Australian Government
Productivity Commission

Major Project Development Assessment Processes

Productivity Commission Issues Paper

February 2013

The Issues Paper

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

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

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

Key study dates

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

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The Productivity Commission

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

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

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

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1 What has the Commission been asked to do?

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

Background to the study

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

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

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

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

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

The Commission is to report its findings within 12 months.

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

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

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

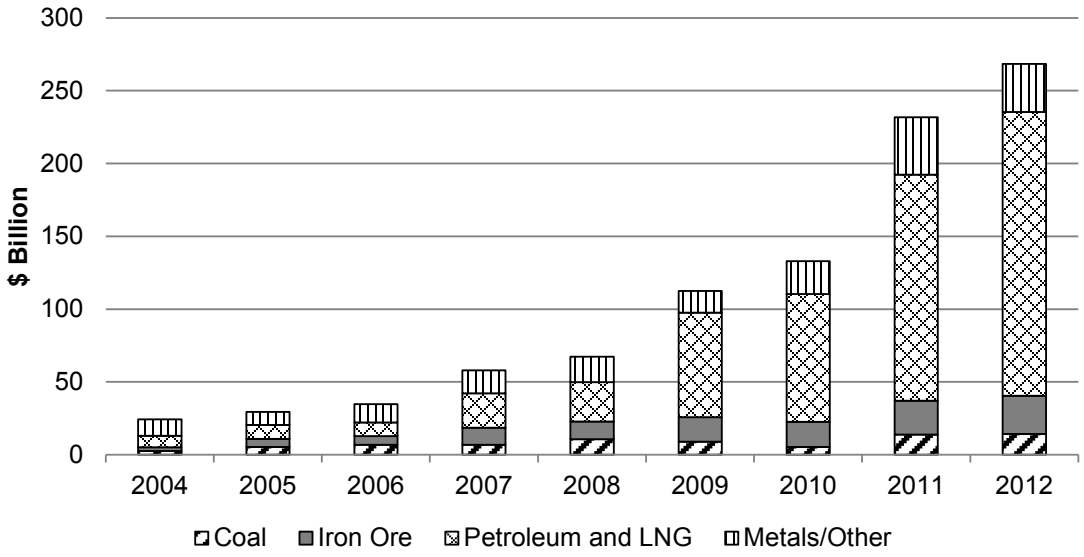
Attachment B provides further information on how to make a submission.

Why this study is important

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

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

Figure 1 **Committed resource projects in Australia**



Source: Barber et al. (2012).

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

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

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

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

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

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

2 What is the scope of the study?

Major project DAA processes

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

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

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

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

Box 1 **Major project definitions**

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

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

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

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

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

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

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

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

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

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

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

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

Relevant existing and ongoing work

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

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

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

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

What is benchmarking?

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

Previous Commission work has highlighted the potential benefits of benchmarking:

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

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

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

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

The Commission's proposed approach to benchmarking

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

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

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

A mainly qualitative exercise will not be able to address the assertions that regulatory burden is imposing 'unnecessary costs'.

Including a qualitative approach is important to this study because poor perceptions and experiences of proponents in dealing with regulators of major projects have been known to undermine a project or to lead the proponent to abandon a project – the proponent is likely to have to maintain a relationship with regulators for the long-term and if the relationship is problematic in the pre-development phase the proponent may elect to invest elsewhere. Major projects do have an economic and commercial imperative but projects can be undertaken in a range of geographical locations and if the assessment and approval processes are too onerous or unreasonable the proponent will most likely choose to do business elsewhere.

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

Benchmarks may be tied to conditions on approvals, state of the environment type reporting and other regional scale reporting.

Consider using time assessment on a 'stop clock' (awaiting further information from applicant), and total assessment time.

Apart from timeframes from application to approval, the quantitative aspects could include:

- Number of single applications required

- Number of consolidated applications facilitated
- Number of processes that can be worked through concurrently across several regulatory agencies
- Number of exemptions available
- Financial incentives for companies
- Cost of application and assessment processes to proponents
- Satisfaction ratings of end users in the context of regulator timeliness; 'one-stop-shop' or perception of joined up regulators; accessibility of regulator expertise; and quality of information and advice received.

