

APPEA Submission to the review of the Environment Protection and Biodiversity Conservation Act 1999

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1. EXECUTIVE SUMMARY

The Australian Petroleum Production & Exploration Association (APPEA) is the peak body representing Australia's oil and gas explorers and producers. Our members account for nearly all of Australia's oil and gas exploration and production.

APPEA welcomes the opportunity to make comment on the Independent Review of the EPBC Act discussion paper.

In Australia, exploration and production operations are conducted within a wide range of terrestrial and marine environments. These operations require effective management in order to be sustainable. APPEA and its member companies support, as part of a reasonable approach to regulation:

- Reducing the regulatory burden and duplication for business;
- Assessing the risks to, and impacts on, the environment as an integral part of the planning process;
- Reducing the impact of operations on the environment to as low as reasonably practicable and to an acceptable level by using the best available technology and management practices;
- Consulting with stakeholders regarding industry activities; and
- Developing and maintaining a corporate culture of environmental awareness and commitment that supports the necessary management practices and technology, and their continuous improvement.

The Australian oil and gas industry is committed to protecting Australia's unique environment. We recognise that the *Federal Environment Protection and Biodiversity Conservation Act 1999* (the Act) is a key pillar in the protection of environmental biodiversity and the promotion of ecologically sustainable development and that there is an important role for the Australian Government for leadership in environmental protection. The statutory review of the Act is an opportunity to consider, support and enhance the regulatory framework for the future.

APPEA understands the importance of government oversight of its activities and the intent behind the regulatory framework. APPEA's objective is not to minimise or avoid regulation, rather is to ensure effective and efficient regulation. Federal legislation plays an important role in setting appropriate and necessary standards and improving public confidence in the operations of all industries. However, regulations that are poorly designed or implemented do have the potential to impede project approvals (and ongoing operations) without contributing either to regulatory outcomes or public confidence. They can lead to increased costs, damage Australia's international competitiveness, and risk economic activity shifting to other jurisdictions. The potential net economic loss for Australia is significant should poorly designed regulations impact timely decision making.

Evidence from the oil and gas industry demonstrates that Australia's environmental regulatory framework is not fundamentally broken, but contains numerous overlapping, confusing or excessive duplicative requirements that are causing unnecessary project delays and unnecessarily increasing costs. Green tape is consistently raised by APPEA members as one of the top issues impacting the global competitiveness of Australia's resource sector and a key barrier to investment.

As the impacts of the Global COVID-19 Pandemic continue to unfold, it is clear that the impact on the Australian economy will be significant. It is more important than ever that we work together to ensure that our regulatory frameworks both protect the environment while supporting and encouraging investment and reducing unnecessary delays and costs for new projects. Complex and duplicative processes for approving projects, including through the EPBC Act, should be considered and addressed in a way that improves administration, restores certainty and encourages investment while ensuring ecologically sustainable development.

A good regulatory environment is an essential foundation for a high performing and successful industry. This submission covers the key issues raised in consultation with our members and also draws upon the findings of previous reviews into the operation of the EPBC Act. Fundamentally the key priorities for the oil and gas industry can be grouped into four categories:

- Avoid duplication between jurisdictions and processes;
- Reduce delays in EPBC Act assessment and approval processes;
- Enhance certainty for proponents, government and the community; and
- A focus on outcomes and standards, rather than prescription

2. THE AUSTRALIAN OIL AND GAS INDUSTRY

- Oil and gas is vital to many industries. Petroleum products, from gasoline to plastics, are integral to our everyday lives, as well as the economy.
- Petroleum is the raw feedstock material for many chemical products, including pharmaceuticals, solvents, fertilizers and pesticides on which we rely.
- Natural gas is Australia's third largest energy resource after coal and uranium.
- Australia's \$28 billion per year oil and gas industry contributes 58% of Australia's primary energy, 2.5% of Australia's gross domestic product, and almost \$9 billion in direct tax payments.

Petroleum is essential to the Australian economy and way of life. As well as generating \$50 billion in export earnings the industry supplies an important energy and commodity resource.

Almost half of Australian homes – five million households – are connected to the natural gas network. In NSW and Victoria alone, 2.3 million homes are connected. Gas accounts for 44 per cent of household energy use, with more than 11 million residential gas appliances in use including 86% of households in Victoria.¹

Petroleum and refined and derived products are used to power our cars, to provide energy and support manufacturing. Oil is the largest single energy source in Australia and accounts for close to 40 per cent of total energy end use². Australia's reserves of liquid fuels are declining, with an increasing proportion of these products being imported.

Natural gas is indispensable to many manufacturing processes. Gas is used to produce non-ferrous metals (such as aluminium, copper and zinc), chemicals and polymers (such as fertilisers and anti-freeze), plastics and non-metallic mineral products like glass, ceramics, cement and bricks, and is also used in food preparation, processing and packaging, fermentation and brewing.

APPEA estimates about 225,000 jobs in the manufacturing sector rely on natural gas. Manufacturing clusters dependent upon gas are found in all Australian states. Until recently, the demand for natural gas has been met from 'conventional' gas reserves (for example, the Cooper, Gippsland and Carnarvon basins). However, in eastern Australia, production from these established conventional sources has peaked. New conventional gas projects, such as the \$5.5 billion Kipper-Turrum project, are underway but will only partly replace lost output.

Fortunately, the last decade has seen a new and growing source of supply created – the coal seam gas reserves of Queensland. The potential of coal seam gas was identified in the 1990s. However, technical challenges and production costs higher than established conventional sources prevented its large-scale development. The opportunity to use coal seam gas as the feedstock for liquefied natural gas (LNG) exports changed the equation, drawing in an unprecedented \$70 billion in investment to unlock the resource.

Today, Queensland's unconventional gas reserves are the largest single source of natural gas in eastern Australia. More than half of the gas consumed on the east coast is coal seam gas from Queensland; almost 90 per cent of gas reserves on the east coast are unconventional gas.³

The LNG industry has not only created its own supply – it has created much of the new supply flowing into the domestic market. Queensland's oil and gas industry employs an estimated 27,000 people, generates more than \$9 billion in value added activities, including \$2 billion in annual associated salaries. Average earnings in the industry are over \$150,000 per annum, double the Queensland average.⁴ Over the last two financial years, \$15 billion of industry investment has helped sustain 3,100 Queensland businesses; most of these businesses (more than 80 per cent) are based in regional areas such as Gladstone, Callide, and Maranoa.

The industry has a relatively small physical 'footprint' which minimises the impact it has on traditional rural industries and ensures that it can coexist with other activities. Access to land is negotiated under a regulatory framework which seeks to minimise impacts and ensures fair compensation for landowners. There are more than 5,000 conduct and compensation agreements signed with Queensland landowners who have received approximately \$500 million in

¹ Deloitte Access Economics (2016) *Analysis for Gas Vision 2050*

² Australian Government (2016), *Australian Energy Statistics* www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/aes/2016-australian-energy-statistics.pdf

³ EnergyQuest (2017) *Energy Quarterly September 2017 Report*. www.energyquest.com.au

⁴ Lawrence Consulting (2019), *Queensland LNG Economic Contribution Report*, prepared for APPEA.

co-existence payments from 2011 to 2018. Regional communities and other local industries are sharing the benefits of the infrastructure funded by the gas industry. For example, renewable energy projects are connecting to new power infrastructure built to serve gas projects. Farmers now have access to new supplies of free, treated water for irrigation, lifting productivity and farm incomes.

Outside Queensland, unconventional gas production is in its infancy, largely because of regulatory restrictions. While most of New South Wales is effectively closed to development, the one project seeking approval from the State government - Santos's Narrabri project - could supply up to 50 per cent of the state's gas demand. The Northern Territory has major unconventional resources. Victoria, who has just lifted its moratorium on conventional oil and gas exploration, has significant natural gas potential with up to 27 TCF (28,514 PJ) of unconventional gas in the onshore Gippsland and Otway basins. Western Australia and South Australia also have promising resources which could underwrite significant industrial development.

The Australian oil and gas industry has invested over \$350 billion in natural gas production, transport, liquefaction and export facilities over the last decade. This investment will deliver returns for Australia with exports revenue increasing to more than \$50 billion in 2018-19, more than double compared to \$22.3 billion in 2016-17.³ This growth means LNG is one of Australia's greatest export earners.

If Australia is to capture further investment in LNG production, it is vital to get the policy settings right by maintaining a stable and competitive tax regime and reducing regulatory costs. Key policies include:

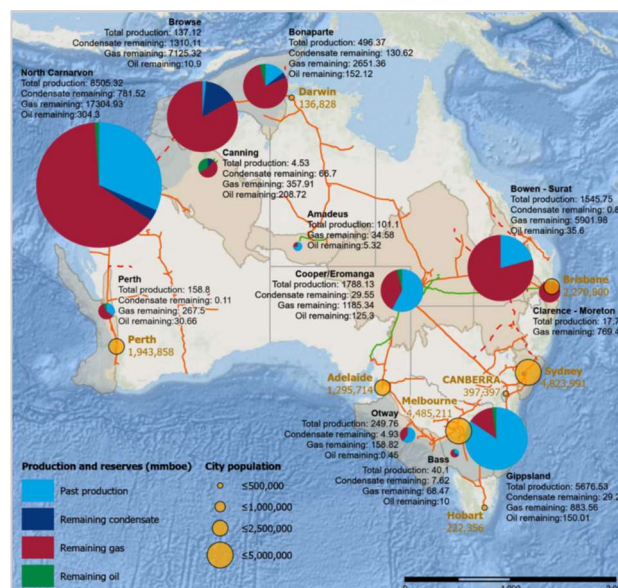
- allowing transparent, open and secure access to resources for exploration and development;
- supporting investment and industry productivity through a stable taxation regime that recognises the costs of doing business; and
- facilitating access to domestic and international markets on globally competitive terms.

2.1. AUSTRALIAN OIL AND GAS RESERVES

Australia's petroleum production comes from seven primary basins: the Carnarvon, Bonaparte and Perth basins in Western Australia, the Gippsland Basin off south-eastern Australia, the Cooper-Eromanga and Amadeus basins in central Australia and the Bowen-Surat basins in southern Queensland.

Australia is a gas-rich nation with known conventional natural gas resources located in the Carnarvon, Browse and Bonaparte basins off the northwest coast of Australia, and the Gippsland Basin off south-eastern Australia. Australia also has significant gas resources in unconventional reservoirs. Large shallow coal seam gas resources exist in the coal basins of Queensland and New South Wales, and the Cooper Basin has potential for deep coal seam gas in South Australia and Queensland. Tight gas accumulations are located in onshore Western Australia and South Australia, while potential shale gas plays are being actively explored in the Northern Territory.

Image 1 Hydrocarbon resource deposits and key population centres in Australia. Source: WoodMackenzie, ESRI



2.2. ESSENTIAL FOR AUSTRALIAN MANUFACTURING

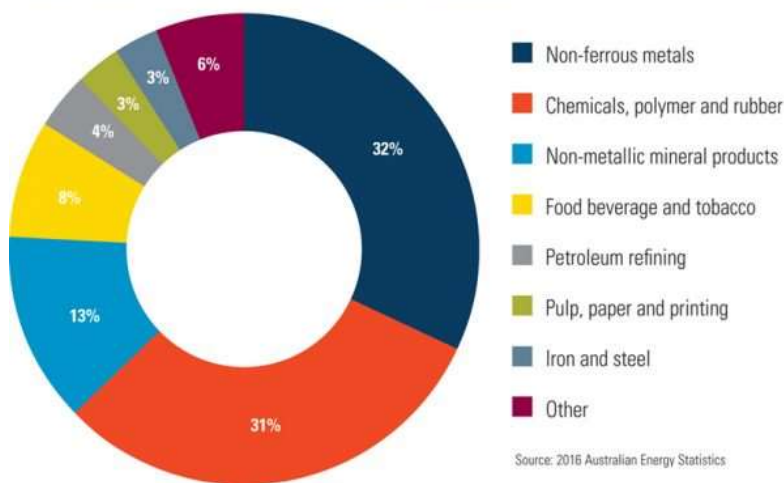
Natural gas is both a source of energy and an essential raw material for manufacturing. Almost one-third of the gas consumed in Australia is used by manufacturers. Manufacturing in Australia is a \$100 billion industry directly employing 890,000 people.

About 225,000 people work in manufacturing sectors that rely heavily on gas; another 500,000 people work in related industries that do business with these manufacturers.

The main industrial uses of natural gas and gas-derived products are producing:

- non-ferrous metals (e.g. aluminium, copper, zinc, tin)
- chemicals and polymers (e.g. fertilisers, antifreeze)
- non-metallic mineral products (e.g. glass, ceramics, cement, bricks)
- plastic packaging for foods and beverages.
- Gas is also needed in food preparation and processing, fermentation and brewing.

Gas use in manufacturing by sector



Gas — powering industrial processes

Gas is second only to oil as an energy source for manufacturing. Gas is essential for many industrial processes — without gas to fire kilns and furnaces, it would be impossible to make everyday products such as glass, bricks, paper, cement, steel and alumina.

Many businesses meet their energy needs from their own gas-fired turbines.

Steel is galvanised with hot molten zinc to create a non-corrosive layer. Victoria-based GB Galvanising uses 50,000 gigajoules (GJ) of gas every year. No alternative fuel can maintain the necessary high temperatures.

Alumina refineries use gas for power generation and for refining bauxite to produce alumina, which is used to produce aluminium. Alumina refining requires temperatures greater than 1100°C. Gas is the only fuel that can achieve this temperature. Alcoa uses 95,000 terajoules (TJ) of gas each year in its three alumina refineries in Western Australia.

Gas — the invisible ingredient of everyday products

Natural gas is also a raw material (feedstock) for creating products such as fertilisers, explosives, paper, plastics and chemicals. In most cases, there is no substitute for gas. Gas is used to produce ammonia, which is an important feedstock for several industries.

The most used fertiliser in the world is urea, which is produced from ammonia. Producing each tonne of urea requires 21GJ of natural gas — the same amount of gas that the average NSW household uses in a year. Australian industries use 1.6 million tonnes of urea each year. Ammonia is also used to make explosives and cleaning products, and in fermentation, brewing and winemaking.

Plastics are made from ethane, which is derived from natural gas. At 850°C, steam is added to ethane to break it into ethylene. This is then used to make plastics, which are used in food packaging and wrapping; plumbing and guttering; fibres and textiles; machine parts; and many other applications.

2.3. THE ROLE OF NATURAL GAS IN A CLEANER ENERGY FUTURE

Greater use of Australian natural gas – in the domestic market, and in Asia as LNG exports – can significantly reduce greenhouse gas emissions.

Australia could generate significant additional national economic, environmental and social benefits through greater utilisation of its substantial natural gas resources.

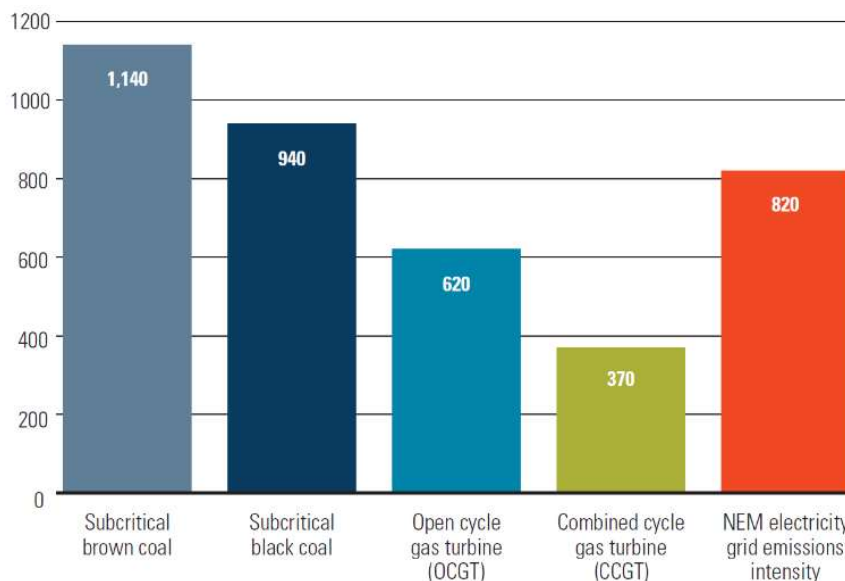
Gas has an essential role to play in reducing emissions. In the home, natural gas is a cleaner fuel and can see the emissions intensity of electricity generation in the National Electricity Market (NEM) fall. Gas-fired generators can be rapidly started making them complementary with intermittent renewable energy. Exporting gas as LNG will allow our Asian trading partners to reduce the emissions from their economies⁵.

