



7 May 2021

Mr Jason Lange  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
1 National Circuit  
BARTON ACT 2600

Dear Mr Lange

**REGULATION IMPACT STATEMENT – TIMELINESS OF PROCESSES UNDER THE NATIONAL ACCESS REGIME – SECOND PASS FINAL ASSESSMENT**

Thank you for your response and comments on the formal first-pass Regulation Impact Statement (RIS) regarding the timeliness of processes under the National Access Regime (the Regime). After engaging with the Office of Best Practice Regulation (OBPR) and further developing the RIS analysis, I am writing to submit the formal second-pass RIS on options to improve timeliness of processes under the Regime.

I consider the RIS meets the requirements set out in the *Australian Government Guide to Regulatory Impact Analysis* and is consistent with the six principles for Australian Government policy makers.

In response to your assessment on the first-pass RIS and request that the analysis be further developed, please see the following outline of the Treasury's position on each issue raised:

1. Provide more evidence of the problem, particularly in terms of impacts on owners, users, and the broader economy, to demonstrate the size and scale of the problem;

In response to your request, Section 2 of the RIS has been adjusted to focus more directly on the timeliness of highly contentious matters and on relevant case studies. In addition, a table has been added to Appendix A providing information on all historical NAR declaration and arbitration matters. Highly contentious matters are highlighted.

2. Provide more granularity in terms of the description of the proposed options and how they would operate in effect;

Further detail has been included to provide context to the options analysed in the RIS, including on the differences between judicial and merits review; statutory timeframes applying to Tribunal reviews of declaration and arbitration decisions; and current provisions on when the NCC may accept applications under the NAR.

3. Provide more robust impact analysis, including monetisation of costs and benefits to the extent possible;

The RIS provides a qualitative assessment of the potential benefits and costs associated with each option.

FIND TREASURY ON   

This reflects that the options considered would not fundamentally change the broader policy contained in NAR framework. In particular, they would not change the criteria used to determine which infrastructure should be subject to the NAR, nor the factors considered in making arbitration decisions applying to declared infrastructure. As such, the options are unlikely to significantly change the broader economic impact of the NAR. Rather, the options aim to address concerns that specific elements of NAR processes are reducing the timeliness of resolving matters under the NAR.

The costs and benefits of the options therefore primarily accrue specifically to the parties to NAR processes. They generally relate to either resources allocated by parties to legal processes, such as court and tribunal proceedings, or issues arising from protracted uncertainty.

It has not been possible to develop precise assessments of the costs incurred in legal processes associated with decisions under the NAR. Precise details of the parties costs' are not made public, with this information usually considered commercially sensitive. While estimates of hourly rates are used elsewhere in the regulatory costings, granular detail on the time spent in legal proceedings is not available and hence is not quantified here. Similarly, it has not been possible to quantify matters such as uncertainty, as while uncertainty has real impacts by its general nature it is difficult to quantify.

This is consistent with the approach of the Productivity Commission (PC) during its review of the National Access Regime in 2013. This review examined the NAR as a whole and therefore could potentially have examined economy-wide impacts. However, the PC was unable to quantify these impacts because of a lack of empirical evidence.

4. Include a more detailed Regulatory Burden Measurement (RBM) costing relative to the status quo for each of the considered options; and

In accordance with the Regulatory Burden Measurement framework (the framework), the second-pass RIS accounts for the administrative cost savings for businesses of abolishing merits review under Options 1 and 2. Further detail has been included relative to the status quo for Options 4 and 5. In accordance with the framework, the second-pass RIS does not contain quantitative estimates of cost savings for legal fees incurred in court or tribunal processes.

5. Explain the status of the RIS at each of the major decision points in the policy development process, including whether a RIS was used to inform each of these major decisions.

On 16 February 2021, the Treasurer, the Hon Josh Frydenberg MP, announced that Treasury would examine processes under the NAR. This decision was not informed by a RIS. On 19 March 2021, Treasury released a consultation paper on options to reform the NAR for stakeholder comment. The options presented in the consultation paper aligned with those in a draft preliminary assessment RIS. It is expected that the Government will announce the reforms on 11 May 2021 as part of the 2021-22 Budget.

I submit the RIS to the Office of Best Practice Regulation for formal Second-Pass Assessment.

If you have any further queries, please do not hesitate to contact me.

Yours sincerely



Meghan Quinn  
Deputy Secretary, Markets Group  
7 May 2021