Proposed criteria for evaluation

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

The Commission's proposed assessment criteria include:

- Clear, justifiable regulatory objectives
- Consistency with other regulations
- Cost-effectiveness
- Proportionate and flexible regulatory requirements
- Clear and predictable processes
- Open and transparent processes
- Appropriate opportunities for public participation and review of decisions
- Clarity in roles and responsibilities
- Accountable decision-makers
- Appropriately skilled and resourced institutions
- Regulatory outcomes consistent with objectives
- Regular review and evaluation.

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

These broad criteria are appropriate, but it is important to also incorporate into any assessment a consideration of the spatial context of the project & the relevant location characteristics as these are, inevitably, different for each project.

The list of criteria could also include "Accessible, current and authoritative information". Current and authoritative data are likely to reduce the time taken for consultants and regulators to search for this information and provide commentary. This would be especially relevant to strategic planning.

The study could assess any recommendations against good regulatory outcomes (or regulatory objectives) to demonstrate the aim of the study is being met prior to finalising.

South Australia conducted a "Smarter Regulation" Project in 2009 to identify ways in which government assessment processes can be better coordinated without loss of rigour. Nine principles of best practice were identified in a case study of the regulatory and administrative frameworks for marine aquaculture in South Australia as follows:

- Early referrals to avoid unnecessary time and expense for government and business
- Present a 'whole of government' position and make policy drafting processes more efficient
- Seek opportunities to coordinate into one process wherever possible
- Identify opportunities for case management
- Opportunities to rearrange process steps to achieve better regulatory outcomes
- Concurrences to be given at a 'zone' or 'policy' level
- Develop an evidence-based mutually acceptable assessment framework
- Consolidated single applications

- Consider the use of exemptions to avoid duplicating the obligations of licence holders.

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

Yes this may be necessary given the differing size and complexity of the regulatory agencies in the various jurisdictions. Smaller jurisdictions can achieve coordination and collaboration that is more difficult to achieve in larger jurisdictions with larger regulatory structures.

Which international jurisdictions should be considered?

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

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

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

Box 2 **Recent reforms in Canada**

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

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

Source: Canadian Government (2012).

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

Benchmarking performance in Australian jurisdictions against one another in the first instance will highlight the most relevant critieria. There is also a need, when benchmarking, to acknowledge differences in the capacity for undertaking assessment and the knowledge and ability/resourcing of the community to take an active role in that process. The specifics of different countries'/jurisdictions' regulatory framework and legislation is also an important consideration.

In terms of benchmarking against equivalent systems, benefits may be gained in terms of refinement of current Australian jurisdictions' processes, but bigger picture opportunities for delivering leading practice regulatory outcomes may be missed if other approaches are ignored.

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

Yes – there are instances where regulatory frameworks have been amended to pave the way for more efficient processes in economic activities that are expected to be the most lucrative e.g. mining projects.

The study should cover broader economic activities because what is relevant today may not be relevant in the future.

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

European countries under the European directive on EIA provide a useful benchmark.

Information sources

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

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

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

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

The major project approvals reforms paper submitted to the Business Advisory Forum in December 2012.

Federal/State environmental regulatory reforms.

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

It would be useful to compare case studies of similar kinds of major projects across jurisdictions e.g. desalination plants, major road/rail projects.

The South Australian Case Management Buckland Park Close Out Evaluation Report 2011.

4 Key features of major project DAA processes

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

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

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

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

- in Victoria, the Minister administering the *Environment Effects Act 1978* decides whether an Environmental Effects Statement is required
- in New South Wales, the *Environmental Planning and Assessment Act 1979* establishes two separate assessment pathways for major projects:
  - State Significant Development: primarily large-scale developments (usually greater than $30 million)
  - State Significant Infrastructure: major infrastructure proposals (particularly linear infrastructure, such as roads, railway lines or pipes which often cross a number of council boundaries)

- in Western Australia, projects are assessed into three categories depending on their size, complexity or environmental, economic or social impacts.

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

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

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

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

In South Australia, there are 2 'tests' under Section 46 of the *Development Act 1993* to declare a Major Development or Project. These are i) whether the proposal is of 'major social, economic or environmental significance' and ii) whether there are existing regulatory or assessment paths that could adequately assess the proposed development. However, the Minister for Planning has discretion on the declaration under the Act. Possibly due to this discretionary power of the Minister, and lack of definition of what constitutes a development or project of 'major environmental, social or economic importance', proponents in SA sometimes question the calling in of some developments for assessment under Section 46.

