) (an agency in the Executive Office of the President). CEQ is responsible for environmental policy coordination, monitoring and reporting, and the operation of the Act. It advises the President on environmental matters and sets the regulations for how NEPA operates, including the EIA process.

NEPA’s action‑forcing provisions are primarily procedural, and most obviously manifest in a requirement for Federal agencies to conduct an EIA for Federal actions that significantly affect the environment. NEPA requires that Federal decision makers consider the potential environmental consequences of their proposed action, and any reasonable alternatives, before deciding whether and in what form to take an action. While this EIA process provides more information on environmental impacts, it does not require decision makers to choose a project formulation with the least environmental impacts. The US Environmental Protection Agency, a sister agency of CEQ, has a role in reviewing EIAs. EIAs deemed inadequate are referred to CEQ. Federal agencies complying with NEPA often require the proponent to prepare and submit adequate application information to help in preparing the NEPA analyses and documentation.

Collaboration with tribal, state and local governments is encouraged to reduce duplication. Regulations ‘explicitly provide for Federal agencies to conduct joint planning processes, joint environmental research … and joint environmental assessments’ (DOE (US) 2013c). State and Federal EIAs are thus sometimes combined into one document (since they can have similar elements for the most part).

#### Key State law

As the most populous State, and one with a prominent environmental regulatory regime, California has been chosen as an illustrative example for relevant state regulatory regimes.

##### The California Environmental Quality Act 1970

Similar to NEPA, the *California Environmental Quality Act 1970* (CEQA) has been a significant influence on environmental law in other jurisdictions. A number of other US States have laws similar to CEQA (although their scope is usually narrower).

CEQA requires State Government agencies to consider (primarily through EIA) the environmental consequences of certain projects before approving their plans. It applies to any action when a project requires discretionary approval by a state or local governmental body.

CEQA is wider in scope than NEPA. NEPA applies only to projects receiving Federal funding or approval by federal agencies, while CEQA applies to projects receiving any form of state or local approval, permit, or oversight. (Thus, development projects in California funded only by private sources and not requiring approval by a Federal agency would be exempt from NEPA, but would likely be subject to CEQA.)

Moreover, unlike the NEPA process, CEQA has:

… substantive provisions beyond mere procedural requirements which means the State may halt a project that on balance is not advantageous for the environment and human health. (DOE (US) 2013a)

That said, a State agency may sometimes approve a project which causes significant environmental damage. In this case:

… the agency must make findings which clearly explain the circumstances surrounding the project analysis and the approval. Then, the agency must explain their decision to approve the project, despite expected environmental damage, by adopting a Statement of Overriding Considerations. This type of statement points out the reasons why a project’s benefits outweigh its environmental costs. (San Luis Obispo County 2013)

### Reform directions

The Commission understands reforms to CEQA were contained in a Bill the California legislature passed in September 2013 (*SB‑743 Environmental quality: transit-oriented infill projects, judicial review streamlining for environmental leadership development projects, and entertainment and sports center in the City of Sacramento*). While it seems the primary motivation of the new law is to provide exemptions from permitting processes for a Sacramento basketball arena redevelopment, other changes include: removing certain urban parking and aesthetics matters as CEQA triggers; a new expedited 270 day period for judicial review; and other changes to facilitate urban infill. It is not clear how material the changes will be on implementation. Commentators have suggested the law is more incremental and narrow than earlier proposed statewide CEQA reforms, which failed to gain sufficient political support (Ewers 2013).

At a Federal level, the Commission is aware that legislative reforms have been mooted, but have yet to gain enough support for passage. For example, as of mid‑October 2013, the US Senate had yet to consider *H.R. 761:* *The National Strategic and Critical Minerals Production Act of 2013,* which aims to streamline Federal permitting for resources projects (and was passed by the House on 18 September 2013). This Act supersedes an analogous Act (*H.R. 4402*) that similarly passed the House in 2012, but was never passed by the Senate.

In the absence of legislative reform, the US Administration has focused on both administrative changes and efforts to enhance access to information. For example, in February 2013, President Obama announced a goal of cutting timelines in half for major infrastructure projects (such as highways, bridges, railways, ports, waterways, pipelines and renewable energy):

[The] modernization effort will achieve time savings … while ensuring projects create better outcomes for communities and the environment. The effort will … [expand the] use of integrated planning, landscape and watershed‑level mitigation, information technology, and publication of public timelines for permitting and review decisions to improve transparency and predictability. (White House 2013)

The changes have also occurred against the backdrop of the President signing a number of key orders to promote streamlined Federal permitting, including:

* the Presidential Memorandum — Speeding Infrastructure Development through More Efficient and Effective Permitting and Environmental Review (31 August 2011)
* the Executive Order — Improving Performance of Federal Permitting and Review of Infrastructure Projects (22 March 2012)
* the Presidential Memorandum — Modernizing Federal Infrastructure Review and Permitting Regulations, Policies, and Procedures (17 May 2013).

#### Administrative changes

Other reforms to Federal US DAA processes involving administrative changes have been implemented recently.

* Reforms to promote internal coordination within government, particularly amongst Federal agencies with a notable role in permits.
* Specific examples, include a 2009 Memorandum of Understanding (MOU) between nine Federal Agencies to speed approval of new transmission lines. This was followed by the interagency ‘Rapid Response Team for Transmission’ initiative, which aims ‘to improve the overall quality and timeliness of electric transmission infrastructure permitting, review, and consultation by the Federal government on both Federal and non‐Federal lands’ (CEQ nd).
* There have also been efforts to increase federal–state coordination, particularly through the use of MOUs. For example, CEQ has worked with the Western (States) Governors Association to reduce duplication on assessments and other permitting matters. Also, the Department of the Interior has signed a 2009 MOU with the State of California, which is assisting in the development of renewable energy projects.
* Greater reporting and transparency requirements have been introduced.
* A new annual report to the President on approaches to cut timelines and improve outcomes for Federal permitting of infrastructure projects has been initiated.
* The Office of Budget Management now tracks the progress of large scale projects, like transmission lines and highways, which has helped put pressure on agencies to improve performance in providing approvals.
* A new ‘Federal infrastructure permitting dashboard’ website has enhanced public transparency.
* Evaluations of internal processes are being undertaken.
* Collectively, the above initiatives have increased pressure on agencies to examine their own procedures. For example, the Department of Transportation initiated an internal improvement program called ‘Every Day Counts’ in 2010 to shorten ‘the time needed to complete highway projects through the use of new technologies and innovative processes’ (DOT (US) 2012). This initiative has led the department to systematically review the efficiency of their permitting processes.
* CEQ is also working with the relevant Federal agencies to track five selected pilot projects which are utilising innovative environmental review methods, ‘in an effort to evaluate their outcomes, and highlight and promote lessons learned on time and cost saving approaches to replicate across the government’ (Council on Environmental Quality, White House 2013).

