



Toxic Greens

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Earlier this year in central Victoria, an orchid stopped a gold mine. The plant was growing seven kilometres away from the proposed mine site—a treeless, badly eroded 15 hectare block grazed by sheep for more than a century. But the three miners were told pay at least \$900,000 to offset the loss of native grass—all because an orchid may grow on the degraded site in the future. The proposed mine was abandoned.

In Western Australia, the discovery of microscopic ‘desert prawns’ led the Western Australia Environmental Protection Authority to block approval of Cameco’s proposed Yeelirrie uranium mine, a project for which BHP had previously paid US\$450 million.

And in Queensland, Adani’s \$16 billion Carmichael coal mine waits in political limbo even after its lawyers emerged victorious from its latest court challenge. Three more court battles lay ahead.

These stories are part of a broader regime of costly red tape weighing down Australian primary industry. They are strikingly similar in that they all demonstrate the bureaucracy surrounding environmental approvals.

A recent Deloitte report found nearly 10 per cent of the mining workforce is dedicated solely to regulatory compliance. The Consolidated Pastoral Company has estimated that it is required to comply with more than 300 pieces of legislation, regulations and codes. And the Roy Hill mine in the Pilbara had to comply with more than 4000 permits, approvals and licences in its pre-construction phase alone.

The unfortunate reality of modern politics is that governments will regulate. But when they do it should have minimal imposition on industry. This is a basic principle of public policy known as ‘minimally effective’ regulation—the fewest rules needed to achieve a given objective. Anything more is unnecessary red tape.

Unfortunately for Australia, it’s becoming normal to impose requirements on projects far beyond what would be needed to achieve a stated public policy objective, notwithstanding the dubious merits of the objectives themselves. To understand why, we need to understand how it works in practice.

In the past, red tape was as simple as filling out forms and documenting compliance with government rules— an inefficient but perhaps unavoidable by-product of a regulatory state. Now red tape is used as an intentional political tool to push agendas and stop economic development.

No need for governments to be the bad guys (and take responsibility) and ban projects. They simply heap costly requirements onto projects—in the name of responsible government and environmental protection—until those projects become unviable. How else can 4000 permits, approvals and licences for one project be explained?



A protest in Melbourne against Adani Mining’s proposed Carmichael coal mine, 1,749 kilometers away



In an even more insidious shift, red tape is increasingly used to cajole industry into implementing and paying for pet political agendas. For example, the Productivity Commission identified a major project approval that came attached with 1,500 conditions, plus 8,000 sub-conditions. These conditions go far beyond environmental risk management requirements. One condition of approving an iron ore mine in Tasmania was for the company to 'donate' \$350 000 to the Save the Tasmanian Devil Program Appeal. Rather than directly managing and owning businesses, governments are increasingly using red tape as a method of control. It is backdoor socialism.

Primary industries are no longer merely dealing with uncertain global commodity markets and the whims of nature. Scarce time and resources are being channelled into defending themselves from a hostile network of legislation, regulation and quasi-regulation cumulatively crafted to stifle development.

The Adani coal mine has a 60 year life expectancy. If it eventually succeeds—bruised and battered from challenges—it is estimated to generate \$2.96 billion for the Queensland economy, while creating 10,000 jobs and providing enough coal to generate electricity for 100 million people.

Reform is desperately needed in two rapidly growing areas of environmental regulation—the federal Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and the state-based native vegetation laws.

The EPBC Act is the federal government's main piece of environmental legislation, covering nine 'matters of national environmental significance' including world heritage and marine areas, and, as we will outline below, nationally threatened species and ecological communities, as well as water resources.

The EPBC Act applies when a project—such as a mine, dam, or railroad—could have a significant impact on one of these matters. For the project to proceed, it then requires approval by the Federal Environment Minister.

The EPBC Act is forever expanding. Indeed, the objective of green groups and environmentalists is to expand the EPBC Act until it covers every conceivable project, handing control of all economic development to the Federal government.

There are three key ways this expansion is occurring: special legal standing under the EPBC Act; the inclusion of water resource as a matter of national environmental significance; and the expansion to the number of listed species classed as threatened.

## **ENDING LAWFARE BY REPEALING SECTION 487**

Section 487 of the EPBC Act allows green groups to challenge the Ministerial approval of projects in court with the aim of having the approval overturned. The section was intended to provide a safeguard on the approvals process.

But the reality is that green groups exploit this provision by launching frivolous and vexatious law

suits. Only 13 per cent of cases brought under section 487 that have proceeded to judgement have been successful. And just one in four of the successful cases could be said to have resulted in a tangible change to the conditions under which the minister gave original approval. One out of 32 is the clear sign of a failed policy.

But these challenges do not aim to succeed. They aim to ‘disrupt and delay’ projects to make them costly and economically unviable, which in turn serves as a deterrent to future investment and exploration.

Delays caused by legal challenges can have a profound impact on our economy. As a 2013 Productivity Commission (PC) report on major project development assessment processes found, the time between approval and legal judgement for coal projects ranged from seven months to more than two years. The PC also estimated that a one-year delay for a major project could cost between \$26 million and \$59 million. Not to mentioned to forgone employment, often concentrated in regional and rural areas.

This strategy of using the law to disrupt and delay projects was outlined by Greenpeace Australia in their document *Stopping the Australian Coal Export Boom*, which notes: ‘Our vision for the Australian anti-coal movement is that it that functions like an orchestra, with a large number of different voices combining together into a beautiful symphony (or a deafening cacophony!).’