Using more natural gas in Australia’s power generation and resource processing would significantly enhance the nation’s ability to meet increasing energy needs and reduce emissions.

These outcomes are possible because, as data on page 203 of the *Independent Review into the Future Security of the National Electricity Market – Blueprint for the Future* (the Final Report) shows⁶, available natural gas power generation technologies can reduce greenhouse gas emissions by 68 per cent compared to current brown coal generation technologies and 61 per cent compared to current black coal generation technologies.

This is illustrated in the figure below, which shows, using data from page 203 of the Final Report, the significantly lower greenhouse gas emission associated with the use of gas-fired power generation compared to the use of other conventional fuels.

Image 2 Estimated Operating Emissions for New Power Stations (kg CO₂-e/MWh)



Source: Data from *Independent Review into the Future Security of the National Electricity Market – Blueprint for the Future* (2017).

The potentially growing role of natural gas considered in these reports reflects the role gas could play as a lower-emissions and cost-effective generation technology, both in replacing coal-fired generation and in complementing the growth in renewable technologies.

⁵ See *Gas Vision 2050* for more information. *Gas Vision 2050* was developed by Australia’s peak gas industry bodies and demonstrates how gas can continue to provide Australians with reliable and affordable energy in a low-carbon energy future. See www.apea.com.au/media_release/gas-vision-2050 and www.apea.com.au/wp-content/uploads/2017/03/GasVision2050_March2017.pdf for more information.

⁶ See www.energy.gov.au/publications/independent-review-future-security-national-electricity-market-blueprint-future for more information.

Intermittent renewable energy requires “on call” electricity generation to manage falls in renewable output or peaks in demand. Gas-fired generation is a key technology capable of delivering that flexible response. As more renewable energy is integrated into the grid, this balancing role becomes more critical.

Experience in the United States demonstrates how quickly emissions from the generation sector can be cut by fuel switching. For example, data from the US Government Energy Information Administration (EIA)⁷ shows energy-related emissions in the US in the first six months of 2016 were at their lowest level since 1991, having fallen about 13 per cent from their peak in 2007. Amongst other reasons, this was possible because the US is developing its abundant natural gas resources. More recently, the EIA found⁸ emissions from power generation are expected to fall by over 2 per cent in 2019, compared to 2018. The EIA noted:

Although the electric power sector is using more natural gas, EIA does not expect the increase in natural gas emissions in 2019 to offset the decrease in coal emissions because natural gas-fired electricity generation is less carbon-intensive than coal-fired electricity generation.

We have a similar opportunity in Australia. If the industry is able to develop them, there are sufficient natural gas resources to underpin a historic shift to a lower emissions generation sector, across Australia.

The increased use of natural gas also has several additional environmental benefits, such as:

- Reduced emissions of fine particulates.
- Reduced emissions of sulphur dioxide (an important contributor to smog and acid rain) and nitrogen oxides.
- Significantly lower demand for water for power station cooling.

Australia’s LNG industry is in a unique position to contribute substantially to the economic development of the nation and to reduce greenhouse gas emissions. Australia’s resources of natural gas and proximity to growing markets make us well-placed to meet the global climate change challenge while substantially contributing to Australia’s economic growth.

While the demand for energy as part of the industrialisation of Asian economies is a key driver, the properties of natural gas as a lower emitting and cleaner burning fuel is also driving much of the international demand for LNG.

As the International Energy Agency (IEA) found in its 2019 World Energy Outlook (2018 WEO)⁹, the use of natural gas is expected to grow consistently over the Outlook period (to 2040) under all scenarios. For example, in its ‘New Policies Scenario’¹⁰ (the central scenario in the 2019 WEO) the IEA forecasts global natural gas demand to grow by around 45 per cent over the Outlook period. Average annual growth of 1.6 per cent means natural gas increases its share in global primary energy demand from 22 per cent today to 25 per cent in 2040. In the ‘Sustainable Development Scenario’¹¹, gas use plateaus from the 2030s, but the IEA notes, as a clean and flexible fuel, gas still sees its share increasing.

The IEA also expects LNG exports will overtake pipeline gas as the main form of long-distance trading, accounting for more than 60 per cent of inter-regional trade by 2040. This outlook is positive for Australia. Most of the growing demand for natural gas will come from China (as part of a long-term and deliberate coal-to-gas switching program¹²), India and other countries in Asia which are turning more and more to natural gas to help improve urban air quality.

The IEA’s July 2019 report *The Role of Gas in Today’s Energy Transitions*, examined the role of fuel switching, from coal to natural gas, to reduce greenhouse gas emissions and air pollutants globally¹³. The report found that since

⁷ See www.eia.gov/todayinenergy/detail.php?id=28312 and www.eia.gov/todayinenergy/detail.php?id=30712 for more information.

⁸ See www.eia.gov/todayinenergy/detail.php?id=40094 for more information.

⁹ See www.iea.org/weo for more information.

¹⁰ According to the IEA, the ‘Stated Policies Scenario’ “...reflects the impact of existing policy frameworks and today’s announced policy intentions. The aim is to hold up a mirror to the plans of today’s policy makers and illustrate their consequences for energy use, emissions and energy security. The aim of the Stated Policies Scenario is to provide a detailed sense of the direction in which existing policy frameworks and today’s policy ambitions would take the energy sector out to 2040. Previously known as the New Policies Scenario, it has been renamed in WEO 2019 to underline that it considers only specific policy initiatives that have already been announced.”

¹¹ The ‘Sustainable Development Scenario’, introduced for the first time in 2017, “... starts from selected key outcomes and then works back to the present to see how they might be achieved. The outcomes in question are the main energy-related components of the Sustainable Development Goals, agreed by 193 countries in 2015: Delivering on the Paris Agreement. The Sustainable Development Scenario is fully aligned with the Paris Agreement’s goal of holding the increase in the global average temperature to “well below 2 °C”. Achieving universal access to modern energy by 2030. Reducing dramatically the premature deaths due to energy-related air pollution. The Sustainable Development Scenario sets out the major changes that would be required to deliver these goals simultaneously.”

¹² For an overview of the role natural gas, including Australian LNG, plays in China’s coal-to-gas switching program, see Oxford Institute for Energy Studies (2018), *The Outlook for Natural Gas and LNG in China in the War against Air Pollution*, December (available at www.oxfordenergy.org/publications/outlook-natural-gas-lng-china-war-air-pollution).

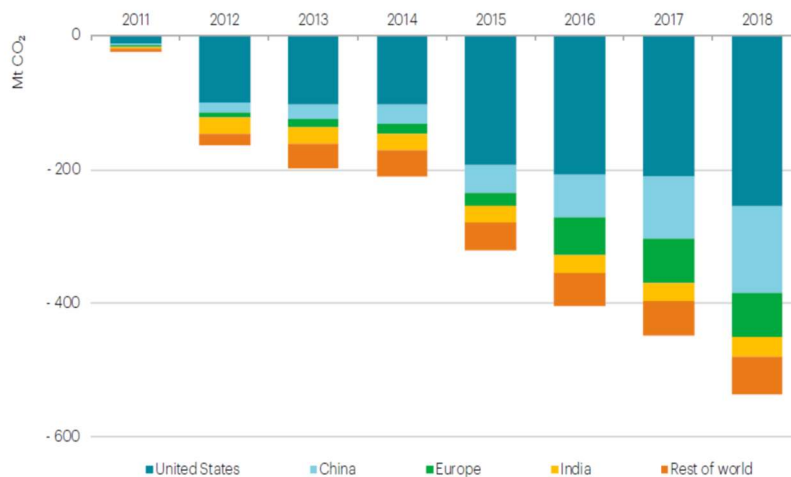
¹³ See www.iea.org/publications/roleofgas for more information.

2010, coal-to-gas switching has saved around 500 million tonnes of CO₂ – the equivalent of putting an extra 200 million electric vehicles on the road running on zero-carbon electricity over the same period. The report also highlighted a significant opportunity in the global electricity generation sector to reduce emissions by switching from coal-fired power plants to gas-fired power plants, which presented “a potential quick win for emissions reductions”. The report found:

There is potential in today’s power sector to reduce up to 1.2 gigatonnes of CO₂ emissions by switching from coal to existing gas-fired plants, if relative prices and regulation support this potential.

To put this opportunity in perspective, the potential for emission reductions across the global economy of 1.2 gigatonnes is more than double Australia’s total annual emissions over the year to the September quarter 2019¹⁴.

Chart 1 CO₂ savings from coal-to-gas switching by region compared with 2010



Note: Mt CO₂ = million tonnes carbon dioxide. Coal-to-gas switching includes emissions reductions in sectors where the market share of coal decreased, and the market share of gas increased within each region. The baseline increase in emissions assumes no improvement in the carbon intensity of energy or the energy intensity of gross domestic product (GDP) since 2010. Savings are calculated as those which occur compared to 2010.

Source: International Energy Agency (2019)

In an Australian context, a landmark report by the CSIRO’s Gas Industry Social and Environmental Research Alliance (GISERA), released in July 2019, confirmed the greenhouse gas emissions benefits from increased use of natural gas in domestic and export markets.

The report¹⁵ *Whole of Life Greenhouse Gas Emissions Assessment of a Coal Seam Gas to Liquefied Natural Gas Project* analysed life cycle emissions, including extraction, transportation and usage of coal seam gas (CSG) in Queensland’s Surat Basin. The report presents a comparison of greenhouse gas emissions from electricity production in Australia from Queensland thermal coal or natural gas derived from CSG operations which finds – incorporating the full life cycle of greenhouse gas emissions from all parts of the supply chain – a reduction in emissions of up to 50 per cent.

This is the first time accurate estimates of life cycle greenhouse gas emissions associated with an operating CSG to LNG project in Australia have been used – and provide data about the benefits of natural gas for electricity generation.

The report found

... considerable climate benefits are possible where natural gas replaced coal for electricity generation; particularly in developing countries.

In addition, burning gas instead of coal improves urban air quality. This is particularly important in many Asian countries that are importing Australian LNG or considering imports.

¹⁴ According to the *Quarterly Update of Australia’s National Greenhouse Gas Inventory for March 2019*, Australia’s total emissions to the year to the September quarter 2019 were 530.8 Mt CO₂-e. See www.industry.gov.au/data-and-publications/national-greenhouse-gas-inventory-september-2019.

¹⁵ See gisera.csiro.au/project/whole-of-life-cycle-greenhouse-gas-assessment for more information.

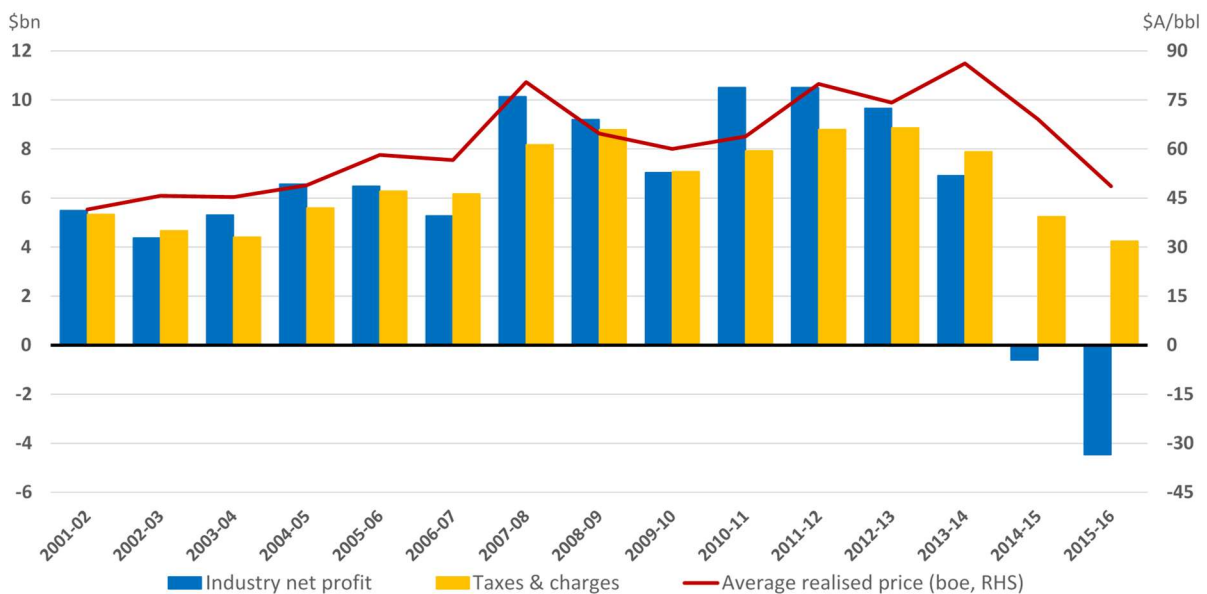
According to recent Australian government estimates, Australian LNG exports in the year to September 2019 have the potential to reduce greenhouse gas emissions by 163 million tonnes in customer nations, equivalent to over 30 per cent of Australia’s emissions during that same period¹⁶.

2.4. FISCAL CONTRIBUTION TO A BETTER AUSTRALIA

Australia’s oil and gas industry in Australia is subject to a number of taxation measures that apply to the operations of the business. Taxation payments to governments (state and federal) encompass direct contributions such as corporate income tax, the petroleum resource rent tax, royalties, excises whilst also making broader contributions to the Australian economy through other fees and payments such as GST incurred through the use of its supply chain, payroll taxes (PAYG) and other such fees.

Between 2007-08 and 2017-18, Australia’s oil and gas industry made direct payments to state and federal governments totalling \$77.3 billion which represents an effective tax rate of 57 per cent over the period (\$135.7 billion net profit before taxes and payments to government). The significance of these contributions can be highlighted through the fact that contributions to governments were made during periods where the industry returned an overall loss. Between 2014 and 2017, the industry returned an overall net loss of \$12.6 billion yet approximately \$14 billion in payments were made to governments (state and federal) during this period. Payments to governments during the 2017-18 period was approximately \$5.8 billion.

Chart 2 : Oil and Gas Industry: Profitability, Payments to Governments and Average Prices Realised: 2000-01 to 2017-18.



Source: APPEA Financial Survey (2017)

Importantly, taxation and payments to governments should not be the only assessment of the fiscal contribution made by Australia’s oil and gas industry to the Australian economy and community. The industry has invested over \$350 billion in capital, supports 80,000 jobs directly and indirectly resulting in excess of \$1 billion in wages be provided, contributed \$59 billion of LNG export earnings (2018-19), supports small businesses in regional Australia through the acquisition of good and services in local communities in regional Australia and overall contribution to infrastructure development across Australia.

¹⁶ See www.minister.industry.gov.au/ministers/taylor/speeches/keynote-address-ceda-future-direction-energy-technologies-event-sydney for more information.

2.4.1. INTERACTION OF MAIN TAXATION LEVERS

Corporate income tax is levied at a company level, while resource taxes are generally applied at a project or production licence level. In terms of resource taxation:

- Each state and territory applies royalties on onshore production (both from conventional and unconventional sources) and from offshore production in state/territory waters (from conventional and unconventional sources). Royalties are generally assessed as a percentage of the wellhead value of production. The wellhead value is calculated by subtracting the cost of transportation and processing involved in bringing the raw products from the wellhead to a point at which marketable products are sold. Royalties are generally assessed on a licence area basis.
- Commonwealth crude oil and condensate production excise and Commonwealth petroleum royalty applies to production sourced from licences derived from Offshore Exploration Permits WA-1-P and WA-28-P (including the North West Project). Commonwealth crude oil and condensate production excise also applies to crude oil and condensate production from areas under state and territory jurisdiction.
- PRRT is a profits-based taxation regime that applies to individual offshore projects. It is levied by the Commonwealth Government under the provisions of the Petroleum Resource Rent Tax Assessment Act 1987. A liability to pay PRRT arises after a project has recovered all eligible outlays associated with the project (including after deducting eligible exploration expenditure transferred from other projects), plus a threshold (or risk-adjusted) rate of return.
- As royalties and/or PRRT is levied before the application of corporate income tax, payments made are deductible for income tax purposes and therefore reduce the amount of taxable income that corporate income tax is levied on.

3. REGULATION AND INVESTMENT

Historically Australia has been seen to be a relatively desirable place to invest. Investors have been attracted to Australia because of political stability, protections for property rights, relatively predictable regulatory regime and good infrastructure. Environmental outcomes are also considered to be relatively strong.

However, declining rates of business investment is one of the most substantial economic challenges in Australia as we move forward. Investment is critical for generating strong and sustainable economic growth as it sustains and grows the capital base necessary for expanding economic production. The generation of new business investment post COVID-19 will be crucial in rebuilding our economies.