#### Information provision

Reforms to Federal US DAA processes involving information provision have also been implemented recently.

* Better baseline data collection (including accessible electronic information systems) have been introduced.
* US agencies have developed web tools to access geospatial databases in real time to help facilitate the environmental review process.
* While certain databases and inventories are currently only available to government users, the US Environmental Protection Agency’s ‘NEPAssist’ tool is publicly accessible. This ‘provides immediate screening of environmental assessment indicators for a user‑defined area of interest. These features contribute to a streamlined review process that potentially raises important environmental issues at the earliest stages of project development’ (EPA (US) 2012).
* Better information on regulatory processes at the pre‑application stage (to assist applicants to have everything in place before actually putting in an application) is being provided.
* Regulatory roadmaps and handbooks are being developed to help proponents (and regulators) understand permitting requirements (for example, the Geothermal Regulatory Roadmap (box D.5)).
* CEQ is working on a pre‑application tool kit to make Federal processes easier to navigate.
* CEQ is also apparently progressing efforts to encourage pre‑application meetings and coordination amongst Federal agencies and applicants, to provide greater regulatory certainty and encourage early information provision.

## New Zealand

### Key features of the DAA framework

The *Resource Management Act 1991* (RMA) is the key legislation governing the assessment and approval of development in New Zealand, including major projects. It replaced in whole or part more than 20 major statutes and 50 other laws related to the environment: ‘a collection of uncoordinated approaches, with many conflicts, gaps and overlaps’ (MfE (NZ) 2013b, p. 12).

Introduced in 1991, the RMA was ‘in international terms … the first real attempt to institute a planning system that was built on a concept of sustainability’ (Miller 2011, p. 1). Its purpose is ‘sustainable management’ — that is, the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety — while:

* sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations
* safeguarding the life-supporting capacity of air, water, soil, and ecosytems
* avoiding, remedying or mitigating any adverse effects of activities on the environment (s. 5).

In addition, the principles of the RMA include:

* matters of national importance that must be recognised and provided for, including:
* the preservation of the natural character of the coastal environment, wetlands, lakes and rivers and protection of them from inappropriate subdivision, use and development
* the protection of outstanding natural features and landscapes from inappropriate subdivision, use and development
* the protection of areas of significant Indigenous vegetation and significant habitats of Indigenous fauna
* the relationship of Maori and their culture and traditions with their ancestral lands, water and sites
* the protection of historic heritage from inappropriate subdivision, use and development
* the protection of protected customary rights (s. 6).
* matters that all decisions shall have particular regard to, including:
* kaitiakitanga[[5]](#footnote-5)
* efficient use and development of natural and physical resources
* efficiency of the end use of energy
* amenity values
* finite characteristics of natural and physical resources
* the habitat of trout and salmon (a proxy for water quality)
* climate change
* renewable energy (s. 7).
* taking into account the principles of the Treaty of Waitangi (s. 8).

Most decisions under the RMA are made by local government, but within a framework that flows from the national level (via statements determined by the Central Government, such as national environmental standards and national policy), through to regional policy statements and plans, and then to district plans and rules (determined by local government).

The RMA:

* imposes a statutory requirement on regional councils to prepare regional policy statements and regional coastal plans, which must give effect to national policy statements
* requires territorial councils to prepare district plans for resource management within their local areas, which must not only give effect to national policy statements of Central Government but also regional policy statements by regional councils.

The RMA allows all consent decisions about a project to be considered in one process. This aims to reduce costs otherwise associated with applications for multiple permits. It brings together in one Act broader coverage of the social, environmental, heritage and Indigenous issues than is the case in Australian legislation.

Nevertheless, the RMA has been criticised:

The Government continues to hear concerns that resource management processes are cumbersome, costly and time consuming, and that the system is uncertain, difficult to predict and highly litigious. The system seems to be difficult for many to understand and use, and is discouraging investment and innovation. The outcomes delivered under the RMA are failing to meet New Zealanders’ expectations. (MfE (NZ) 2013b, p. 6)

#### Proposals of national significance

While local authorities are the principal decision makers under the RMA, the Act provides for the Minister for the Environment to make a direction that a proposal is of national significance and refer it to a board of inquiry (appointed by the Minister) or to the Environment Court for a decision. The Minister does not decide whether these proposals should be approved.

Factors the Minister may consider, when deciding whether the proposal has national significance, include whether the matter has:

* aroused widespread public concern
* involves significant use of natural and physical resources
* is relevant to New Zealand’s international obligations
* will help the Crown fulfil public health, welfare, security or safety obligations or functions
* is likely to contribute to significant changes to the environment
* relates to network utilities extending to more than one district or region (s. 142(3)).

For nationally significant proposals that have been lodged with a local authority, the Minister can be formally requested to intervene in a decision‑making process by either the applicant for the proposal or the local authority that would normally make the decision. Alternatively, the Minister can choose to intervene on his or her own volition. Applicants with proposals that they consider are of national significance can also lodge directly with New Zealand’s recently established Environmental Protection Authority (EPA).

If the Minister calls in a proposal that has been lodged with a local authority, he or she can make a direction that the matter is referred for consideration and decision to an independent board of inquiry (the Minister appoints members to the Board), or to the Environment Court. In either case, the local authority will no longer have the role of deciding the matter. Examples of call‑ins in the last five years include proposals for the Turitea, Waikato and Te Waka wind farms, the Upper North Island Grid Upgrades and the Te Mihi geothermal power station (MfE (NZ) 2011).