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

In South Australia, the Minister for Planning has discretion in this regard.

In South Australia the case management service facilitates access to the full range of regulatory agency personnel on behalf of the proponent. This enables all the

relevant requirements and parameters that need to be considered in the project to be discussed with the proponent before major decisions have been taken, e.g. land acquisition, environmental considerations, zoning, etc.. This also enables regulatory agencies to be aware of the potential project and to assign resources once the assessment process begins.

Interactions between processes at different levels of government

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

The EPBC Act requires that actions that would have (or are likely to have) a significant impact on one or more matters of national environmental significance to be approved by the Minister for Sustainability, Environment, Water, Population and Communities. Assessment and approvals may also be required if:

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

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

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

5 What are the impacts of the current arrangements?

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

Delays

Lengthy DAA processes could increase costs and uncertainty for project proponents, and may even compromise the commercial viability of a major project.

A previous Commission study into the upstream petroleum sector found that delays in gaining approvals can 'reduce flexibility in responding to market conditions, impede financing of projects, and defer production and revenues' (PC 2009b, p. XXIII).

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

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

Furthermore, unnecessarily lengthy DAA processes could diminish Australia's attractiveness as an investment destination. Analysis commissioned by the Minerals Council of Australia estimates that for thermal coal projects, the average Australian project experiences an additional 1.3 years of delay relative to those elsewhere(Ergas and Owen 2012).

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

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

The timeframe for major project assessments in South Australia has been shortened in recent years with the removal of the requirement for an Issues Paper to be considered by the Development Assessment Commission prior to the development of assessment guidelines. This has shortened the DAA process by about 3 months, although it has also removed an opportunity for community input/consultation that had previously been attached to the Issues Paper (note that there remain important opportunities for public engagement in the assessment process). This initiative has not affected regulatory outcomes.

By way of example - South Australia reviewed its *Petroleum and Geothermal Energy Act* and Regulations that were proclaimed in 2009. The Act and subsequent Regulations were precipitated by pre-emptive and progressive industry and community engagement. There was broad input from government, industry and community interest groups. South Australia's Department of Planning, Transport and Infrastructure was engaged in the process. This process resulted in

agreement whereby the proponent only needs to prepare one set of documents for assessment.

Administrative agreements between regulatory agencies have been a feature of the South Australian application and assessment frameworks for over a decade. This approach defines documents that will be acknowledged for various processes; where processes will occur concurrently; where priority and timeliness will be assured; and exemptions that will be honoured between agencies.

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

Delays to the DAA processes are mostly proponent driven (e.g. through more investigative work to provide sufficient information to undertake an assessment of the proposal), which may cause additional holding costs for land etc that the proponent generally bears.

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

Yes, in SA, Section 49 (crown development) deals with public infrastructure and is generally a shorter DAA process than S46 (major projects). When a proposal is a public project under S46 it is generally a shorter assessment process than a private project because much of the investigative work has already been completed and information needed to inform the assessment process is more readily available.

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

Yes, it is predictable for the government assessment process, whereas the proponent may have open ended timeframes for investigations.

Furthermore, shortening timeframes is often dependent on the proponent providing adequate information for assessment in a timely fashion.

The *Development Act 1993* and *Development Regulations 2008* prescribe assessment timeframes for some parts of the major development assessment process, for example the amount of time required for public consultation on

proponent's environment impact assessment documents. To the extent that there are prescribed timeframes, the time taken to complete a major development assessment can be predictable. However, as there is, understandably, no timeframe prescribed for proponents to prepare and submit their development proposal, environmental impact assessment document (i.e. the environmental impact statement, public environmental report, or development report) or response to issues raised during the public consultation process, this results in these parts of the major development assessment process having an unpredictable timeframe.

South Australia has a case management service on offer to proponents, which acts as the single entry point for private sector proponents driving major projects (usually valued > $20m). Case managers have established networks within the relevant regulatory agencies – proponents have reported predictability through the proactive, specific and consistent coordination and support provided as they navigate multi-government assessments for licensing and approvals.

