

The EPBC Survey Project: Preliminary Data Report



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1. Introduction

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is an omnibus piece of environmental legislation that aims to provide protection for, and promote the conservation of, matters of national and Commonwealth environmental significance. The Act contains important provisions for, amongst other things, the establishment and management of Commonwealth reserves, the regulation of trade in living organisms and wildlife, the taking of native species in Commonwealth areas, and environmental monitoring and reporting. However, the centre piece of the legislation is the environmental impact assessment (EIA) processes.

The EPBC Act contains three main streams of EIA: project-based, strategic assessment, and bioregional planning. There is also a conservation agreement process that could be classified as a fourth stream; however, its assessment functions are limited and are of minor importance. The project-based EIA regime refers to the process contained in Parts 3-9 that assesses the impacts of individual actions. Since the EPBC Act commenced in July 2000, the project-based regime has been relied on as the main vehicle for achieving environmental outcomes. The strategic assessment process has been used sparingly and mostly in relation to Commonwealth-managed fisheries. Bioregional planning has only been attempted in relation to Commonwealth marine areas and, at the time of writing, plans were being prepared for Australia's five marine regions.

Previous research has identified problems with the functioning of the Commonwealth's project-based EIA regime (hereafter referred to as the 'EIA regime'). In particular, the regime has only captured a small proportion of the activities that pose the greatest threat to the Australian environment and the matters of national and Commonwealth environmental significance. For example, agriculture, fisheries and forestry – the industries that have the most significant impacts on the matters that are meant to be protected by the regime – have rarely been regulated. Where actions have been regulated, there is evidence the regime is not adding significant environmental value. In many cases, the outcomes of other applicable federal, state and territory processes have been duplicated. This is largely due to the types of projects the regime has captured. The bulk of the projects referred and assessed under the regime have been major infrastructure, mining and urban development activities, the environmental impacts of which are already regulated under other regimes. While the effectiveness of these alternative processes is debatable, their presence reduces the capacity for the EPBC Act's EIA regime to generate significant environmental improvements. In addition, the Commonwealth has struggled to effectively monitor and enforce the EIA regime due to a lack of resources and the absence of administrative infrastructure in the states and territories.

The inability to identify clear environmental benefits from the EIA regime has led to questions being raised about its cost-effectiveness. The administrative cost of the scheme between July 2000 and July 2009 was approximately \$170-250

million. These costs should be matched by commensurate improvements in environmental outcomes.

Although the evidence has suggested the EIA has not been a cost-effective policy instrument, further research has been necessary to shed light on a number of issues, including:

- the environmental effectiveness of the process where actions have been referred;
- the indirect effects of the regime (e.g. has it deterred 'unsustainable' projects and resulted in proponents making voluntary adjustments to projects to avoid or mitigate environmental harm); and
- the costs incurred by proponents.

Due to the nature of the EIA regime and the manner in which it has been administered, concerns have also been raised about fairness and due process. In particular, proponents and industry representatives have claimed that the failure to integrate the Commonwealth EIA regime with other processes has resulted in unnecessary costs and unjust outcomes.

To provide data on cost-effectiveness and explore proponents' perspectives on the process, a survey was conducted of people who referred projects under the EIA regime between July 2000 and July 2009. This report describes the survey method and presents preliminary results.

The report is set out as follows.

Section 2 describes the key components of the EIA regime.

Section 3 contains background statistics on the administration of the EIA regime.

Section 4 describes the method followed in conducting the survey.

Section 5 contains the major results.

Section 6 provides a conclusion.

2. The Commonwealth EIA regime

The EIA process has three stages: referral, assessment, and approval.

Referral

If a person is proposing to take an action that may have a significant impact on a matter protected under Part 3 of the EPBC Act (referred to as 'Part 3 matters'), they are required, unless the action is exempt, to refer details of the action to the federal Environment Minister. The Part 3 matters fall into four categories.

- The 'matters of national environmental significance', which are the world heritage values of world heritage areas, the national heritage values of national heritage places, the ecological character of Ramsar wetlands, listed threatened species and ecological communities, listed migratory species, nuclear actions, and the Commonwealth marine area and Commonwealth managed fisheries.
- The environment on Commonwealth land in the Australian jurisdiction.
- The environment in Commonwealth heritage places outside the Australian jurisdiction.
- The environment generally where the relevant action is carried out on Commonwealth land in the Australian jurisdiction or the action is undertaken by the Commonwealth or a Commonwealth agency (inside or outside the Australian jurisdiction).

When a referral is made, the Minister must decide whether the action requires approval. This involves the Minister determining whether the action is likely to have a significant impact on a Part 3 matter. This decision is commonly known as the 'controlled action decision' and, if the action requires approval, it is called a 'controlled action'. In making the decision, the Minister has three options: the action is a controlled action; the action is not a controlled action; or the action is not a controlled action if it is undertaken in a particular manner (called 'particular manner' or 'manner specified' actions). Since February 2007, the Minister has also had the power to truncate the EIA process on the grounds the action is clearly unacceptable (i.e. it would have unacceptable impacts on Part 3 matters).

Assessment

If an action is declared to be a controlled action, the Minister must decide whether it must be assessed under the EIA regime and, if so, how it will be assessed. In cases requiring assessment, the Minister has a choice of five federal assessment methods:

- public inquiry;

- environmental impact statement;
- public environment report;
- assessment on preliminary documentation; and
- assessment on referral information.

These assessment methods are supposed to represent a hierarchy with public inquiry being the most rigorous through to assessment on referral information at the bottom. In addition to the federal assessment processes, actions can be assessed by way of another accredited federal process, or an accredited state or territory process. The accreditation of State processes can occur on a one-off basis under section 87 or via a bilateral agreement made under Part 5.

Approval

At the completion of the assessment, the Minister must decide whether to approve the action. In making this decision, the Minister is required to have regard to economic and social matters related to the action, but the relevant environmental issues are confined to the Part 3 matters that triggered the assessment (ie the 'relevant impacts'). The effect of this framework is to create a process for the weighing of competing interests, similar to a cost-benefit analysis, where a substantial section of the environmental equation is often excluded. This creates a structural bias against environmental interests. If the action is approved, the Minister can attach enforceable conditions to the approval to protect, repair or mitigate damage to the matter that triggered the approval requirement.

Bilateral Agreements

The EPBC Act contains provisions that enable the Commonwealth to enter into agreements (called 'bilateral agreements') with the states and territories to accredit their environmental assessment and approval processes. An action that is assessed or approved under a process that is accredited under a bilateral agreement is generally exempt from the equivalent process in the EIA regime.

At the time of writing, so-called 'assessment bilaterals' – where responsibility for EPBC Act assessments is delegated – had been made in relation to all states and territories. In comparison, only one bilateral agreement has been made devolving responsibility for approval decisions (called 'approval bilaterals'). This agreement was made in December 2005 between the Commonwealth and NSW and it concerns actions that are approved by the NSW Government (or a NSW government agency) in accordance with the accredited management plan for the Sydney Opera House.

3. Background statistics on administration

To provide context for the survey, this section contains headline statistics on the operation of the EIA regime. Table 1 provides statistics on the total number of referrals, controlled actions and approvals to the cut off date of the main survey (i.e. 10 June 2009).

Table 1 Headline referral, controlled action and approval statistics, to 10 June 2009

	Total	% of referrals
Referrals	3105	
Not controlled actions	2369	76
<i>Particular manner – directly enforceable</i>	384	12
<i>Particular manner – not directly enforceable</i>	154	5
<i>Not particular manner</i>	1831	59
Controlled actions	736	24
Clearly unacceptable	6	na
Withdrawn	240	na
Lapsed	26	na
Approved	291	na
Not approved	8	na
Approved without conditions	11	na

Source: EPBC Public Notices database, August 2009.

Points to note from Table 1 include the following.

- The total number of referrals (3105 over almost nine years, or around 350/yr) is relatively low. By way of example, the average rate referrals to the Federal Environment Minister under the *Environment Protection (Impact of Proposals) Act 1974* (Cth) (EPIP Act) in its final five years of operation was 317/yr. This is despite the fact that the EPIP Act applied to far narrower range of actions.
- The majority (76%) of referrals were not controlled actions. This suggests that a large number of projects were referred that are ill-suited to the Commonwealth EIA regime and/or that the Federal Government adopted a high threshold for significance under the legislation.

- Conditions were imposed on a relatively small number of projects. Final approval conditions were imposed on 280 actions. Particular manner conditions were imposed on 538 actions. Prior to 1 January 2004, particular manner conditions were not directly enforceable. This affects 154 actions that were subject to particular manner conditions prior to this date.
- Where actions have reached the final approval phase, the overwhelming majority (97%) have been approved.
- Since the 'clearly unacceptable' powers were introduced in February 2007, they have been exercised on six occasions.

Table 2 shows the number of referrals and controlled actions by industry category to 30 June 2008.

Table 2 Referral and controlled actions by activity category, to 30 June 2008

Activity category	Referrals	Controlled actions
Residential development	425	111
Mining	289	120
Commercial development	246	43
Exploration (mineral, oil and gas – marine)	245	12
Transport – land	220	43
Tourism and recreation	183	43
Water management and use	174	42
Energy generation and supply (non-renewable)	149	39
Energy generation and supply (renewable)	106	13
Transport – water	88	27
Natural resources management	81	7
Commonwealth	72	13
Waste management (sewerage)	68	8
Telecommunications	61	6
Agriculture and forestry	59	16
Aquaculture	58	22
Manufacturing	54	23
Science and research	47	1
Waste management (non-sewerage)	30	5
Transport – air and space	19	9
Exploration (mineral, oil and gas – non-marine)	18	2
Private	4	0
Fishing	1	1
Total	2697	606

Source: A. Macintosh, 'The Environment Protection and Biodiversity Conservation Act 1999 (Cth): An evaluation of its cost-effectiveness', *Environmental and Planning Law Journal*, Vol. 26(5), 2009 (in press).

What is evident from Table 1 is that the EIA regime has captured mainly large infrastructure, oil, gas, mining and urban development actions.

- The residential and commercial development sectors accounted for 25% of referrals and controlled actions to 30 June 2008.
- The oil, gas and mining sectors (i.e. mining and exploration categories) accounted for 20% of referrals and 22% of controlled actions.

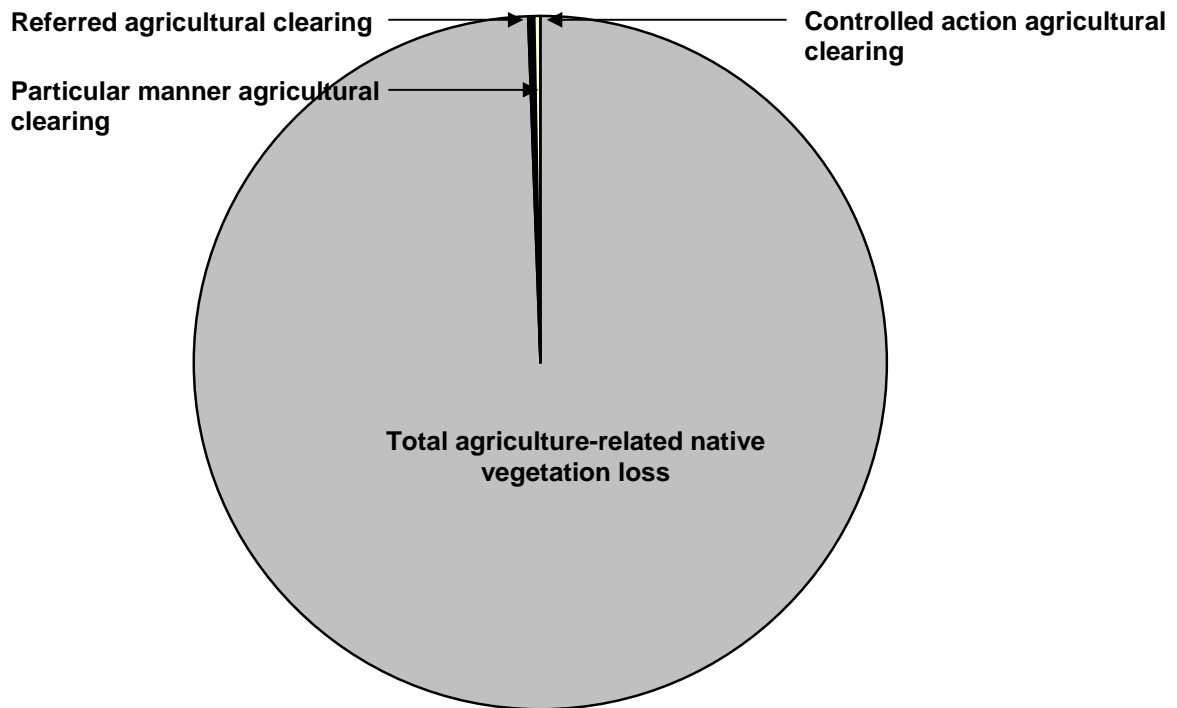
- The transport sector accounted for 12% of referrals and 13% of controlled actions.
- The energy generation sector accounted for 9% of referrals and 9% of controlled actions.
- Combined, the above sectors accounted for 67% of referrals and 69% of controlled actions.

Activities associated with these sectors can have significant adverse impacts on the environment, including the matters protected under the EIA regime. However, they are not the major drivers of environmental degradation. The major threats to Australia's biodiversity and heritage – poor agricultural practices (including land clearing), invasive species, altered fire regimes, unsustainable forestry and fisheries practices, unsustainable patterns of water extraction and use, and climate change – have largely fallen outside the parameters of the regime. This is due to both the design of the legislation (e.g. the nature of the Part 3 matters and exemptions) and its administration.

The absence of agriculture, fisheries and forestry referrals and controlled actions is of particular note.¹ No fishing referrals had been received as at 30 June 2008 – due mainly to non-compliance, the 'significant impact' threshold and the operation of the strategic assessment processes. Between July 2008 and 30 June 2008, agriculture and forestry actions accounted for only 2% of referrals and just over 2.5% of controlled actions. Remarkably, only 22 agricultural-related land clearing referrals (i.e. 0.8% of all referrals) were made in the regime's first eight years of operation. These referred projects involved a total of no more than 12,100 hectares of native vegetation. By comparison, at least three million hectares of native vegetation was cleared over this period in Australia for agricultural purposes (see Figure 1). Of the 22 agricultural-related land clearing referrals received over this period, only three were controlled actions and seven were manner specified. The total amount of native vegetation involved in the three controlled actions was 1,650 hectares. The particular manner projects involved an estimated 4,550 hectares.

¹ The statistics presented here are taken from A. Macintosh, 'The Environment Protection and Biodiversity Conservation Act 1999 (Cth): An evaluation of its cost-effectiveness', *Environmental and Planning Law Journal*, Vol. 26(5), 2009 (in press)

Figure 1 Total native vegetation clearance vs. agricultural-related clearing regulated under the EIA regime, July 2000 to 30 June 2008



Source: A. Macintosh, 'The Environment Protection and Biodiversity Conservation Act 1999 (Cth): An evaluation of its cost-effectiveness', *Environmental and Planning Law Journal*, Vol. 26(5), 2009 (in press).

The concentration of the EIA regime on large infrastructure, oil, gas, mining, and urban development projects has stunted its capacity to generate significant environmental gains. These types of activities are already subject to other federal, state and territory regulatory processes. State and territory planning and/or environment laws generally apply to all major developments within these sectors. Specific oil, gas and other mining legislation also exists to regulate activities within the relevant sectors. As noted in the introduction, while the effectiveness of these alternative processes is debatable, the duplication of regulatory effort reduces the capacity for the EPBC Act's EIA regime to generate significant environmental improvements.

An additional concern that has been raised about the EIA regime is that its application to these sectors has been partial and sporadic, especially in relation to urban development projects. This is evident in the statistics on administration. Between July 2000 and July 2008, 458 residential development referrals were made, of which 120 were declared to be controlled actions (22 of these were

later withdrawn). This is a relatively low number when put in the context of the number of residential development actions that are likely to have had a notable impact on the matters protected under the regime over this period. By way of example, the total *site area* of all residential controlled actions to 30 June 2008 was 17,790 hectares. Over the same period, 18,000 hectares of woody native vegetation was *cleared* for urban development in Queensland alone. Moreover, the residential controlled actions over this period were concentrated in a small number of areas and these regulatory 'hot spots' shifted over time. Between July 2000 and 30 June 2004, over 50% of the controlled actions came from five areas: west and north-west Sydney (NSW), northern Sydney (NSW), Sunshine Coast (Qld), Bendigo (Vic) and Perth (WA). Over the following four years to 30 June 2008, 50% of the residential controlled actions came from four different areas: Mission Beach – Innisfail (Qld), Hervey Bay (Qld), Werribee (Vic) and Mandurah – Busselton – Dunsborough (WA). These trends cannot be fully explained by changing development pressures and appear to be attributable to decisions made by the Department to concentrate their regulatory effort on specific areas.

Main points from administrative statistics

The broad administrative statistics on the operation of the EIA regime support four main conclusions.

- By and large, the processes and activities that pose the greatest threat to Australia's biodiversity and heritage are not being regulated under the EIA regime.
- The bulk of the regulatory effort applied under the EIA regime has been directed toward large infrastructure, oil, gas, mining and urban development actions.
- The application of the regime to these sectors has, at times, been partial and sporadic.
- Due to the nature of the activities that are being captured by the EIA regime, there are concerns about the overlap with other regulatory processes and the potential for inefficient duplication of regulatory effort.

Although there is evidence supporting the conclusion that the EIA regime is not cost-effective, a number of research questions remain. In particular:

- To what extent is the EIA regime improving the environmental outcomes of actions that are subject to approval and particular manner requirements?
- What costs are proponents incurring as a result of the EIA regime?

- Is the process fair on proponents and third parties?
- What are the indirect benefits associated with the EIA regime (e.g. Is it changing state government practices? Is it altering business practices? Is it helping to reinforce social values about conservation?)

To help shed light on some of these issues, we conducted a survey of proponents. The following section describes the method that was followed in developing and administering this survey.

4. Method

Evaluating the environmental effectiveness of any EIA regime is a difficult task as it requires a determination to be made on the counterfactual question of what would have occurred in the absence of the regime. In seeking to answer this question, it is necessary to take into account the direct and indirect ways in which EIA regimes can alter environmental outcomes. Where a project is subject to assessment and approval under an EIA regime, environmentally beneficial requirements can be imposed on the project. Regulators can also refuse to approve projects, which theoretically should occur where the costs of the activity outweigh the associated benefits. Through such direct intervention, regulators can improve environmental outcomes and social welfare.

EIA regimes can also improve environmental outcomes indirectly. Due to the existence of the regime, proponents may voluntarily avoid certain areas or modify their activities so as to reduce negative environmental impacts. These actions may be motivated by a desire to reduce regulatory costs and ensure approval. They can also be a product of the EIA regime's capacity to influence and reinforce social norms and thereby change behaviour.²

The objects of the current study were to obtain information on three issues:

- whether the Commonwealth EIA regime has improved the environmental outcomes of referred projects;
- the costs incurred by proponents; and
- the fairness of the regime.

To acquire this information, a survey of proponents was undertaken.

A survey approach was adopted because it offers an efficient and timely way of obtaining data on the relevant issues. Alternative methods require extensive field work to obtain data on on-ground outcomes and detailed document evaluation to determine the drivers of project design and implementation. Due to the number of projects involved and resource limitations, a survey was seen as the most cost-effective method of obtaining information on the operation of the EIA regime since it commenced in July 2000.

In designing the survey, a decision had to be made about who was the most appropriate target for the questionnaire: proponents, the regulator (i.e. the Commonwealth Environment Department), or interested third parties (e.g. environment and other community groups). Proponents are in an ideal position to provide information on environmental outcomes, compliance costs and the

² The dividing line between what may be regarded as a direct and indirect impact of an EIA regime can be blurry due to the nature of the negotiations that occur between regulators and proponents.

fairness of the EIA regime. They are directly involved in the regulatory process and are aware of their intentions and how the regime may have altered their plans. In addition, they alone have information on the costs they incurred during the process and whether they believed they were treated fairly.

The Department is likely to be able to provide valuable information on the operation of the EIA regime. However, because it is unable to provide insights on proponents' intentions, it is at a disadvantage compared to proponents in attempting to evaluate what would have occurred in the absence of the EIA regime. It is also a less reliable source of information on the fairness of the regime and compliance costs. Third parties are likely to be in an even weaker information position than the Department. Typically, they are kept to the periphery of the regulatory process and seldom have insights on the thinking of proponents. Due to these characteristics and the resource limitations of the research project, proponents were seen as the most appropriate target for the survey.

The downside of relying on proponents for information on the cost-effectiveness and fairness of an EIA regime is the potential for biased and inaccurate responses. Proponents who oppose the process or who are aggrieved at particular regulatory outcomes may provide erroneous information and seek to distort the research findings. The different values and capacity of proponents may also influence results. Further research is required to evaluate to what extent the results of this survey were influenced by these factors.

To conduct the survey, projects that were referred under the EIA regime were broken into three groups:

- controlled and particular manner actions (Survey 1);
- withdrawn projects (Survey 2); and
- not controlled actions (Survey 3).

Separate surveys were sent to proponents from the three groups to extract information on the above issues. All three surveys were predominantly internet-based, with survey invitations and responses being sent via email. Phone surveys were conducted for five proponents who had difficulties accessing and using internet services.

Survey 1

Survey 1 was sent to proponents of all projects that were given final or particular manner approval under the EIA regime over the period 16 July 2000 to 10 June 2009 for which contact details could be obtained. Project and contact details were extracted from the EPBC Public Notices Database. Internet and phone search techniques were also used where the database contained insufficient or

obviously incorrect information. Using this method, 380 valid contacts were obtained.

A reproduction of the text of Survey 1 is provided Appendix A. The key areas of interest in the survey were whether the regime had improved the environmental outcomes associated with their project, the costs they incurred in complying with the regime, and the fairness of the regime both to proponents and third parties.

Survey 2

Survey 2 was sent to all proponents of projects that were referred under the EIA regime and subsequently withdrawn over the period 16 July 2000 to 16 June 2009 for which contact details could be obtained. Using the same techniques as were applied for Survey 1, 124 valid contacts were obtained.

A reproduction of the text of Survey 2 is provided in Appendix B. It has been argued that proponents have withdrawn projects due to the environmental rigour of the EIA regime. Survey 2 was designed to elicit information from proponents on this issue. Questions were also asked about proponent costs and the fairness of the process and its cost-effectiveness.

Survey 3

Survey 3 was sent to a random sample of proponents of projects that were declared to be not controlled actions over the period 16 July 2000 to 9 April 2009. The sample was derived using a chronological selection approach (e.g. every 25th project in order of the date of the final decision notice), adjusted to account for cases where contact details could not be obtained. Using this method, 64 valid contacts were obtained.

A reproduction of the text of Survey 3 is contained in Appendix C. Survey 3 was intended to provide additional proponent cost data, particularly in relation to the cost of referrals. It was also designed to provide an initial test sample on whether proponents believed the EIA process was generating environmental benefits, even when projects were not subject to direct regulation under the regime.

In the process of conducting the survey, it became clear that a significant number of proponents were afraid to participate because of a fear of retribution from the Department. This lowered the response rate and is an issue that warrants further research and investigation.

5. Results

5.1 Response rate

We received a good response in relation to all three surveys, with the response to Survey 1 being particularly strong (see Table 1). The 155 responses to Survey 1 constituted 41% of the study sample and 19% of all approved and particular manner projects over the period July 2000 to June 2009. The response to Survey 2 constituted 19% of the study sample and 10% of all withdrawn projects to June 2009. The response to Survey 3 constituted 33% of the study sample but only 1% of all not controlled actions to June 2009.

Table 3 Response rate

	Survey 1	Survey 2	Survey 3
Responses	155	24	21
Response rate (study sample)	41%	19%	33%
Response rate (all projects)	19%	10%	1%

The remainder of this Section presents the results from Survey 1. It is set out as follows.