If the matter has been lodged with the EPA, the EPA must make a recommendation to the Minister on whether it considers the proposal to be of national significance, and whether it should be referred to a Board of Inquiry, the Environment Court or the local authority for consideration and decision.

If the Minister decides to call‑in a proposal, he or she must give a direction in writing, stating the reasons for referring the matter to a Board of Inquiry or to the Environment Court. The EPA serves the Minister’s direction on the local authority and applicant. The EPA also gives public notice of the Minister’s direction and receives submissions on the proposal.

If the Minister makes a direction that the matter will be processed by the local authority, the Minister may still intervene in the process. For example, the Minister may make a submission on the matter for the Crown, appoint a project coordinator to advise the local authority on anything relating to the matter, or appoint an additional hearings commissioner.

If the matter is referred to a Board of Inquiry, as soon as practicable after the inquiry has been completed, the Board prepares a draft decision and produces a draft report which states the reasons for its decision. After inviting comments on ‘minor or technical’ aspects of the report, the Board produces a final report and decision. That is, the Board is the ultimate approval authority.

If the matter is referred to the Environment Court, the Court must have regard to the Minister’s reasons for making a direction in relation to the matter, and must apply relevant sections of the RMA as if it were a consent authority.

A Board of Inquiry must make its final decision within nine months of the public notification of the Minister’s decision to call‑in the matter. However, the Minister can extend this timeframe to 18 months if special circumstances exist. The timeframe can be extended beyond 18 months only with the applicant’s agreement. The nine month decision making timeframe does not apply to the Environment Court.

Many of the costs that the EPA or a Board of Inquiry incur to review proposals of national significance are recovered from the proponent (MfE (NZ) 2013a).

A decision by a Board of Inquiry or the Environment Court may be challenged only by an appeal to the High Court on a question of law. If that decision is challenged, a further appeal may be taken to the Supreme Court or the Court of Appeal on a question of law, but only with the leave of the Supreme Court.

#### Reporting on implementing the RMA

Every two years the Ministry for the Environment surveys local authorities in New Zealand about key aspects of RMA implementation. The survey does not separate the processing of proposals of national significance, but has data about the approval process in general.

Five key facts from the 2010–11 survey were:

* 36 154 resource consent applications were processed through to a decision
* 0.56 per cent (203) of resource consent applications were declined
* 6 per cent (2263) of resource consent applications were notified in some way (publicly notified or limited notified)
* 95 per cent of resource consent applications were processed on time. Section 37 was used to extend the time limits for 15 per cent of all resource consent applications
* 68 per cent of consents that required monitoring were actually monitored.

The survey also monitors the use of good practice by local authorities to improve performance in resource management functions (MfE (NZ) 2011).

### Reform directions

There have been 18 amendment Acts for the RMA since 1993. The New Zealand Government has a program for further streamlining the RMA and improving decision making:

… the Government is hearing that, in practice, every step of the current resource management system has become overly complex and unclear. There is a concern that focus under the RMA has shifted too far towards avoiding effects on the environment and that too little emphasis is being placed on using planning to deliver positive outcomes — this is a particular concern in urban areas. (MfE (NZ) 2013b, p. 12)

#### Phase One

The first phase was completed in 2009 and streamlined decision making for projects of national significance (MfE (NZ) 2013b). One main element of these reforms was the establishment of an EPA, as previously there was no dedicated authority to receive or process applications that were of national significance. Other elements included providing more guidance about what would likely be of national significance — in particular those projects involving key infrastructure — and making some procedural changes to one of the decision pathways.

Phase one involved a range of other changes.

* The Environment Court can award security for costs, in order to make appellants think carefully about the merits of their appeal.
* Parties that are trade competitors of an applicant cannot make a submission, except when they are affected by an environmental effect and this is not related to trade competition. Damages can be awarded against parties who participate for trade competition reasons.
* Councils’ ability to stop the clock has been reduced except with the agreement of the applicant. The council must consider the interests of those affected by the extension and its duty to avoid unreasonable delay.
* Councils must discount charges for processing resource consents outside of statutory timeframes.
* Fines for noncompliance with the RMA have been increased.
* Applicants can choose whether their application is considered by elected representatives or by independent commissioner(s) (MfE (NZ) 2009).

#### Phase two

Phase two of the reforms aims to improve the operation of the RMA and resource management more broadly, including in freshwater management and use, planning for natural hazards and for urban land supply.

In 2011, the New Zealand Government established a Technical Advisory Group to provide independent advice to the Minister for the Environment on any changes needed to sections 6 and 7 of the RMA, to improve the functioning of the legislation in the light of: 20 years’ experience of its operation; the Government’s environmental and economic objectives; and the broader second phase of resource management reforms.

The Technical Advisory Group found:

* the RMA’s principles give greater weight to the sustainable management of natural and physical resources, than to social, cultural and economic matters. As well, some ambiguity in the wording of sections 6 and 7 makes it unclear whether and how to weight the matters within or between the sections.
* sections 6 and 7 do not include nationally significant matters — such as natural hazards, urban design and related housing affordability issues — or investment in major infrastructure beyond renewable energy. Each of these is important to consider in present day planning, and a national view is needed because their impacts cross regional and local boundaries. One result is uncertainty for local decision makers who may then turn to the courts to make final decisions. (MfE (NZ) 2013b, p. 20)

In addition to these broad issues, the New Zealand Government sees a range of process-oriented problems that need to be resolved (box D.6).