Compliance costs

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

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

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

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

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

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

In South Australia, compliance matters are transparent through the specific legislative requirements attached to a proposal (which differ according to the nature of the proposal). Licensing costs for particular activities have increased to reflect contemporary (more risk averse) industry standards.

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

Licensing costs are necessary and reasonable, provided they are priced on a rational basis that relates to the cost of administration and the impacts of the proposal.

Possible causes of unnecessary costs

Unclear and inconsistent regulatory objectives

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

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

Regulatory objectives are clearly defined in South Australia; there are no known examples of contradictory regulatory objectives, and the benefits of the regulation are established by regulatory impacts assessment supported by properly performed cost - benefit analysis.

In relation to the assessment of development applications (including major development applications) that are referred to the Environment Protection Authority (EPA), section 57 of the *Environment Protection Act 1993* specifies the assessment criteria that the EPA must consider when determining its response to such applications. Section 57 requires the EPA to have regard to, and seek to further, the objects of the Act and have regard to the general environmental duty (as described in Section 25 of the Act), any relevant environment protection policies and the waste strategy for the State adopted under the *Zero Waste SA Act 2004* (if relevant). These are very specific assessment criteria against which the EPA rigorously assesses all referred development applications.

During the preparation of the State Government's final Assessment Report on major development applications, the EPA's comments and recommendations are given consideration by the Minister for Planning, recognising that any potential development approval can only be given if the proposed development can be constructed and operated in compliance with the *Environment Protection Act 1993*, relevant environment protection policies and any EPA licence conditions.

The Department for Water, Environment and Natural Resources is also consulted on Environment Impact Reports (EIR) and draft Statements of Environmental Objectives (SEO) which all companies must address as a pre-cursor to assessment. The assessment indicates the level of environmental impact of a particular activity which forms the basis for cross agency consultations. The agencies focus resources on these documents and significance assessments (summary of EIR) and because these documents are used for various agency requirements it is more efficient for the proponent. The significance assessment framework is available to proponents so they can clearly see the level of detail that needs to be provided in the EIR. This also increases efficiency for the proponent by focusing the information provided and minimising the need for document revisions.

Unclear governance and institutional arrangements

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

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

Roles and responsibilities are clear; each agency has a 'key contact' who will moderate any conflicting advice from within the agency so that there is clear guidance provided to the proponent on agency requirements. There is no overlap in functions of agencies.

The Case Management process in South Australia identifies all the relevant issues that a project proponent needs to address in the development assessment process and holds all parties to account; the proponent for providing the appropriate information in the appropriate format and the government for identifying all relevant issues early and for undertaking the assessment of the issues and responses from the proponent in a timely and pragmatic matter. The immediate benefit provided to a Case Managed project is the Case Manager, a single government contact point acting as a go between and providing leadership for the project, who has the skills to:

- Understand the approval process, regulatory considerations, and the issues a project will trigger to assist in streamlining the development approval and any licensing process;
- Navigate through and identify who within government will need to be involved in the development approval process; and
- Engage all agencies with a possible interest in the project early to identify all the issues so the project proponent has a clear understanding of the issues to be addressed, what will be required and is then able to make an early assessment as to the commercial risks in progressing the project.

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

Local councils provide advice on likely community impacts (e.g. road impacts, community facilities and resources) of a proposal and interact with the proponent particularly if council will eventually own/manage any aspect of the development into the future. Councils can also be proponents or part proponents and different relationship management/structures may need to be put in place in such cases.

There is a limited role for local government in major developments or projects in SA, mainly focused on concurrence with the Development Assessment Commission, given major developments or projects reside in a council area (by definition).

Local councils have a substantial interest in major development proposals due to the additional economic activity, population growth etc. which major developments

often create and the additional infrastructure and social services demands they generate. The current major development assessment system in South Australia provides local councils with the opportunity to comment on draft environmental impact assessment documents prepared by proponents. However, proponents are encouraged to consult more closely with local councils during the impact assessment and planning process where there are likely to be specific impacts on regional centres and local populations.

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

In South Australia, there is a whole-of-government approach to major project assessment & approval processes that coordinate agency and local government input. Communication is vital to the success of this approach and tends to work well in the South Australian context where communication channels are established.