According to the Productivity Commission, resource sector investment peaked in 2012-13 at \$102 billion, about ten times the level of the early 2000s (figure 1).¹⁷ Since then, it has wound down as new projects have transitioned into production. Exploration expenditure has also decreased — from a peak of \$8.4 billion in 2012-13 to \$3.6 billion in 2018-19. And at October 2019, the pipeline of committed major projects — about \$30 billion worth — while still large, was about one-tenth of the October 2012 level.

The Australian Bureau of Statistics and the Reserve Bank of Australia have indicated that business investment, as a share of nominal GDP is at the lowest levels in decades. The impact of COVID-19 restrictions is likely to push this even lower. The resources sector remains strong as an overall share of business investment.

Project proponents and operators must navigate a large array of regulatory requirements across a project's lifecycle. Before exploration or extraction can begin, a proponent has to:

- get a licence or permit;
- assess the potential impacts of planned activity; and
- obtain any required environmental and other approvals.

Once operational, activity has to be monitored and when a site ceases operation, it has to be rehabilitated as agreed (unless this has happened progressively). Regulation therefore plays a significant and important role in establishing a project, and in its operational phase.

¹⁷ Productivity Commission, Draft Report into Resource Sector Regulation, www.pc.gov.au/inquiries/current/resources/draft

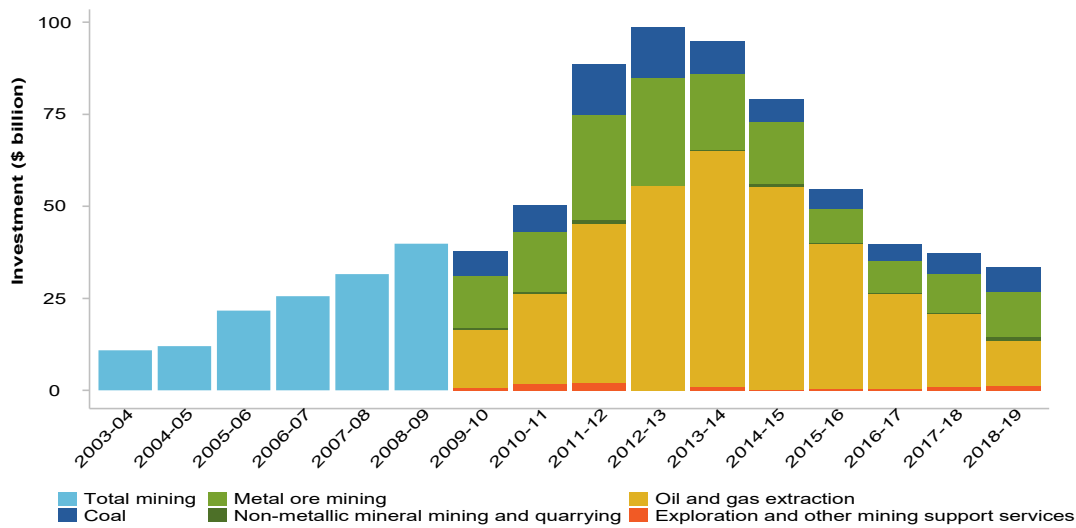


Figure 1 Resources sector investment by broad commodity, 2018 19 dollars (Source: Productivity Commission)

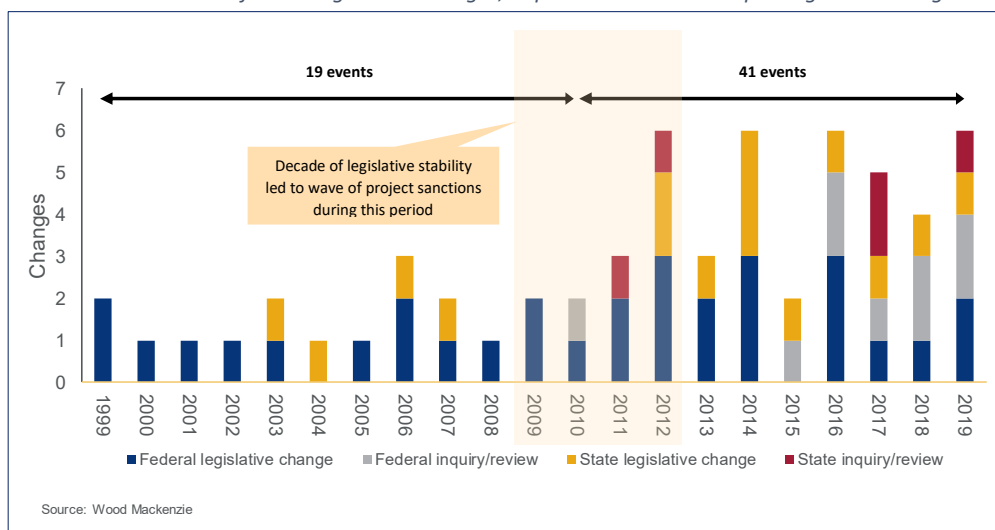
3.1. THE AUSTRALIAN OIL AND GAS INDUSTRY INVESTMENT ENVIRONMENT

The broader macroeconomic and regulatory environments in jurisdictions play a critical role in attracting the substantial investment required to develop resources. For Australia, this is important due the country’s vast size, remote terrain and distance from markets resulting in individual resource discoveries alone cannot justify the significant investment required.

A decade of regulatory stability and sound macroeconomic policies formed the foundation for an unprecedented wave of investment (circa. \$350 billion) and activity through the early 2010’s culminating in the sanctioning of multiple new LNG projects.

Such a scale of investment has yielded direct and induced economic benefits in the form of long-term tax payments to governments, increased local employment, supply chain growth, increased industrial activity and construction, infrastructure build out, education and upskilling of workers and supporting the overall growth and development of regional Australia. However, as outlined in Chart 3 below, since many investment decisions were taken early in the 2010’s, the Australian macroeconomic and regulatory environment has endured a tumultuous period, one that many companies are required to explain to boards and shareholders and that severely impacts the attractiveness of Australia as an investment destination.

Chart 3 Australian state and federal legislative changes, inquiries and reviews impacting the oil and gas industry



Source: Wood Mackenzie

While significant global investment in new LNG capacity has occurred globally since 2012 (over 250 Million Tonnes), none of this has occurred in Australia.

Competition is becoming fierce and capital is more mobile with other lower-cost, more stable regulatory jurisdictions that can provide greater returns on investment being preferred. To attract upstream investment, Australia will need to reverse the growing perception of instability and volatility and present itself as a more stable, prospective or lower risk destination over the entire life-cycle of an oil and gas development than other countries competing for capital. This is because replacing production volumes is a capital-intensive, multi-year process with inherent risks throughout, and companies must take decisions on where to invest with significant care and diligence.



Figure 2 Key activities of resource capture and commercialisation

Uncertainty over costs, timelines and a range of other factors introduce risk throughout the project development process. While not an exhaustive list, typical risks may include:

- Regulatory and legal risks (e.g., property title disputes, increased taxes and royalties, compliance with governmental and intergovernmental body regulations)
- Market risks (e.g., commodity price variations, competition for licenses and assets)
- Subsurface risks (e.g., reservoir characteristics and properties, reserves and resources up- and down-grades)
- Schedule and cost risks (e.g., time and budget overruns, inaccuracies in cost estimation)
- Operational / performance risks (e.g., inability of partners or contracted service companies to finance or execute the project, inability to develop or implement technologies to access fields)
- Governance risk (i.e., board and management performance)

All levels of government, with multiple agencies in each jurisdiction, play a role in creating, administering and enforcing regulations. It is a complex regulatory landscape and comprehensive depictions challenge regulators themselves. Figure 4 provides a stylised mapping. Opportunities for regulatory outcomes that impose unnecessary costs on companies and fail to achieve regulatory objectives are manifold.

It is important to consider perspectives of the investment decision makers. The nature of investment decisions is important in order to recognise that attractiveness for investment is a *relative* or *competitive* assessment. It should always be viewed relative to other overseas investment opportunities and environments.

In 2014 the United Kingdom undertook a review on their offshore continental shelf. The “Wood Review¹⁸” by Sir Ian Wood was published report on 24 February 2014 and made key recommendations to maximise economic recovery from the UK Continental Shelf and key learnings specifically relevant to the sector's regulation.

One significant change to the regulation of the UK oil and gas sector was the creation of the Oil and Gas Authority, which created operational independence from the Department for Business, Energy and Industrial Strategy (previously the Department of Energy and Climate Change). Partly in response to previous Commission reports, Australia commenced a similar journey with the establishment of the National Offshore Petroleum Titles Administrator (NOPTA) and National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) and could review whether the policy intent of this change has been fully realised, especially across State and Commonwealth jurisdictions.

¹⁸ UK oil and Gas, maximising Economic Recovery - www.ogauthority.co.uk/media/1014/ukcs_maximising_recovery_review.pdf

EPBC Act decision timeframes. – Case Study

Australia Pacific LNG’s recent experience is that the current EPBC Act is an example of a framework that does not facilitate consistent assessments and decisions, and it does not provide certainty for an applicant to understand what matters will be considered in the assessment, or timeframes for which a decision will be made. This provides a disincentive for industry to proactively design projects to preferentially avoid or minimise impacts to matters of national environmental significance (MNES).

The timeframes for making decisions under the Act are inadequate to meet the needs of industry, especially as it relates to the Australian domestic gas market. The Australian Energy Market Operator’s report Gas Statement of Opportunities¹ provides the projected supply-demand balance for a 20-year outlook period (e.g. the period to 2038) for the east coast domestic gas market. The AEMO report identifies that there will be natural gas supply shortfall as early as 2023 unless additional reserves and resources and infrastructure are developed. Minister Ley has publicly provided a 3.5-year assessment timeframe for assessment of a major project referred under the EPBC Act¹. Compared to average major projects, coal seam gas projects will typically experience extended assessment timeframes due to additional assessment requirements of the water trigger.

These timeframes for assessment of gas referrals present a significant barrier for meaningful contribution to the gas supply shortfall before 2023. This is also reflected in the Australia Competition and Consumer Commission’s (ACCC) January 2020 Gas Inquiry Interim Report¹ which identifies environmental approvals as a barrier to the commercial recovery of gas resources.

The EPBC Act prescribes approval timeframes for decision making, including the Minister’s decision on whether a referred proposal is a controlled action (s75), the decision on an assessment approach (s88), and approval decisions (s130). However, APLNG has experienced delays due to statutory deadlines missed by the Department. Some examples include:

- Imposing non-statutory administrative requirements such as ‘validation’ of a referral application with timeframes of up to 3 weeks consuming approximately 75% of the 20-business day statutory timeframe for a decision (EPBC 2019/8534).
- Publishing referrals on the Department’s website has occurred up to 1 month following submission. The EPBC Act requires that referrals are published on the Department’s website *as soon as practicable* after receiving a referral (EPBC 2019/8534).
- 7 months (and counting) taken to make a controlled action decision with a 20 business day statutory timeframe (EPBC 2019/8534).
- 87 business days taken to make an approval decision with a 40 business day statutory timeframe (EPBC 2017/7902).

3.1. PROJECT DELAY COSTS

The financial impact of overlapping or duplicative environmental laws and regulations can be viewed from two perspectives: the impact on project economics; or, more narrowly, through a direct increase in compliance costs. Both affect projects where delays and/or additional costs exist.

For large-scale projects, delays affect the project economics directly. In addition, the critical timelines associated with capturing market opportunities can negatively impact on investment returns and the optimal development of resources. Project delays are costly because the delay of a net revenue stream in effect leads to net revenue forgone.

Previous studies have estimated that a one-year delay for a gas project could cost in the order of 10 per cent of its net present value, acknowledging that such estimates are highly sensitive to assumptions, particularly the cost of capital (discount rate), and projected revenue flows including future commodity prices.

For example, the Productivity Commission estimates that the indicative cost of a one-year delay to a major offshore liquefied natural gas project is in the order of \$500 million to \$2 billion, depending on assumptions made (box 7.9). The central estimate of \$1.1 billion represents a reduction in the net present value of the investment by about 9 per cent. The equivalent cost of delay for a major project of more average size (with capital expenditure of \$473 million) might be around \$26 million to \$59 million.

By representing the cost in terms of a one-year delay, the Commission is not suggesting that this is the typical length of unnecessary delay caused by the DAA process as a whole or by any of its component stages. These examples do, however, indicate that the benefits of measures to reduce unnecessary delays may be substantial.

3.1.1. DELAY COST - OFFSHORE LNG PROJECT

In its 2013 report into major project development assessment, the Productivity Commission analysed the impact of a project delay on a large Offshore LNG project.¹⁹ The discounted cash flow methodology estimated that a one-year delay to a major offshore LNG project could reduce its net present value (NPV) by between \$0.5 and 2.0 billion, with a central estimate of \$1.1 billion (or around 9 per cent). These estimates relate to costs borne by the project proponent (from delayed profits) and the wider community (through delayed royalty and tax revenue). Delay may also result in higher financing costs and commercial risks.

These estimates were developed from an illustrative project with construction costs of \$11.3 billion (within the \$4.4 billion to \$52 billion range for the eight oil and gas projects under construction in the September quarter of 2013 (DAE 2013)). Cash flows for the project were constructed using: output volume, and construction, operating and decommissioning cost data; and prices based on those producers are currently receiving (adjusted over time by an energy price growth assumption). The cost estimates are sensitive to the assumed profile of the project’s income stream and the discount rate. To test the sensitivity of the estimates, both the discount rate and price assumptions were varied.

Sensitivity analysis — simulated offshore LNG project (Source Productivity Commission)²⁰

Energy price growth ^b	Discount rate ^c			IRR ^d	Baseline NPV ^e
	12.0	10.0	8.0		
%				%	\$m
0.0	-500	-600	-800	18	7 000
2.0	-900	-1 100	-1 300	22	12 500
4.0	-1 500	-1 800	-2 000	26	19 800
<i>Impact on NPV (%)</i>	<i>-10.7</i>	<i>-9.1</i>	<i>-7.4</i>		

^a Capital investment of around \$11.3 billion occurs over five years, with a subsequent 24 year effective production life. ^b Assumed annual nominal growth rate. ^c Per cent discount rate. ^d Internal rate of return. ^e Baseline NPV without delay, based on a 10 per cent discount rate.

There are a range of other factors not considered in the analysis that could influence the actual cost of a delay brought about by DAA processes. For example, an increased difficulty in financing the project or reduced flexibility to respond to market conditions could push costs higher and/or threaten the viability of the project. In contrast, any ability to accommodate the delay within the planned project schedule or use the delay to improve project design could lower costs.

3.1.2. DELAY COST - GENERIC MAJOR PROJECT

To illustrate potential delay costs for a major project of more average size, a stylised cash flow profile for a project with an average investment cost and similar features to the above project was constructed.

This suggests a one year delay could result in societal costs in the order of \$26 million to \$59 million for a project with a construction cost of \$473 million (this being the average size of the non-oil and gas projects that were under construction in the September Quarter 2013). This estimate assumes the same range of internal rates of return as for the LNG project, a discount rate of 10 per cent and a similar cash flow profile as for the LNG project (though scaled down to reflect the smaller investment and a shorter (20 year) operating life).

3.2. CERTAINTY FOR BUSINESS DECISIONS

Alongside fiscal attractiveness, the Wood Mackenzie report identified regulatory stability as being a key enabling factor for Australia’s success, particularly in the decade preceding Australia’s LNG investment boom.

Since then, the number of regulatory changes has increased significantly. Australia had an average of 1.6 state and federal reviews or legislative changes per year, which increased to 4.6 per year from 2010–2019. This increased variability has been accompanied by an absence of new LNG project sanctions since 2013.