Subsection 5.2 contains the results from questions concerning the environmental effectiveness of the regime.

Subsection 5.3 contains the results from questions concerning the fairness of the process.

Subsection 5.4 contains the results from the questions concerning the costs incurred by proponents in relation to the regime. In this subsection, combined cost data are provided from Surveys 1, 2 and 3 in relation to the cost of referrals and assessments. However, separate results are only provided for approved and particular manner actions (i.e. Survey 1).

Subsection 5.5 contains the results from the open-ended questions concerning how the EIA regime could be improved and proponents' views on the process.

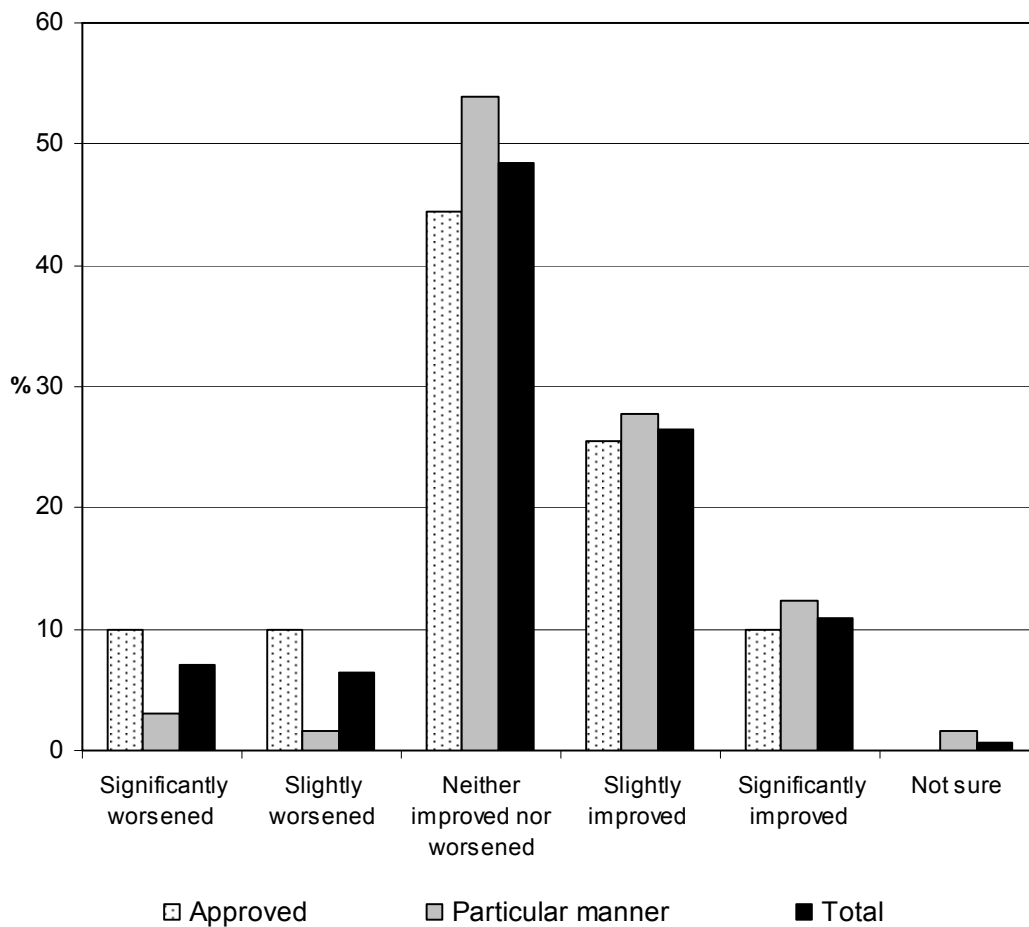
Readers should be cautious when interpreting and using the data outlined below. The results presented here are preliminary. Further, the sample sizes for a number of the questions were reasonably small, which diminishes the robustness of the results.

5.2 Environmental effectiveness

Q1a: Were the likely environmental outcomes of your project improved or worsened by the EPBC Act process?

By approval type

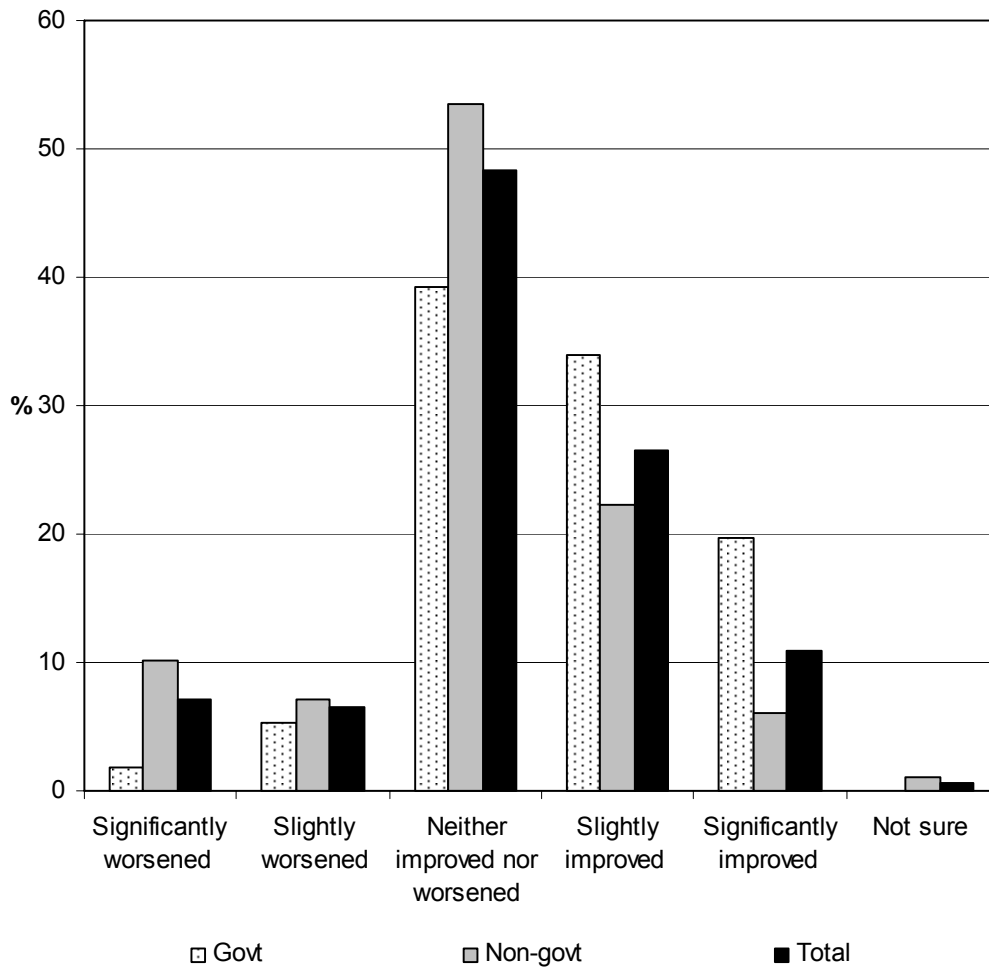
Respondents: Approved = 90, Particular manner = 65, Total = 155



Response (%)	Approved	Particular manner	Total
Significantly worsened	10	3	7
Slightly worsened	10	2	6
Neither improved nor worsened	44	54	48
Slightly improved	26	28	26
Significantly improved	10	12	11
Not sure	0	2	1
Total	100	100	100

By government/non-government proponent

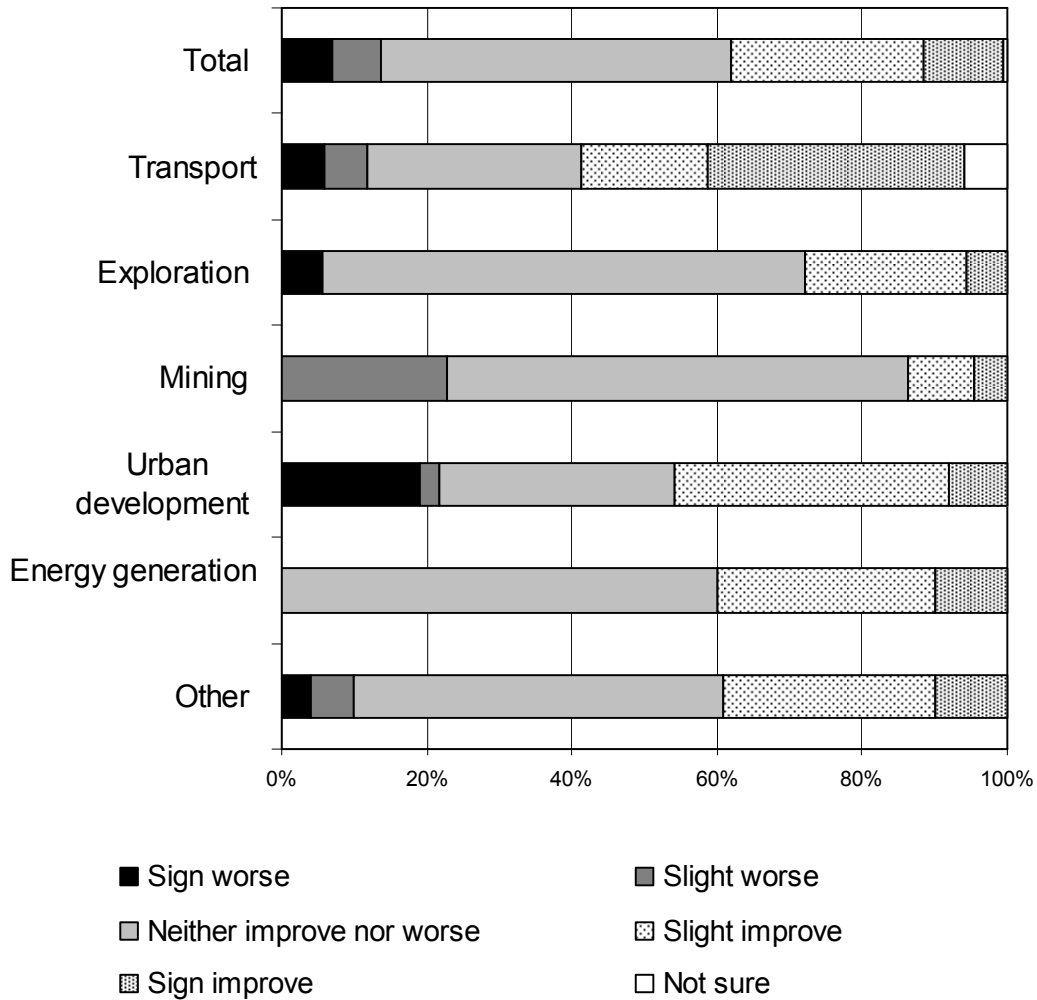
Respondents: Government = 56, Non-government = 99, Total = 155



Response (%)	Govt	Non-govt	Total
Significantly worsened	2	10	7
Slightly worsened	5	7	6
Neither improved nor worsened	39	54	48
Slightly improved	34	22	26
Significantly improved	20	6	11
Not sure	0	1	1
Total	100	100	100

By industry category

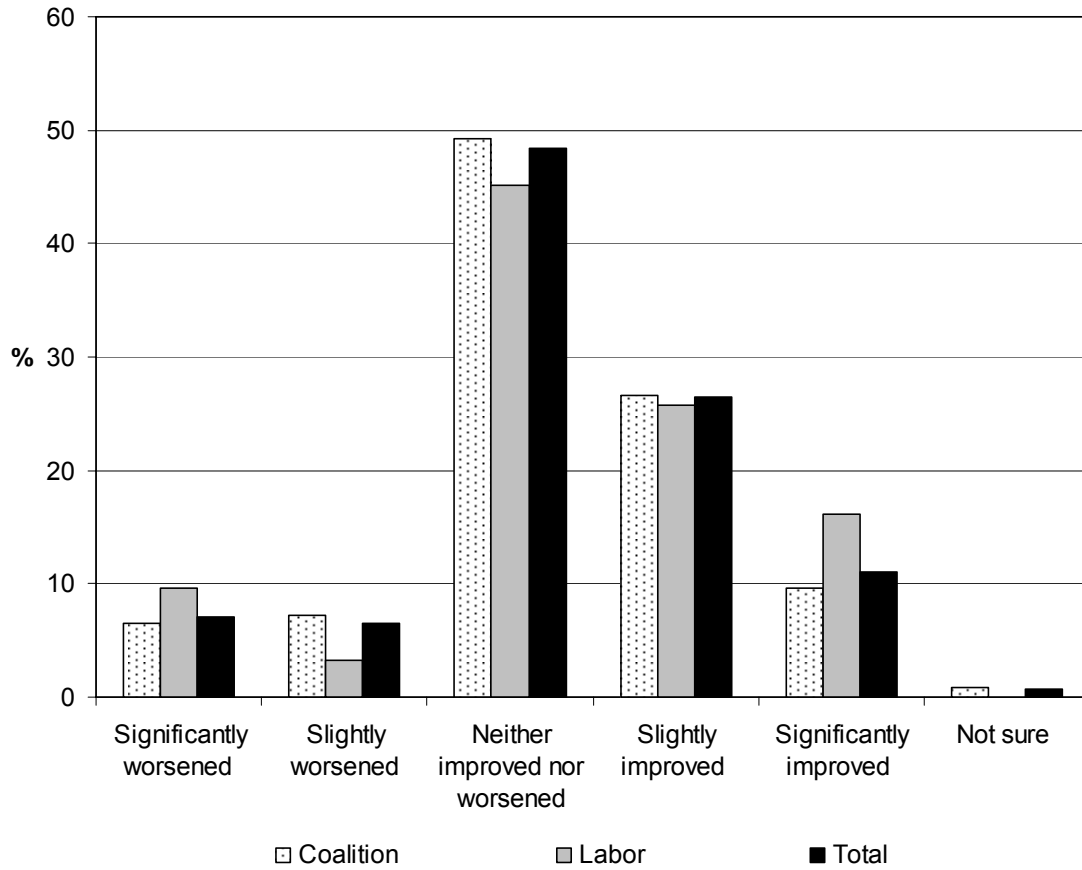
Respondents: Transport = 17, Exploration = 18, Mining = 22, Urban development = 37, Energy generation = 10, Other = 51, Total = 155



Response (%)	Other	Energy	Urban	Mining	Explore	Trans	Total
Significantly worsened	4	0	19	0	6	6	7
Slightly worsened	6	0	3	23	0	6	6
Neither improved nor worsened	51	60	32	64	67	29	48
Slightly improved	29	30	38	9	22	18	26
Significantly improved	10	10	8	5	6	35	11
Not sure	0	0	0	0	0	6	1
Total	100	100	100	100	100	100	100

By political party in power – Coalition/Labor

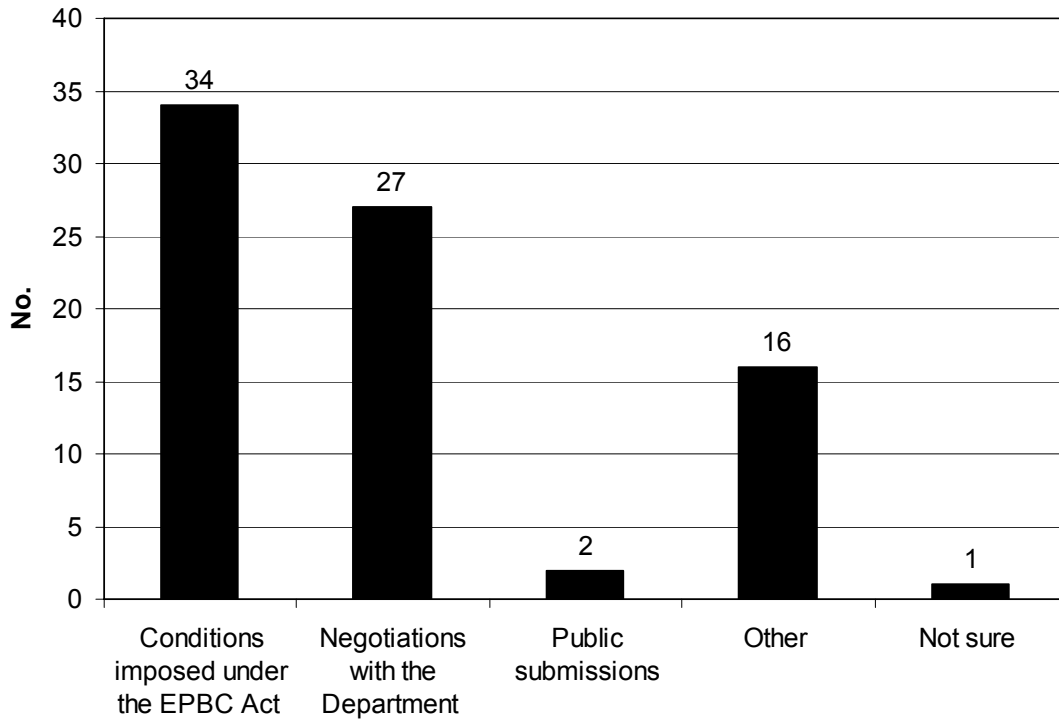
Respondents: Coalition = 124, Labor = 31, Total = 155



Response (%)	Coalition	Labor	Total
Significantly worsened	6	10	7
Slightly worsened	7	3	6
Neither improved nor worsened	49	45	48
Slightly improved	27	26	26
Significantly improved	10	16	11
Not sure	1	0	1
Total	100	100	100

Q1b: Where the EPBC Act process improved environmental outcomes, what were the improvements due to?

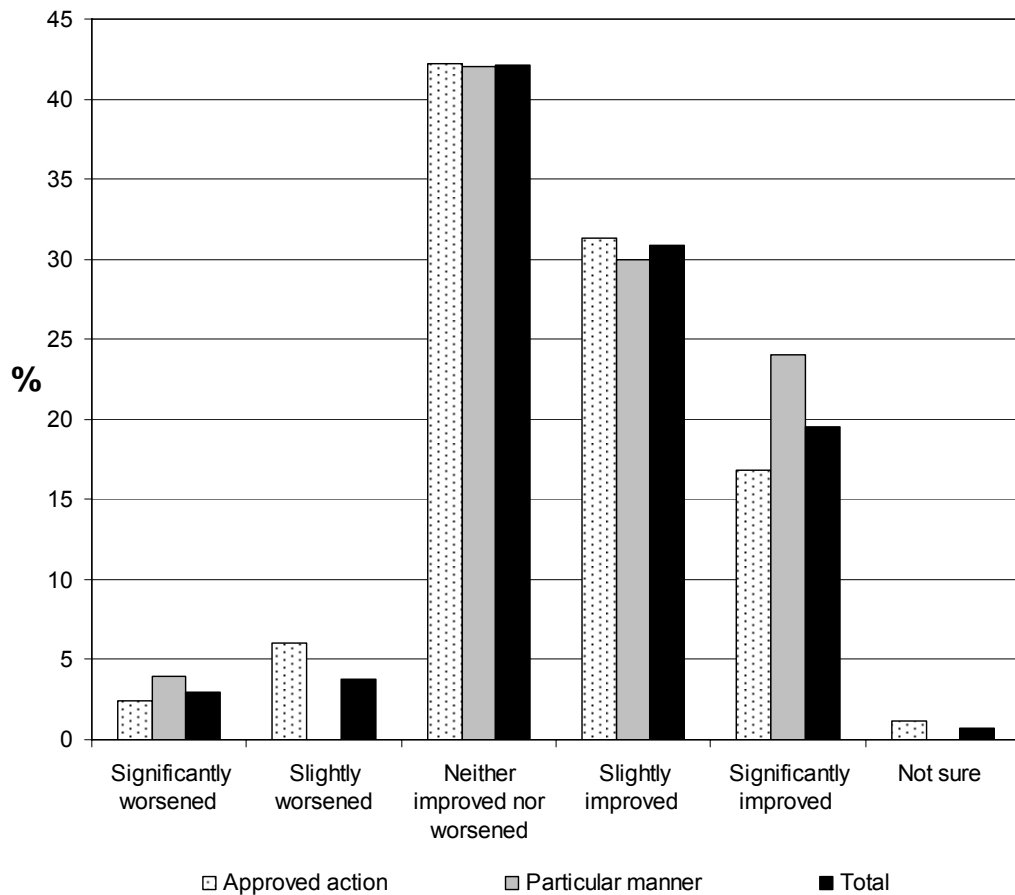
Respondents: 59



Q2a: Were the likely environmental outcomes of your project improved or worsened by state/territory environmental and planning processes?