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| Box D.6 Areas targeted for further reform in New Zealand |
| The Government has identified problems that need to be resolved:   * inefficient duplication of effort in developing plans, and unnecessary variation and complexity in planning documentation, creating problems for engagement, understanding and compliance * a lack of clear, up-to-date national guidance on matters of national importance, leaving such issues to be resolved at local levels, coupled with a highly devolved decision making system, that has led to tension between national and local objectives and the development of inconsistent approaches to these matters across the country * insufficient attention being paid to meeting future needs as opposed to mitigating impacts * overreliance on consents and Environment Court appeals in attempting to resolve fundamental tensions over resource uses and values that would be better addressed at the plan stage * high costs of securing and complying with decisions, particularly consent decisions that are not commensurate with actual impacts * a lack of predictability in decision making — in both plans and consents — particularly affecting those needing decisions * inflexibility in the application and enforcement of the Resource Management Act processes, leading to disproportionate costs and requirements, particularly for small projects. |
| *Source*: MfE (NZ) (2013b). |
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The New Zealand Government initiated a consultation process on a package of reforms in February 2013 (MfE (NZ) 2013b) and, in August 2013, published a summary of reform proposals, including:

* combining sections 6 and 7 of the RMA (matters of national importance and other matters, respectively) into a single list, to remove the current hierarchy between the two sections, in order to support more balanced decision making
* including three new matters of national importance in the new combined section:
* effective functioning of the built environment
* management of significant risks of national hazards
* efficient provision of infrastructure
* creation of a new section 7, which will set clear expectations of best-practice approaches to resource management decisions for stakeholders, including:
* endeavouring to use timely, efficient and cost‑effective resource management processes
* promoting collaboration between or among local authorities on common resource management issues
* ensuring that restrictions are not imposed under this Act on the use of private land except to the extent that any restriction is reasonably required to achieve the purpose of the Act
* reduced regulatory requirements for minor and less complex projects
* changes to reduce the cost and complexity of the EPA’s processing of applications for nationally significant proposals, including:
* simplifying the requirements for public notification
* requiring boards of inquiry to have regard for cost-effective processes when determining their procedures
* improving the ability for electronic provision of information related to the proposal
* enabling the EPA to stop processing a proposal where there are unpaid debts and clarifying the EPA’s ability to recover debts
* measures to resolve appeals to the Environment Court more quickly, including judicial conferences and mediation
* requirements that councils monitor how they are delivering their functions and duties under the RMA, against measures such as timeliness, cost and overall user satisfaction, and performance against environmental and economic indicators (MfE (NZ) 2013c).

E Overview of international rankings reports

There are a number of publicly available reports that rank Australia or its States and Territories against other jurisdictions in areas related to development assessment and approval (DAA) processes. Most of these reports adopt a perception survey approach and attempt to translate this information into some sort of comparative quantitative indicator(s) that can be used to rank jurisdictions.

Some of the reports survey broad regulatory performance, while others take an industry perspective (for example, attractiveness of jurisdictions for mining investment). Most of the reports do not directly measure the efficiency and effectiveness of DAA processes.

Australia compares favourably with other countries. Australia ranks 10th out of 185 countries in the World Bank’s *Doing Business Report* (a proxy for the efficiency of regulatory processes) and 20th out of 144 countries in the World Economic Forum’s *Global Competitiveness Report*. Resource‑related surveys also indicate that Australia is a preferred location for mining investment and has a regulatory framework that is supportive of investment. For example, Behre Dolbear’s *Ranking of Countries for Mining Investment* ranked Australia as the best destination (out of 25 countries) for mining investment for the last three years.

Within Australia, surveys that compare the regulatory performance of Australian jurisdictions generally rank Western Australia, South Australia or the Northern Territory highest.

Table E.1 summarises the focus and key findings of these surveys.

Table E.1 An overview of international surveys that rank regulatory performance

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| Report | Focus | Key findings |
| **Survey of Mining Companies 2012‑13**  *Fraser Institute* | This survey ranks the mining investment climate of 96 jurisdictions around the world. Jurisdictions are assigned scores for each of 17 policy factors, covering:   * regulatory certainty * regulatory duplication and inconsistencies * uncertainty with respect to land use or claims * infrastructure (access to roads, power availability and so on) * political stability and level of corruption.   The factors are aggregated for each jurisdiction into a Policy Potential Index to provide an overall score. | The top ranked jurisdictions were Finland, Sweden and Alberta (Canada).  The best ranked Australian jurisdiction was Western Australia (15th overall) and the lowest ranked Australian jurisdiction was Tasmania (49th overall).  Western Australia and the Northern Territory scored relatively well as jurisdictions that encourage investment by reducing uncertainty concerning the administration, interpretation, and enforcement of existing regulations, but generally Australia does not rank as well on avoiding regulatory duplication and inconsistencies. |
| **Global Petroleum Survey 2012**  *Fraser Institute* | This survey ranks 147 jurisdictions around the world in relation to the barriers to investment in upstream oil and gas exploration and production.  Jurisdictions were assigned scores for each of 18 factors, covering:   * regulatory uncertainty * cost of regulatory compliance * trade barriers * infrastructure * political stability and corruption.   The All‑Inclusive Composite Index for each jurisdiction is derived from the equally‑weighted scores for each factor. | The top ranked jurisdictions were Oklahoma (USA), Mississippi (USA) and Texas (USA).  The highest ranked Australian jurisdiction was South Australia (29th overall) and the lowest ranked Australian jurisdiction was New South Wales at 63rd. In general, Australian jurisdictions performed relatively poorly in terms of regulatory environment, with the highest performing jurisdiction (New South Wales) ranked 47th and the lowest performing jurisdiction (South Australia) ranked 116th. |
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Table E.1 (continued)

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| Report | Focus | Key findings |
| **2013 Ranking of Countries for Political Risk: Where Not to Invest**  *Behre Dolbear* | This report ranks 25 countries on their attractiveness as global mining investment destinations. Seven criteria are used:   * economic system * political system * social issues affecting mining in the country * delays in receiving permits * the degree of corruption * stability of currency * competitiveness of the country’s tax policy. | Australia ranks as the ‘best destination’ for mining investment of all 25 countries. Its position as the best destination is unchanged over the last three years.  Within the specific criteria, Australia is also ranked as:   * being the most effective at managing social issues * having the fewest permitting delays. |
| **National audit of regulations influencing mining exploration and project approval processes (draft)**  *URS Australia Pty Ltd*  (cited in MCA, sub 33) | This report covers the scope and application of laws that affect the minerals sector in Australia and New Zealand.  Each jurisdiction was rated out of five for various criteria, covering the design of policies and regulations and the administration of the process for each approval/ permitting/access requirement. The scores are aggregated to yield rankings, including an overall ranking of individual jurisdictions. | Unnecessary delays and duplication in processes were found to negatively impact mining projects in Australia. Overall, the ratings of all Australian jurisdictions fell between 2006 and 2012, which is attributed to the increase in the amount of legislation applicable to the minerals sector.  South Australia ranks the highest, with an average score of 3.7 out of 5 across all criteria. This is closely followed by New South Wales, Victoria, Queensland and New Zealand. |
| **Doing Business 2013**  *World Bank and International Finance Corporation* | This report ranks 185 economies in terms of ease of doing business generally as well as an assessment of 11 specific regulatory areas, including the ease of:   * starting a business * dealing with construction permits * getting credit * enforcing contracts * trading across borders. | The highest ranked economies were Singapore, Hong Kong and New Zealand. Overall, Australia ranked 10th.  On dealing with construction permits, Australia is ranked 11th. It was estimated that the process of dealing with construction permits in Australia involved 11 procedures and took 112 days. |
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Table E.1 (continued)