¹⁹ Productivity Commission, 2013, major project development assessment, www.pc.gov.au/inquiries/completed/major-projects

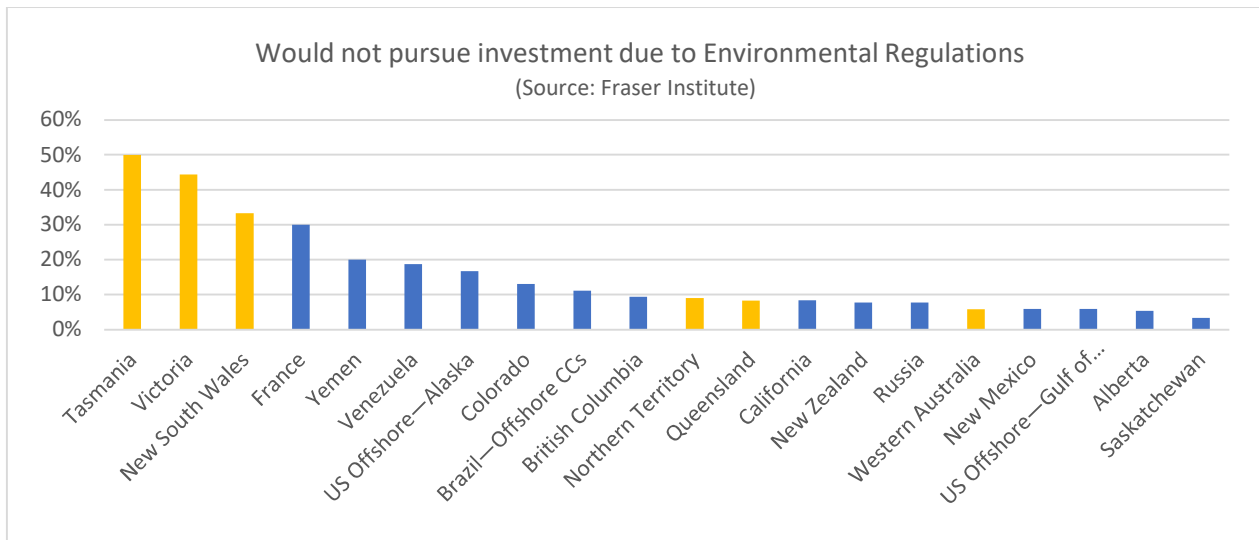
²⁰ Productivity Commission, 2013, Major Project Development Assessment Processes.

3.3. FRASER INSTITUTE REGULATORY SURVEY

The Fraser Institute’s Global Petroleum Survey 2018 released in November 2018 ranked 80 jurisdictions on ‘barriers to investment’ to oil and gas exploration and production. The survey results indicate that New South Wales (73rd), Victoria (77th) and Tasmania (78th) are amongst the worst 10 in the world.

Jurisdictions within this group include Venezuela (80th), Yemen (79th), Libya (76th) and Iraq (75th).⁴ These are also the 3 jurisdictions in Australia that have banned or restricted onshore gas development. The three states have been poor performers for years, but their investment rankings continue to fall.²¹

For jurisdictions in the survey where investors would not “pursue investment due to environmental regulations” Tasmania, Victoria and New South Wales fared the worst in the world.



3.4. ASSESSMENT COSTS

Environmental assessment processes involve a range of costs (including administrative costs, compliance costs, delay costs and costs caused by uncertainty) and study respondents indicated that these costs can be significant.

A survey conducted by Andrew Macintosh of Australian National University found: *The estimated average proponent cost associated with projects that have received final approval under the [EPBC Act] environmental impact assessment regime is between \$660 000 and \$2.2 million.*

The Office of the Environment Protection Authority in Western Australia estimated that in 2012-13, environment assessments involved (on average) about \$50 000 in regulator expenses (2013b). In a cost–benefit analysis of proposed reforms to environmental assessments under the EPBC Act, commissioned by the Department of Sustainability, Environment, Water, Population and Communities, Deloitte Access Economics estimated that bilateral assessment and approval agreements could create a net benefit approaching \$400 million, largely from reduced delays.²²

According to the Productivity Commission most of the benefits would accrue to project proponents. The Australian Government would have fewer approvals to process, while processing costs would rise a little for State and Territory Governments.

²¹ Fraser Institute, 2019, global petroleum survey, www.fraserinstitute.org/studies/global-petroleum-survey-2018

²² DAE (Deloitte Access Economics) 2011, Cost-Benefit Analysis — Reforms to Environmental Impact Assessments under the Environment Protection and Biodiversity Conservation Act 1999, 20 April. www.ris.pmc.gov.au/sites/default/files/posts/2011/09/EPBC-Act-Environmental-Impact-Assessment-CBA.pdf

4. THE EPBC ACT

The EPBC Act is the Commonwealth's key environmental legislation. The EPBC Act is focussed on the protection of nine 'matters of national environmental significance (MNES)'. These matters include World Heritage properties; threatened species; the Great Barrier Reef Marine Park; and water resources in relation to large coal mining and coal seam gas developments (the 'water trigger'). Actions that are likely to have a significant impact on a matter of national environmental significance undergo environmental assessment and require approval from the Commonwealth Environment Minister. The Minister usually attaches conditions to any approval.

The Australian oil and gas industry refer a broad range of activities under the EPBC Act. Following referral, the Minister will make a decision that the proposed action is a controlled action requiring formal assessment and approval by the Minister under the EPBC Act.

Common matters of national environmental significance include listed threatened species and communities (sections 18 and 18A EPBC Act) (which include EPBC-listed springs); water resources (section 24D and 24E EPBC Act); and Commonwealth Marine Areas.

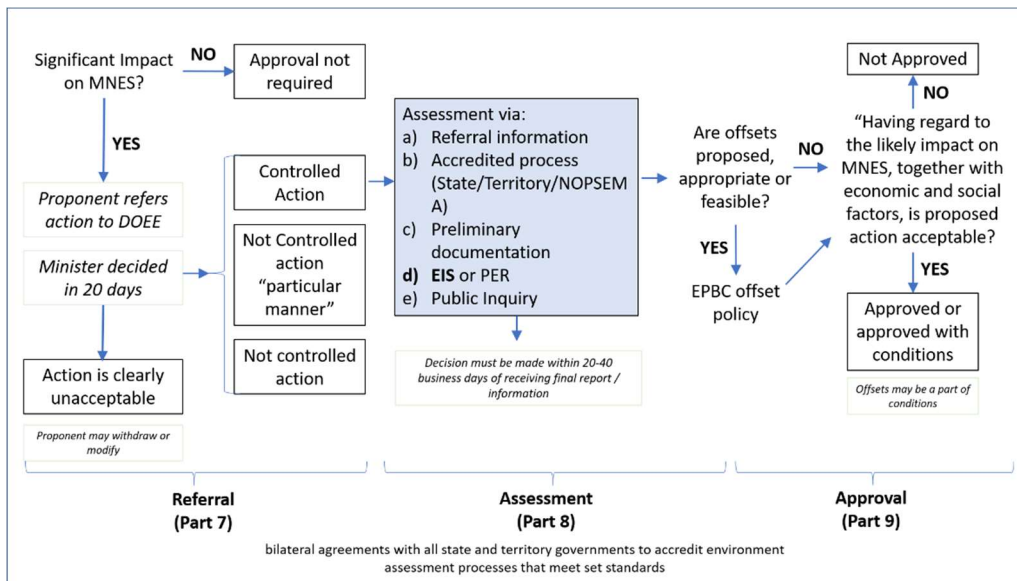
If the Minister decides that an action is a controlled action, an environmental assessment of the action must be carried out. The test of significance of impacts is not reapplied, and instead the Minister considers the acceptability of impacts. The acceptability of a residual impact (which is any impact that remains after all proposed avoidance and mitigation measures have been applied) is considered against the risk of not achieving an environmental objective specific to the proposed action, taking into account the likelihood and consequence of the risk.

An action may be approved by the Minister with or without conditions that control how the action is undertaken to ensure the impacts of the action are acceptable. Conditions necessary for the protection of EPBC-listed springs and water resources are recommended by the Department during the assessment and approval process for the Minister's decision on the approval.

There are currently five assessment approaches under the EPBC Act for actions that are likely to have significant impacts on MNES (including water resources):

- 1) accredited assessment, which includes an accredited state/territory assessment process (accredited under a bilateral agreement between the state/territory government and the Commonwealth);
- 2) assessment on referral information, which is an assessment carried out based solely on the information provided in the referral form;
- 3) assessment on preliminary documentation, which is an assessment carried out based on the information contained in the referral form and any other relevant material identified by the minister as being necessary to adequately assess a proposed action;
- 4) assessment by environmental impact statement (EIS) or public environment report (PER); and
- 5) assessment by public inquiry.

Chart 4 - EPBC Act referral and approval process. Adapted from 2014 Productivity Commission Report

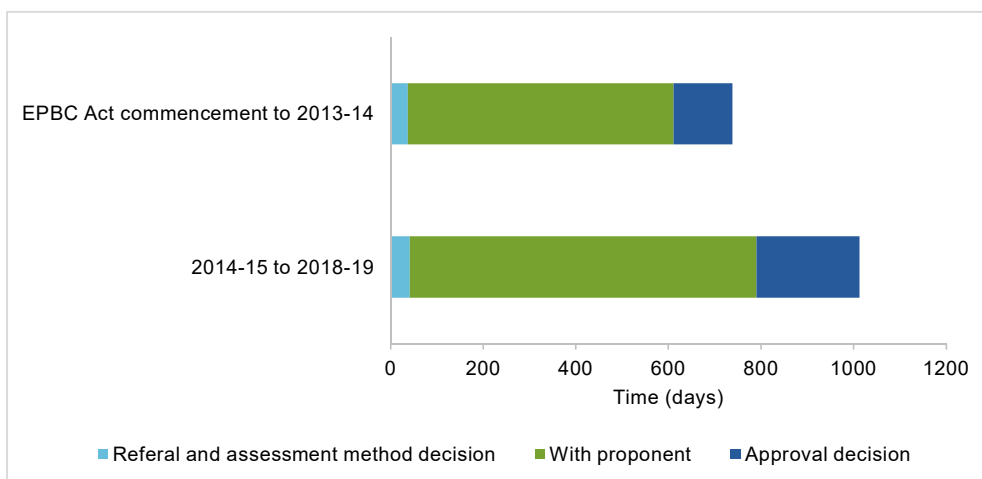


4.1. REFERRALS UNDER THE EPBC ACT

The Australian oil and gas industry refers numerous activities to the EPBC Act for assessment. The amount of referral have reduced since 2013 as a result of the authorisation of NOPSEMA’s approval processes under the EPBC Act, but average 5 – 6 projects per year.

The Productivity Commission’s report into major project assessments has found that the average time between project referral and approval for resources projects under the EPBC Act over the five years to 30 June 2019 was 1014 days, or nearly three years (Chart 5 Environmental approvals. Average Time taken for decisions under the EPBC Act (Source: Productivity Commission)).

Chart 5 Environmental approvals. Average Time taken for decisions under the EPBC Act (Source: Productivity Commission)



Proponents had carriage of environmental impact assessments (EIAs) for three quarters of this time. This represents requests for further information, preparing EIA documentation, or other reasons.

The time taken for the Commonwealth environment minister to make an approval decision for resources projects, after receiving the final assessment documentation from the proponent, averaged 223 days in the five years to 30 June 2019. This was around three months longer than the average between commencement of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and 2013-14.

APPEA analysed purely oil and gas related decisions between October 2013 and November 2019. This showed the average amount of time between referral submission (and public notice) and the assessment decision was 244 days (slightly higher than the Productivity Commission average). With some decisions taking multiple years to reach a decision. This demonstrates the significant lead time required for most projects.

As noted by the Productivity Commission, these numbers do not consider post approval requirements (such as Management Plans) which can in some instances take just as long as the primary environmental approval.

Chart 6 - Approval Timeframes in Days (from referral to decision) Source: EPBC Act

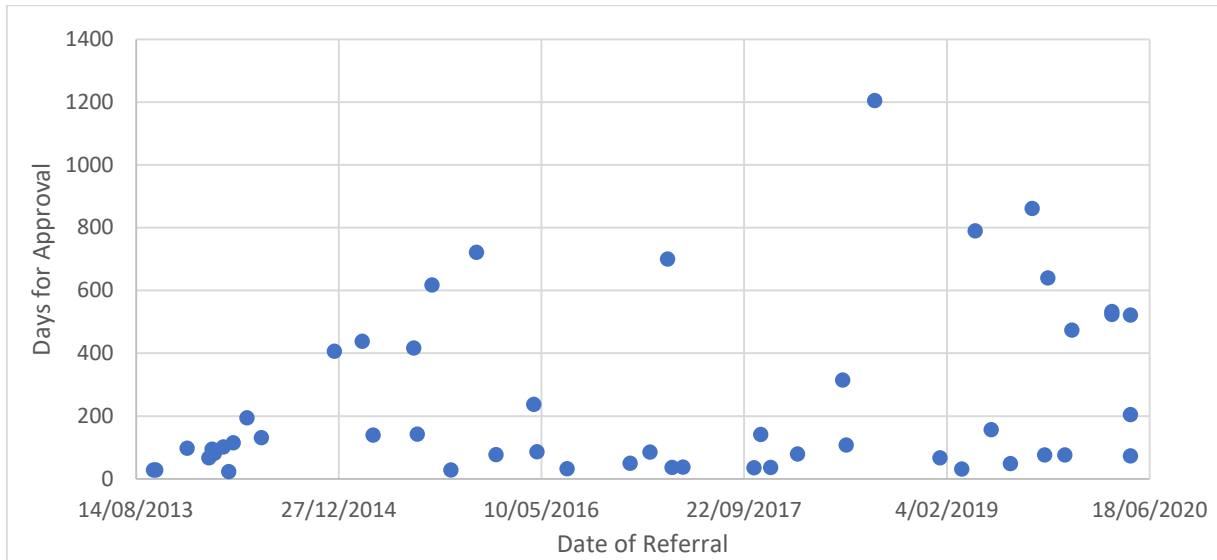
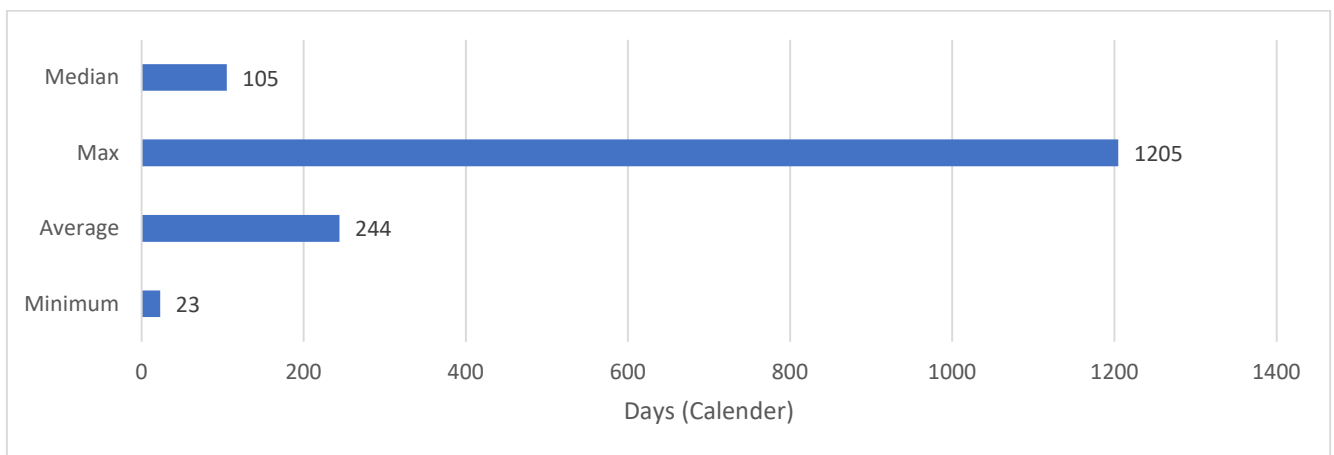


Chart 7 Time from public comment to decision in days. Oil and Gas Activities: Source EPBC Referral list



Case Study. Origin Energy:

An example of this inconsistency was evident in the Alfredson Block development (EPBC 2017-7902) where the assessment included the impacts to a land-based snail. This assessment and recommendations were a point of contention and debate until the project was approved on 2 September 2019. Through a review of the proposed approval recommendation report Attachment B Paragraph 67, it was shown that an independent expert assessment was sought on 29 March 2019 by the Department that was not communicated to Origin and it supported the proponents assessment of no significant impact was acceptable. This brings into question the decision-making process which continued to raise this issue for a further 6 months.

There appears to be a lack of oversight around threatened species issues under the EPBC Act. Updating the Species Profile and Threat Database (SPRAT) with more quantifiable impact thresholds may remedy this. Furthermore, a management review of assessment outcomes to ensure consistency would be beneficial.

4.2. ROLE OF THE EPBC ACT - COORDINATED AND RATIONALISED REGULATION

- **Coordinated and consistent Commonwealth and state/territory processes and requirements -** This can be achieved through approval bilateral agreements, collaborative/joint assessments and greater recognition of state-based requirements and conditions. This should be supported by full implementation of assessment bilateral agreements and embedding more Commonwealth staff within relevant state agencies. This should also include alignment of different triggers, timeframes and requests for further information.
- **Better coordination of requirements –** This can be achieved by adopting collaborative measures between the Federal and State Governments that seek to align on the management of risk, approvals, and compliance.
- **Address regulatory creep –** Clear delineation between state and Commonwealth responsibilities to address increasing federal involvement in matters outside their traditional Constitutional or policy responsibilities.