The level of interaction between different levels of government will depend on the complexity of the major development. For example, the recent assessment of the Olympic Dam expansion major development was very carefully managed through the formation of the Olympic Dam Taskforce as a special unit within the South Australian Government, which resulted in very positive interaction between the State and Federal governments and between the agencies at the State level. For smaller major developments there is likely to be less interaction between the State and Federal Governments, but perhaps greater interaction between State and Local Government.

In South Australia the major development assessment process is coordinated by the Department of Planning, Transport and Infrastructure and the process works effectively.

The EPA, Department of Environment, Water and Natural Resources, and Zero Waste South Australia have an agreement by which the EPA coordinates the response of these Sustainability, Environment and Conservation portfolio agencies to major development applications, thereby providing a coordinated single response.

Resourcing and behaviour of regulators

The resourcing and behaviour of regulatory institutions is another factor that could impose an excessive compliance burden on major project proponents and result in

poor regulatory outcomes. For instance, inadequate budgetary resources and capability within government agencies that administer DAA processes could lead to unnecessary delays. Reports have also raised concerns about high staff turnover, inadequate participation by senior staff in key meetings, lack of professionalism and regulatory capture. Appropriate rules governing the behaviour of decision-makers serve to preclude inefficient and improper conduct.

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

Regulators perform well and agencies are coordinated through 'round-table' identification of 'show-stoppers' early in the assessment process. In addition, South Australia has an effective cabinet process to coordinate key decision making processes.

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

In South Australia, regulators generally provide timely and effective advice.

There are occasions where significant projects (e.g. Olympic Dam Expansion) warrant allocation of specific resources to undertake assessments. This can impact on the level of resources routinely available to conduct other assessments. The specialist expertise required is sometimes difficult to recruit.

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

There are no examples of regulator behaviour contributing to unnecessary compliance costs. There are examples of dissension between regulators and case managers particularly where social and environmental impacts are 'predicted' or assessed in terms of 'likelihood' e.g. flooding – Buckland Park Development. This is what prompted the evaluation/close out reports being generated by case managers to enable review of what has transpired and how dissension could be better managed in the future.

Regulatory complexity

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

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

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

This is a very difficult to determine. South Australia does not engage in cost recovery for land use planning approvals but our processes are cost effective for developers given the level of investigations and analysis required. Also the outcome gives certainty for developers as there is no appeal against decisions on Major Developments in South Australia.

South Australia's *Petroleum and Geothermal Energy Act 2000* is the culmination of proactive research and effective consultation coupled with an openness to change. The Act encompasses key regulatory principles i.e. certainty, openness, transparency, flexibility, practicality and efficiency. This example demonstrates that by providing early guidance to the applicant and alerting the environmental regulatory agencies to the upcoming application both the applicant and the agencies can plan for the process thereby reducing regulatory timeframes and targeting the regulatory effort.

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

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

Yes, project timelines and key milestone information is requested from proponents such that government can attempt to meet these deadlines. This sometimes puts

pressure on regulatory agencies with competing demands. Delays are often on the side of the proponent who may underestimate the time required to undertake necessary (and agreed) investigations.

There are mechanisms and approaches available to manage commercial realities, such as the use of Reserved Matters (under the Development Act) for matters of detail that can be reserved until after development approval, to enable commencement of project elements not subject to reserved matters.

Use of strategic planning

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

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

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

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

South Australia's Strategic Plan (SASP) is the state's primary directional document. SASP has 100 specific targets grouped under six interrelated pillars. Progress against SASP targets is reported every two years and the plan is updated every four years.

'Beneath' SASP sit specific 'action' plans which facilitate achieving the SASP targets, including the Strategic Infrastructure Plan for South Australia and the South Australian Planning Strategy. The Department for Planning, Transport and Infrastructure (DPTI) has lead responsibility for both of these documents.

The Strategic Infrastructure Plan for South Australia (SIPSA) sets out infrastructure priorities from a whole-of-state perspective and specific initiatives, with associated timeframes, to address infrastructure needs.

The South Australian Planning Strategy is the specific document providing direction on land use and development in the state over the medium-long term (15-30 years) to achieve SASP targets. The Planning Strategy also reflects infrastructure priorities set out in the SIPSA.