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| Report | Focus | Key findings |
| **The Global Competitiveness Report 2012‑13**  *World Economic Forum* | This report calculates a Global Competitiveness Index for 144 countries as a weighted average of different ‘pillars’, including:   * institutions * infrastructure * macroeconomic environment * health and primary education * higher education and training * goods market efficiency * labour market efficiency * financial market development * technological readiness * market size * business sophistication * innovation. | The best ranked jurisdictions were Switzerland and Singapore. Overall, Australia was ranked 20th.  However, Australia performs relatively poorly on individual measures related to development assessment and approval processes. Australia is ranked:   * 96th on the burden of complying with government regulation * 29th on the transparency of government policymaking * 56th on government provision of services to help businesses boost their economic performance * 18th on the efficiency of the legal framework in settling disputes * 19th on the efficiency of the legal framework in allowing private businesses to challenge the legality of government actions and/or regulations. |
| **Development Assessment Report Card 2012**  *Property Council of Australia* | This report evaluates each Australian jurisdiction’s planning system against the Development Assessment Forum (DAF) leading practice principles, namely:   * effective policy development * objective rules and tests * built‑in improvement mechanisms * track‑based assessment * single point of assessment * notification * private sector involvement * professional determination for most applications * applicant appeals * third‑party appeals. | The Northern Territory was ranked the best of the Australian jurisdictions in terms of a consistent improvement program and commitment to the DAF principles. Western Australia also made significant improvement between 2010 and 2012. |
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Table E.1 (continued)

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| Report | Focus | Key findings |
| **DAF Reform Implementation Report Card (2012)**  *Property Council of Australia* | The progress of each Australian jurisdiction in implementing the planning reforms outlined by the DAF leading practice principles. | The Northern Territory was ranked the best jurisdiction overall, which is largely attributed to its single level of planning control. South Australia made the most advances by setting policies and strategies and providing planning direction to local government. New South Wales scored the lowest, notwithstanding the major reforms already put in place, but has the most potential for improvement if announced reforms are implemented. |

*Sources*: Behre Dolbear (2013); Fraser Institute (2012, 2013); PCA (2012a, 2012b); URS Australia Pty Ltd (nd); WEF (2013); World Bank and the International Finance Corporation (2013).

F National and international use of strategic assessment

This appendix provides information on the use of strategic assessment by Australian States and Territories and selected overseas jurisdictions. This information supports the analysis contained in chapter 11.

## Australian States and Territories

### Strategic assessment in land‑use and development planning

#### New South Wales

The implementation of formal strategic assessment mechanisms in New South Wales has been a difficult process. For example, prior to July 2009, the *Environmental Planning and Assessment Act 1979* (NSW) had allowed for the development of regional environmental plans (REPs). REPs were considered by some commentators (Ashe & Marsden 2011; Kelly, Jackson & Williams 2012) to constitute a framework for strategic assessment‑type processes. However, REPs are no longer part of the hierarchy of environmental planning instruments in New South Wales. The NSW Government states that ‘the removal of the REP layer is intended to simplify the State’s planning system’ (Department of Planning and Infrastructure (NSW) 2009).

Although the State currently lacks a formal mechanism for strategic assessment, the NSW Government has instigated a number of metropolitan and regional plans that have elements of strategic planning and strategic assessment. For instance, the Metropolitan Plan for Sydney 2036 will be implemented through detailed sub‑regional plans that will include ‘upfront consultation with communities about what culture and heritage they want to protect in their area’ (Department of Planning and Infrastructure (NSW) 2013, p. 18).

In addition, there are also ‘regional strategies’ in place for eight areas of regional New South Wales that have been prepared in partnership with local governments. These are intended to identify strategic priorities that will direct land use planning at the regional level and are to be updated every five years.

The NSW Government has also recently put in place a ‘Gateway process’ to provide independent assessment of how mining or coal seam gas proposals would impact the agricultural values of the land on which it is proposed to be located (NSW Government nd). However, this assessment is quite narrow in focus, considering only one dimension of impacts (agricultural land values), whereas a full strategic assessment would consider a broader range of environmental, economic and social values.

#### Victoria

Victoria lacks a formal framework for strategic assessment. Neither the *Environmental Effects Act 1978* (Vic) or the *Planning and Environment Act 1987* (Vic) explicitly provide for strategic assessment. However, section 12 of the Planning and Environment Act provides a mechanism for examining strategic proposals that require amendments to planning schemes, while section 151 of the Act allows the Minister for Planning to appoint an advisory committee to advise on the merits of a proposal or planning policy issue. Section 151 has been used several times to investigate the merit of strategic proposals (Parliament of Victoria 2011).

#### Queensland

In Queensland, the Coordinator‑General undertakes strategic planning through the creation and planning of State Development Areas (SDAs). SDAs are specific areas created under the *State Development and Public Works Organisation Act 1971* (Qld) to facilitate industrial development, infrastructure corridors and major public infrastructure (Queensland Government, sub. 47). The planning process for the creation of SDAs contains elements of strategic assessment. Each SDA is subject to a development scheme, a regulatory document that controls land use and infrastructure planning and development in the SDA. The development scheme is prepared and administered by the Coordinator‑General and covers the following broad areas.

* Compatibility of land uses with the objectives of the SDA.
* The processes and procedures for the assessment of development, or material change of use, applications.
* Avoiding or minimising environmental impacts.