By approval type

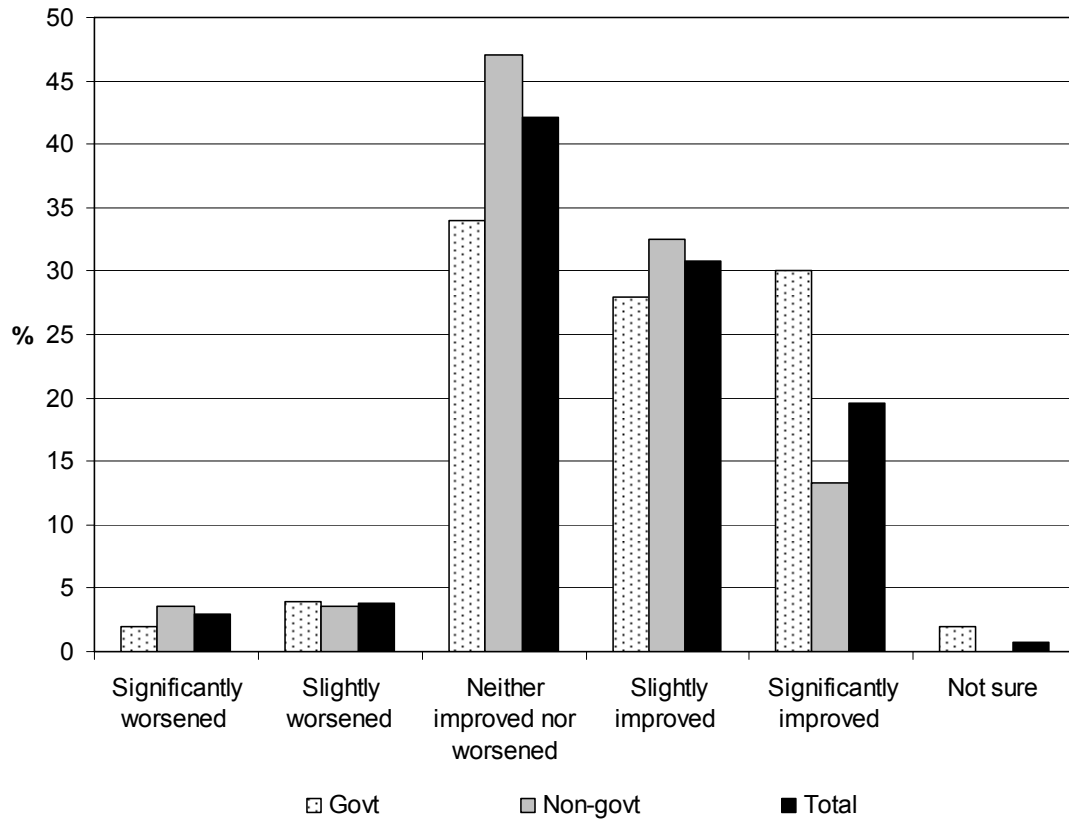
Respondents: Approved = 83, Particular manner = 50, Total = 133



Response (%)	Approved action	Particular manner	Total
Significantly worsened	2	4	3
Slightly worsened	6	0	4
Neither improved nor worsened	42	42	42
Slightly improved	31	30	31
Significantly improved	17	24	20
Not sure	1	0	1
Total	100	100	100

By government/non-government proponent

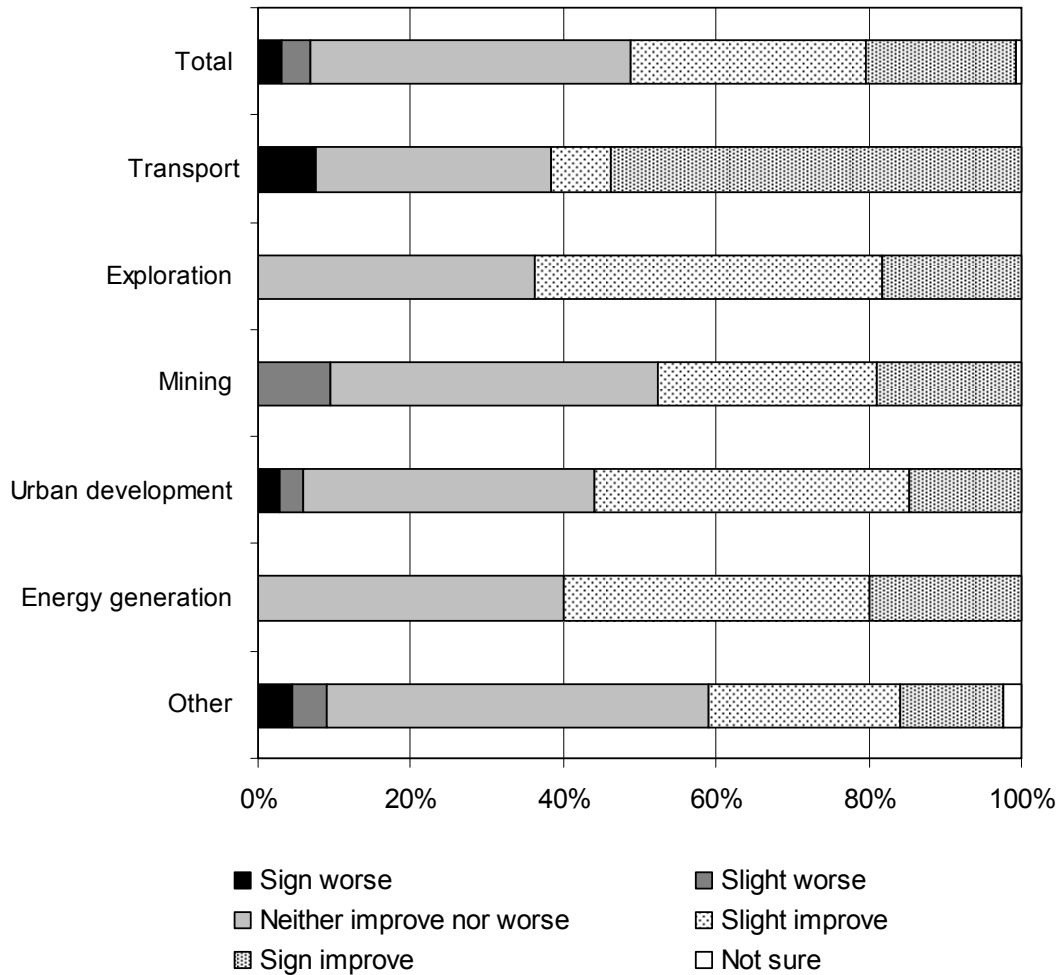
Respondents: Government = 50, Non-government = 83, Total = 133



Response (%)	Govt	Non-govt	Total
Significantly worsened	2	4	3
Slightly worsened	4	4	4
Neither improved nor worsened	34	47	42
Slightly improved	28	33	31
Significantly improved	30	13	20
Not sure	2	0	1
Total	100	100	100

By industry category

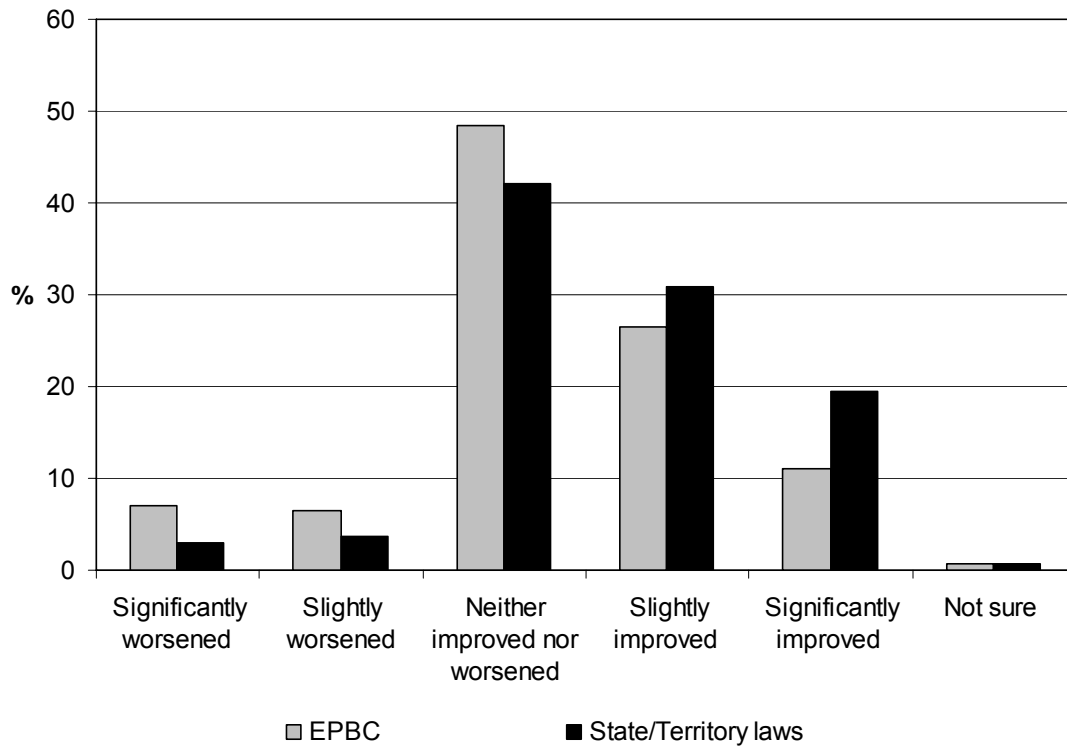
Respondents: Transport = 13, Exploration = 11, Mining = 21, Urban development = 34, Energy generation = 10, Other = 44, Total = 133



Response (%)	Other	Energy	Urban	Mining	Explore	Trans	Total
Significantly worsened	5	0	3	0	0	8	3
Slightly worsened	5	0	3	10	0	0	4
Neither improved nor worsened	50	40	38	43	36	31	42
Slightly improved	25	40	41	29	45	8	31
Significantly improved	14	20	15	19	18	54	20
Not sure	2	0	0	0	0	0	1
Total	100	100	100	100	100	100	100

Q2b: Were the likely environmental outcomes of your project improved or worsened by the EPBC Act process vs. were the likely environmental outcomes of your project improved or worsened by state/territory environmental and planning processes?

Respondents: EPBC = 155, State/Territory = 133

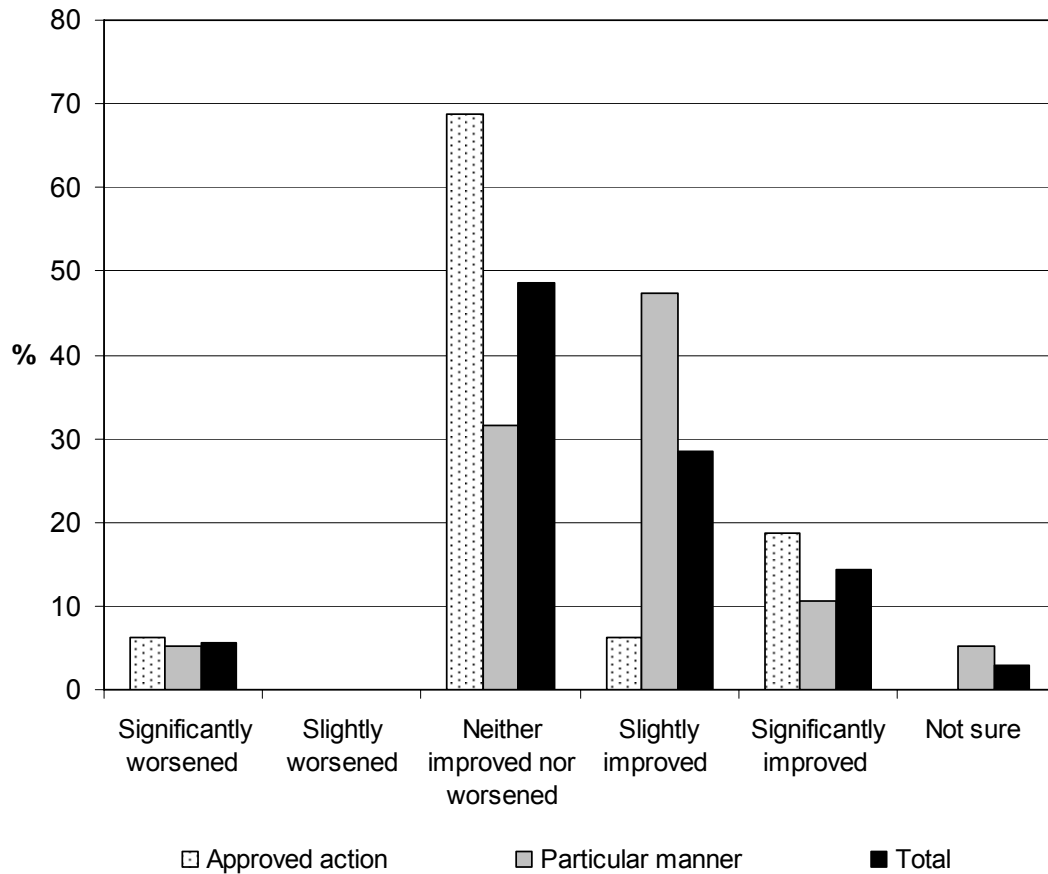


Response (%)	EPBC	State/Territory laws
Significantly worsened	7	3
Slightly worsened	6	4
Neither improved nor worsened	48	42
Slightly improved	26	31
Significantly improved	11	20
Not sure	1	1
Total	100	100

Q3a: Were the likely environmental outcomes of your project improved or worsened by federal laws other than the EPBC Act?

By approval type

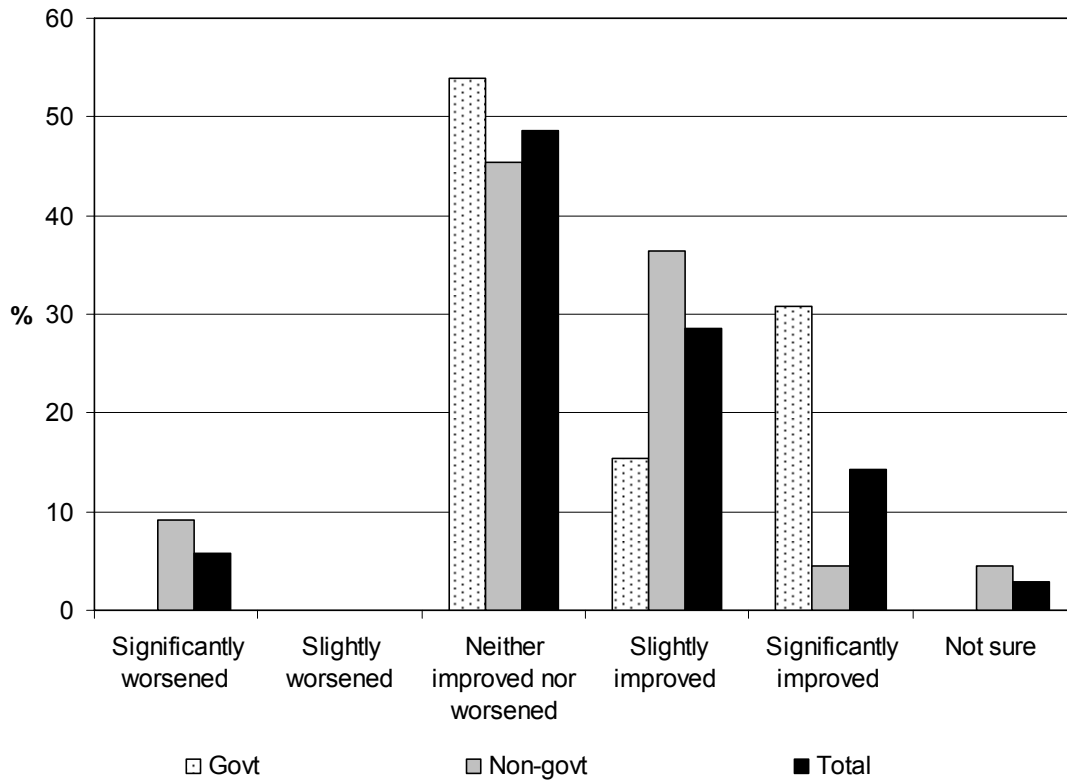
Respondents: Approved = 16, Particular manner= 19, Total = 35



Response (%)	Approved action	Particular manner	Total
Significantly worsened	6	5	6
Slightly worsened	0	0	0
Neither improved nor worsened	69	32	49
Slightly improved	6	47	29
Significantly improved	19	11	14
Not sure	0	5	3
Total	100	100	100

By government/non-government proponent

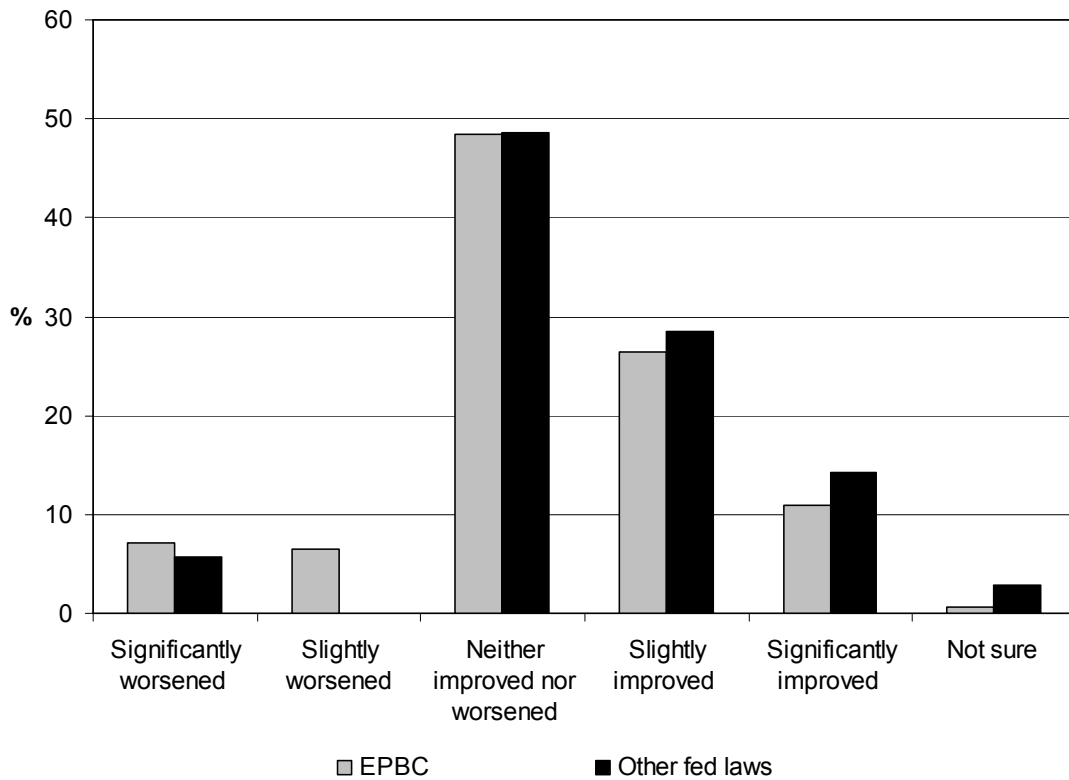
Respondents: Government = 13, Non-government = 22, Total = 35



Response (%)	Govt	Non-govt	Total
Significantly worsened	0	9	6
Slightly worsened	0	0	0
Neither improved nor worsened	54	45	49
Slightly improved	15	36	29
Significantly improved	31	5	14
Not sure	0	5	3
Total	100	100	100

Q3b: Were the likely environmental outcomes of your project improved or worsened by the EPBC Act process vs. were the likely environmental outcomes of your project improved or worsened by federal laws other than the EPBC Act?

Respondents: EPBC = 155, Other federal laws = 35

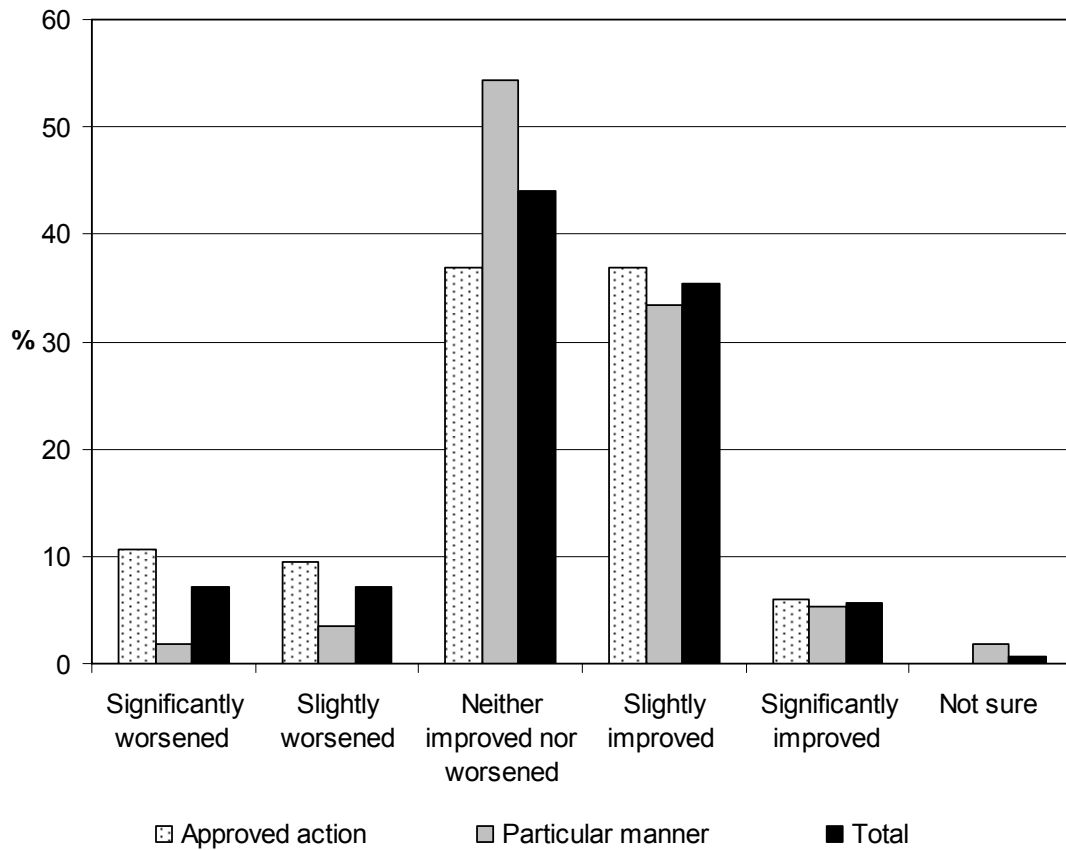


Response (%)	EPBC	Other fed laws
Significantly worsened	7	6
Slightly worsened	6	0
Neither improved nor worsened	48	49
Slightly improved	26	29
Significantly improved	11	14
Not sure	1	3
Total	100	100

Q4: Were the likely environmental outcomes of your project improved or worsened by the conditions imposed under the EPBC Act?

By approval type

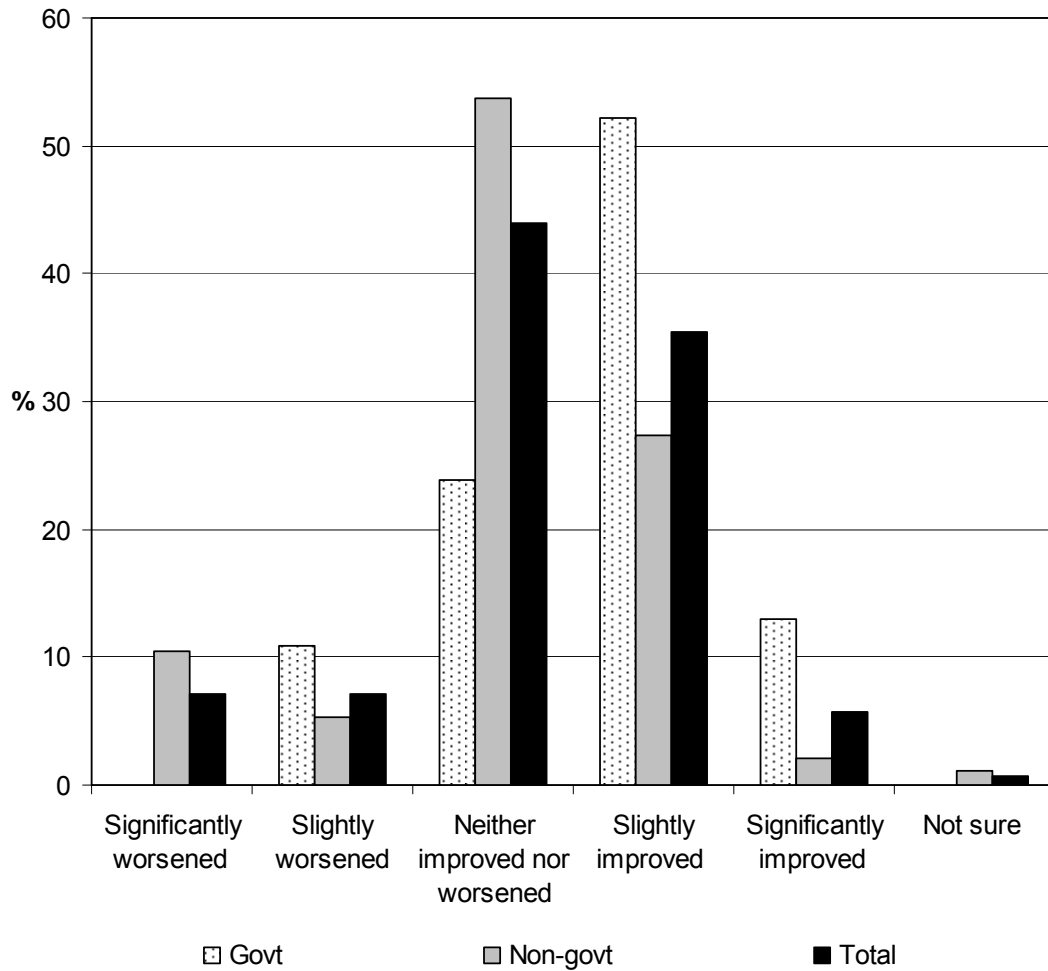
Respondents: Approved = 84, Particular manner= 57, Total = 141



Response (%)	Approved action	Particular manner	Total
Significantly worsened	11	2	7
Slightly worsened	10	4	7
Neither improved nor worsened	37	54	44
Slightly improved	37	33	35
Significantly improved	6	5	6
Not sure	0	2	1
Total	100	100	100