As a component of the 2008 Planning Reforms the South Australian Government introduced measures to improve governance of land use and infrastructure planning and strengthen links between SASP, the Planning Strategy and infrastructure planning and investment. Key elements are:

- Single lead agency - the recently created Department of Planning, Transport and Infrastructure has primary carriage of implementing the Planning Strategy and the SIPSA and provides a single point of contact on land use, infrastructure and development matters.

- Improved coordination across SA Government Agencies - the Government Planning Coordination Committee – comprising Chief Executives of SA Government departments, chaired by DPTI and reporting directly to Cabinet – has been established to oversee implementation and monitoring of the Planning Strategy and ensure integration with agency planning, infrastructure planning, and budget processes.

- Integration into Government Agency planning and programs – Premier and Cabinet Circular 24 (PC024), Integration of South Australia's Strategic Plan into Government Agency Planning Processes, requires all Government agencies to consider the SASP, Planning Strategy, SIPSA and the principles of the Office for Design and Architecture SA in their planning processes and programs.

Strategic planning is a statutory requirement of the *Development Act 1993* in South Australia, however this does not necessarily assist in reducing the time and cost of Major Development processes.

The Planning Strategy, Regional Natural Resource Management Plans, Regional Mining and Infrastructure Plans, Regional Sustainability Plans are examples of existing plans or plans in development in South Australia.

A recent example of a strategic planning process is the investment made by the Commonwealth under the National Partnership Agreement on Coal Seam Gas

and Large Coal Mining Development, whereby an expert scientific committee requires an upfront regional view on what are the important water assets. This information was collated and resourced by the Commonwealth and demonstrates the commitment and level of information required just for one natural resource asset (water).

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

Yes, proponents need to address government policy including the Planning Strategy in a Major Development process.

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

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

The ability exists to consider cumulative impacts of Major Developments under the *Development Act 1993, Mining Act 1971* and *Petroleum and Geothermal Energy Act 2000*.

Effectiveness of current processes

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

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

Yes, legislation prescribes this.

The South Australian major development assessment process is a rigorous one, which enables adequate input from the public, community groups, industry and government agencies, thereby ensuring a high level of environmental protection and a good regulatory outcome for the community from an environmental perspective.

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

Yes, the DAA processes in South Australia incorporate opportunities for public engagement that generally results in better community outcomes, less community resistance, and a better educated and more engaged community.

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

Some pre-lodgement processes are confined to Ministerial consideration and so are not open. On declaration of a Major Project, the process is transparent and well documented in legislation and a range of public documents.

An example of innovation in the revised *Petroleum and Geothermal Act 2000* is prescription of an enforcement pyramid for petroleum activities undertaken in South Australia. In essence the pyramid serves to articulate the nature and time of a detected non-compliance under the Act and the appropriate level of government intervention it will attract.

Another initiative is the adoption of high and low level surveillance classifications that divides regulated activities carried out under the Act into those requiring a high level of regulatory oversight and those for which the licensee has demonstrated its competence and capability in achieving compliance with the Act and the SEO through the implementation of effective management systems. Consequently the focus of agency resources is on compliance monitoring and proponent strategies to maintain compliance.

South Australia uses financial incentives to recognise companies that attract and maintain 'low level surveillance' status. The incentives are in the form of reduced licence fees.

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

6 Possible measures to improve the efficiency and effectiveness of processes

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

Measures to coordinate and streamline regulatory processes

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

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

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

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

SA has adopted Case Management as an investment attraction strategy to make the state a more competitive place in which to do business. Case Management as a defined strategy has been in operation for approximately 5 years with elements of it evident well before this time e.g. project facilitation. Case Management makes dealings with government more efficient by creating a forum for the project proponent and their representatives to come together with government representatives to work through the various issues a project throws up. Case

Management is not limited to capital projects – the culture of Case Management can be applied to any interaction with government.

Case Management at the very outset brings parties together to develop a common understanding of what a project involves and the issues requiring management. The 'goal posts' are defined and through Case Management a discipline is in place to ensure the goal post do not shift.

For private sector project proponents Case Management helps to de-risk the approvals phase and reduces the time otherwise taken to work through the required approvals. These outcomes are supported through a greater clarity of focus as the Case Management process allows the government and private sector issues for a project to be made transparent early and through Case Management for them to be worked through to a common outcome. Case Management provides the 'theatre' for this interaction to take place.