Once complete, the scheme overrides local and Queensland Government planning instruments related to the use of land. The Coordinator‑General may also prepare policies to assist in the implementation of an SDA’s development scheme (Department of State Development, Infrastructure and Planning (Qld) 2012).

#### Western Australia

In Western Australia, the *Environment Protection Act 1986* (WA) was amended in 2003 to allow the WA Environmental Protection Authority to assess ‘strategic proposals’. A strategic proposal is a proposal that identifies one or more future proposals that may, either individually or in combination, have a significant effect on the environment. According to the Environmental Protection Authority (2012b), strategic proposals can be used as an alternative to project‑by‑project assessment and are useful to ensure community involvement in the early stages of planning and for the consideration of cumulative impacts. The process may also give rise to more streamlined consideration of future ‘derived’ proposals that fall within the parameters of the strategic proposal.

However, the Environmental Protection Authority has noted the limited use of these provisions as an alternative to project‑based assessment (Environmental Protection Authority (WA) 2012a). In light of this, it has published a bulletin to describe its approach and its expectations of proponents of strategic proposals.

#### South Australia

South Australia is currently in the process of developing a Regional Mining and Infrastructure Plan. The plan covers three regions: the Far North; Eyre and Western; and Yorke and Mid North/Braemar provinces. The regions have been selected as they cover the majority of mining projects in South Australia. The Plan will consider the infrastructure that is best able to facilitate the development of the mining sector in South Australia, and help articulate the means of delivering this infrastructure. As part of the process, stakeholder feedback will be sought on a number of issues that would be included in a strategic assessment, including the regional and community impacts of mining (both positive and negative), the contribution of mining to the economy and any environmental costs. This feedback will be used to develop a priority list of infrastructure projects (Department of Planning, Transport and Infrastructure (SA) 2013).

#### Tasmania

The Tasmanian Government has introduced a planning reform program, a key feature of which is the introduction of regional land use strategies (Tasmanian Government, sub. 53, attachment 1). The development of these strategies has employed elements of strategic assessment. However, the lack of consistent and accurate environmental data has, in some cases, hampered attempts to develop a pro‑active planning approach to the protection of environmental values (Southern Tasmanian Councils Authority 2011)

#### ACT

Under the *Planning and Development Act 2007* (ACT), a strategic environmental assessment (SEA) may be undertaken when a major policy matter is proposed, such as a major variation to the Territory Plan (the key statutory planning document in the ACT). The ACT Minister for Planning can request a SEA, or the ACT Planning and Land Authority may decide that one is needed. Under the ACT approach, a SEA can be used to:

… assess the environmental benefits and impacts on an area [of the proposed policy or plan], which is an important part of any decision about an area’s suitability for future development. It can also recommend how the finding of the assessment should be considered in future planning. (Environment and Sustainable Development Directorate (ACT) 2013)

#### Northern Territory

The Commission is not aware of strategic assessment being used in a land‑use or development planning context in the Northern Territory.

### Strategic assessment in environmental and resource management policy

#### Water planning

Under the COAG National Water Initiative (NWI), considerable effort has been put into increasing the number and quality of water plans across Australia. An NWI‑consistent water plan: appropriately balances economic, social and environmental considerations; draws on the best available science, socioeconomic analysis and community input; and provides a clear basis for water access entitlements and allocations (National Water Commission 2011). As such, water planning clearly requires a strategic approach to be taken to the assessment of water resources.

The latest biennial assessment of the NWI reported that progress has been made in increasing the proportion of areas covered by water plans and in improving their quality, but that further improvements could be made (National Water Commission 2011). Fermio and Hamstead reported:

There is a view amongst mining stakeholders that water allocation planning has been focused on agricultural and urban water use; and that remote areas where mines are the only significant water‑using activity have not been prioritised for investment in water planning. (2012, p. 55)

There are regions where water planning can enable decisions about resource developments to be better informed about cumulative impacts on water resources. A possible example is the Fortescue Marsh area in Western Australia, where there is potential for the cumulative impacts of dewatering by iron ore mines to affect the groundwater‑dependent ecosystem of the marsh (Fermio & Hamstead 2012).

#### Regulation of native vegetation clearing

A review of Victoria’s native vegetation clearing regulations commenced in 2012. Part of the review involved developing an interactive model (called NaturePrint) that:

… brings together large amounts of information collected about species presence, habitat quality and connectivity, to determine relative environmental value across the landscape. This model ranks locations for their potential to contribute to the efficient conservation of the full range of Victoria’s biodiversity. (Department of Sustainability and Environment (Vic) 2012, p. 23)

The development of this model entailed a strategic approach to the assessment of biodiversity values.

Reforms to Victoria’s native vegetation clearing regulations that incorporate the use of NaturePrint have been announced (Department of Environment and Primary Industries (Vic) 2013). While the Commission has not independently evaluated the model, it would appear that it has enabled the regulations to be reformed in ways that are likely to improve the predictability and speed of decision making and ensure that offsets more cost‑effectively target environmental benefits. For example, maps generated by the model will in some cases be able to be used in assessing a clearance application as low risk, thereby avoiding the need for on‑site assessment. Proponents will also be able to more readily obtain information about the biodiversity value of different parcels of land, which could assist them to reduce their costs by siting developments in less environmentally sensitive locations.

## Selected overseas jurisdictions

### European Union

Within the European Union, SEA has been mandatory for certain types of plans and programs since 2001 under Directive 2001/42/EC, known as the ‘SEA Directive’. A directive is a legislative Act of the European Union that requires member states to achieve a particular result, but typically does not dictate the means of achieving that result. Failure to comply with the Directive may result in the European Commission initiating legal action against the member state in the European Court of Justice.

The SEA Directive covers plans and programs that are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste, waste water management, telecommunications, tourism, town and country planning or land use. For plans and programs not covered by these categories, EU member states have to carry out a screening procedure to determine whether the plans and programs are likely to have significant environmental effects.

Governments within EU member states can choose to go further than the minimum requirements of the SEA Directive, as for example Scotland has (see below). Other EU member states, such as Sweden, have chosen to only comply with the minimum requirements of the Directive. Since July 2004, Swedish law has contained provisions requiring certain government plans and programs to be subject to SEA (Environmental Protection Agency (Sweden) 2010).