The EPBC Act was intended to deliver a high level specific and focused regulatory framework that provided management of key environmental matters.

APPEA supports the approach of strategic national policy setting that focuses on outcomes rather than prescription. We welcome the consideration of a set of national standards and objectives that is set at a federal level supported by monitoring and compliance.

While states and territories have primary responsibility for management of the environment, the Commonwealth has both obligations to deliver on international environmental commitments and an increasingly important role to play in providing strategic leadership and coordination.

The 1992 *Intergovernmental Agreement on the Environment (IGAE)* sets out roles, responsibilities and interests for governments in the management of the Environment. It describes the responsibilities and interest of the Commonwealth in safeguarding and accommodating national environmental matters as: matters of foreign policy relating to the environment; ensuring that the policies of States do not significantly affect the environment of other States; and facilitating the co-operative development of national environmental standards and guidelines.²³

The IGAE is still relevant today, but its framework has been overlooked and distorted over the years (See section on water trigger). In particular section 2.2.1 outlines the responsibilities and interests of the Commonwealth in environmental matters. These include:

1. matters of foreign policy relating to the environment and, in particular, negotiating and entering into international agreements relating to the environment and ensuring that international obligations relating to the environment are met by Australia;

²³ Intergovernmental Agreement on the Environment, 1 May 1992 www.environment.gov.au/about-us/esd/publications/intergovernmental-agreement

2. ensuring that the policies or practices of a State do not result in significant adverse external effects in relation to the environment of another State or the lands or territories of the Commonwealth or maritime areas within Australia's jurisdiction (subject to any existing Commonwealth legislative arrangements in relation to maritime areas).
3. facilitating the co-operative development of national environmental standards and guidelines as agreed in Schedules to this Agreement.

The IGAE is still relevant today and a more cooperative approach to the development of standards should be the focus of the legislation. A national approach that focuses on outcomes and standards on national matters, together with appropriate authority and support for states and territories to implement them within their own policy and regulatory frameworks.

Standards should be set by the Commonwealth in cooperation with state and territory governments and input from relevant expertise/stakeholders.

This would allow for the States to maintain their own regulatory and administrative arrangements, but within a general framework set by the Commonwealth. This aligns with 2.3.1 of the IGAE that states that “*each State will continue to have responsibility for the development and implementation of policy in relation to environmental matters which have no significant effects on matters which are the responsibility of the Commonwealth or any other State.*”

This ensures the Commonwealth is focused on national strategic approaches, rather than prescriptive approvals, and compliance.

Case Study: Australian and Northern Territory Governments’ Bilateral Agreement

On 31 May 2002, the Australian and Northern Territory Governments entered into an Assessment Bilateral Agreement relating to environmental impact assessment under the provisions of the EPBC Act. An amended bilateral agreement was entered into on 28 May 2007 and a further amended bilateral agreement was made on 11 December 2014.

The intention of the bilateral agreement was to support the delivery of a “one-stop-shop” for environmental approvals in the Northern Territory by accrediting the Northern Territory Government’s environmental assessment and relevant approval systems to create a single process for nationally protected matters, reducing duplication and streamlining environmental approval processes.

For example, the environmental assessment report by the Northern Territory Department of Natural Resources, Environment, the Arts and Sport on the East Arm Wharf expansion project (a key element of the Ichthys LNG Project) was assessed under the Assessment Bilateral Agreement.

The report formed the basis of advice to the Northern Territory Environment Minister as to whether the project should proceed. Following the determination by the Minister to issue a development permit, the report also informed the consideration by the Australian Government Minister for Sustainability, Environment, Water Population and Communities.

The bilateral agreement process enabled the conduct of two approvals processes (NT Government and Australian Government assessments) to be undertaken simultaneously, however, approval by the Australian Government followed that of the Northern Territory.

4.2.1. ECOLOGICALLY SUSTAINABLE DEVELOPMENT (ESD)

APPEA members are broadly supportive of the EPBC Act and do not consider the establishment of a replacement Act or new authority necessary.

The principles of Ecologically Sustainable Development (ESD) remain an important supporting principle and APPEA members believe that the Minister for the Environment should retain the role of decision-maker to enable ongoing consideration of social and economic factors.

The principles of ESD outlined in section 3A of the EPBC Act are that:

- decision-making processes should effectively integrate both long-term and short-term economic,

- environmental, social and equity considerations
- if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation
- the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations
- the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making
- improved valuation, pricing and incentive mechanisms should be promoted.

The first and last of the ESD principles under the EPBC Act relate to the integration of social, economic and environmental issues. The middle three principles relate specifically to ensuring that environmental consequences are considered in decision-making. The current wording in Section 3A of the Act (principles of ESD) is appropriate. However, further clarification could be provided to assist guide proponents around the application. For instance, the weighting of the principles of ESD.

4.3. EPBC ACT - PRIORITIES FOR REFORM

Effective environmental regulation is critical to protect heritage, biodiversity and other environmental values. Well-designed environmental regulation also helps ensure business and community confidence in Commonwealth and state governance processes. Yet the EPBC Act is increasingly failing to meet these goals in an efficient and effective manner.

Central to the objects of the EPBC Act is providing ‘for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance’ (MNES).²⁴ While recognising the Commonwealth has specific responsibilities – largely linked to Australia’s international obligations and that general environmental protection sits primarily with states/territories, the EPBC Act remains a key pillar of the broader protection regime. In consultation with our members, APPEA has outlined four key priority outcomes sought by industry in the review of the Act. They can be summarised as:

- Avoid duplication between jurisdictions and processes
- Reduce delays in EPBC Act assessment and approval processes
- Enhance certainty for proponents, government and the community
- A focus on outcomes and standards, rather than prescription

4.4. PRINCIPLES OF GOOD ENVIRONMENTAL REGULATION

APPEA believes that the alignment of outcomes between the Federal and State and Territory Government has the potential to deliver significant streamlining of Australia’s environmental approvals regime and deliver on the recommendations of numerous Australian reports and reviews.

APPEA supports strong and independent regulation that sets an objective and science-based framework for reducing risk while providing certainty to industry. Adhering to best-practice processes for developing regulation is vitally important. APPEA believes that Governments at all levels should aim to establish environmental and planning approvals processes based on the following principles:

- Support for the adoption of a single process for Commonwealth and State/territory environmental and planning approvals that:
 - Supports robust and consistent environmental regulation and high environmental standards and performance
 - Reduces regulatory burden and removes duplication of approvals between jurisdictions
 - Provides for efficient, streamlined processes and faster timeframes for approvals
 - Increases certainty and global competitiveness and thereby facilitate further business investment
- Clear objectives and transparent oversight:
 - The rationale for any regulation must be well defined and understood. Government regulation may not always be the most effective policy solution or mechanism to manage risk.
 - The processes for implementing regulation must be transparent, clear, uniform and predictable.
 - Regulation objectives meet environmental as well as economic and social objectives.
 - Regulation is constantly reviewed to ensure to assess its ongoing relevance
- Underpinned by sound science and evidence:

²⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 3 (a).

- An evidence-based approach should be adopted based on rigorous and reliable information and centered on well-defined risks and environmental values.
- Information, science and evidence used to underpin regulations should be transparent.
- Risk-based and focused:
 - Objective and risk-based regulation should be adopted rather than prescriptive standards
 - This allows a flexible and dynamic approach adapting to changing circumstances (technology, environments, science and financial arrangements)
 - Allows actions to be taken to mitigate risk in conditions of scientific uncertainty rather than stopping or banning projects or activities.
- Appropriate to the nature and scale of the project:
 - Regulation should be focused on what is appropriate to the ‘nature and scale’ and to the risks and impacts from the activity being regulated.
 - The ongoing compliance activity and costs imposed on governments and proponents are appropriate to the risks and impacts.
 - Transparent processes supported by guidance on regulator expectations

5. REDUCING DUPLICATION BETWEEN JURISDICTIONS AND PROCESSES

Across government the Commonwealth, states and territories, and local councils have shared responsibility for the environment and, result, each level of government maintains a suite of environmental legislation and regulatory powers. This results in excessive and conflicting regulatory processes and double handling. The water trigger in particular has resulted in significant duplicative requirements for proponents.

The Commonwealth Government and state and territory governments should, as a priority, continue to develop collaborative approaches under the EPBC Act. There are numerous ways in which this can be achieved through the existing legislation, including:

- Bilateral Agreements to accredit state government approval processes that meet the required environmental standards;
- Strategic Assessments; or
- More collaborative administration.

In many legislative areas, more than one level of government, or two bodies within the same level of government, are providing unclear and often inconsistent regulatory approvals for the same activities. On 13 April 2012, COAG recognised this duplication as a priority.²⁵ It agreed to expedite the accreditation of state and territory environmental assessment and approval processes for matters of National Environmental Significance (NES) under the EPBC Act, supported by a robust framework of standards. The Australian oil and gas industry supports this goal.

Strategic approaches to reduce duplication should be accompanied by an assurance framework that demonstrates the agreements are being adhered to, environmental outcomes are being achieved, and that the regulatory burden on project proponents is lower than is currently the case.

5.1.1. EXAMPLES OF DUPLICATIVE REQUIREMENTS

In many cases, the State and Territory Government and the Commonwealth Government impose requirements which cover the same issues and seek to achieve the same outcome but require slightly different compliance and reporting arrangements.

There are many examples of duplication and inefficiency within the legislative frameworks, especially in environmental management plans.

There is however, usually some form of variation, causing multiple plans about the same thing to be developed to manage the issue and satisfy approval requirements. Examples include:

- Rehabilitation plans
- Significant Species Management Plans, Species Management Plans, Fauna Management Plans,
- Environmental Management Plans,
- Construction Environmental Management Plans,
- Operational Environmental Management Plan

²⁵ COAG, 2012, business advisory forum communique www.coag.gov.au/meeting-outcomes/coag-meeting-communique-13-april-2012

- Decommissioning plans
- Water: There is significant overlap between the requirements of the Commonwealth and the Queensland Government in relation to CSG water management plans, groundwater impact modelling, spring surveys (mound springs), monitoring and reporting. Neither jurisdiction will accept the other's documentation, undermining the value of the bilateral agreement.
- Constraints Planning and Field Development Protocol: The Commonwealth approvals and the Coordinator-General's Report both require the development and implementation of a constraints planning and field development protocol which further duplicates environmental constraints conditioned in state environmental authorities.
- Disturbance Limits to Habitat Values for Listed Species: Disturbance limits to environmentally sensitive areas are quoted in both Federal and State Government approvals. Some of these values are the same in both jurisdictions, however different rules for development and/or disturbance limits can apply.
- Environmental Offsets: Each approval requires the preparation of environmental offsets for impacts from unavoidable disturbance to regional ecosystems, threatened ecological communities, listed flora and fauna and migratory species. The offsets are required under various Commonwealth and Queensland Government Acts and policies, with a significant amount of overlap. Jurisdictions will not agree on a single offsets approach.
- General Monitoring and Reporting: All the approvals have detailed monitoring and reporting requirements.
- Annual Returns: The Commonwealth and State and Federal Government approvals all have requirements for the preparation of annual returns, which cover the same issues but are required to be submitted in a different format.
- Third Party Audit Requirements: Third party audits are required for by State Government regularly, for instance the Queensland State Coordinator-General's Report on an annual basis; state environmental authorities every 3 years; and for various Commonwealth approvals.
- Induction Programs: Both the Commonwealth and State Government require staff working in LNG plants to complete induction programs.
- Biosecurity measures – Both the Commonwealth and the State Government have the same requirements for dealing with biosecurity matters, including dealing with domestic and international shipping, and delivery of goods.
- Fauna survey guidelines – Both the Commonwealth and the State Government provide survey guidelines for fauna. However, there is variation in guideline content. This is particularly an issue if a species is listed under both Commonwealth and State Government legislation.

5.2. FIT-FOR-PURPOSE ASSESSMENT AND APPROVAL

Regulation has been increasingly used to address public concerns rather than an identified regulatory 'gap' and without consideration of other non-regulatory options (e.g. improving process transparency or co-regulatory initiatives such as industry adopted standards). This results in even more duplication and regulations with poorly defined objectives and outcomes. Findings of the recent PC inquiry into Resources Sector Regulation draft report included:

*"Environmental impact assessments are often unduly broad in scope and do not focus on the issues that matter most. This comes with costs — the direct costs of undertaking studies and preparing documentation and the more significant cost of delay to project commencement. Disproportionate and unfocused environmental impact assessments are also of questionable value to decision makers and the community."*²⁶

The current approach to Environmental Impact Assessment creates unnecessary costs and delays for both proponents and governments. It also acts as a barrier to community engagement and understanding by overwhelming with stakeholders with information, not all of which is relevant to the protection of key environmental matters.

Regulatory or scope creep occurs when the Commonwealth considers matters outside of their policy responsibility or when conditions and requirements imposed through regulatory administration proliferate over time, resulting in complex documentation that is no longer fit-for-purpose and additional regulatory layers.

Regulation has been increasingly used to address public concerns rather than an identified regulatory 'gap' and without consideration of other non-regulatory options (e.g. improving process transparency or co-regulatory

²⁶ Productivity Commission, [Resources Sector Regulation: Draft Report](#), Canberra, p. 38.

initiatives such as industry adopted standards). This results in even more duplication and regulations with poorly defined objectives and outcomes.

Appropriate expertise is deployed to understand the impact of regulation on business decisions and investment. APPEA supports the Productivity Commission findings that:

Leading-practice environmental impact assessment involves application of a risk-based approach, where the level and focus of investigations is aligned with the size and likelihood of environmental risks that projects create. In practice this means:

- *Allocating different projects to different assessment tracks depending on their level of risk, which occurs throughout Australia*
- *Thorough scoping, including community consultation, to identify which matters need to be investigated more or less thoroughly*
- *Terms of reference that focus on projects' biggest and most likely risks*
- *Regulators that are empowered to focus on what matters most, for example through Statements of Expectations as occurs at National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).*

5.2.1. SERVICE CHARTERS AND APPROVAL TIMEFRAMES

Legislative timeframes are better defined and understood. Facilitating improved confidence in the referral process. Improving regulator capacity and consistency in implementation through training, supporting systems and platforms and senior departmental referrals and case management to improve consistency, coordination and delivery, and reduce delays. Levies are commensurate with the activity.

5.2.2. STOP THE CLOCK MECHANISMS (INFORMATION REQUESTS)

While statutory timeframes exist for approval decisions under the EPBC Act, there are mechanisms which enable regulators to 'stop the clock' on these timeframes. One such mechanism is requests for further information. These requests can also occur late in the assessment process, leading to significant delay and additional costs. The Commonwealth is also not constrained in making these requests and it is not necessarily clear how critical this information is to the approval decision.. The recent PC Resources Sector draft report found:

"Leading-practice use of stop the clock provisions means placing limits on when they can be used — when matters emerge that were not contained in the terms of reference or could not have been reasonably anticipated — and transparency about why the clock is stopped.²⁷"

Other safeguards against potentially unnecessary additional information requests should also be considered. Specifically, proponents should also be able to contest the validity of information requests, as per the *Environmental Protection Act 1994* (Qld) which gives the applicant the right to refuse to respond to an information request in full or in part.

The government then has to make a decision to assess the application on the information provided or declare that the information not required was critical. The applicant can either accept the decision of the regulator or alternatively proceed with litigation. The ability to decline to answer irrelevant or immaterial information requests would assist in ensuring only essential information is requested.

5.2.3. STATUTORY TIMEFRAMES

APPEA supports the use of statutory timeframes to guide decision making and increase certainty for proponents. The Federal Government reports annually on the share of EPBC Act project decisions made within statutory timeframes.

In 2018-19, 62 per cent of decisions were made within statutory timeframes and it was noted that '*delays are due to high workloads and working with project proponents to obtain additional information*' (DoEE 2019).

According to the Productivity Commission the average time taken to make approval decisions for resource projects was 223 days over the period 2014-15 to 2018-19, much greater than the statutory timeline of 20-40 days (depending on the type of assessment) (unpublished data from DAWE).

Statutory timelines for individual regulatory decisions should be set to two timelines: one excluding periods when the 'clock' is stopped and one including all time elapsed. There should also be disclosure of reasons for regulators

²⁷ Productivity Commission, [Resources Sector Regulation: Draft Report](#), p. 40.

requesting additional information, and measurement and public disclosure of their performance against these targets.