Longer term, through Case Managed projects relationships are forged between government and the private sector and a strong element of trust is established.

The Department of Manufacturing, Innovation, Trade, Resources and Energy refers the Productivity Commission to two examples of how South Australia fosters projects with case management:

The *December 2012 Roadmap for Unconventional Gas Projects in South Australia* which describes: upstream petroleum projects; the licensing and co-regulation of upstream petroleum projects through a lead agency serving as a one-stop-shop; the supply-chains for upstream petroleum projects; the economics for upstream petroleum projects, and the 125 ranked recommendations for improvements that would foster the economic development of upstream petroleum projects. The Roundtable (of 240+ organisations including companies, peak representative bodies, government agencies, and research institutions) that informed this Roadmap met to characterise implementation options for all 125 recommendations. This forum puts DMITRE into a knowledgeable position to act as a go-to-whoa case manager for the upstream petroleum sector. Indeed, with Roundtable representatives from every State, the NT and the Federal Government – this forum can be leveraged into benchmarks for national leading practices. For additional details – contact: Barry.Goldstein@sa.gov.au

The *February 2013 Minerals Regulatory Guidelines |MG4 – Guidelines: landowner rights and access arrangements in relation to mineral exploration and mining in South Australia* is an example of the way South Australia is providing case management for one of the essential stages in project life – attaining a social

licence to operate from the start e.g. ahead of exploration. For additional details – contact: Ted.Tyne@sa.gov.au

Lead Agency Framework

The EPA considers that the use of a 'Lead Agency Framework' in South Australia through the Case Management framework for some major developments has improved the efficiency of the major development assessment process. The EPA's experience is that the use of case managers has been particularly effective in connecting proponents with relevant assessment agencies and coordinating and managing inputs from agencies involved in the assessment process.

The formation of the Olympic Dam Taskforce is a prime example of how the South Australian Government adopted the 'Lead Agency Framework' approach to guiding BHP Billiton through the major development assessment process for the Olympic Dam Expansion project and coordinating and managing inputs from government agencies during the assessment process.

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

Case Management requires the right culture – it is about government business understanding the commercial drivers of projects and interfacing with proponents accordingly. Case managers require the 'licence' to operate at the cross agency level. They have dual accountabilities to the proponent and to government.

All case managers are now in the Department for Manufacturing, Innovation, Trade, Resources and Energy (since January 2012) which has enabled sharing of expertise; consistency in practice; and coordinated development (mindful of the fact that the current team came from several agencies). The main risk is associated with succession planning and development of future case managers. The ideal is to draw on aspiring case managers from a raft of agencies rather than recruit from within the one agency.

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

Options to reduce duplication and improve coordination

- Case Management. In South Australia, the Case Management Framework works well. The case manager works closely and regularly with assessment staff.

- Statutory referrals to other agencies.
- Accreditation of lead agencies to undertake activities under other legislation e.g. accreditation of lead agencies to undertake assessment of native vegetation offset proposals.

Measures to improve timeliness

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

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

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

The Major Project DAA process has time limits for the consideration of the Development Assessment Commission (the planning authority) as well as prescribed internal administrative timelines. Major Projects may require site visits to a remote region.

Statutory time frames do not recognise the full level of complexity of projects and the specific site context.

The *Development Act 1993* contains statutory time limits in respect of some parts of the assessment process. For example, there is a timeframe for the EPA to provide comment on the draft guidelines where the proposed major development involves a prescribed activity of environmental significance. There are also timeframes for public viewing of the assessment documents. The use of statutory timeframes can be beneficial in ensuring the assessment process does not stall or become delayed, but it does rely on sufficient resources being available to undertake a proper assessment within the required timeframe.

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

Generally, this would lead to inferior investigations and decision making on these significant developments.

A simpler process might eventuate for lower risk developments where a standard process applies to all DAAs.

The SA *Petroleum and Geothermal Energy Act 2000* exemplifies another approach to EIA which applies varied timelines depending on level of significance.

Timeframes could be shortened with better guidance for proponents on statutory processes.