By government/non-government proponent

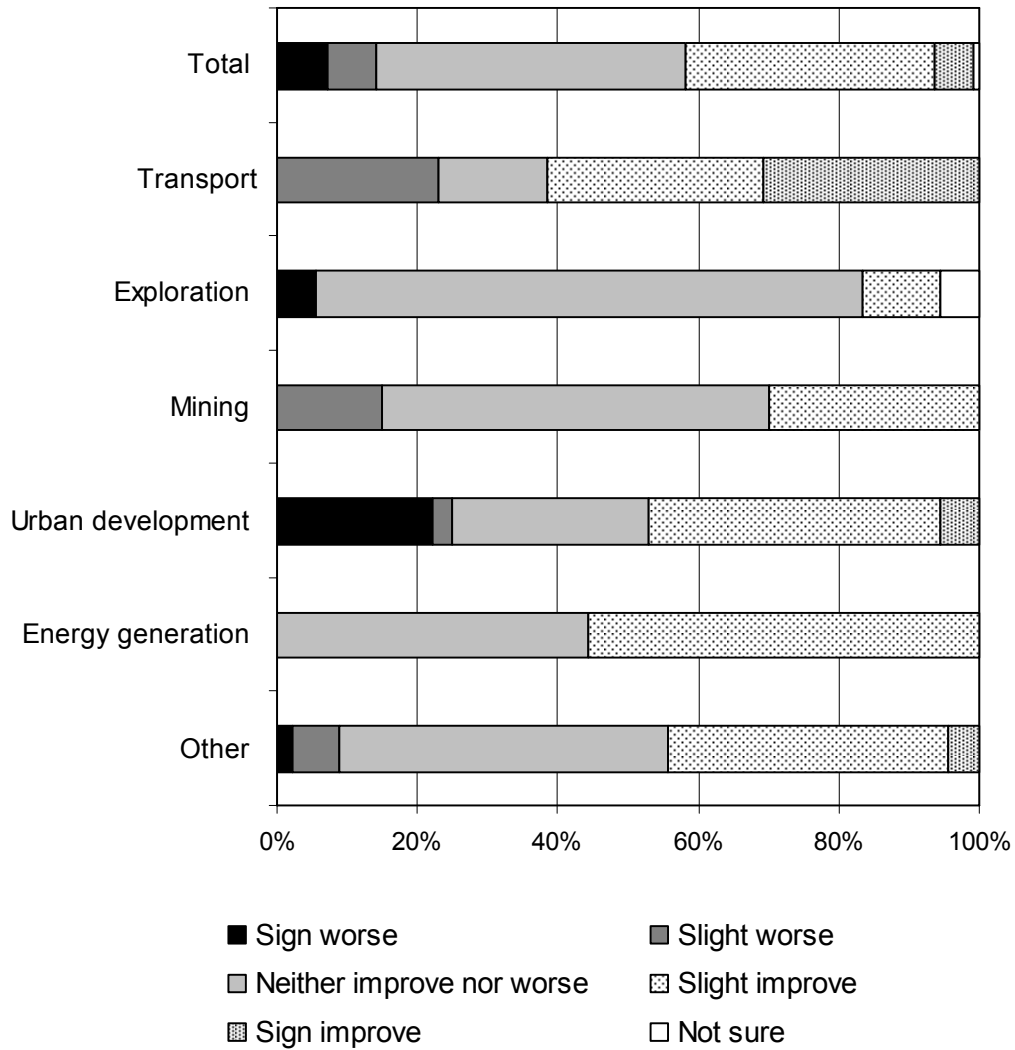
Respondents: Government = 46, Non-government = 95, Total = 141



Response (%)	Govt	Non-govt	Total
Significantly worsened	0	11	7
Slightly worsened	11	5	7
Neither improved nor worsened	24	54	44
Slightly improved	52	27	35
Significantly improved	13	2	6
Not sure	0	1	1
Total	100	100	100

By industry category

Respondents: Transport = 13, Exploration = 18, Mining = 20, Urban development = 36, Energy generation = 9, Other = 45, Total = 141

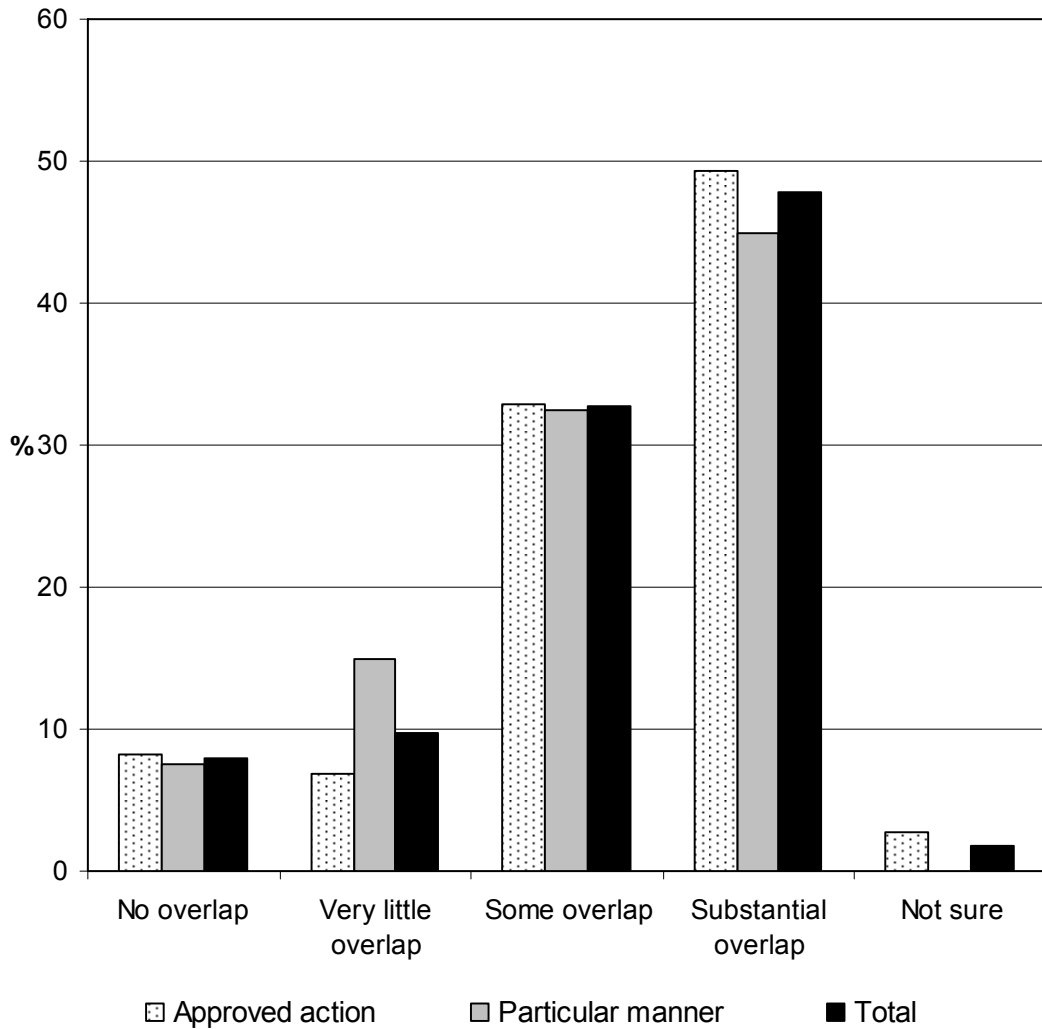


Response (%)	Other	Energy	Urban	Mining	Explore	Trans	Total
Significantly worsened	2	0	22	0	6	0	7
Slightly worsened	7	0	3	15	0	23	7
Neither improved nor worsened	47	44	28	55	78	15	44
Slightly improved	40	56	42	30	11	31	35
Significantly improved	4	0	6	0	0	31	6
Not sure	0	0	0	0	6	0	1
Total	100	100	100	100	100	100	100

Q5: Was there overlap between EPBC Act conditions and conditions imposed under state/territory permits?

By approval type

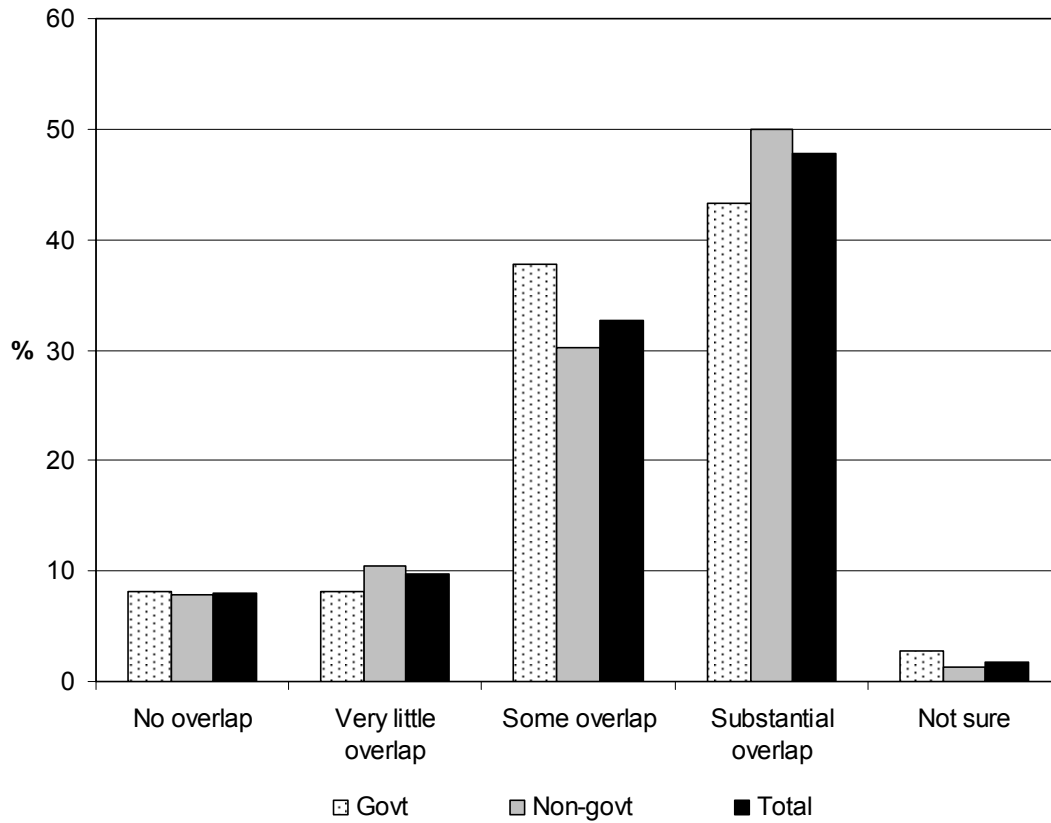
Respondents: Approved = 73, Particular manner= 40, Total = 113



Response (%)	Approved action	Particular manner	Total
No overlap	8	8	8
Very little overlap	7	15	10
Some overlap	33	33	33
Substantial overlap	49	45	48
Not sure	3	0	2
Total	100	100	100

By government/non-government proponent

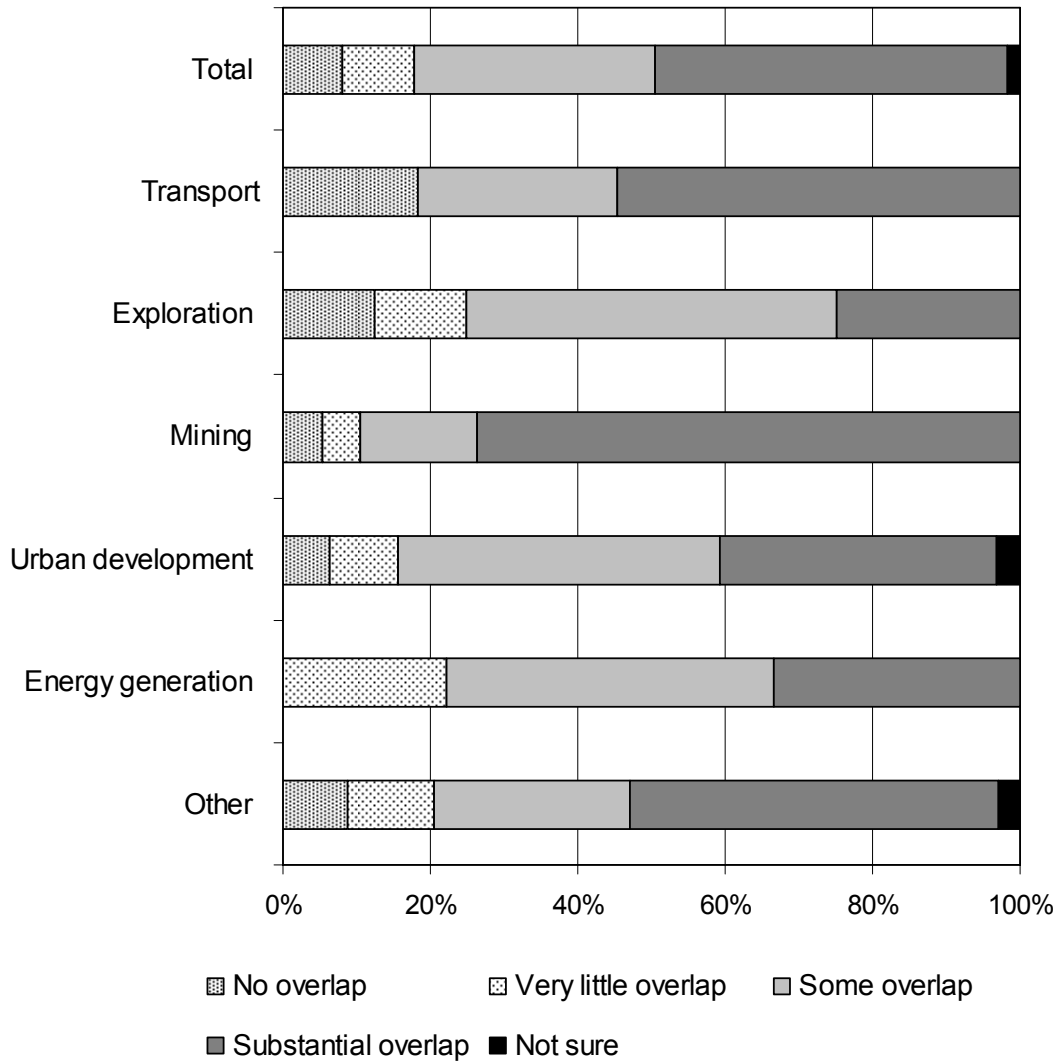
Respondents: Government = 37, Non-government = 76, Total = 113



Response (%)	Govt	Non-govt	Total
No overlap	8	8	8
Very little overlap	8	11	10
Some overlap	38	30	33
Substantial overlap	43	50	48
Not sure	3	1	2
Total	100	100	100

By industry category

Respondents: Energy generation = 9, Urban development = 32, Mining = 19, Exploration = 8, Transport = 11, Other = 34, Total = 113

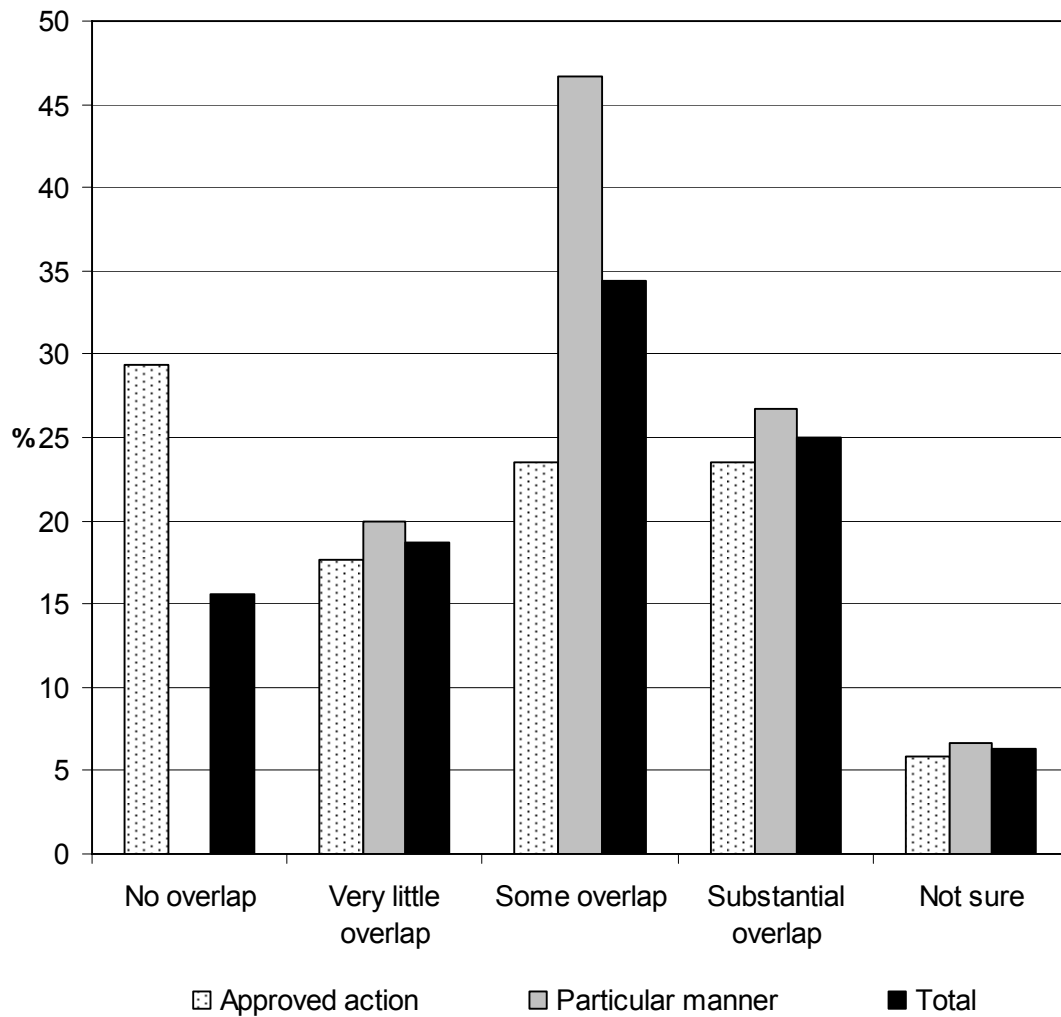


Response (%)	Other	Energy	Urban	Mining	Explore	Trans	Total
No overlap	9	0	6	5	13	18	8
Very little overlap	12	22	9	5	13	0	10
Some overlap	26	44	44	16	50	27	33
Substantial overlap	50	33	38	74	25	55	48
Not sure	3	0	3	0	0	0	2
Total	100	100	100	100	100	100	100

Q6: Was there an overlap between EPBC Act conditions and conditions imposed under other federal laws

By approval type

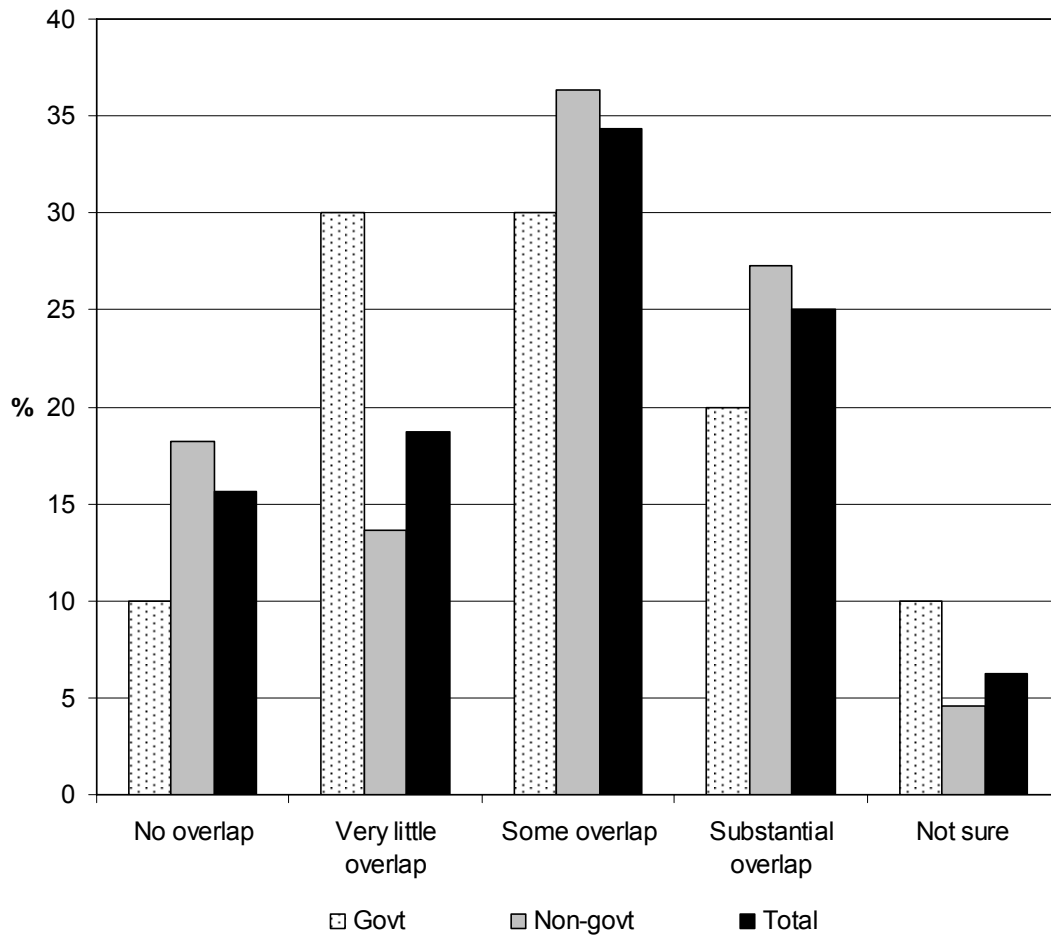
Respondents: Approved = 17, Particular manner= 15, Total = 32



Response (%)	Approved action	Particular manner	Total
No overlap	29	0	16
Very little overlap	18	20	19
Some overlap	24	47	34
Substantial overlap	24	27	25
Not sure	6	7	6
Total	100	100	100

By government/non-government proponent

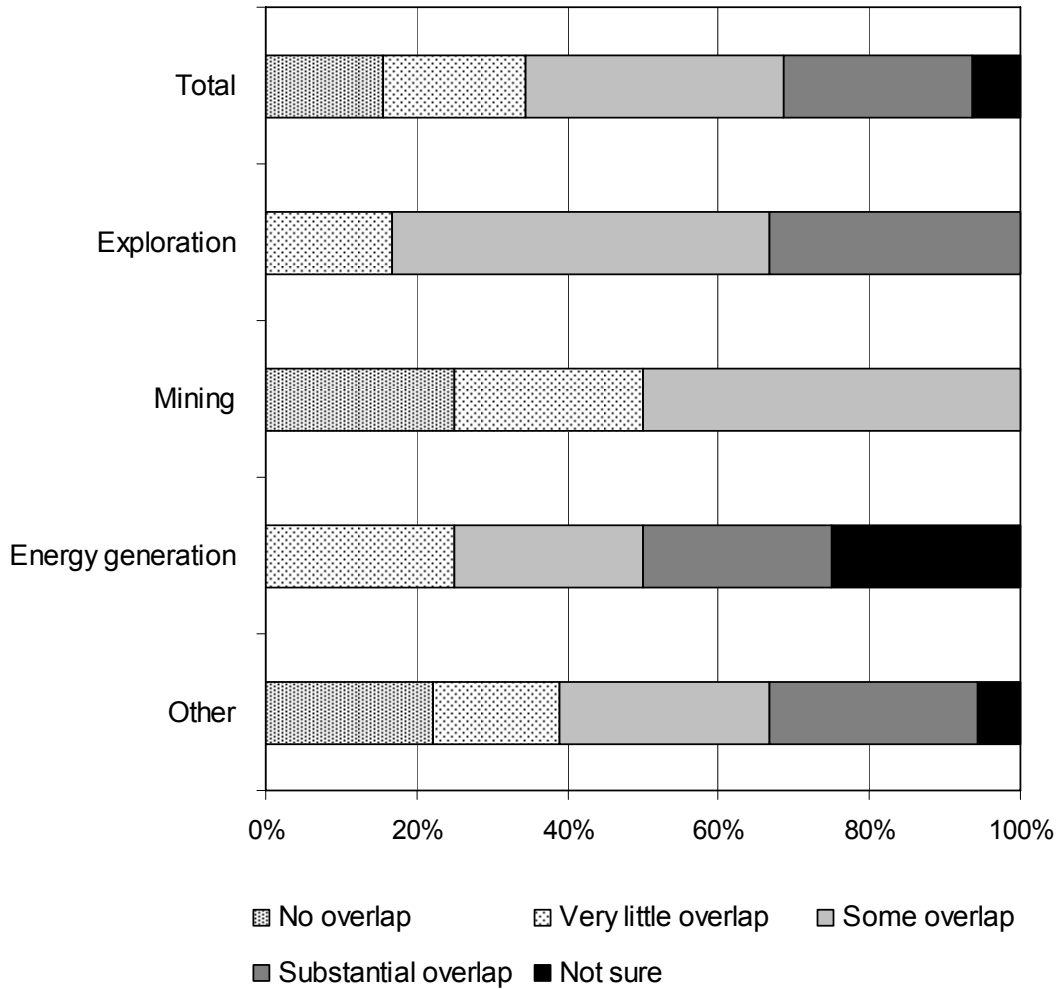
Respondents: Government = 10, Non-government = 22, Total = 32