(Sadler & Jurkeviciute 2011) noted a number of leading practices that have contributed to successful SEA outcomes in the European Union, including:

* adequate procedural and methodological guidance is provided to practitioners
* proper public consultation is undertaken
* checks and balances for SEA quality, such as independent review, are used
* reasonable alternatives are identified and considered (for example, alternative locations for development should be genuinely considered, rather than undertaken during report preparation to meet requirements)
* cumulative and large‑scale impacts are considered.

However, they suggested that there are some areas where EU nations need to improve, such as monitoring and compliance:

Not much seems to be known about practice in monitoring environmental effects of plans and programs … or reviewing environmental reports to ensure they are of ‘sufficient quality to meet the requirements of the Directive’ – both of which are critical to gaining a firmer understanding of SEA effectiveness. (Sadler & Jurkeviciute 2011)

Overall, they found that the implementation of the SEA Directive in the European Union has been mixed, ‘proceeding at very different speeds in member states’ (Sadler & Jurkeviciute 2011). This accords with the observations of the Commission. The Commission has focused on the application of the SEA Directive in the United Kingdom, and more specifically, Scotland, which is considered by some researchers to have the most comprehensive application of SEA (Kelly, Jackson & Williams 2012).

#### United Kingdom

As an EU member state, the United Kingdom has legislation in place that addresses the requirements of the SEA Directive. The UK (Office of the Deputy Prime Minister (UK) 2005) reported that the UK SEA approach places an emphasis on the following areas in particular.

* Collecting and presenting information on the environmental baseline and current problems, and their likely future evolution.
* Predicting significant environmental effects of the plan or program, including those of strategic alternatives.
* Addressing adverse environmental effects through mitigation measures.
* Consulting the public and authorities with environmental responsibilities as part of the assessment process.
* Monitoring the environmental effects of the plan or program during its implementation.

However, SEA regulations and practice differ between England, Scotland, Wales and Northern Ireland and consequently the types of plans and programs that require a SEA varies across the UK (Office of the Deputy Prime Minister (UK) 2005). For example, in England the Department of Communities and Local Government is the lead department on SEA and has prepared regulations to implement the SEA Directive. In Wales, the National Assembly for Wales has prepared Regulations for SEA of Welsh plans and programs, while in Northern Ireland, the Department of the Environment for Northern Ireland has prepared regulations to implement the SEA Directive (Environment Agency (UK) 2013).

Of all the constituent parts of the United Kingdom, Scotland has the most comprehensive application of strategic assessment techniques. In Scotland, the *Environmental Assessment (Scotland) Act 2005* (EA Act), an Act of the Scottish Parliament, governs the implementation of the SEA Directive. This Act makes SEA a statutory requirement for virtually all aspects of Scottish policy formation. Kelly, Jackson and Williams (2012) argued:

[Scotland] currently represents the most comprehensive application of this technique to public sector policies, plans and programs, not just within the EU but across all the members of the Organisation for Economic Co‑operation and Development. (p. 1)

##### The Scottish SEA experience

The Scottish Government has been an advocate of the value of the SEA approach. It argues that it has been an ‘important statutory step’ that can add value to development planning ‘by stimulating creative and lateral thinking, helping to challenge traditional views and facilitating fuller consideration of the environmental effects of policies and proposals’ (Scottish Government 2010). The Scottish Government (2006, p. 4) argued that SEA achieves this by:

* systematically assessing and monitoring the significant environmental effects of public sector strategies, plans and programs
* ensuring that expertise and views are sought at various points in the process from Scottish National Heritage, Scottish Environment Protection Agency, Historic Scotland and the public
* requiring a public statement as to how opinions have been taken into account.

From July 2004 to 1 January 2011, some 555 policies, plans and programs affecting Scotland were subject to at least one formal stage of SEA. Of these, 159 were screened out on the basis that they are unlikely to lead to significant environmental effects, while 396 went on to be subject to a full SEA (Environment Protection Agency (Scotland) 2011).

The Scottish SEA process involves a number of steps with formal requirements that must be undertaken according to statutory or agreed timelines. A SEA is instigated by a responsible authority, that is, the authority responsible for the policies, plans and programs as determined by the EA Act (such as the Scottish Government or a local council). The responsible authority must consult with the statutory consultation bodies under the Act and a report must be produced on how their responses have been taken into account (Environment Protection Agency (Scotland) 2011). The stages of the Scottish SEA process are described in box F.1. The progress of all Scottish SEA consultations can be tracked through a publically accessible online portal, the SEA Database. The SEA Database also holds all formal submissions to the assessment, and the government responses to those submissions (Historic Scotland nd).

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| Box F.1 Main stages of the Scottish SEA process |
| The Scottish strategic environmental assessment (SEA) process has a number of steps.   * *Screening*: the responsible authority establishes whether the policy, plan or strategy is likely to have a significant environmental impact. Having formed an opinion, it must formally consult with the consultation authorities to seek their views prior to making a determination about undertaking a SEA. The consultation authorities are Scottish Natural Heritage, Scottish Environment Protection Agency and Historic Scotland. Certain categories of policies, plans and programs automatically require a SEA and therefore screening is not required. * *Scoping*: formal consultation is undertaken with the consultation authorities to identify the scope and level of detail needed in the assessment, including the proposed period of consultation. * *Assessment*: the assessment has to describe the effects on the environment of the policies, plans or programs and their reasonable alternatives. Environmental data collection will have been ongoing through these stages and an environmental report must be prepared. * *Stakeholder engagement*: formal public consultation is required on the draft environmental report and on draft policies, plans and programs. * *Post‑adoption*: the responsible authority is required to make a statement on how the consultation responses and findings have been taken into account in the preparation of the policies, plans and programs. * *Monitoring*: to ascertain the effectiveness of mitigation measures, as well as providing for the identification of any unforeseen adverse effects at an early stage. |
| *Source*: SEPA (2011). |
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A recent review of the SEA process found that, while it was not as efficient as it could be, SEA had considerable potential to improve the quality of Scottish policies, plans and programs (Environment Protection Agency (Scotland) 2011). The report identified a number of positive aspects of the Scottish approach, including:

* improved transparency of decision making in respect of environmental issues
* clearly defined requirements and procedures of the EA Act
* regular consultation (a requirement considered important by stakeholders).