Timelines, statutory or otherwise, provide proponents with information about how long regulatory processes ought to take, which supports project planning. They also focus regulators' attention, and public reporting of regulator performance in meeting those timelines is a means of keeping them accountable.

5.2.4. CLARITY ON REFERRALS

APPEA members have indicated that there is a need for clarity around what is required for referrals under the EPBC Act. The water trigger, for instance, has a very broad scope and incorporates a wide range of industry activities.

As stated earlier, the costs of a project delay are significant and as such proponents will tend to refer a project even when it may not trigger a significant impact. This 'precautionary referral' is undertaken to reduce the risk of the project being called-in later.

Where projects risks are low, APPEA recommends further work with State and Territory Governments to recognise existing frameworks, such as codes of practice, that can manage that risk.

In order to assist address the ambiguity on what actions should be referred and what constitutes a significant impact APPEA recommends specific guidance and frameworks around significant impact. Industry-specific guides or outcomes statements can allow set clear limits for significance and protection.

5.2.5. SIGNIFICANT IMPACT' DEFINITION

The concept of a 'significant impact' is central to the Act in that any proposed action that will have, or is likely to have a significant impact on a MNES require approval from the Environment Minister.

Evidence from proponents indicates that the threshold for what is considered a "significant impact" has changed, and as a result has captured more actions. Furthermore, the significant impact 'test' does not account for pre-existing land use.

Investment in better policy advice and guidance would greatly increase efficiency in decision-making and certainty for developers. This could include improved guidance on what would constitute a significant impact against each MNES (in the context of national objectives) and how pre-existing land use is addressed.

5.3. STRATEGIC APPROACHES TO ASSESSMENTS

- **Enhanced use of strategic assessments** – Better defining the operation and processes required for strategic assessments, particularly in the post-approval/validation stage and allowing flexibility for modification of programs can expedite approvals and result in more strategic environmental outcomes. Strategic Assessments can deliver tangible benefit when done correctly.
- **Enhanced use of streamlining provisions** – More use of collaborative approaches to improve alignment in requirements between the State and Commonwealth Governments.

The assessment and approval of projects can be costly and time consuming. APPEA members support strategic approaches in the legislation to consider activities as they sit in the landscape, and ultimately reduce delays by eliminating the need for project by project approvals under the EPBC Act and support long-term management of regional environmental values.

Industry experience with strategic assessments has been varied. Some assessments have failed to be endorsed. Whereas others, such as the Strategic Assessment and endorsement of NOPSEMA's authorisation process has ultimately been considered successful. In addition to formal Strategic Assessments, and as covered in the section above, a process can be established between regulators and industry to better coordinate and align on requirements. The Joint Industry Framework establishes a strategic approach to managing environmental outcomes in a collaborative way – through better communication and engagement.

APPEA recognises that well-developed strategic assessment can deliver superior outcomes through the consideration of impacts to MNES early and at a regional scale. This can provide a reduced administrative burden, an increased ability to deliver better regional scale environmental outcomes and provide more certainty for proponents and communities.

While APPEA supports the increased use of Strategic Assessments, some of the limitations to the current process include:

- They can be costly and time consuming.
- Insufficient guidance on how to best undertake a Strategic Assessment, including what’s “in scope” of the assessment and how to deal with non-proponent industries.
- There can be discord between what was agreed and intended with the regulator in the approval phase and the interpretation and application by the post-approval regulator.
- There is no provision in the Act to modify a Strategic Assessment. As discussed in the NOPSEMA strategic assessment, this means that a program needs to be fit-for-purpose for many decades.
- A lack of clarity around the process for dealing with newly listed species over the life strategic assessment.

Key success factors from recent strategic assessments should be used to inform future efforts. For example, the strategic assessment undertaken by BHP and the Commonwealth in the Pilbara highlighted the opportunity for single proponent assessments in development intensive areas. Key to its success was the fact the assessment was driven by single highly proactive proponent.

Strategic assessments allows the Commonwealth to assess and approve a plan, program or policy at a regional scale. Matters that could potentially be coordinated include:

- A mechanism to guide future development to areas of lower environmental impact, including setting the context in which development should occur and to manage cumulative impacts
- Better planning where offsets and other conservation investments should be directed (e.g. pest animal and weed control in high biodiversity areas and unconstrained by numerical offset calculators that do not accommodate regional priorities)
- Identification of areas where important MNES exist in a landscape
- Strategic assessment plans could also guide efforts on other issues, including climate change adaptation, water use and infrastructure planning.

To realise the full potential of strategic assessments and encourage their use, the Act should be amended to better define the operation and processes required for strategic assessments. Amendments should also provide greater flexibility to modify programs where they are consistent with the plan objectives and approval in the post-approval/validation stage.

5.4. THE “WATER TRIGGER”

- The water trigger adds duplication and inefficiency for no benefit at a time when clarity and investor certainty are required.
- There is no justification for extending the water trigger to shale and tight gas as such activities are already covered effectively by State water planning processes.
- Queensland and South Australia, for example, have considered potential water demand for shale and tight gas in recent water plans.
- In Queensland, new requirements have been introduced for non-associated water take, which includes water used for hydraulic fracturing and construction activities. These requirements provide that such water be authorised under the same process that applies to all water users and such authorities are not typically issued if they would impact existing water users.
- Government reports and studies have recommended the removal or modification of the water trigger. It’s expansion to other sectors is not justified.

The ‘water trigger’ was introduced into parliament via the [Environment Protection and Biodiversity Conservation Amendment Act 2013](#) on 13 March 2013 and entered into force on 22 June 2013. The trigger created a new subdivision (Subdivision FB) in the EPBC Act that applies to actions that involve coal seam gas development (and large coal mines) and that action has, or will have, a significant impact on a water resource; or is likely to have a significant impact on a water resource.

The water trigger was a political fix to secure a vote in 2013. There was no regulatory impact assessment and no evidence that State regulation was deficient. While adding another layer of Commonwealth regulation, the trigger did not add any new scientific assessment or evidence.

There is a clear commitment from Australian Governments, through the Council of Australian Governments (COAG) process, to streamline and reduce regulatory burdens on business, and to implement best-practice regulatory approaches. It is also contrary to the objects of the EPBC Act (...to promote a co-operative approach to the protection and management of the environment involving governments..) and the recommendations made by the Hawke Review of the Act.

The EPBC Act was never intended to duplicate or override state environmental law. Its objective was always to facilitate and promote an effective framework for inter-governmental relations on the environment in order to “provide greater certainty for participants in environment issues, minimise **duplication** of effort to achieve common goals and facilitate improved environmental outcomes”. The Act is meant to encourage Bilateral Agreements, not remove them. (*Environment Protection and Biodiversity Conservation Bill Explanatory Memorandum 1998*.)

Matters of National Environmental Significance (NES) under the EPBC Act are generally on the protected matter, rather than a specific industry or activity. The unilateral creation of an industry specific trigger is inconsistent with the EPBC Act matters of NES that focus on impacts to protected matters.

The water trigger considers that an action is likely to have a significant impact on a water resource if there is a real or not remote chance or possibility that it will *directly or indirectly result in a change to the quantity of a water resource, and / or quality of a water resource*. By no standard are coal seam gas developments the largest users of water resources nor does it have a higher risk of significant impact on water resources.

5.4.1. PRODUCTIVITY COMMISSION CONSIDERATION OF THE WATER TRIGGER

In its 2013 report on *Major Project Development Assessment Processes*²⁸, the Productivity Commission estimated that the indicative cost of a one-year delay to a major liquefied natural gas project is in the order of \$500 million to \$2 billion, depending on assumptions made. The central estimate of \$1.1 billion represents a reduction in the net present value of the investment by about 9 per cent. The equivalent cost of delay for a major project of more average size (with capital expenditure of \$473 million) might be around \$26 million to \$59 million.²⁹

*“The water trigger amendment (in combination with the prohibition on use of bilateral approval agreements) imposes an extra layer of regulation on affected proponents. Further, it is not obvious that existing laws are deficient or that the particular legislative amendment adopted by the Australian Government is the best approach to deal with any identified gap in the regulatory framework”*³⁰

Duplicative assessment, as presented in the water trigger, is also a preventable burden on the resources of the Australian Government. The Productivity Commission also modeled what the potential cost of a delay may have on a major LNG project. This may assist the review in understanding the potentially large impacts even small delays can have on a project. The report finds that:

“the indicative cost of a one-year delay to a major liquefied natural gas project is in the order of \$500 million to \$2 billion, depending on assumptions made. The central estimate of \$1.1 billion represents a reduction in the net present value of the investment by about 9 per cent. The equivalent cost of delay for a major project of more average size (with capital expenditure of \$473 million) might be around \$26 million to \$59 million.”

5.4.2. THE SENATE SELECT COMMITTEE ON RED TAPE CONSIDERATION OF THE WATER TRIGGER

On 11 October 2016, the Senate resolved to establish the Select Committee on Red Tape known as the 'Red Tape Committee'. As part of its inquiry into the effect of red tape on the economy and community, the Committee examined the effect of red tape on environmental assessment and approvals.³¹

The interim report of the Committee, released on 18 October 2017 recommended that *“the ‘water trigger’ be removed from the Environment Protection and Biodiversity Conservation Act 1999”*.

²⁸ Productivity Commission (2013) Major Project Development Assessment Processes www.pc.gov.au/inquiries/completed/major-projects/report

²⁹ Ibid (page 201)

³⁰ Ibid (Page 149)

³¹ Senate Select Committee – Environmental assessment and approvals

www.aph.gov.au/Parliamentary_Business/Committees/Senate/Red_Tape/Environment (accessed 01 December 2017).

The committee also considered the review of the EPBC Act by Dr Allan Hawke AC in 2008-09. Dr Hawke found that *“including water extraction or use as a matter of NES under the Act is not the best mechanism for effectively managing water resource”*. He notes that there is *“limited value in attempting to regulate individual extractions of water”* and that the EPBC Act could already assess the impacts of water extraction where that extraction or use has, will have or is likely to have a significant impact on a matter of National Environmental Significance.

5.5. A MODEL FOR REFORM - JOINT INDUSTRY FRAMEWORK FOR THE MANAGEMENT OF IMPACTS TO GROUNDWATER RESOURCES IN THE SURAT CUMULATIVE MANAGEMENT AREA

APPEA supports reform to better facilitate consistent risk-based and outcomes-based conditioning and management processes for actions.

Over time the approach to approval conditions under the EPBC Act has become far too prescriptive. Rather than adopting an outcomes-based approach, the regulatory burden imposed by the current system has increased dramatically over time. A single project may be the subject of hundreds of conditions under the EPBC Act, resulting in inevitable duplication and inconsistencies with State and Territory post-approval requirements.

For gas projects, a typical set of conditions requires the approval holder to prepare one or more management plans, which describe proposed actions to manage and mitigate impacts to MNES. The holder is prevented from commencing the action until these management plans have been approved by the Minister. Any changes to management plans must also receive Ministerial approval. This approval process is often protracted and duplicative with State or Territory requirements.

APPEA members have reported delays of several years in the assessment and approval of changes to management plans, resulting in numerous operational issues and ambiguity of compliance standards.

The prescriptive approach to conditioning essentially creates secondary approvals and presents a significant impediment to the commencement and ongoing operation of actions. That impediment is often not reflective of the risk the action poses to the relevant MNES.

To resolve these issues, APPEA supports a transition to post-approval processes that focus on requiring approval holders to meet specified environmental outcomes for the relevant MNES, with the level of management action commensurate to level of risk that those outcomes will not be achieved. This approach would present opportunities to leverage state and territory regulatory processes in the post-approval phase, where those processes are robust and support the measurement and achievement of environmental outcomes for the MNES.

The government's outcomes-based conditions policy and guidance supports this approach, and APPEA recognises the steps that have been taken to give effect to this policy.

APPEA is aware that DAWE is taking steps to familiarise itself with the risk management processes at State and Territory levels, and that there are circumstances where DAWE agrees that the State or Territory framework is thorough and appropriate for the protection of MNES. For example, DAWE has acknowledged the Queensland government approach to the protection of water resources and groundwater dependent ecosystems from CSG developments in the Surat Cumulative Management Area (Surat CMA).³²

To its credit, DAWE is already working with APPEA on a Joint Industry Framework (JIF) that will operate in conjunction with the EPBC Act to streamline post-approval processes to avoid and mitigate impacts on water resources and groundwater dependant ecosystems by CSG developments within the Surat CMA. No amendment to the EPBC Act is necessary for the Surat CMA framework to be implemented and it will continue to be developed with DAWE irrespective of the outcome of the EPBC Act review. However, the work done by DAWE and industry is an important step towards an efficient regulatory environment for industry, and it may present an opportunity to avoid administrative duplication more broadly in the gas sector and in other sectors as well.

³² Surat Cumulative Management Area, 2020, www.environment.des.qld.gov.au/management/activities/non-mining/coal-seam-gas/cumulative-management#toc-2

Under the proposed framework:

1. Outcomes or minimum protection standards are prescribed by DAWE for the protection of each relevant MNES.
2. Risk management frameworks for each relevant MNES are incorporated, reflecting the robust State process already in place.
3. Mitigation action is required to address the risk of an outcome not being met.
4. Monitoring and reporting requirements apply, to ensure DAWE is aware of how the action is tracking towards meeting the relevant outcomes.
5. A standard set of conditions will apply, which will substantially reduce the cost, time and administrative burden of the current approval conditioning process.

Critically, the risk thresholds and management frameworks reflect the Queensland groundwater regulatory framework under Chapter 3 of the *Water Act 2000* (Qld), which assigns responsibility to tenure holders for the management of impacts to groundwater resources. This provides a consistent approach across EPBC Act approvals and reduces duplication with state requirements, recognising in these circumstances that state mitigation obligations serve the purposes of the EPBC Act.

Leveraging Queensland legislation and shifting to an outcomes-based approach for conditioning and compliance is expected to significantly streamline the post-approval process for gas operators in the Surat CMA. The result is decreased administrative burden on both approval holders and the government, while maintaining existing levels of protection and enforcement capability. Many MNES are managed by regulatory processes at the State or Territory level that assign responsibility for the mitigation of environmental impacts in a manner similarly robust to Chapter 3 of the *Water Act 2000* (Qld). These processes should be recognised through standardised risk and outcomes-based conditions.

While no amendment to the EPBC Act is needed for the proposed framework to take effect, there is an opportunity to amend the EPBC Act to expressly recognise such frameworks. For example, the EPBC Act may be amended to provide proponents with certainty that only standard conditions will be imposed in circumstances where DAWE has entered an agreed framework with industry that:

1. sets outcomes for each relevant MNES, which operate as minimum standards of protection that are required to be met at all times;
2. identifies the key requirements imposed on industry at a State or Territory level and require that those requirements are met; and
3. allows DAWE to receive efficient and effective reporting on risk management actions, the status of the outcomes for each MNES and compliance with an Agreed Framework.

This process could relate to new projects and to amendment applications seeking to adopt the standard conditions. This approach would not be uncommon. In many jurisdictions, standard condition sets exist for different types of projects that meet prescribed criteria, and approval on those standard conditions alone is a quick and easy process.

The standard conditions would ensure that DAWE is empowered to take appropriate protective and enforcement action when required. The EPBC Act should be amended to provide proponents with certainty that only standard conditions will be imposed in circumstances where DAWE has entered an agreed framework with industry.

6. NOPSEMA

- Support for the strategic assessment of the NOPSEMA administration of activities under the Offshore Petroleum and Greenhouse Gas Storage Act 2006. This represents a model of genuine streamlining between commonwealth regulators and duplicative legislation.
- Further improvement of the administration by NOPSEMA can be achieved by allowing for delegated decisions to further define the scope of decisions required by NOPSEMA.
- Further defining “petroleum activity” to also consider the significance test to apply EPBC Act requirements.
- Further defining the application of EPBC Act recovery plans to risk-based decisions that are fit for purpose.
- Further guidance from the Commonwealth Government to on the interpretation of legislative requirements to minimise regulatory creep and increase consistency.

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) is the national regulator for health and safety, well integrity and environmental management for offshore petroleum activities in Commonwealth waters and in coastal waters where regulatory powers and functions have been conferred.

The conferral of powers for offshore petroleum safety has already occurred in Victorian waters and is under consideration by other jurisdictions in Australia. APEA supports the conferral of powers to ensure consistency of decisions and to minimise duplicative assessments.

Case Study – Conferral of State Waters

Woodside’s proposed trunkline which will transport natural gas from the Scarborough Field to the Pluto LNG facility is assessed by NOPSEMA when in Commonwealth Waters, and then by both the State EPA and the Federal Department of Environment and Energy (DoEE) in State Waters.