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

This depends on the nature of the project and the proponent's propensity to engage with the community and other agencies.

Where there are no native title rights to minerals, petroleum or gas it is necessary to negotiate land access with Indigenous people in most circumstances. Indigenous Land Use Agreements have been used successfully in South Australia but can impact on timelines.

Risk-based regulation

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

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

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

Section 57 of the *Environment Protection Act 1993* requires that the EPA takes account of many risk-based considerations when assessing referred development applications. For example, assessment of whether a proposed development complies with the general environmental duty (as described in section 25 of the *Environment Protection Act 1993*) requires consideration of the nature of the pollution or potential pollution and the sensitivity of the receiving environment. One of the Objects of the *Environment Protection Act 1993* also requires the EPA to apply a precautionary approach to the assessment of risk of environmental harm and ensure that all aspects of environmental quality affected by pollution and waste (including ecosystem sustainability and valued environmental attributes) are considered in decisions relating to the environment.

In addition, the EPA's current Strategic Plan identifies that it will:

- employ best practice regulatory principles and tools, and robust processes to tackle the important issues through taking a proportionate, risk and evidence based approach; and
- make decisions that use sound science and are evidence based.

In practice, the EPA has adopted a risk-based approach to the assessment of environmental impacts associated with major development proposals for many years.

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

Such mechanisms could lead to greater focus on particular issues but this depends on government and community expectations.

The *Development Act 1993* contains 'scaling' mechanisms that enable the Development Assessment Commission to determine the level of assessment to be applied to a declared major development (i.e. by determining whether a proponent needs to prepare an Environmental Impact Statement, Public Environmental Report, or a Development Report). The intensity of the assessment process and the expectations of proponents are then adjusted depending on the level of assessment required by the Development Assessment Commission.

Examples of 'scaling' to streamline processes regardless of project size include the classifications of environmental impact; the adoption of high and low level

surveillance classifications; and the distinction between activities requiring a high level of regulatory oversight as opposed to those that don't.

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

There is a risk inconsistent treatment of similar developments.

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

Yes, Section 46 of the *Development Act 1993* allows for a more risk based approach.

The *Petroleum and Geothermal Energy Act 2000* applies a risk based approach to environmental assessment.

Reducing duplication between levels of government

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

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

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

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

In 2008, South Australia entered into a bilateral agreement with the Commonwealth under the EPBC Act resulting in the accreditation of section 46 major projects assessment processes under the state's Development Act. This

reduces the demands from the Commonwealth while giving State assessment of Commonwealth issues recognition. It improves certainty for developers and the state. To date an assessment under the South Australian bilateral has not been completed, so the effectiveness of this agreement cannot be determined.

South Australia has also previously taken advantage of informal streamlining of assessments with the EPBC Act, and has indicated a willingness to consider entering into formal assessment bilateral agreements for the Mining Act and the Petroleum and Geothermal Energy Act.

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

In December 2012, COAG agreed not to proceed with accreditation of state approval processes

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

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Attachment A: Terms of Reference

STUDY TO BENCHMARK AUSTRALIA'S MAJOR PROJECT DEVELOPMENT ASSESSMENT PROCESSES

Productivity Commission Act 1998

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

Background

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

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

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

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

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

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

Scope of the research study

In undertaking the study, the Commission should:

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

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

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

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

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

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

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

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

DAVID BRADBURY
Assistant Treasurer

[Received 7 December 2012]

Attachment B

HOW TO MAKE A SUBMISSION

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

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

How to prepare a submission

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

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

How to submit a submission

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

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

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

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

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

By fax: 03 9653 2199

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

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

Due date for submissions

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

Attachment C

Productivity Commission
SUBMISSION COVER SHEET
(not for publication)

Australian Government
Productivity Commission

Please complete and submit this form with your submission to:

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

OR

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

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

Name(first name and surname): _____

If submitting on behalf of a company or organisation:

Name of organisation: _____

Position in organisation: _____

Phone: _____ **Mobile:** _____

Email address: _____

Street address: _____

Suburb/City: _____ **State:** _____ **P'code:** _____

Postal address: _____

Suburb/City: _____ **State:** _____ **P'code:** _____

Please note:

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

Please indicate if your submission:

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

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

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

☐ No (view online)

☐ Yes (post)