Green groups are using the legal system to seek expansive rulings. For instance, they seek rulings which in effect say that the minister approving a mine in Australia needs to consider the environmental impact of burning mined coal overseas (such as in India). Green groups argue that this burning affects global warming, causing sea level to rise and damaging the Great Barrier Reef (which has national environmental significance). A ruling to this effect would result in practically every major project needing to receive federal ministerial approval—precisely the aim of environmental activists.

## **THE WATER TRIGGER**

In 2010, the ninth matter of national environmental significance was added to the EPBC Act in a political deal hatched by the Gillard government to secure Tony Windsor’s support. That inclusion has become known as the ‘water trigger’, requiring federal approval of a coal seam gas development or a large coal mining development which could affect a ‘water resource’.

It is obvious the addition of the water trigger has nothing to do with the environment. We have the water trigger because of pure politics—Windsor capitalised on misplaced community concerns about the effects of coal seam gas and coal mines on water resources.

Further, the inclusion of the water trigger didn’t even have the usual veneer of objective analysis attached to it. There was no regulatory impact statement, nor was industry consulted. As with the use of Section 487, the water trigger aims to capture more projects and expand the environmental law to target coal and gas.

Ironically, the water trigger fails to capture the sector which uses the most water—agriculture. It is aimed squarely at mining and gas. If there were fundamental concerns about water resources, the inclusion would have included agriculture. Coal mines, for instance, only use about 0.8 per cent of Australia’s water resources, whereas agriculture uses about 60 per cent.

Additionally, the federal regulation of projects affecting water resources comes on top of extensive state regulation. All jurisdictions already have regulations over the use of water, and place conditions on mines and coal seam gas (where it is legal) in relation to use of water, including a requirement to replace certain water that has been used.



## THREATENED SPECIES LIST

The third way the EPBC Act is being expanded is through the number of listed threatened flora, fauna and ‘ecological communities’. At the introduction of the EPBC Act in 2000, there were approximately 1,300 listed flora and fauna. In 2016, that number has grown almost 50 per cent. This is significant because if a project could affect one of these listed species that project needs approval from the Federal Environmental Minister.

Pressure comes from green groups in ‘nominating’ species to be assessed by the Threatened Species Scientific Committee, which under section 179 follows various criteria and thresholds for determining the listing of species. But the more species we look for, the more will be found.

Unsurprisingly, environmentalists tend to welcome and nominate additional threatened species to the EPBC list. But doing so takes little account of the societal and economic value of a particular species in relation to the potential economic value of a project.

The federal government should develop a systematic process to halt this damaging trend. Listings should at least return to the baseline number of species when the current list began, in recognition of the reality that the current trend will lead to an endless supply of red tape.

## NATIVE VEGETATION

Farmers do not escape the tyranny of environmental extremism under the native vegetation laws.

A system of bureaucratic rules, different in each state, outline how and where landholders can clear their own land.

In recent years native vegetation rules have cost millions of dollars and placed huge regulatory uncertainties upon our farmers.

Recent Labor attempts to further tighten native vegetation regulations in Queensland were thankfully blocked in parliament. But even given this victory, it is markedly clear that across Australia vegetation laws do not adequately enable farmers the capacity to manage their land in the way they see fit, and balance the trade-off between the environment and economic growth.



Policies such as ‘no-net-loss’— where landowners must at least fully offset all native vegetation clearing elsewhere—are too strict and cumbersome to enable a modern agricultural business to flourish. In one instance a farm worker in North Eastern Victoria was told to pay \$115,000 in compensation to remove seven trees so that a fence on the owner’s private property could be fixed.

All Australian jurisdictions require a new approach to native vegetation management that is not consistently skewed towards stricter and more complex red tape.

One such solution could come from market-based solutions to environmental policies, as recently recommended by the PC.

Market-based environmental solutions can come in two forms. The first is for governments to return to their proper role in protecting private property and allowing transactions of that property to be freely made. If green groups are concerned about a piece of land be conserved, then they should purchase that land. Alternatively, they should be free to pay landowners to undertake conservation on their land rather than use it for economic development. This would ensure the costs of policy preferences are incurred by the groups with those preferences, rather than landowners and others in the community.



The second approach, and the one recommended by the PC, is for governments to get the costs of regulation onto their books, rather than placing the financial burden on farmers. This would mean governments would be responsible for purchasing land for environmental purposes rather than regulating farmers into doing the same thing.

This market-based approach recognises that governments shouldn't place the costs of regulation onto landholders. Rather, it would ensure that the costs of these actions are borne by those seeking them —governments or green groups.

## **OVERCOMING OUR RED TAPE CRISIS**

We have an environmental red tape crisis. Red tape is holding back the efficiency and productivity of our key industries, without leading to an attendant improvement in environmental amenity. Federal and state governments, pushed by green groups, are placing the enormous cost of environmental preservation directly onto private industries.

In a world of competing and mobile capital and labour, we cannot afford to be complacent about our capacity to withstand costly red tape.

The role of a truly liberal government—one that believes in free markets and economic freedom—is to develop a regulatory environment conducive to economic development. And our primary industries play a crucial role in Australia's future prosperity.

The first step in this direction is clear: cut environmental red tape.