This is because there is no conferral of powers from WA to NOPSEMA in State Waters. Wherever possible, 'one stop shops' should be created, whereby a single regulator is conferred the necessary powers to consider resources sector development proposals. In the above example, it was a deliberate policy decision of the previous WA Government not to confer its powers on NOPSEMA and allow a 'one stop shop', despite the recommendations of the Commission and despite the then Federal Government's response to the Borthwick Inquiry into the Montara well blow-out.

Had that conferral taken place, Woodside’s single trunkline could have had a single assessment from a single regulator all the way to the beach. There should be a mechanism via which project proponents can make recommendations where there could or should be a single regulator, to reduce duplication.

The objective of the Program is to ensure all offshore petroleum and greenhouse gas activities are carried out in a manner in which impacts on the environment are reduced to as low as reasonably practicable (ALARP) and of an acceptable level. The program covers Commonwealth waters and designated state and Northern Territory waters where environmental management functions have been conferred under legislation. Impacts on the environment include those matters protected under Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Establishment of NOPSA in 2005 and then NOPSEMA in 2012, recognised the benefits of having a single national, independent, expert regulator that applies a consistent approach to the regulation of offshore petroleum activities in Australia. NOPSEMA has taken on the role of a one-stop-shop for offshore approvals.

Once the EPBC Act came into effect, it became a requirement that any action (including seismic surveys) with the potential for significant impacts on matters of national environmental significance be referred for formal assessment. For seismic surveys, this typically meant that only surveys proposed in sensitive areas with potential impacts for threatened and migratory species underwent formal environmental assessment by the Federal Government. Where no significant impact to an EPBC Act listed species was predicted no assessment was conducted, including for commercially important species not protected under the EPBC Act. There have been about 430 marine seismic surveys conducted in offshore Commonwealth waters since the establishment of the EPBC Act.

The Offshore Petroleum and Greenhouse Gas Storage (OPGGs) Environment Regulations (Environment Regulations) came into force in 2009, requiring environmental impact assessments, including details of control measures, to be undertaken for all seismic surveys and undergo independent assessment by the regulator.

The streamlined arrangement not only reduces cost and burden at the approvals stage but also throughout the life of projects through reductions in overlapping compliance monitoring and reporting burden.

The Government estimated that the streamlined arrangement would reduce costs to industry in the order of \$120 million a year. Since the endorsed arrangements came into effect NOPSEMA has accepted 218 environment plans for offshore activities, many of which would otherwise have required consideration for referral and duplicative assessment under the EPBC Act.³³

6.1. STRATEGIC ASSESSMENT OF THE ENVIRONMENT MANAGEMENT AUTHORISATION PROCESS FOR OFFSHORE PETROLEUM

Several reviews have been undertaken to assess NOPSEMA's performance – including performance audits from the Australian National Audit Office (ANAO).³⁴ In addition, operational effectiveness reviews of NOPSEMA are conducted every 3 years.

These reviews have found that *“Overall, NOPSEMA has appropriately integrated administrative arrangements for the new function of environmental management and has established a sound framework for the regulation of the offshore petroleum industry.”*

In 2015, ERM undertook a report into the streamlining mechanisms for NOPSEMA and found that the Program commitments had been met during the term of the review period.³⁵

In September 2019, Australia's Chief Scientist, Dr Alan Finkel AO, conducted an independent audit of the National Offshore Petroleum Safety and Environmental Management Authority's (NOPSEMA) consideration of exploration in the Great Australian Bight.³⁶ This audit was, in part, a result of concern as to the authorisation of NOPSEMA in relation to the EPBC Act. The audit found NOPSEMA:

- to be a highly skilled, professional and competent regulator
- has appropriate processes, procedures and guidance material in place to meet its regulatory requirements
- has appropriate processes and practices to ensure environment plans are assessed against relevant and complete scientific and technical information

The audit outlines opportunities for industry, the regulator and governments to provide further assurance. This includes greater transparency about NOPSEMA's assessment process and oil and gas activities in general.

There is also scope for Government to consider further streamlining of other functions covering sea dumping, offshore renewables and offshore minerals and further collaborating in areas such as marine biosecurity.

NOPSEMA has fostered, and continues to grow, a mature risk culture within industry and promotes best practice for oil spill preparedness. The regime administered by NOPSEMA is comparable to the performance of other leading international jurisdictions and compares favourably to industries such as onshore mining, agriculture and maritime.

According to NOPSEMA further streamlining of measures are likely to reduce future costs in the hundreds and millions of dollars. Since streamlining under the EPBC Act, the removal of duplication of 134 permissioning documents has significantly contributed to the reduction of burden to industry and government.³⁷

6.2. IMPROVEMENT OF NOPSEMA'S ADMINISTRATION OF THE EPBC ACT

Industry views NOPSEMA as a skilled regulator and a strong and independent regulator is fully supported. There are opportunities to further strengthen NOPSEMA's ability to carry out their regulatory functions. For example, although NOPSEMA staff are recognised as highly skilled, there should be flexibility to contract specialist skills on offshore petroleum development, construction and operations on an 'as needed' basis when required. This capability may be useful for NOPSEMA to better manage short-term peaks in regulatory workload as these arise from time to time.

³³ Strategic Assessment Review Taskforce, 'Single Stage Regulation Impact Statement', Office of Best Practice Regulation Reference 16191 (2014) p 5.

³⁴ NOPSEMA - The Auditor-General Audit Report No.38 2013–14 Performance Audit www.anao.gov.au/sites/default/files/AuditReport_2013-2014_38.pdf

³⁵ 2015, EPBC Act Streamlining review report www.nopsema.gov.au/assets/Corporate/EPBC-Streamlining-review-report-August-2015.pdf

³⁶ Independent audit of NOPSEMA's consideration of exploration in the Great Australian Bight www.industry.gov.au/data-and-publications/independent-audit-of-nopsemas-consideration-of-exploration-in-the-great-australian-bight

³⁷ 2019, NOPSEMA submission to the Productivity Commission - Resources Sector Regulation Study www.pc.gov.au/data/assets/pdf_file/0006/247047/sub013-resources.pdf

One of the challenges associated with the shift from the EPBC Act to NOPSEMA is that NOPSEMA manages all risks to the environment, whereas the EPBC Act is meant to apply for those projects deemed to be of significance. Industry has indicated that this means that the increased requirements on operators are applying to all activities, regardless of whether they are significance or not.

APPEA recommends that only significant risks be managed under a full ALARP and Acceptability criteria as is done for safety. Similarly with respect to environmental approvals, the 2014 streamlining initiatives enabled NOPSEMA assessment of petroleum activities under the EPBC Act only applies in Commonwealth waters (greater than 3nm from the low water baseline). In Western Australian State waters there has been no-conferral of powers upon NOPSEMA so additional assessment is required, and in addition for potential impacts on matters of National Environmental Significance in State Waters, assessment by the EPBC Act is still required.

As a result, NOPSEMA and the Western Australian EPA reached an in-principle agreement in 2018 whereby a common approach to environmental approvals for the project would be adopted. It was agreed that both the EPA and DoEE would assess the project via a single combined Commonwealth Environmental Impact Statement.

6.3. STRATEGIC ASSESSMENT VARIATION

On 27 February 2014 the then-Minister for the Environment signed a class approval for offshore petroleum and greenhouse gas activities taken in accordance with the Program Report (Strategic Assessment of the environmental management authorisation process for petroleum and greenhouse gas storage activities administered by the National Offshore Petroleum Safety and Environmental Management Authority under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 February 2014), subject to some exclusions as listed on the approval notice. This approval is in effect until 31 December 2040.

Actions covered by the approval must be taken in accordance with the endorsed Program. There is no flexibility within the current arrangements to modify the Program (i.e. the processes followed by NOPSEMA), as set out in 2014. This means that the offshore environment regulatory framework is effectively frozen in time and cannot be improved or modified to any great extent without risk of invalidating the Program – even where the proposed changes result in no reduction in environmental protection.

As an example, when DIIS introduced the new requirement to publish Environment Plans in full, both on submission to, and acceptance by, NOPSEMA in April 2019, APPEA sought to have the requirement for titleholders to produce an EP Summary removed. It was considered that because all the information in an accepted EP will now be public, the EP summary is unnecessary.

However, because the Strategic Assessment Report includes the preparation and publication of an EP Summary as one of the steps in the process it is not possible to remove this requirement without risk of invalidating the Program and therefore the class approval. APPEA recommends that Part 10 provisions be amended to improve flexibility.

7. CONSERVATION PLANS, RECOVERY PLANS

The Minister may make, adopt and implement a recovery plan for threatened fauna, threatened flora (other than conservation dependent species) and threatened ecological communities listed under the Act. Recovery plans set out the research and management actions necessary to stop the decline of, and support the recovery of, listed threatened species or threatened ecological communities. For instance, the national Recovery plan for marine turtles in Australia came into force on 3 June 2017. The new recovery plan was approved by the Minister for Environment and Energy and outlines the conservation requirements for six of the world's seven species of marine turtle that occur in Australian waters.

The preparation of recovery plans is provided for under section 269 of the Act and the Minister is unable to enter into an agreement under the Act unless they are satisfied that a provision relating to a listed threatened species or threatened ecological community is **not inconsistent** with any recovery plan or threat abatement plan.

Therefore activities cannot be approved if it is inconsistent with a recovery plan or wildlife conservation plan that is in force. But what is inconsistent is not defined. Plans are not developed in a way that considers Ecologically Sustainable Development and were never designed to be project related. In many instances their objectives and actions are not appropriate for an objective-based and risk-based framework with consideration of risk. This includes NOPSEMA.

The actions within these plans are developed with a focus on Government actions not potential development - such as the need for science, monitoring and investigations. In addition, plans are reviewed and update infrequently and do not consider the most up-to-date science and information nor allow potential proponents to demonstrate how they could operate without being inconsistent with recovery objectives.

APPEA contends that this requirement on the Minister is removed from the EPBC Act or:

1. These Recovery/ Abatement Plans should be revised to ensure they are written with the view of risk, and the consideration of ESD; or
2. Clear guidance is issued to industry and key stakeholders that outlines that “not inconsistent” is related to the overall objective of the relevant recovery/ abatement plan not the specific actions within it.

8. INDIRECT IMPACTS

In 2002, a legal case (Nathan Dam) found that approvals under the EPBC Act is not limited to just the direct impacts of construction and operation of a project.³⁸ This was built off the definition of impact as defined in Section 527E of the Act.

The judgement found that the widest possible consideration is to be given in the first place to all adverse impacts, limited only by considerations of the likelihood of it happening. By that means the Environment Minister will exclude from further consideration those possible impacts which lie in the realms of speculation

While APPEA is not commenting on the merits or outcome of that specific case, the extension of all adverse influences or effects, no matter who was responsible for the action, requires further clarification for proponents. This is especially important in the context of how 527 E is applied to streamlining efforts with other jurisdictions.

APPEA recommends amendments to Section 527E of the EPBC Act do define how far down the indirect assessment pathway proponents and regulators are required to consider and a reasonableness test needs to be defined.

9. POST-APPROVAL PROCESSES

More certainty in post approvals– Transparent, consistent and efficient post-approval processes should include flexibility to consider post-approval requirements in the pre-approval stage, supported by statutory timeframes.

Variations of existing referrals – Reforms to allow for variation of existing approvals could include flexible pathways for tailored consideration of minor or material changes, to better support projects to adapt, improve and respond to evolving circumstances. This should include:

Flexibility to vary the scope of an approval and conditions (e.g. for an expansion within a certain range). Variations should allow for better environmental outcomes and provide a simpler process for the operator and regulator to administer.

Matters considered in the post-approval stage can be critical to the overall viability of a project. Post-approval planning is increasingly burdensome causing significant delay and uncertainty for proponents

An option should be provided to consider post-approval matters in the primary approval stage. Remaining post-approval matters should be supported by a set of assessment rules, setting out procedures, timeframes and internal review rights. A framework supporting risk-based, flexible pathways for project variations would allow for projects to adapt, improve and respond to evolving circumstances while maintaining the environmental outcomes sought by the approval.

Many aspects of the approval process are undertaken following the primary approval (e.g. offsets determinations, approval of management plans etc.). This places time pressure on proponents as these ‘nested approvals’ are critical for project commencement. For instance, the approvals of ‘water management plans’ have routinely taken many years to complete, despite the approval of the project occurring many years earlier.

There is also a significant reliance on additional plans rather than a focus on outcomes and the specific measures needed to manage impacts. For many of these there are two risks:

- The matter that has been deferred for future consideration may be fundamental both to the approval and

³⁸ See Queensland Conservation Council Inc v Minister for the Environment and Heritage [2003] FCA 1463 FCA 1463

- to the proponent's investment decision; and
- There is no assessment framework for the post-approval plan or report, such as regulatory timeframes, criteria or appeal against refusal. There may be multiple information requests, with no way of closing out the process, preventing the operation (or construction) from starting.

A confounding factor is that the assessment of a plan is often undertaken by assessment officers who are unfamiliar with the project and the primary assessment process, requiring re-learning and re-assessment of the project's impacts as new.

The Strategic approach outlined in the Joint Industry Framework outlines a new method of managing post-approval requirements and APPEA supports further investigation into this approach in other areas.

Guidelines detailing opportunities to deal with many of these matters during the assessment phase could generate significant efficiencies for some projects. Approval conditions set for the development of management plans (in the post-approval stage) should allow for a focus on the desired outcome rather than the detailed means by which a proponent may deliver the outcome.

This is the difference between prescriptive action-based conditioning and outcome-based conditioning. For those technical matters of detail that can be addressed by post-approval plans or reports, a set of development assessment rules should set out procedures, timeframes and internal review rights. If the subject-matter is standard, then benchmark criteria should also be included.

9.1. VARIATION PATHWAYS

Post-approval processes could be more flexible to allow changes and variations to projects and approval conditions. In particular, provisions of the Act that allow for variation of existing approvals could include flexible pathways to more appropriately consider minor or material changes based on their level of risk.

This would enable projects to adapt, improve and respond to evolving circumstances while maintaining the environmental outcomes sought by the approval.

By their nature, mining operations and plans alter frequently. Whether driven by market forces, geology or climate (e.g. high rainfall and flood events) the specifics of a mine plan can change unexpectedly. Often the rate of production, footprint or need for supplementary infrastructure (e.g. roads, dams etc.) can evolve overtime. These changes may be outside the referred footprint or differ from the project description that was assessed and approved.

Many EPBC Act variation assessments for mining projects are limited to impacts on Threatened Ecological Communities and species habitats and in coal and coal seam gas cases, the water trigger. The associated issues are not new or particularly complex and are unlikely to require detailed study.

In situations where the changes result in only minor impacts to MNES the post-approval variation process should address these as minor amendments, potentially through a simple process that confirms that existing management measures will apply and where relevant additional offsets, based on previous calculations, will be secured.

Where more significant changes are proposed, a rapid assessment process to determine if changes will result in materially different impacts to those originally assessed (e.g. whether additional MNES are likely to be impacted that were not considered in the initial assessment).

A variation to the approval should be possible in situations where changes are not determined to be material. This would enable expansions of additional infrastructure to be considered without the need for a second full referral and assessment process. Variations to approvals should be issued as a consolidated approval, making it simpler for the operator and regulator to administer and track the conditions

10. ENVIRONMENTAL OFFSETS

APPEA recommends the development of a consistent offsets framework. This should include an agreed national approach to the application of biodiversity offsets.

Environmental offsets play an important part of the environmental regulatory arrangement to compensate for the residual adverse impacts of an action on the environment. Offsets can provide an important and scientifically-robust means to deliver environmental outcomes while achieving social and economic benefits associated with Australia's development. The goal of biodiversity offsets must be measurable conservation outcomes that result from actions

designed to compensate for significant residual adverse biodiversity impacts arising from project development. This is applied after other appropriate prevention and mitigation measures have been taken to achieve no net loss (or net gain) in biodiversity.

Offsets should only be required once avoidance, minimisation and mitigation measures have been undertaken and that the residual impact is significant. There should be proactive incentives for project proponents to find ways to first avoid, then minimise and mitigate the potential impacts that their actions may have on matters of national environmental significance. The use of offsets should not be expanded outside of this hierarchical framework.

Each approval for onshore activities requires the preparation of environmental offsets for impacts from unavoidable disturbance to regional ecosystems, threatened ecological communities, listed flora and fauna and migratory species. There is a significant overlap in the respective requirements and jurisdictions will not agree on a single offsets approach.