Response (%)	Govt	Non-govt	Total
No overlap	10	18	16
Very little overlap	30	14	19
Some overlap	30	36	34
Substantial overlap	20	27	25
Not sure	10	5	6
Total	100	100	100

By industry category

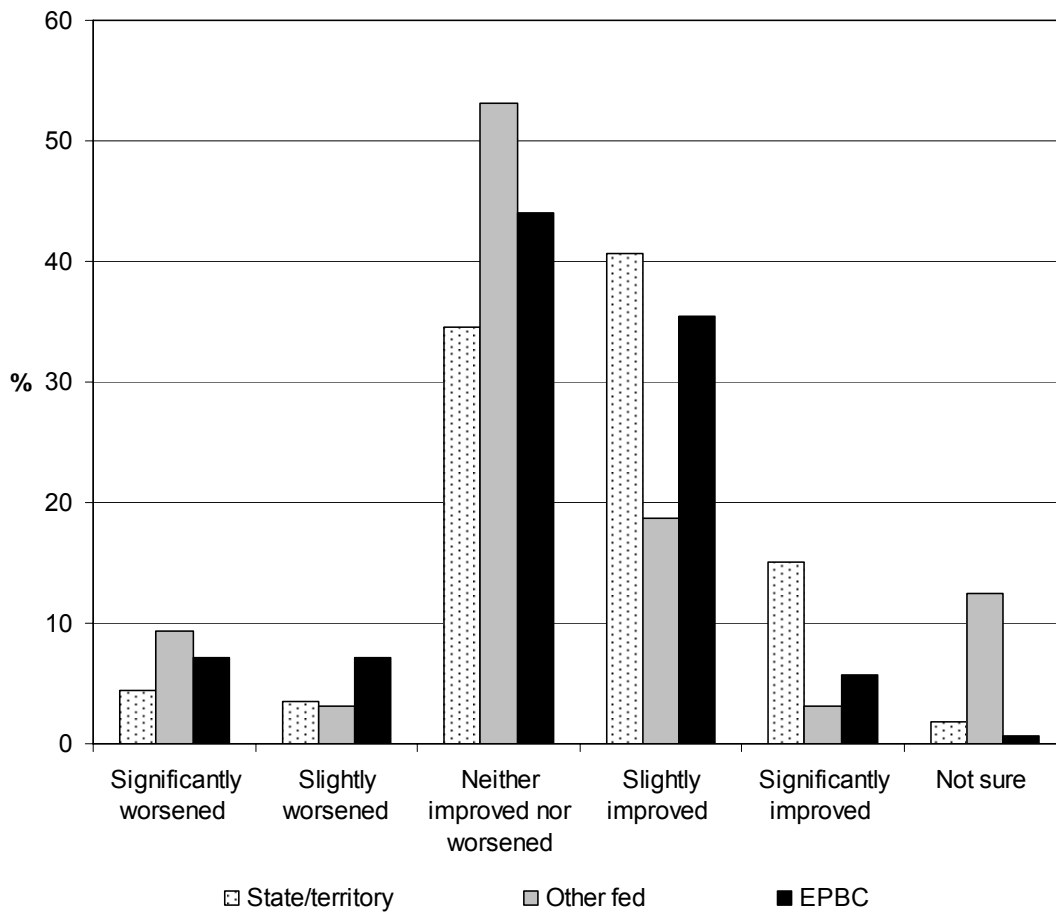
Respondents: Exploration = 6, Mining = 4, Energy generation = 4, Other = 18, Total = 32



Response (%)	Other	Energy	Mining	Explore	Total
No overlap	22	0	25	0	16
Very little overlap	17	25	25	17	19
Some overlap	28	25	50	50	34
Substantial overlap	28	25	0	33	25
Not sure	6	25	0	0	6
Total	100	100	100	100	100

Q7: Were the likely environmental outcomes of your project improved or worsened by the conditions imposed under state/territory permits, other federal laws and EPBC Act

Respondents: State/territory = 113, Other federal = 32, EPBC = 141

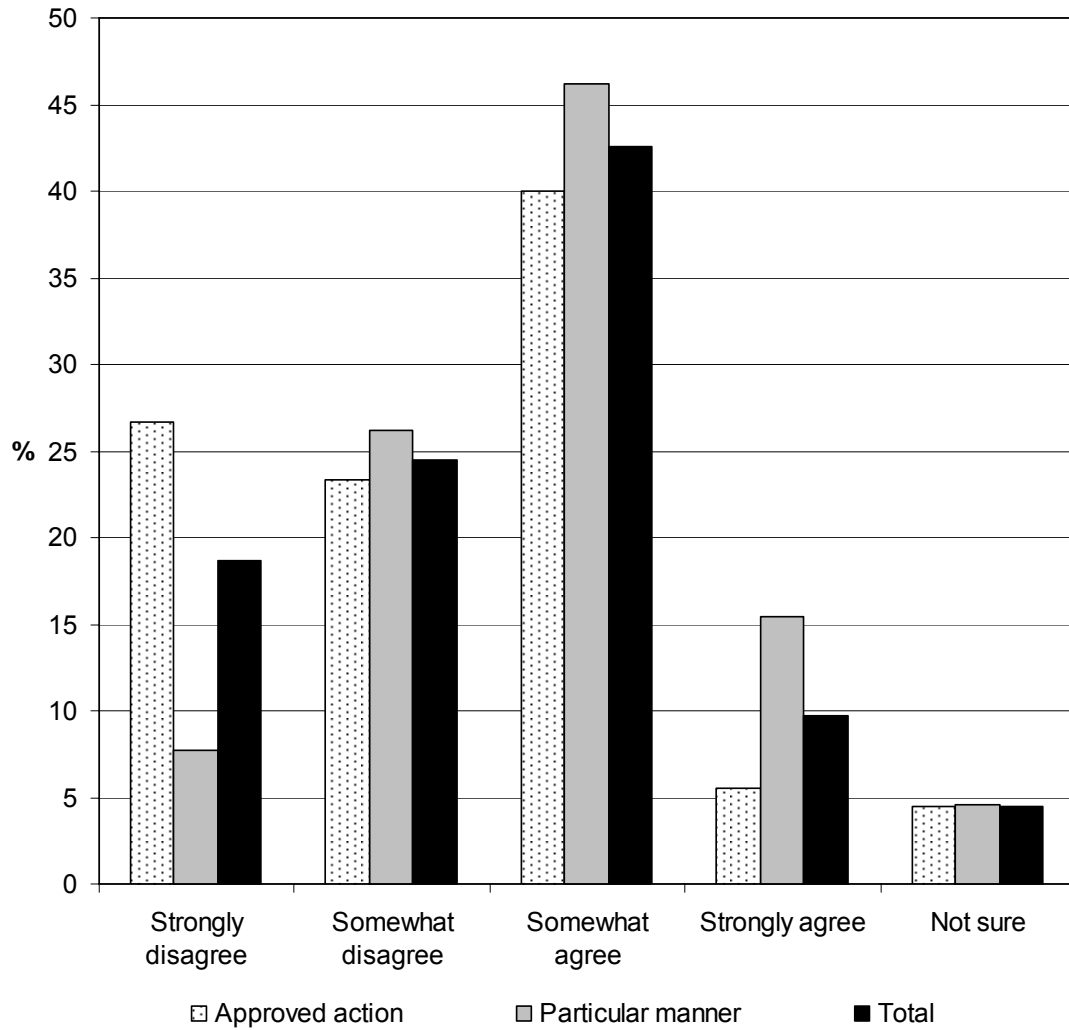


Response (%)	State/territory	Other fed	EPBC
Significantly worsened	4	9	7
Slightly worsened	4	3	7
Neither improved nor worsened	35	53	44
Slightly improved	41	19	35
Significantly improved	15	3	6
Not sure	2	13	1
Total	100	100	100

Q8: The EPBC Act process was designed and administered effectively

By approval type

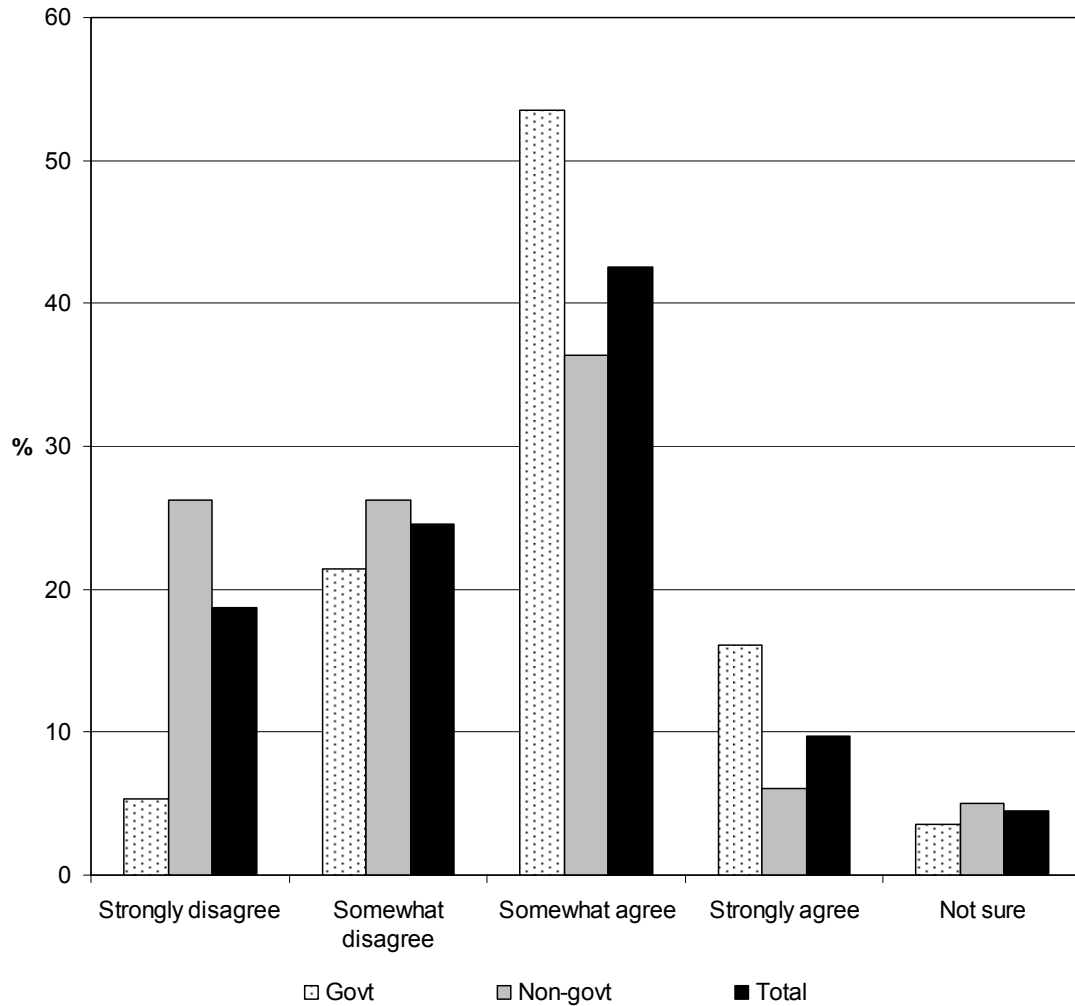
Respondents: Approved = 90, Particular manner= 65, Total = 155



Response (%)	Approved action	Particular manner	Total
Strongly disagree	27	8	19
Somewhat disagree	23	26	25
Somewhat agree	40	46	43
Strongly agree	6	15	10
Not sure	4	5	5
Total	100	100	100

By government/non-government proponent

Respondents: Government = 56, Non-government = 99, Total = 155

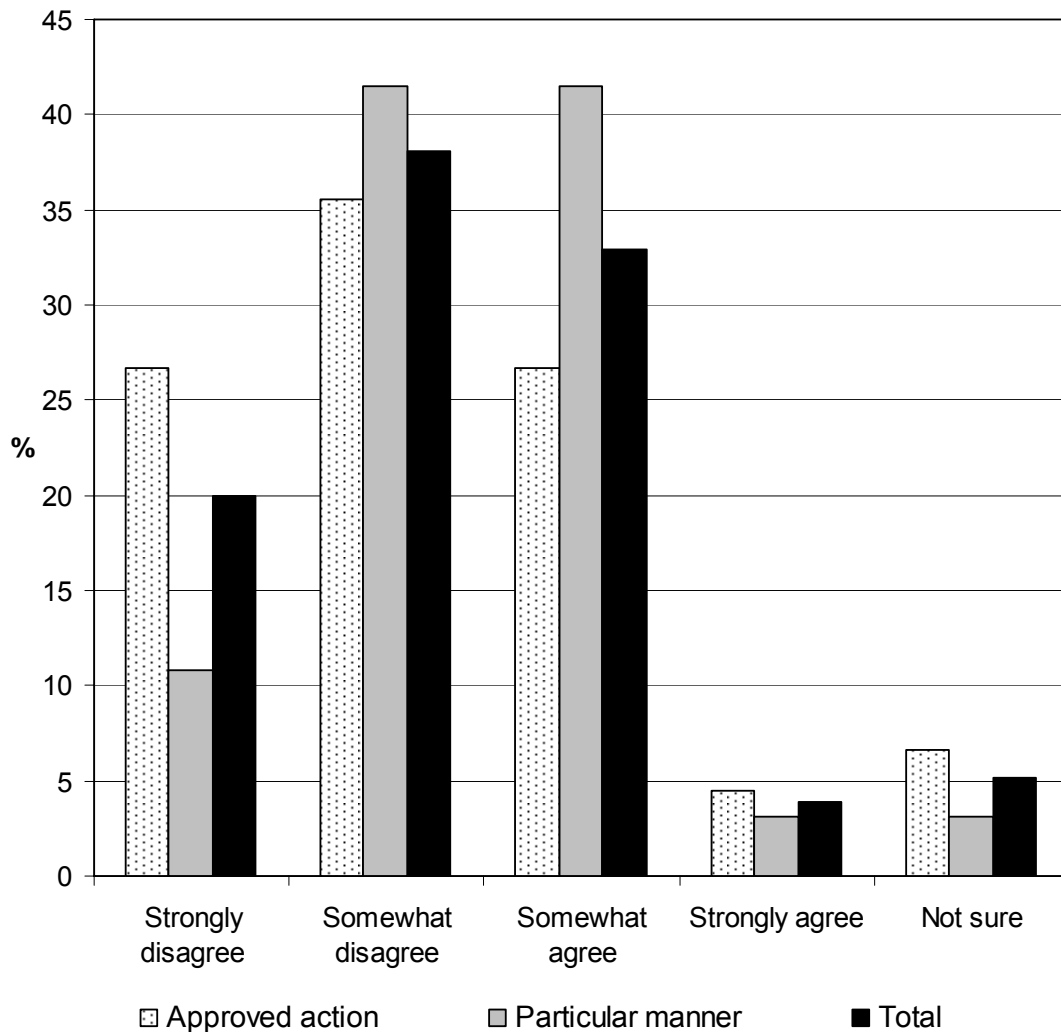


Response (%)	Govt	Non-govt	Total
Strongly disagree	5	26	19
Somewhat disagree	21	26	25
Somewhat agree	54	36	43
Strongly agree	16	6	10
Not sure	4	5	5
Total	100	100	100

Q9: The EPBC Act process was an efficient way of improving the environmental outcomes associated with the project

By approval type

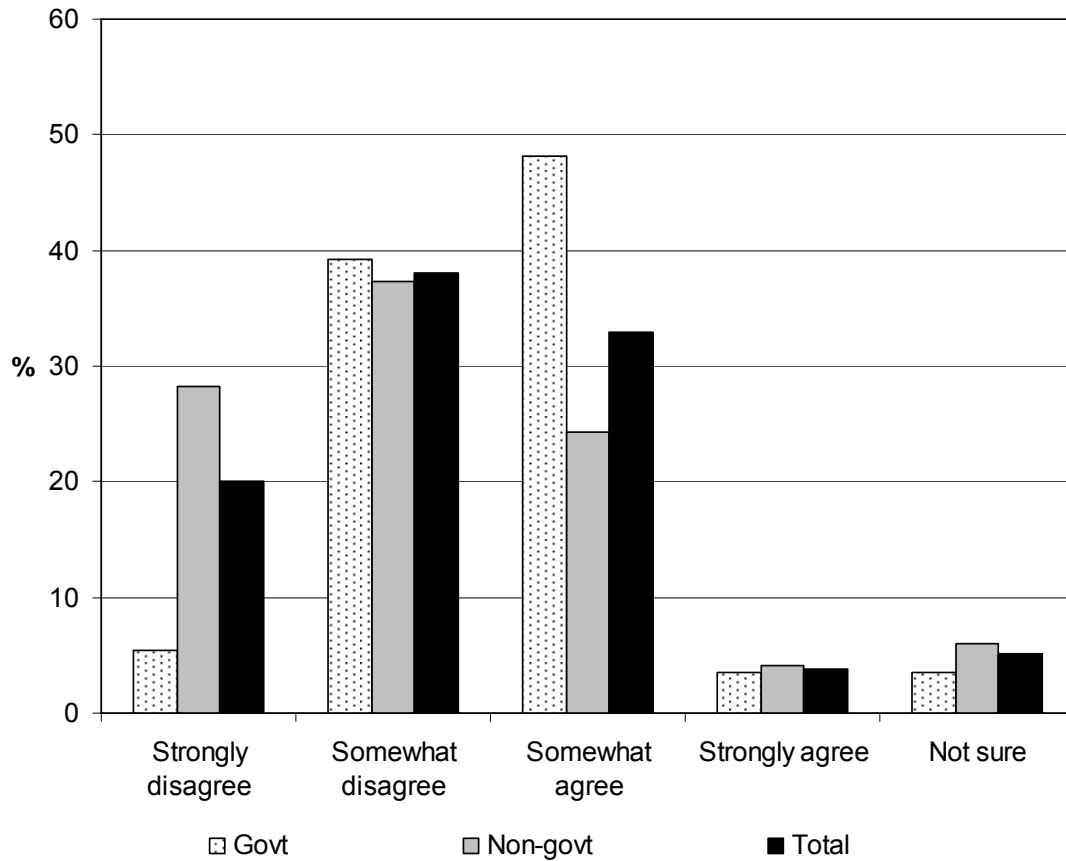
Respondents: Approved = 90, Particular manner= 65, Total = 155



Response (%)	Approved action	Particular manner	Total
Strongly disagree	27	11	20
Somewhat disagree	36	42	38
Somewhat agree	27	42	33
Strongly agree	4	3	4
Not sure	7	3	5
Total	100	100	100

By government/non-government proponent

Respondents: Government = 56, Non-government = 99, Total = 155

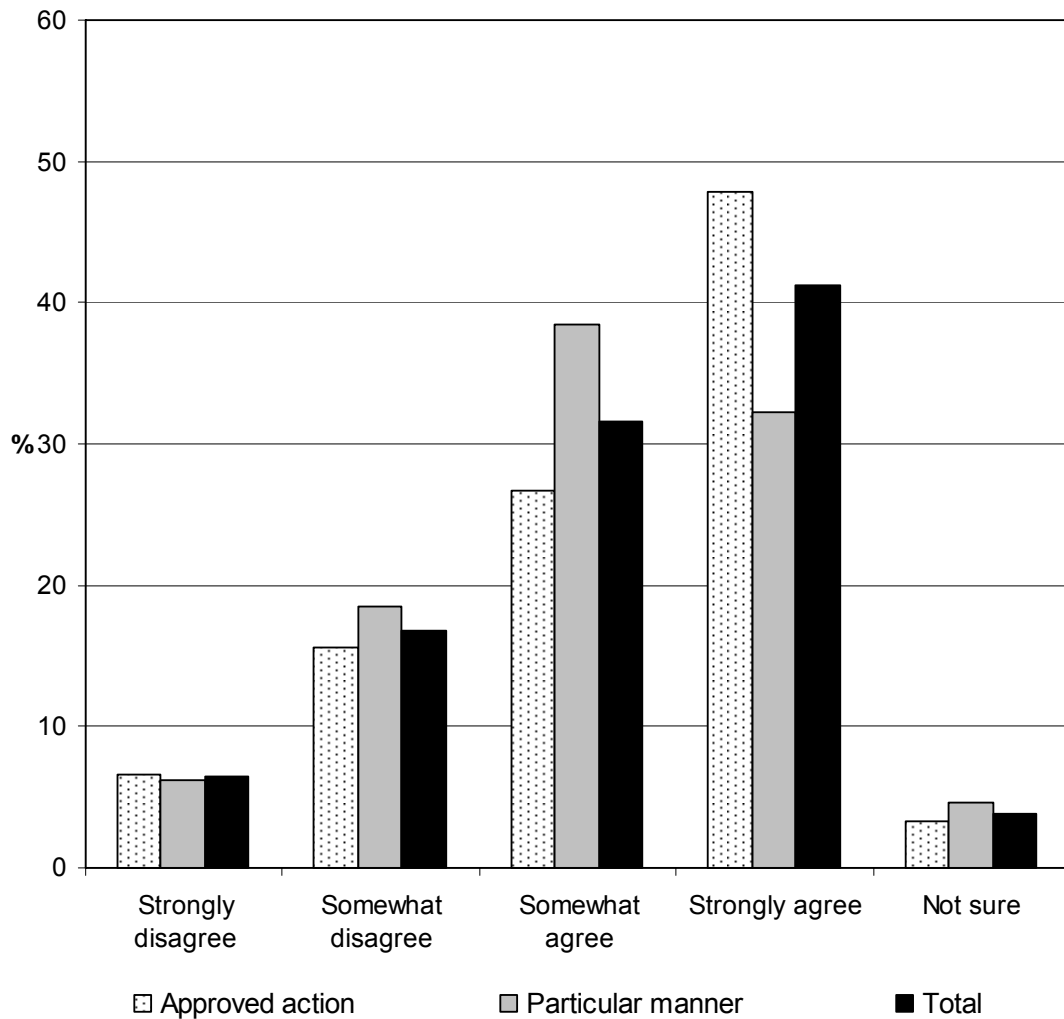


Response (%)	Govt	Non-govt	Total
Strongly disagree	5	28	20
Somewhat disagree	39	37	38
Somewhat agree	48	24	33
Strongly agree	4	4	4
Not sure	4	6	5
Total	100	100	100

Q10: The EPBC Act process duplicated other regulatory processes without significantly improving environmental outcomes