However, the report also identified a number of negative aspects to the Scottish SEA process, including:

* some stakeholders perceived that SEA had limited influence over policies, plans and programs
* consideration and evaluation of the effect on the environment of different alternatives is not undertaken in a rigorous manner
* SEA is sometimes treated as a ‘bolt‑on’ process rather than being effectively integrated, and stakeholder engagement may be poor
* benefits are not always clear and immediate and this can lead to a lack of ‘buy in’ to the process by some stakeholders, or it may potentially be viewed as an inconvenience rather than an opportunity
* considerable resources are required to undertake a SEA appropriately, the process is time consuming, and the output is often complex.

A survey of Scottish SEA practitioners undertaken as part of the review found that around 40 per cent believed that SEA led to better environmental outcomes, around 35 per cent were unsure and 25 per cent disagreed that the process led to better outcomes (Environment Protection Agency (Scotland) 2011).

### Canada

In Canada, regional environmental assessments incorporate aspects of strategic assessment, as they focus on the development potential of a geographic area, and include an examination of cumulative impacts under different development scenarios. The Canadian *Environmental Assessment Act 2012* provides the Minister of the Environment with authority to establish a committee to conduct a regional assessment for areas that are entirely composed of federal lands. The Minister may also establish a committee jointly with one or more provincial governments to conduct a regional study outside of federal lands (Natural Resources Canada, pers. comm., 8 June 2013).

At this stage, no regional environmental assessments have been started under the Environmental Assessment Act. However, a regional environmental assessment of the Beaufort Sea in Canada’s far north was instigated by the Canadian Government in August 2010 to facilitate socioeconomic and scientific research to inform regulatory decisions for potential offshore exploration and development activities in the region. It is a multi‑stakeholder initiative, involving Inuvialuit communities, industry, federal and territorial governments, academia and regulators. The intention is to support effective and efficient regulatory decision making by providing the necessary scientific and socioeconomic information to all stakeholders (Aboriginal Affairs and Northern Development Canada 2012). The assessment is currently in progress and is expected to be completed within the next two years.

In addition, some Canadian provinces undertake SEAs for offshore developments. In these cases, SEAs must be undertaken prior to issuing exploration licences for oil and gas. These assessments are undertaken by the jurisdictions’ petroleum board (the Canada–Newfoundland and Labrador Offshore Petroleum Board and the Canada–Nova Scotia Offshore Petroleum Board are two examples). These boards have used the SEA tool to analyse broad geographic areas and identify areas of particular environmental sensitivity that should be avoided or protected through mitigation measures. Assessments are also used to identify information gaps, and can assist efforts to assess project‑specific environmental effects (Natural Resources Canada, pers. comm., 8 June 2013).

#### Alberta

The Government of Alberta intends to develop regional plans for seven different regions. These plans are intended to set environmental limits, conserve sensitive land from development and provide certainty to developers. The plans are also intended to assist in a shift to ‘cumulative effects management’ (Environment and Sustainable Resource Development Alberta 2013). The plans are legally binding. Only one regional plan (for the Lower Athabasca Region) has been approved, with the regional planning process not yet commenced for five of the seven regions.

The Lower Athabasca Regional Plan became effective 1 September 2012. The Albertan Government (Environment and Sustainable Resource Development Alberta 2012) has reported the successful outcomes of the plan as follows.

* More than 10 000 Albertans, including individuals and representatives from Aboriginal organisations, industry, municipalities and environmental organisations, were engaged in land‑use planning over a three year period.
* The plan sets regional environmental limits for air and surface water quality and groundwater management. It also establishes six new conservation areas and protects important caribou habitat. The plan also establishes environmental monitoring frameworks, and commitments to engage with the Indigenous population in environmental planning decisions.
* The plan addresses infrastructure challenges and sets strategies to plan for both urban growth and the continued growth of the oil sands industry within the region.

### United States

While the United States was the first country to require the use of environmental impact assessments for individual major projects through the *National Environmental Policy Act 1969*, to date, strategic assessment in the United States has been relatively underused (Clark, Mahoney & Pierce 2011). Clark, Mahoney and Pierce (2011) outlined a number of challenges to the wider application of strategic assessments in the United States.

* US regulatory organisations are not sufficiently cohesive to work together at a strategic level.
* Current organisational frameworks do not support cohesive consideration of projects that have cross‑jurisdiction impacts.
* There are limited environmental data available at the regional level to support strategic decision making.
* Decision makers are risk averse in situations where future developments are uncertain.
* There is a limited pool of professionals qualified to prepare strategic assessments.
* There is a risk of litigation if strategic assessment is flawed.

Overall, Clark, Mahoney and Pierce (2011) concluded that strategic assessment may result in improved decision making in the United States, but there would need to be more acceptance of the process by those involved in environmental impact assessments before it becomes more widely used.

1. The thresholds used to determine who assesses and approves projects are not considered by the Western Australian Government to be thresholds for attaining major project status. Projects are categorised as major based on their size, complexity or environmental, economic or social impact (rather than solely by capital values) (sub. DR103). [↑](#footnote-ref-1)
2. The Minister of the Environment can refer an EA to a review panel if the Minister is of the opinion that it is in the public interest to do so. The review panel is a group of ‘independent experts’ appointed by the Minister who are responsible for managing the EA process. The panel prepares a report that includes its rationale, conclusions and recommendations and submits it to the Minister of the Environment for a final determination (CEAA 2013). [↑](#footnote-ref-2)
3. Screening does not apply to projects regulated under the Nuclear Safety and Control Act, 2000, the National Energy Board Act, 1959 or the Canada Oil and Gas Operations Act, 1985. Such designated projects are automatically required to undergo a federal environmental assessment. [↑](#footnote-ref-3)
4. Substitution and replacement provisions do not apply if a project is being assessed by the Canadian Nuclear Safety Commission or the National Energy Board, or if the project has been referred to a review panel. [↑](#footnote-ref-4)
5. The traditional Maori system of environmental guardianship is kaitiakitanga, which is a way of managing the environment based on the traditional Maori world view. [↑](#footnote-ref-5)