Environmental offsets are actions taken outside of a site to compensate for direct, indirect, or consequential effects of a development. Offsets are used by regulators as a mitigation measure to protect natural environmental values, whilst allowing appropriate development to proceed. Offset packages are developed under State / Territory legislation and also under the EPBC Act environmental offsets policy.

Offset plans operate at a range of project scales and for varying purposes from supporting large project approvals to detailed singular site plans. They may be required to address:

- the EIS commitments prepared for large projects
- the conditions for individual tenements
- the unavoidable need to remove threatened plants or habitat for fauna;
- removing significant values such as threatened vegetation communities identified by the State or the Commonwealth government.

Offsets can be one of the most frustrating, costly and difficult requirements to fulfil. Advice from companies indicates that there is an overlap in the respective requirements for environmental offsets at both a State and a Commonwealth level. This overlap is further frustrated when there is not agreement between agencies on a single offsets approach.

Furthermore, an overly prescriptive approach to offsets is hampering better environmental outcomes. For instance, there should be recognition that certain vegetation communities provide suitable habitat for several listed threatened species and that while this may not fit a like-for-like offset requirement, it would have a better net environmental outcome.

The use of offsets is inconsistent between jurisdictions and APPEA recommends the development of a consistent offsets framework. This should include an agreed national approach to the application of biodiversity offsets. This can reduce costs and delays while achieving strategic outcomes. Improved guidance materials and reconciled data sources would improve consistency. Other improvements could include:

- Increased flexibility to use a greater combination of monetary and research-based offsets, as is applied via the Queensland biodiversity offsets model.
- A financial option for administration of offsets that enables contribution to regional strategic environmental outcomes
- Consideration of a Federal pooled offset funding to focus on best environmental benefit.
- Recognition of rehabilitation as a contribution to agreed environmental offsets.
- Defining requirements for offsets to achieve regional environmental objectives rather than strict like-for-like conditions
- The review should consider conservation banking where industries contribute monetary offsets to secure very large parcels of land rather than the project by project land-based offsets. This would remove the piecemeal approach to offsets, provides schedule certainty for companies and ensure a greater positive impact for the community at large.

10.1. TARGET BASED OUTCOMES

The Northern Territory's recent discussion paper on biodiversity offsets outlines a process of target-based outcomes. This approach allows the Government and proponents to consider regional level environmental benefits and how a biodiversity offset package can best contribute to those targets.

The target-based implementation model is based on the concept of offsets contributing to the achievement of environmental targets developed for the region. Such targets would reflect the most serious environmental threats, or those elements of biodiversity which are most threatened, most valued and/or most amenable to recovery. Such targets could include, for example, preventing the further spread of serious environmental weeds (or reducing their current extent); or a specified level of recovery in the status of threatened mammal species in a particular region.

Proponents identify a suitable offset or offsets using a simple set of consistent and transparent rules. The offset should support actions or activities that contribute to measurable positive outcomes for one or more environmental targets.

11. EMISSIONS AND CLIMATE CHANGE

The effective and efficient management of greenhouse gas emissions is an issue which APPEA and its members takes very seriously and APPEA and its members have been engaged constructively in the development of climate change policy for more than 25 years.

APPEA acknowledges the need to reduce emissions across the globe to achieve the objectives of the Paris Agreement.

Societies around the world will continue to face two major, interdependent challenges:

- Maintaining and expanding affordable, secure energy supplies to meet growing consumer demand.
- Addressing the social, economic and ecological risks posed by rising greenhouse gas emissions and climate change.

Managing greenhouse gas emissions and meeting growing energy demand requires action by individuals, companies, and governments.

Making genuine progress requires an integrated set of solutions. This includes actions by industry to reduce emissions, provide and advance lower carbon energy technologies and solutions, and support effective national and international policies.

APPEA in 2016 released a second edition of its *Climate Change Policy Principles*³⁹ setting out the principles that APPEA considers should underpin Australia's response to climate change.

Most importantly, APPEA supports a national climate change policy that delivers greenhouse gas emissions reductions, in line with Paris Agreement commitments, at least cost to the economy and facilitates broad based investment decisions consistent with an international price on carbon.

APPEA is also a member of the Australian Industry Greenhouse Network (AIGN), a network of industry associations and individual businesses that contribute to the climate change policy debate and see value in joint industry action on climate change policy issues in order to promote sustainable industry development. APPEA has contributed to the AIGN submission to the Review.

APPEA notes the current discussion on the EPBC Act as a mechanism for addressing greenhouse gas emissions, including the recent introduction of an *Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2020*.

APPEA considers there are more appropriate policy mechanisms than the EPBC Act for meeting Australia's greenhouse gas emissions reduction commitments. Addressing emissions on a project by project basis as part of the approvals process is inefficient, focusing efforts on a narrow set of point sources. An isolated, approvals-based approach that is disconnected from broader government climate change and energy policy is not an efficient approach to managing Australia's greenhouse gas emissions reduction commitments. Furthermore, such a trigger would be unwieldy, likely capturing a large number of activities and potentially duplicate other Commonwealth and state-based policies and requirements.

Australia's greenhouse gas emissions reduction commitments should be met through a national, fit-for-purpose national policy framework.

³⁹ A copy of APPEA's *Climate Change Policy Principles* can also be found at www.appea.com.au/2016/02/appea-updates-climate-change-policy-principles.

This national approach is provided through the Australian Government’s Emissions Reduction Fund, Safeguard Mechanism and related policies. In addition to opportunities to pursue emissions reduction opportunities through the Emissions Reduction Fund⁴⁰ (the ERF, soon to become the Climate Solutions Fund (CSF)), projects with annual emissions above 100,000 tCO₂-e are subject to the ERF’s safeguard mechanism⁴¹. The safeguard mechanism requires facilities covered by it to keep their emissions within established baselines. This is to ensure emissions reductions are not displaced significantly by a rise in emissions elsewhere in the economy.

As a package of measures, the CSP has been designed, according to the Australian Government, to meet its Paris Agreement commitments. In addition, the national approach to meeting Australia’s commitments to 2030 and beyond will be the subject of formal review during 2020 (and 2025 and every five years thereafter) and is also subject to regular review by the Climate Change Authority.

Whether to include a greenhouse trigger into the EPBC Act was the subject of consideration in the previous Review of the Act. The Review did not recommend a greenhouse trigger be introduced, recognising that the Australian Government, at that time was seeking to introduce a national approach to greenhouse emissions reduction, through the introduction of a carbon price in the Clean Energy Act 2011. In a similar way, the Australian Government today has a national approach through the CSP, meaning it remains the case that inefficient and duplicate measure, such as a greenhouse trigger, is not required.

11.1. CLARITY ON THE TREATMENT OF SCOPE 3 EMISSIONS

The approach of Australian Governments for many years has been to consider Scope 1 and Scope 2 emissions in their greenhouse policy approaches. This is in recognition that Scope 3 emissions are not covered by international reporting arrangements or emissions reduction commitments, as one country’s Scope 3 emissions are, in effect, another country’s Scope 1 or Scope 2 emissions and so including them in the reporting and policy approaches of both jurisdictions is double-counting. This has, for example, been one of the underlying principles of international emissions accounting approaches since they were established in the 1980s.

That said, a number of APPEA members report scope 3 emissions and have, or are taking, action to assist customers in reducing Scope 3 emissions. This is an encouraging development and the Review should welcome the provision of these estimates where they are available and where project proponents choose to provide them. However, APPEA does not agree, for the reasons set out above, that this information should be required by the under the Act.

The Productivity Commission, in its recent Resources Sector Regulation Draft Report⁴² found assessing individual projects on the basis of their potential scope 3 emissions in export markets have created uncertainty for investors and is unlikely to be an effective way of reducing global emissions. It found on page 229:

Climate change is the cumulative result of multiple individual actions. Environmental approval processes in Australia are largely configured to manage the risks and impacts created by individual projects — they are not set up to manage cumulative impacts. A decision in one jurisdiction to stop a new coal mine, for example, will not contain exports from existing mines in Australia or from around the world, or stop new projects from being approved in other Australian States or Territories or in other countries.

Under the global emissions reduction architecture individual countries are responsible for reducing their scope 1 and 2 emissions. How they achieve their targets is then up to them. Abatement actions will likely affect their consumption of coal and fossil fuels to varying degrees, including their consumption of Australian exports of these commodities. There is no case, or need, for Australia to do anything to try to influence or override abatement actions designed to achieve agreed emission targets in these countries, as acknowledged by the NSW IPC ...

The Review provides an important opportunity to provide clarity around the approach to be taken by regulatory agencies, including NOPSEMA, in their treatment of Scope 3 emissions in environmental approval processes.

⁴⁰ The ERF is enacted through the *Carbon Credits (Carbon Farming Initiative) Act 2011*, the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* and the *Carbon Credits (Carbon Farming Initiative) Rule 2015*. A number of activities are eligible under the scheme and participants can earn Australian carbon credit units (ACCUs) for emissions reductions. One ACCU is earned for each tCO₂-e stored or avoided by a project. ACCUs can be sold to generate income, either to the government through a carbon abatement contract, or in the secondary market. See www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund for more information.

⁴¹ See www.cleanenergyregulator.gov.au/ERF/About-the-Emissions-Reduction-Fund/the-safeguard-mechanism for more information.

⁴² See www.pc.gov.au/inquiries/current/resources/draft for more information.

The Review should reinforce the APPEA position that both NOPSEMA and the WA EPA (and other EPAs around the nation) should not focus on greenhouse gas emissions conditions, which is the focus and purview of the Commonwealth.

12. INTERNATIONAL CONTEXT – SUSTAINABLE DEVELOPMENT GOALS

A key outcome from the 2012 United Nations World Commission on Environment and Development (UNCED) World Summit was the adoption by the UN General Assembly in 2015 of the 2030 Agenda for Sustainable Development and Sustainable Development Goals (SDGs). The SDGs outline 17 integrated and indivisible goals, and 169 underlying global targets, to address matters such as poverty and inequality, food security and sustainable agriculture, sustainable economic growth, resilient infrastructure and human settlements, combating climate change, restoration of ecosystems and halting biodiversity loss. The SDGs provide a unifying framework by which to measure environmental and social governance performance and help implement Sustainable Development.

APPEA recognises that Sustainable Development and the exercise of human rights are interdependent and interrelated. The protection and promotion of human rights is expressly included in paragraph 3 of the resolution of the 2030 Agenda and is apparent in the drafting of many of the SDGs.

The UN Special Rapporteur on Human Rights and the Environment has published “Framework Principles on Human Rights and the Environment” (2018), the first two of which demonstrate this interdependence:²

- States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.
- States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.

The 2018 Special Report of the Intergovernmental Panel on Climate Change (IPCC) also notes that climate change impacts and responses are closely linked to Sustainable Development, with both mitigation and adaptation actions having synergies with Sustainable Development.⁴³

13. COMMUNITY CONFIDENCE AND DATA

APPEA supports a comprehensive and integrated approach to community consultation to improve transparency and decision making. Community confidence and accountability in EPBC Act processes can be enhanced under existing arrangements by improving the accessibility, transparency and inclusiveness of assessment and approval processes. This should include greater access to clear, simple and consistent information, robust community engagement and online project tracking.

Consolidated state/territory and Commonwealth data made available through an accessible, consolidated portal to ensure data is not recollected and regulators are making assessment and approval decisions based on the consistent and credible information

APPEA recommends the development of data sharing platforms to allow access to common environmental information for use by regulators, community and other proponents. These approaches can improve decision making and increase community confidence.

⁴³ 3 Intergovernmental Panel Climate Change, 2018. Special Report on Global Warming of 1.5C – Summary for Policymakers, D2.1, D3, D4.1

Example of shared data - Index of Marine Survey for Assessment (IMSA) and Index of Biodiversity Surveys for Assessment

The Index of Marine Surveys for Assessments (IMSA) is an online portal to information about marine-based environmental surveys in Western Australia¹. IMSA is a project of the Department of Water and Environmental Regulation (the department) for the systematic capture and sharing of marine data created as part of an environmental impact assessment (EIA).

IMSA captures and consolidates marine data collected to support assessments under the Western Australian Environmental Protection Act 1986 – providing a platform to make the information publicly available. The consolidation of marine environmental data in IMSA is expected to improve the EIA process by:

- getting maximum value from existing data
- expanding the knowledge base of WA’s marine environment
- allowing proponents to access data from other proposals
- reducing the need for proponents to undertake timely and costly surveys
- supporting the digital enhancement of the EIA
- building regulator confidence in impact predictions and delivering better environmental outcomes
- improving public trust in the EIA through transparency and visibility of survey data.

Similar to IMSA, the Index of Biodiversity Surveys for Assessments (IBSA) is an online portal that provides an index of land-based biodiversity surveys in Western Australia, creating better environmental outcomes by maximising availability of biodiversity data.¹

The objective of IBSA is to capture and consolidate data contained in biodiversity survey reports to support assessments and compliance under the Western Australian Environmental Protection Act 1986 and to provide a platform to make the information publicly available.

The consolidation of biodiversity data in IBSA will deliver:

- more efficient assessments for proponents
- a broader decision-making base for regulators
- an expanded knowledge base of WA’s flora and fauna

13.1. IMPROVED AVAILABILITY OF ENVIRONMENTAL INFORMATION FOR THE COMMUNITY

APPEA members also believe that access to information on environmental assessment and approvals is vital to improve community understanding of decision making. Current EIS requirements can be extensive, complex and difficult to navigate.

However, what we see or is reported most often as “community” opinion is not demonstrably a representative sample of views of all people. Some people are directly impacted more than others (e.g. by on the ground, industrial activities which attract compensation), benefits flow to residents in the State (e.g. via royalties which feed State government spend) and to Australians more generally (e.g. through federal taxes). Communities are heterogeneous, dynamic and overlapping.

This acts as an impediment to community engagement and understanding by overwhelming stakeholders with information, not all of which is relevant to the protection of key environmental matters. By taking a risk-based approach to EIA and focusing on matters of material risk, EIA documentation can be more user-friendly for proponents and communities seeking to engage in consultation.

A comprehensive and integrated approach to community consultation would improve transparency of decision making and minimise objections and appeals. Opportunities to improve community engagement include:

- Integrated consultation processes encompassing Commonwealth and state requirements;
- Improved community access to data and information on assessment processes; and
- Improved community access to environmental data to ensure an informed discussion

14. KEY PRIORITIES AND FURTHER INFORMATION**Summary of key priorities:**

- **Coordinated and consistent Commonwealth and state/territory processes and requirements.**
This can be achieved through approval bilateral agreements, strategic assessments, and collaborative processes that give greater recognition of state-based requirements and conditions.
- **Risk and outcomes-based approaches should be further adopted**
Greater use of outcome and risk-based assessments and compliance can ensure that resources are focused on key environmental issues and reduce resourcing costs for industry and government. Focus should be on the assessment of key environmental risks with other matters addressed through standard approaches and conditions.
- **Better coordination of requirements**
Adoption of collaborative measures between the Federal and State Governments that seek to align on the management of risk, approvals, and compliance.
- **Refined project approval conditions**
This can be achieved through greater use of outcomes-based process and conditions, a single consistent set of state and Commonwealth conditions and risk-based approaches including standard conditions for low risk matters.
- **Rationalisation of Triggers under the Act**
Triggers that are wholly duplicative of state requirements should be amended – including the full removal of the water trigger for coal seam gas and large coal mining development. Triggers are based on matters or risk. This includes addressing the water trigger for coal seam gas and large coal mining development.
- **Consistent environmental data**
A role for further collaboration in data, and this is accessible and consolidated.
- **Defining 'Significant impact'** - Improved definition and guidance material for assessing a 'significant impact' would reduce precautionary referrals and address a trend towards lower thresholds.
- **More certainty in post approvals**
Transparent, consistent and efficient post-approval processes.
- **Variations of existing referrals** – Reforms to allow for variation of existing approvals could include flexible pathways for tailored consideration of minor or material changes and flexibility to vary the scope of an approval and conditions (e.g. for an expansion within a certain range).
- **Consistent offsets framework**
Develop an agreed national approach to the application of biodiversity offsets and consider approaches including combined funds, and outcomes driven approaches.
- **Support for the strategic assessment** of the NOSPEMA administration of activities under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. Improvements can be made around conferral and treatment of other legislative mechanisms.
- **Community inclusion** – A comprehensive and integrated approach to community consultation.
- APPEA supports a **national climate change policy** outside of the EPBC Act. Emissions on a project by project basis as part of the approvals process is inefficient, focusing efforts on a narrow set of point sources.

Should you require further information on any of the content of this submission, please contact is through our Policy Director at kknudsen@appea.com.au or 0434 123 780.