By approval type

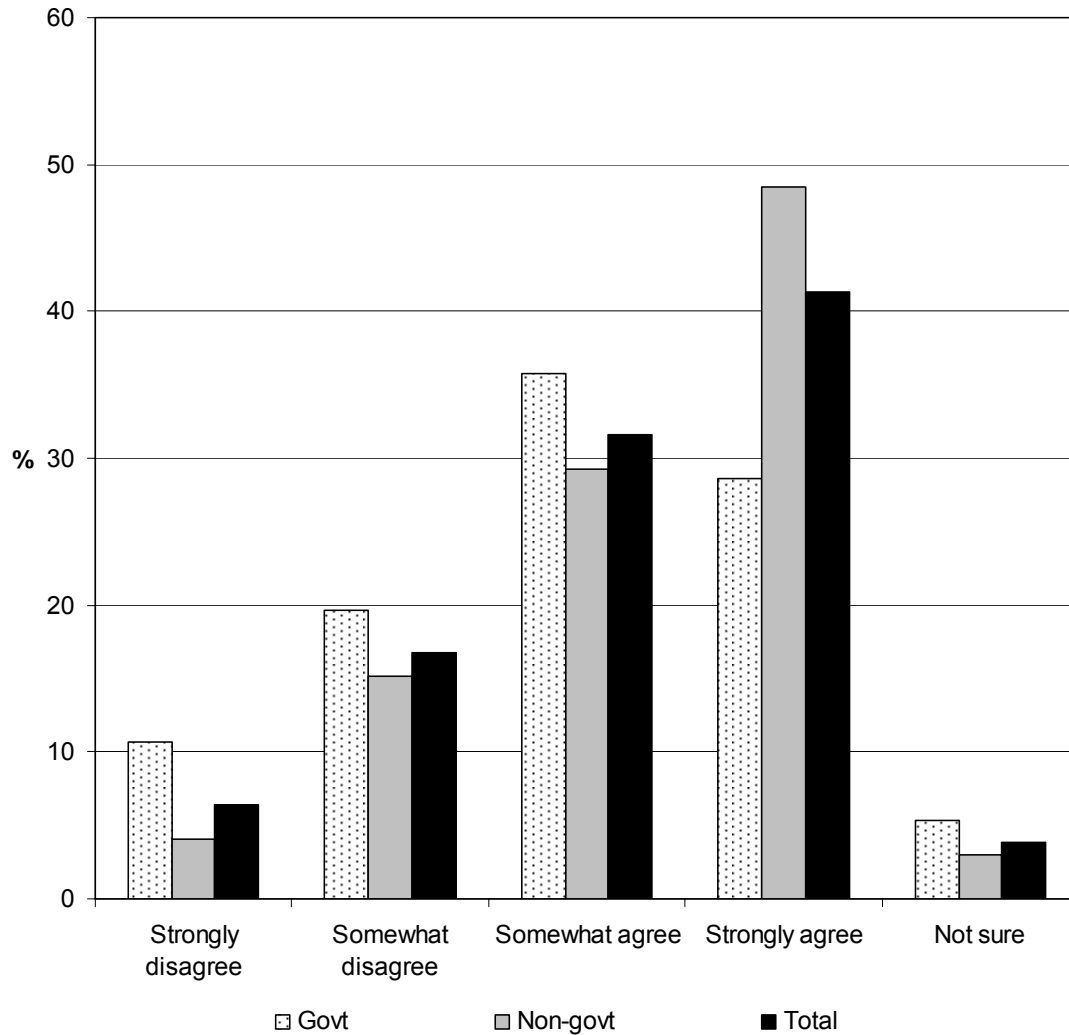
Respondents: Approved = 90, Particular manner= 65, Total = 155



Response (%)	Approved action	Particular manner	Total
Strongly disagree	7	6	6
Somewhat disagree	16	18	17
Somewhat agree	27	38	32
Strongly agree	48	32	41
Not sure	3	5	4
Total	100	100	100

By government/non-government proponent

Respondents: Government = 56, Non-government = 99, Total = 155

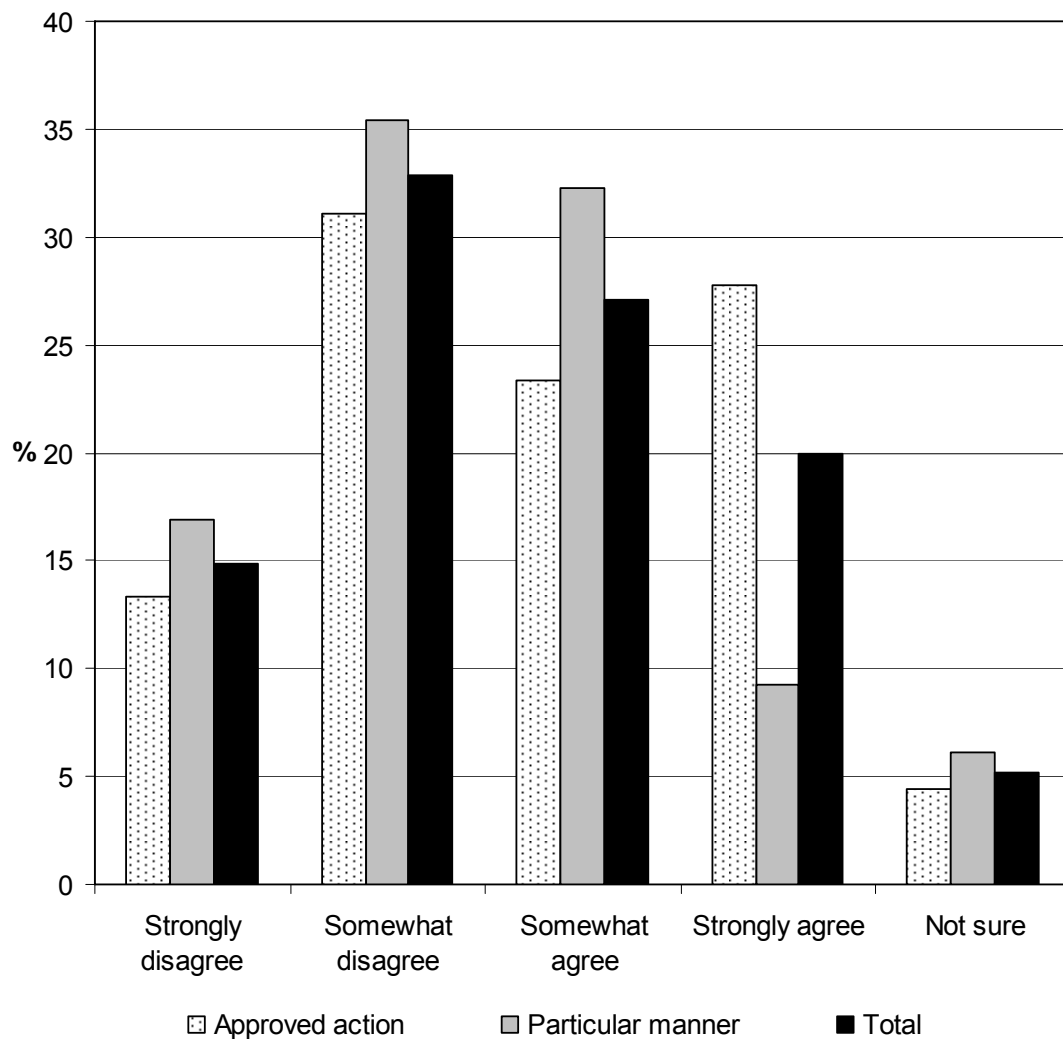


Response (%)	Govt	Non-govt	Total
Strongly disagree	11	4	6
Somewhat disagree	20	15	17
Somewhat agree	36	29	32
Strongly agree	29	48	41
Not sure	5	3	4
Total	100	100	100

Q11: The EPBC Act process was a waste of time and resources

By approval type

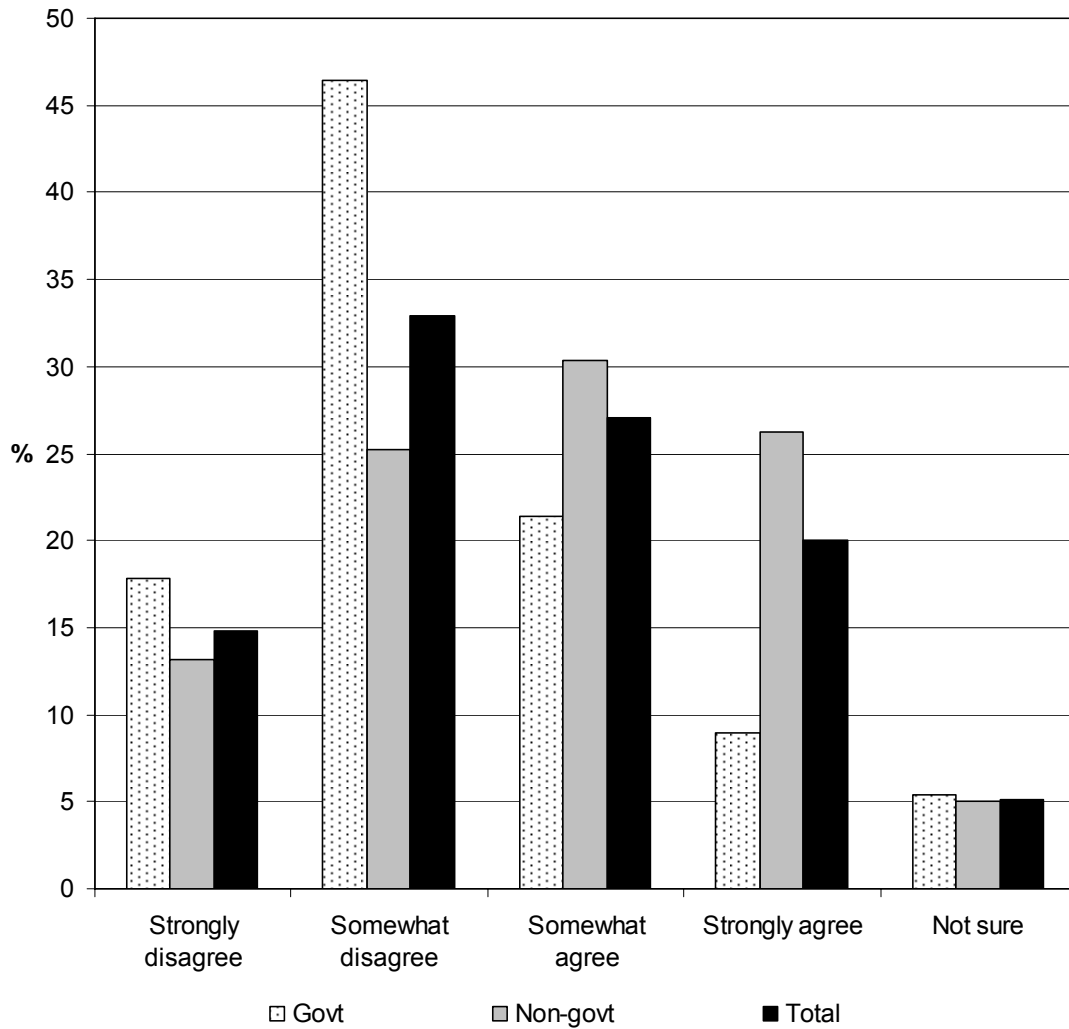
Respondents: Approved = 90, Particular manner= 65, Total = 155



Response (%)	Approved action	Particular manner	Total
Strongly disagree	13	17	15
Somewhat disagree	31	35	33
Somewhat agree	23	32	27
Strongly agree	28	9	20
Not sure	4	6	5
Total	100	100	100

By government/non-government proponent

Respondents: Government = 56, Non-government = 99, Total = 155

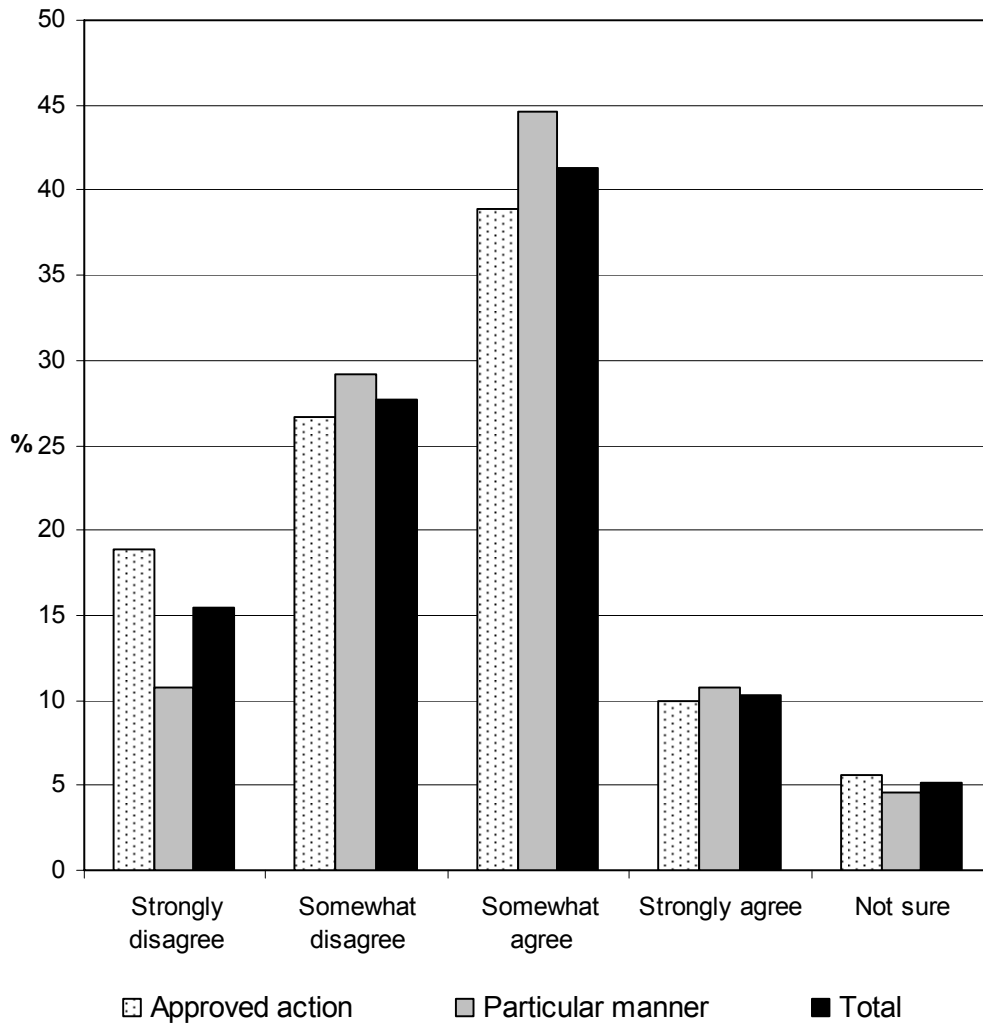


Response (%)	Govt	Non-govt	Total
Strongly disagree	18	13	15
Somewhat disagree	46	25	33
Somewhat agree	21	30	27
Strongly agree	9	26	20
Not sure	5	5	5
Total	100	100	100

Q12: The EPBC Act process was constructive and beneficial for the environment

By approval type

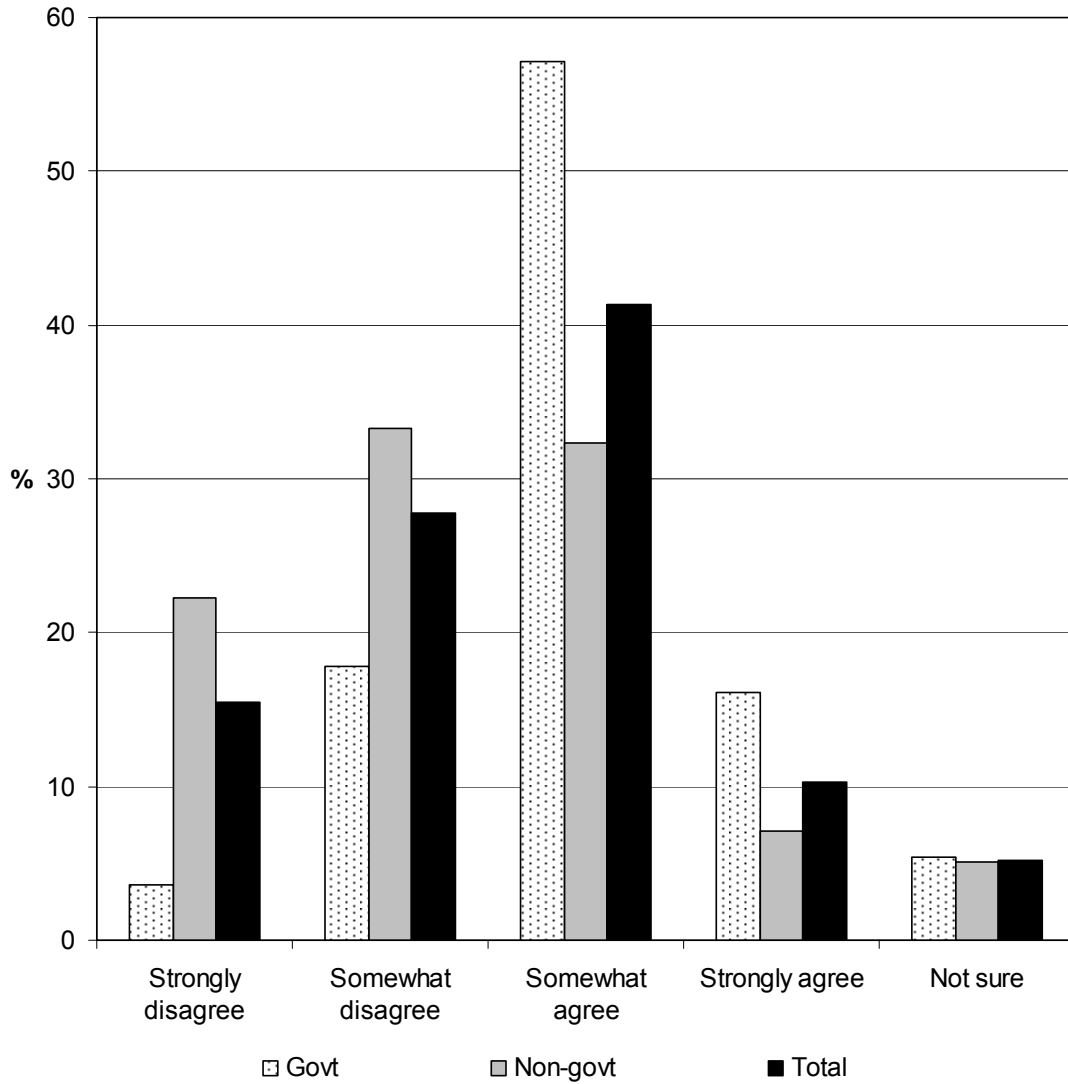
Respondents: Approved = 90, Particular manner= 65, Total = 155



Response (%)	Approved action	Particular manner	Total
Strongly disagree	19	11	15
Somewhat disagree	27	29	28
Somewhat agree	39	45	41
Strongly agree	10	11	10
Not sure	6	5	5
Total	100	100	100

By government/non-government proponent

Respondents: Government = 56, Non-government = 99, Total = 155

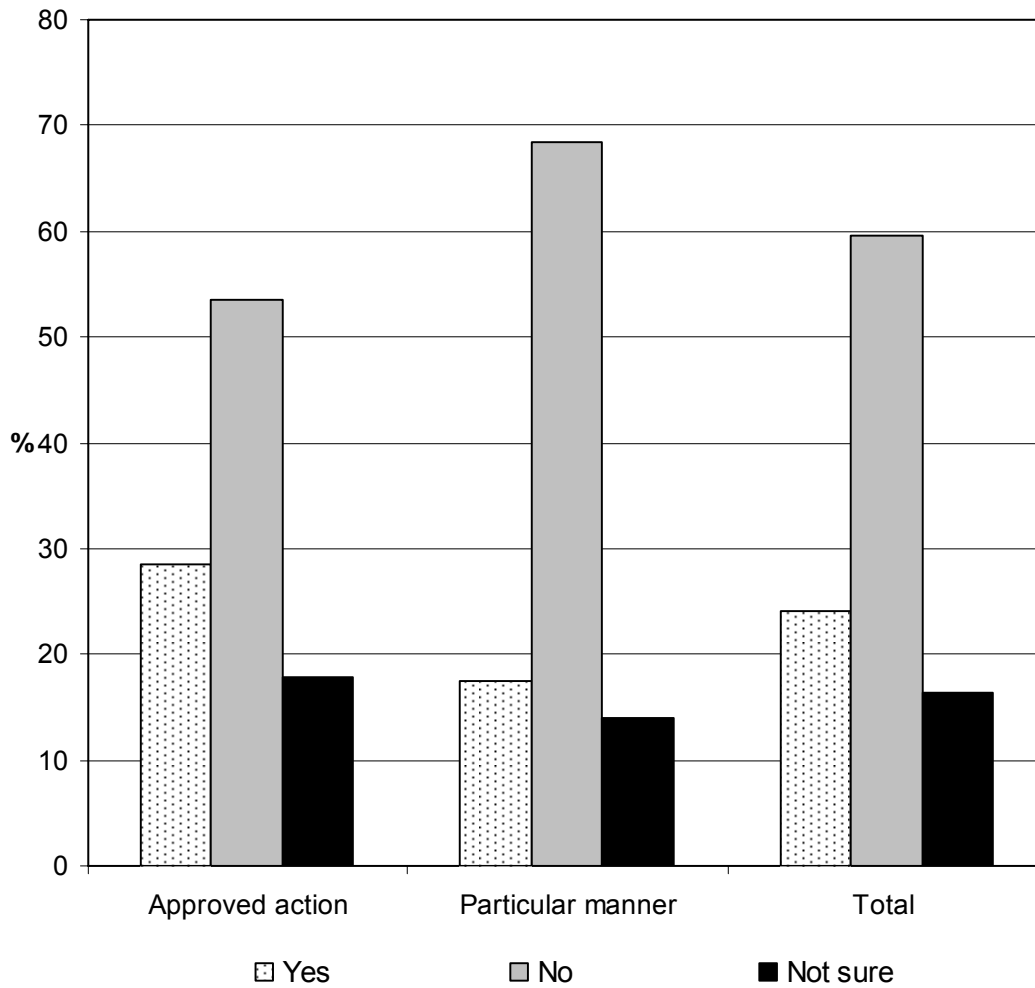


Response (%)	Govt	Non-govt	Total
Strongly disagree	4	22	15
Somewhat disagree	18	33	28
Somewhat agree	57	32	41
Strongly agree	16	7	10
Not sure	5	5	5
Total	100	100	100

Q13: Has the Federal Government, or an agent acting on behalf of the Federal Government, conducted a site visit to monitor compliance with the conditions imposed on your project?

By approval type

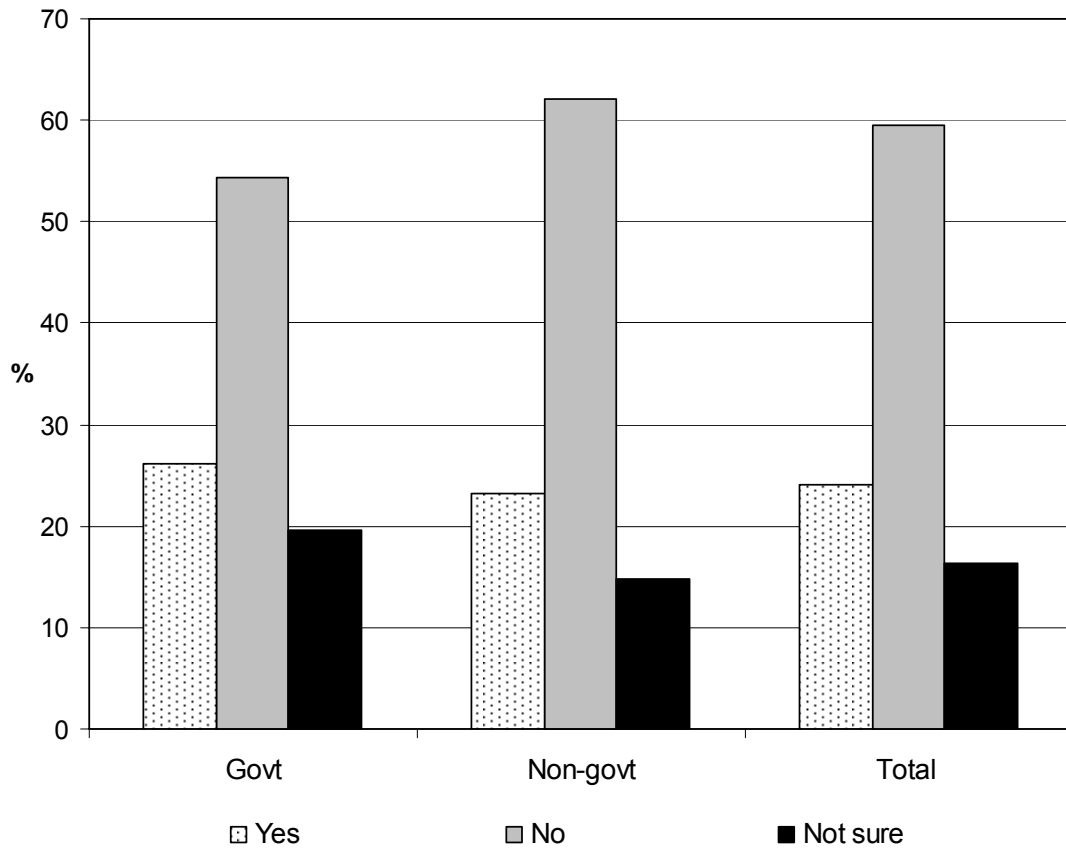
Respondents: Approved = 84, Particular manner= 57, Total = 141



Response (%)	Approved action	Particular manner	Total
Yes	29	18	24
No	54	68	60
Not sure	18	14	16
Total	100	100	100

By government/non-government proponent

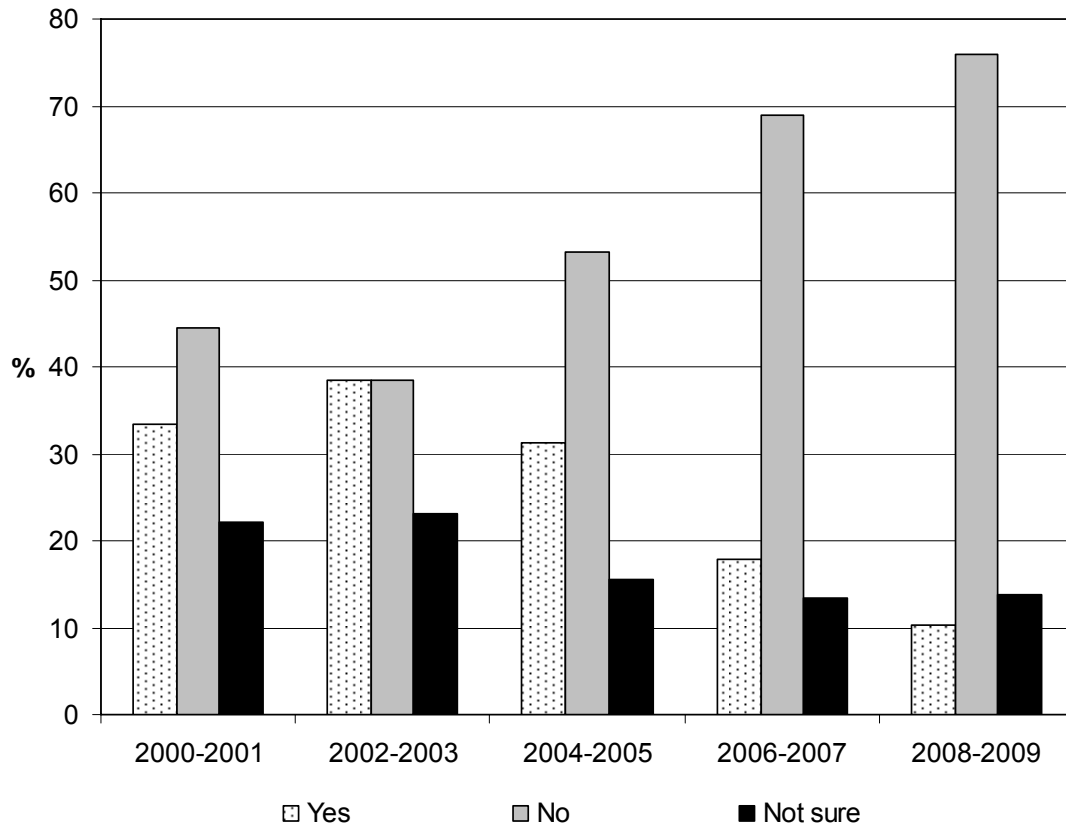
Respondents: Government = 46, Non-government = 95, Total = 141



Response (%)	Govt	Non-govt	Total
Yes	26	23	24
No	54	62	60
Not sure	20	15	16
Total	100	100	100

By referral date

Respondents: 2000-2001 = 9, 2002-2003 = 26, 2004-2005 = 32, 2006-2007 = 45, 2008-2009 = 29, Total = 141



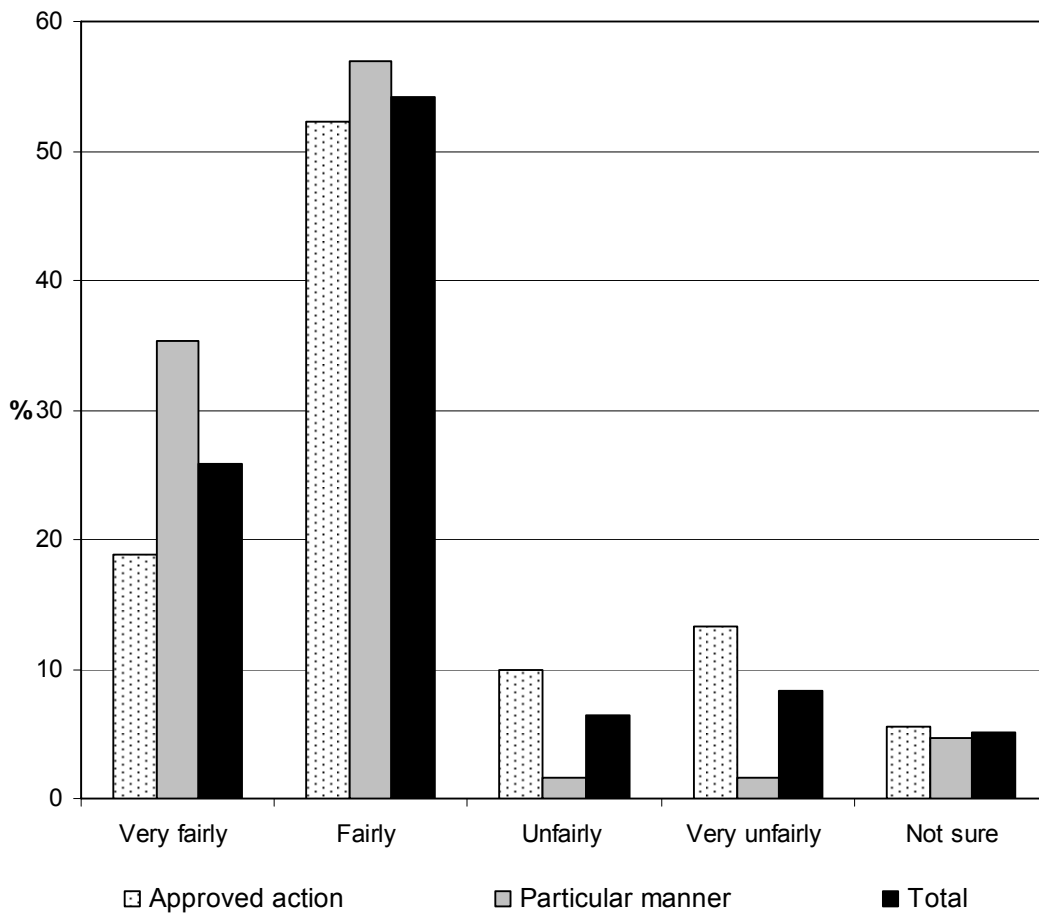
Response (%)	2000-2001	2002-2003	2004-2005	2006-2007	2008-2009
Yes	33	38	31	18	10
No	44	38	53	69	76
Not sure	22	23	16	13	14
Total	100	100	100	100	100

5.3 Fairness of the process

Q14: Did the Commonwealth Department of the Environment treat you and your project fairly or unfairly during the EPBC Act process?

By approval type

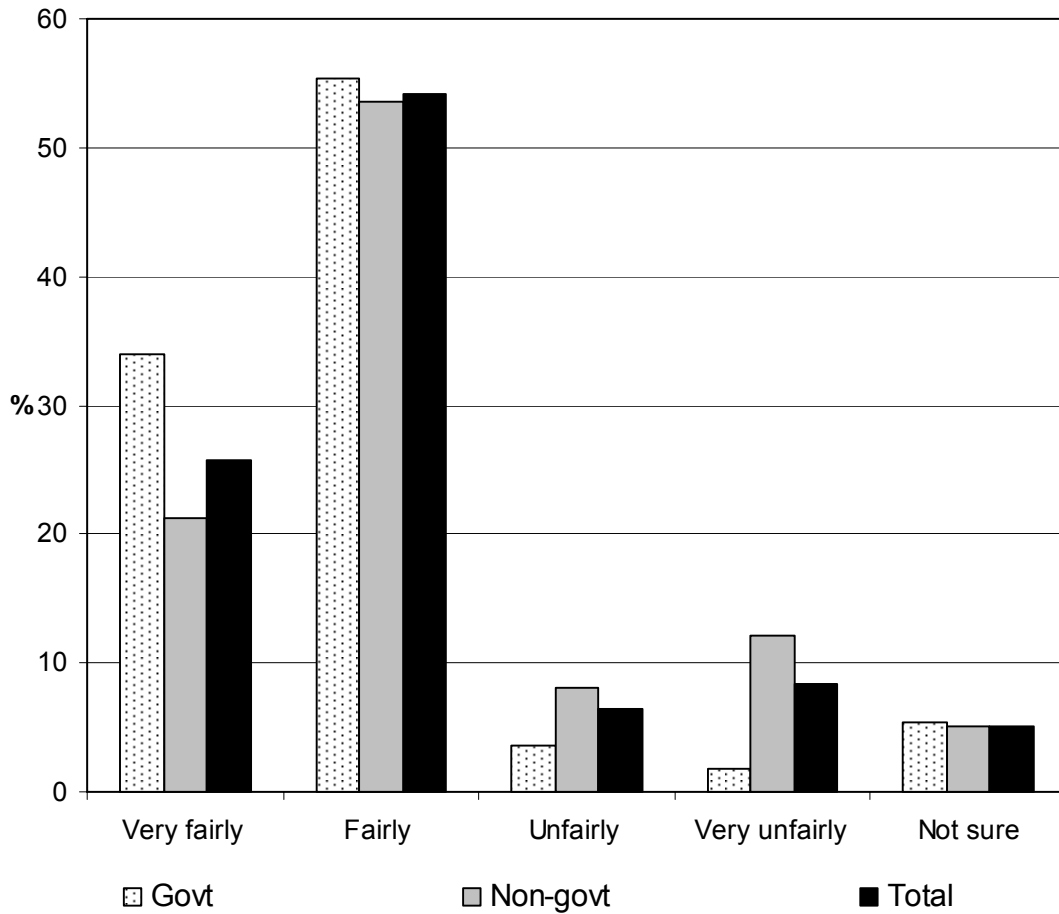
Respondents: Approved = 90, Particular manner= 65, Total = 155



Response (%)	Approved action	Particular manner	Total
Very fairly	19	35	26
Fairly	52	57	54
Unfairly	10	2	6
Very unfairly	13	2	8
Not sure	6	5	5
Total	100	100	100

By government/non-government proponent

Respondents: Government = 56, Non-government = 99, Total = 155

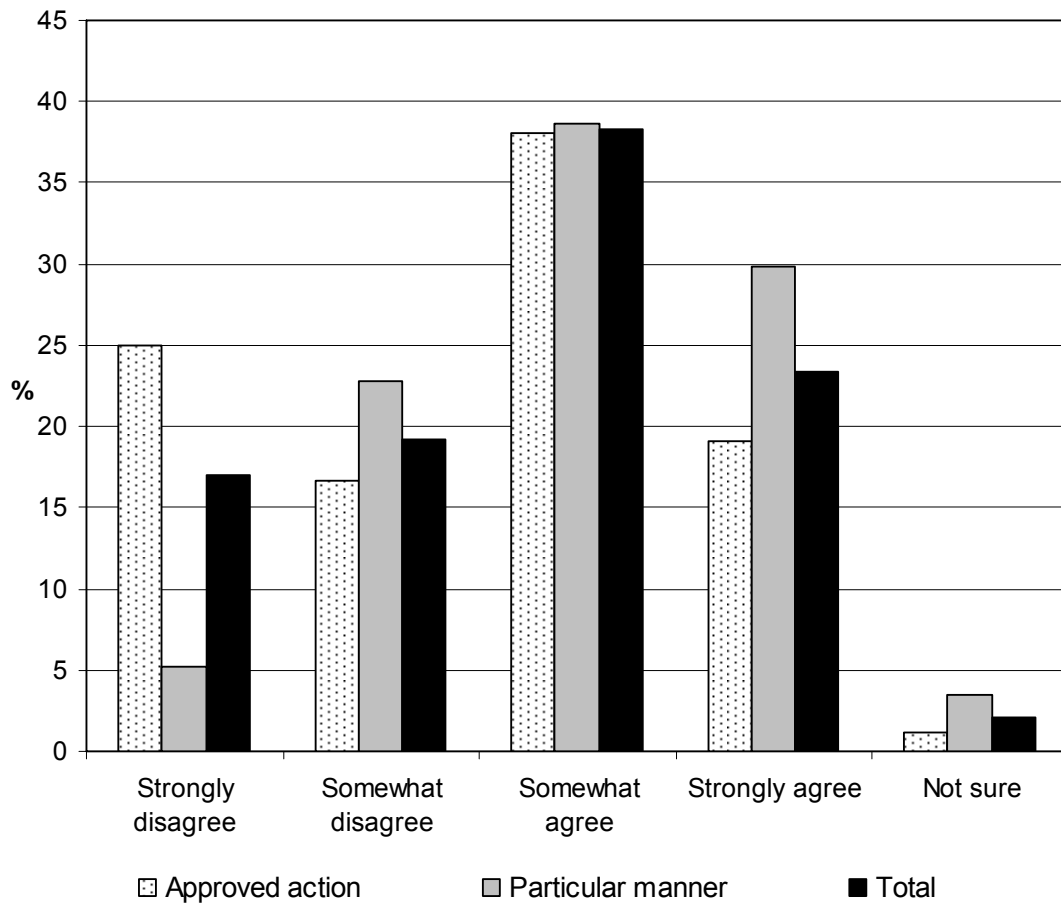


Response (%)	Govt	Non-govt	Total
Very fairly	34	21	26
Fairly	55	54	54
Unfairly	4	8	6
Very unfairly	2	12	8
Not sure	5	5	5
Total	100	100	100

Q15: The EPBC Act conditions were devised in a transparent manner that allowed me to understand their basis and purpose

By approval type

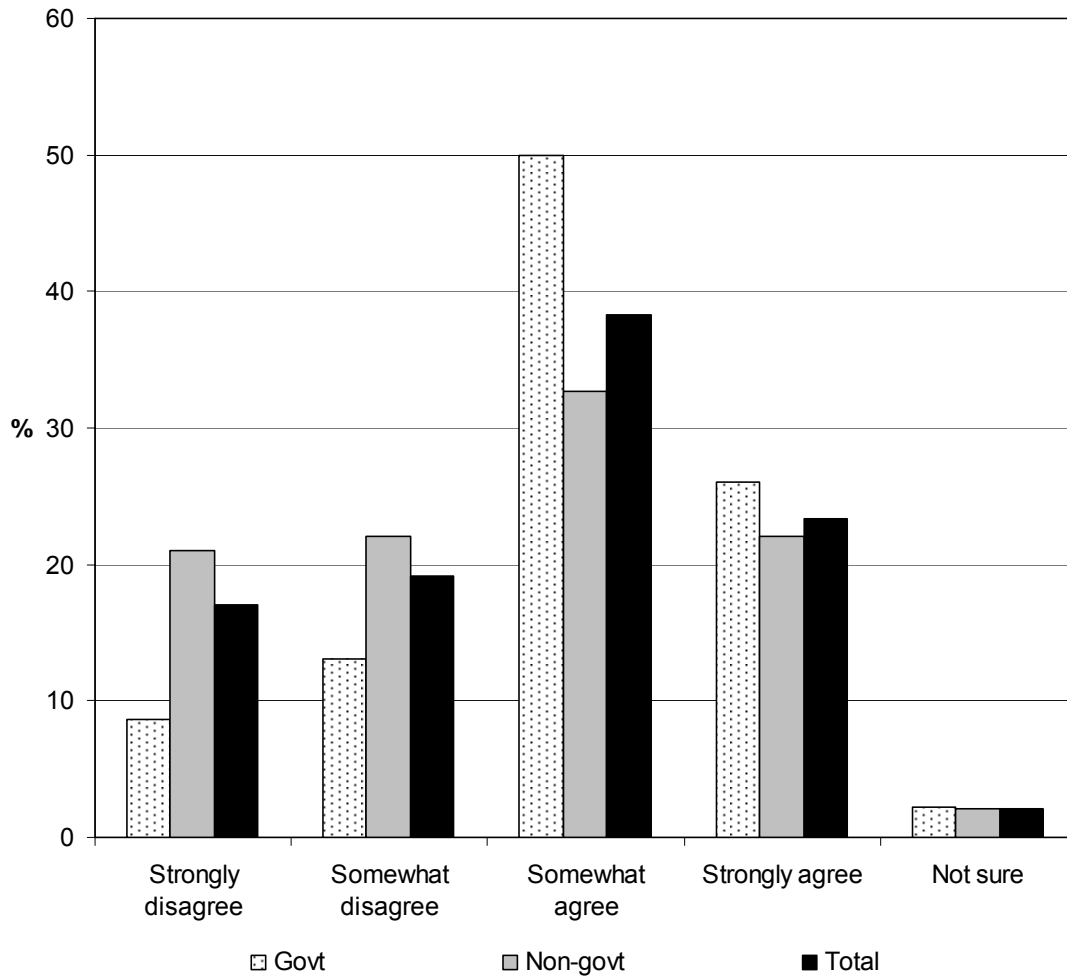
Respondents: Approved = 84, Particular manner= 57, Total = 141



Response (%)	Approved action	Particular manner	Total
Strongly disagree	25	5	17
Somewhat disagree	17	23	19
Somewhat agree	38	39	38
Strongly agree	19	30	23
Not sure	1	4	2
Total	100	100	100

By government/non-government proponent

Respondents: Government = 46, Non-government = 95, Total = 141

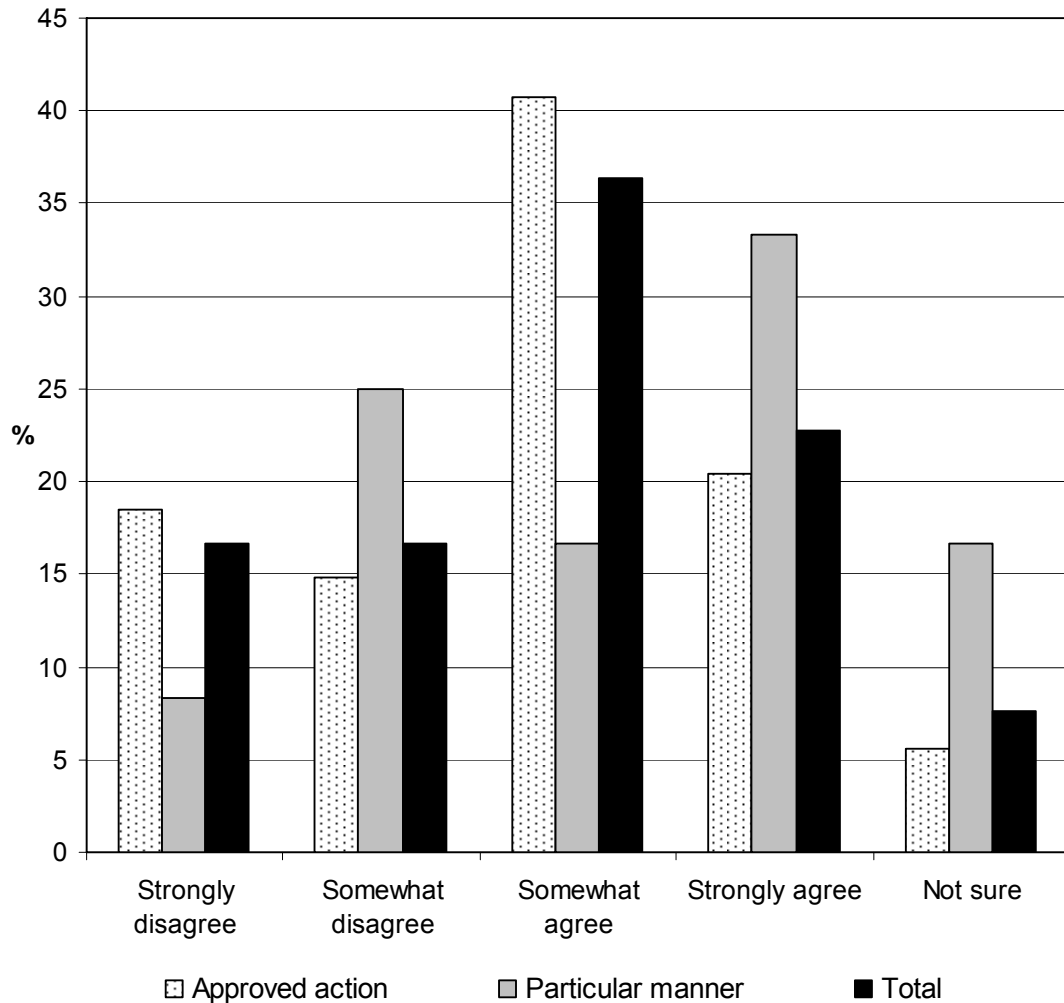


Response (%)	Govt	Non-govt	Total
Strongly disagree	9	21	17
Somewhat disagree	13	22	19
Somewhat agree	50	33	38
Strongly agree	26	22	23
Not sure	2	2	2
Total	100	100	100

Q16: If offset conditions were imposed on the project, the offset conditions were devised in a transparent manner that allowed me to understand their basis and purpose

By approval type

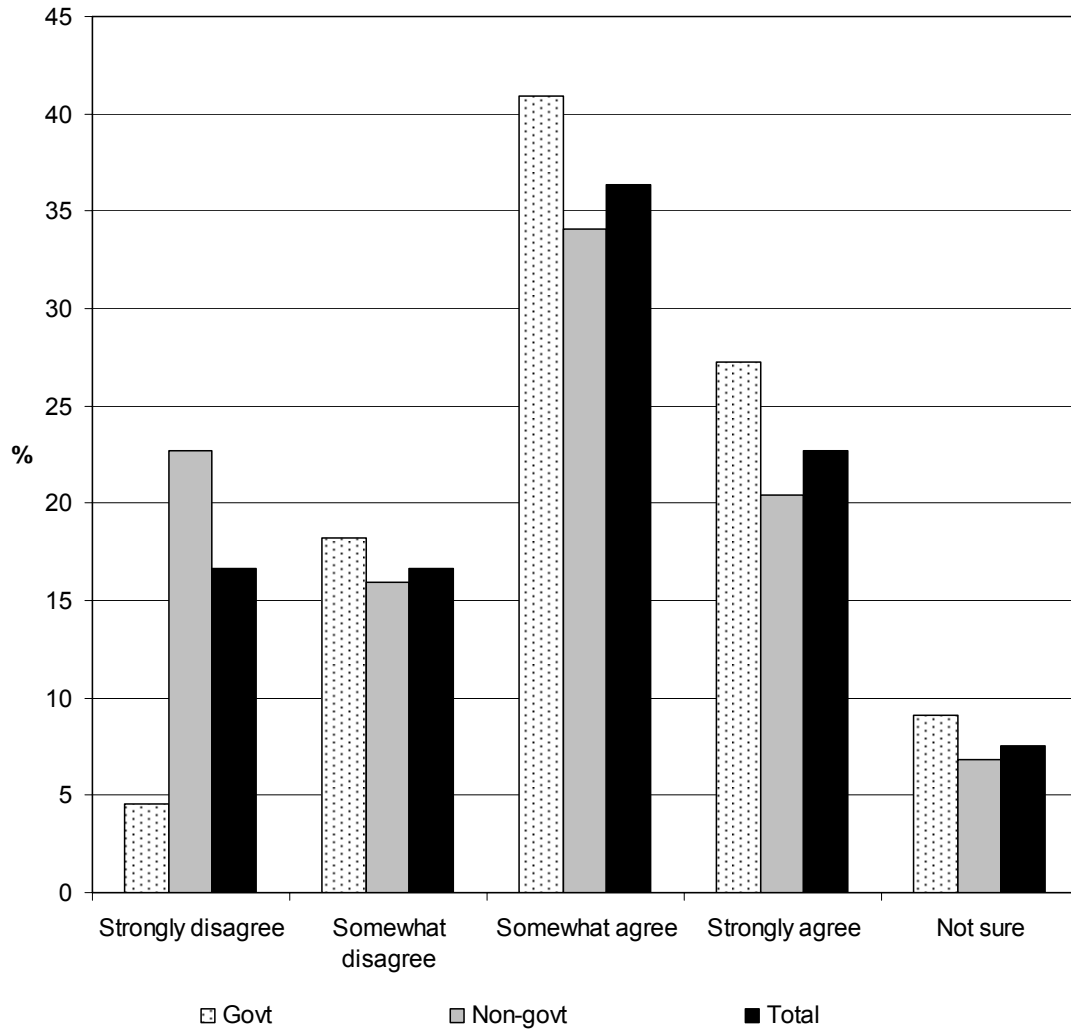
Respondents: Approved = 54, Particular manner= 12, Total = 66



Response (%)	Approved action	Particular manner	Total
Strongly disagree	19	8	17
Somewhat disagree	15	25	17
Somewhat agree	41	17	36
Strongly agree	20	33	23
Not sure	6	17	8
Total	100	100	100

By government/non-government proponent

Respondents: Government = 22, Non-government = 44, Total = 66

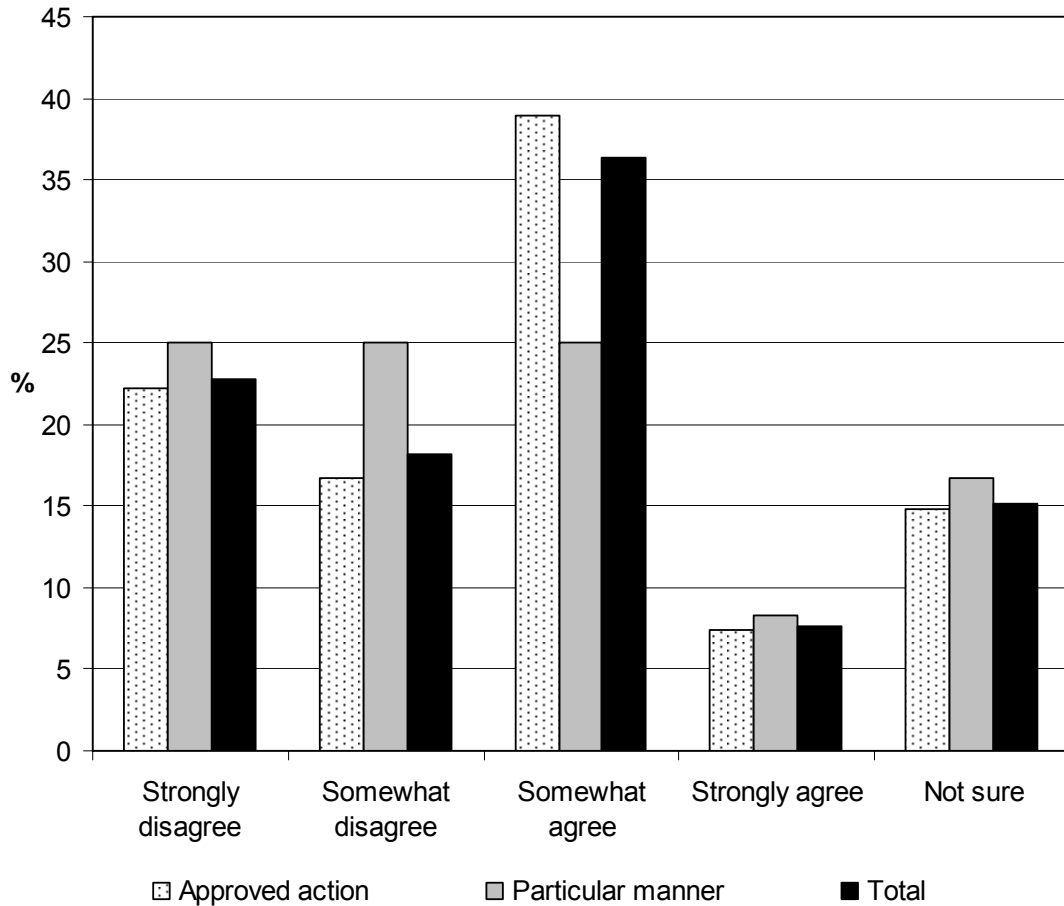


Response (%)	Govt	Non-govt	Total
Strongly disagree	5	23	17
Somewhat disagree	18	16	17
Somewhat agree	41	34	36
Strongly agree	27	20	23
Not sure	9	7	8
Total	100	100	100

Q17: If offset conditions were imposed on the project, the size or financial value of the offset(s) was devised on the basis of the environmental impacts of the project

By approval type

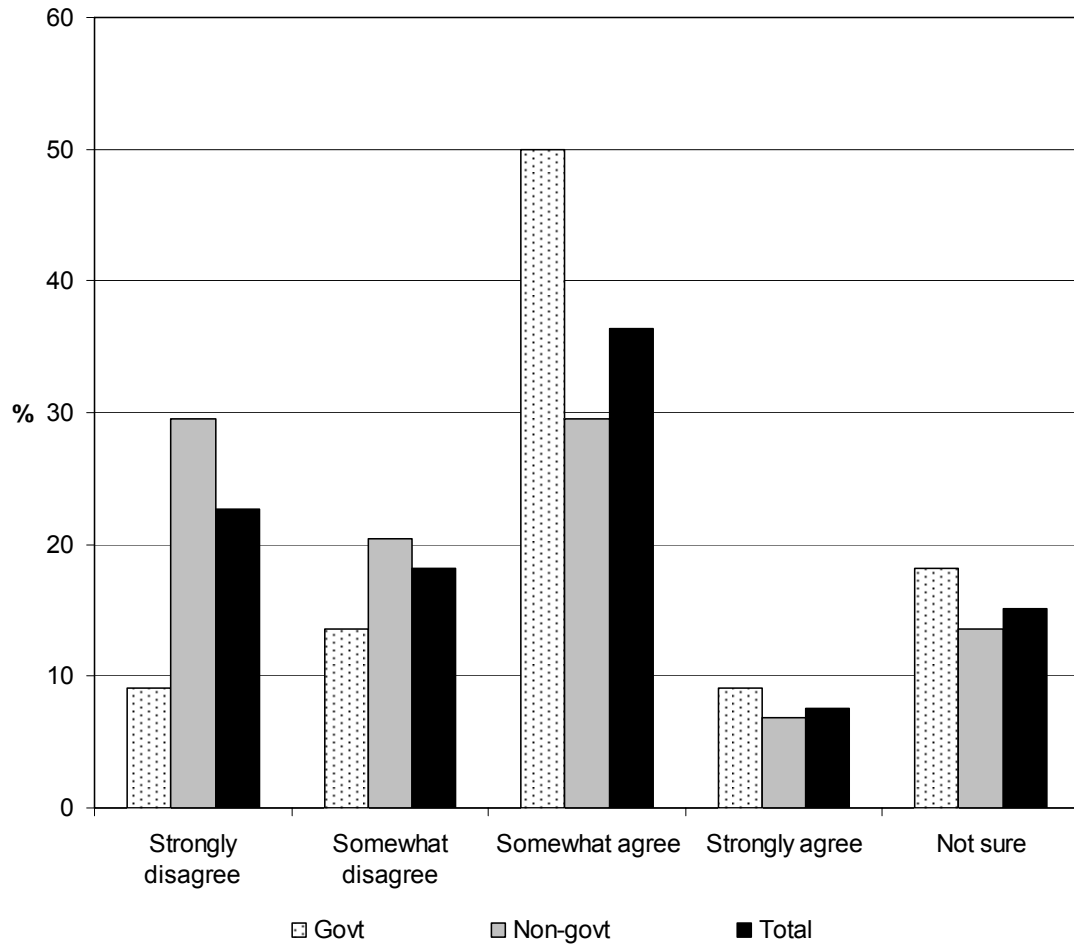
Respondents: Approved = 54, Particular manner= 12, Total = 66



Response (%)	Approved action	Particular manner	Total
Strongly disagree	22	25	23
Somewhat disagree	17	25	18
Somewhat agree	39	25	36
Strongly agree	7	8	8
Not sure	15	17	15
Total	100	100	100

By government/non-government proponent

Respondents: Government = 22, Non-government = 44, Total = 66

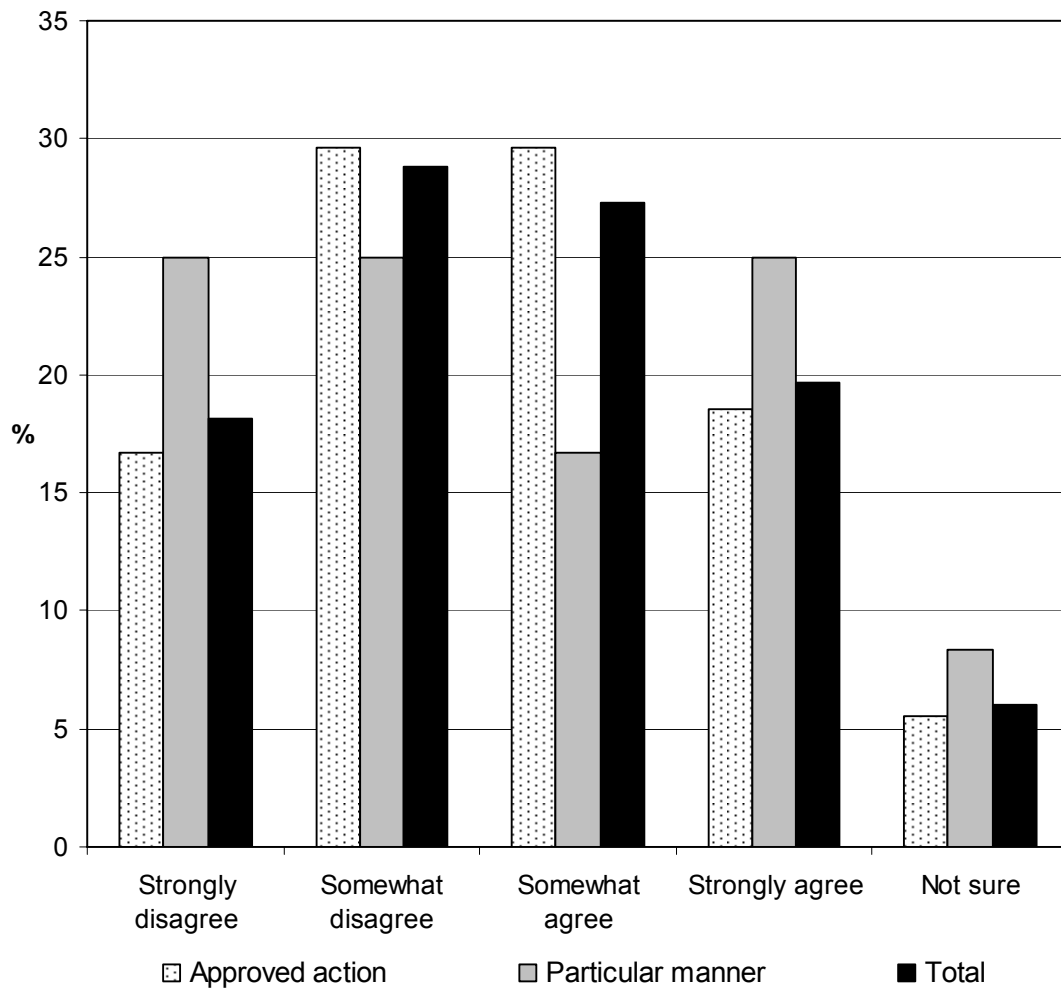


Response (%)	Govt	Non-govt	Total
Strongly disagree	9	30	23
Somewhat disagree	14	20	18
Somewhat agree	50	30	36
Strongly agree	9	7	8
Not sure	18	14	15
Total	100	100	100

Q18: If offset conditions were imposed on the project, the offset conditions were unfair on my business

By approval type

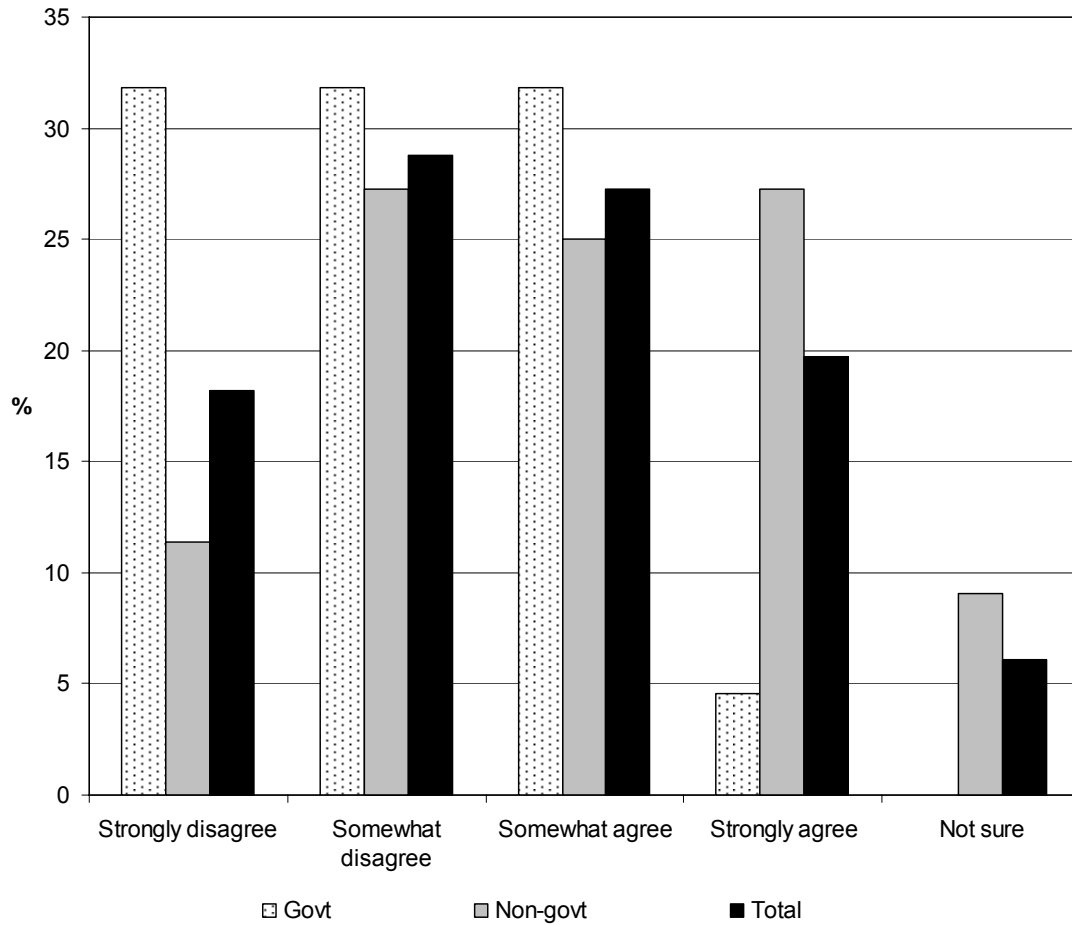
Respondents: Approved = 54, Particular manner= 12, Total = 66



Response (%)	Approved action	Particular manner	Total
Strongly disagree	17	25	18
Somewhat disagree	30	25	29
Somewhat agree	30	17	27
Strongly agree	19	25	20
Not sure	6	8	6
Total	100	100	100

By government/non-government proponent

Respondents: Government = 22, Non-government = 44, Total = 66

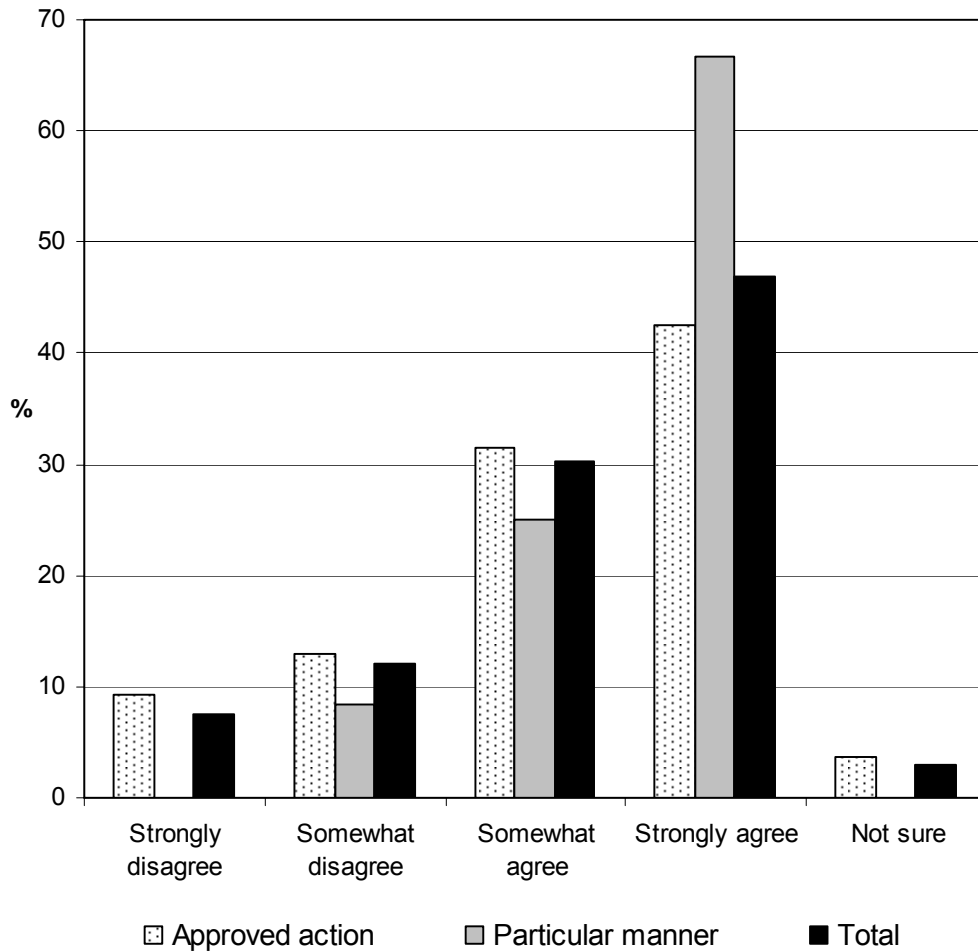


Response (%)	Govt	Non-govt	Total
Strongly disagree	32	11	18
Somewhat disagree	32	27	29
Somewhat agree	32	25	27
Strongly agree	5	27	20
Not sure	0	9	6
Total	100	100	100

Q19: If offset conditions were imposed on the project, the offset conditions were the main way the Commonwealth Environment Department tried to improve the environmental outcomes of the project

By approval type

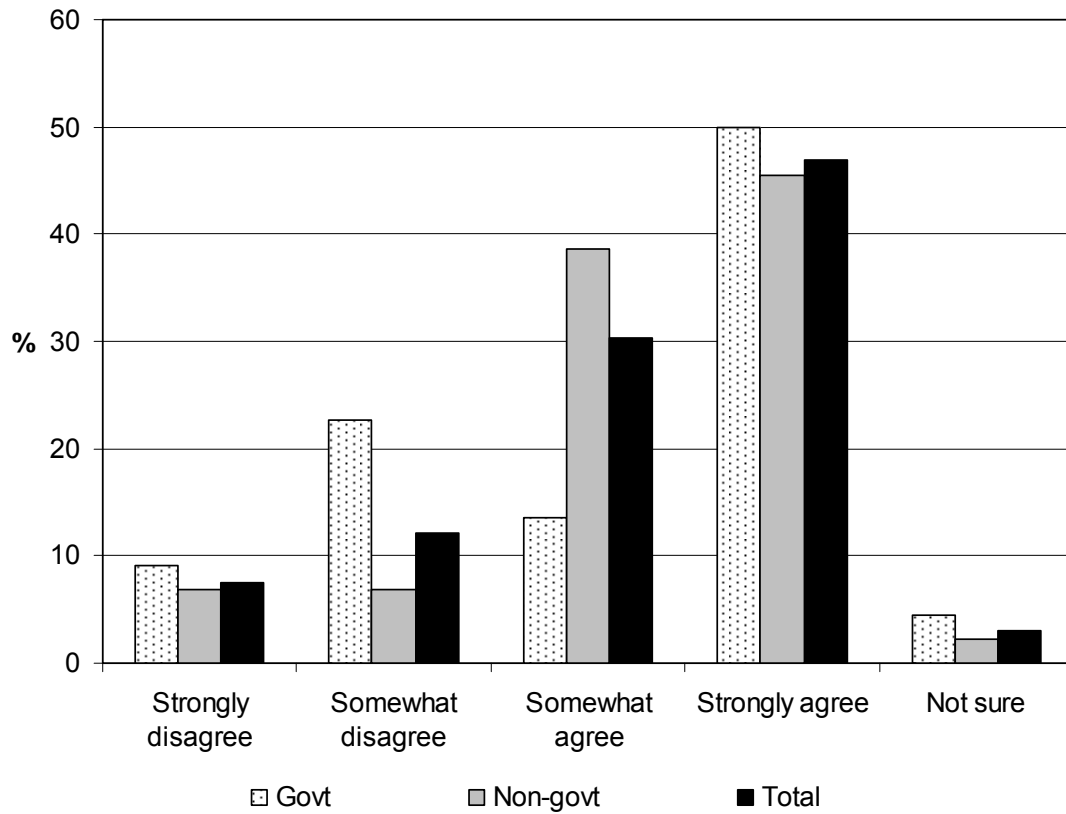
Respondents: Approved = 54, Particular manner= 12, Total = 66



Response (%)	Approved action	Particular manner	Total
Strongly disagree	9	0	8
Somewhat disagree	13	8	12
Somewhat agree	31	25	30
Strongly agree	43	67	47
Not sure	4	0	3
Total	100	100	100

By government/non-government proponent

Respondents: Government = 22, Non-government = 44, Total = 66

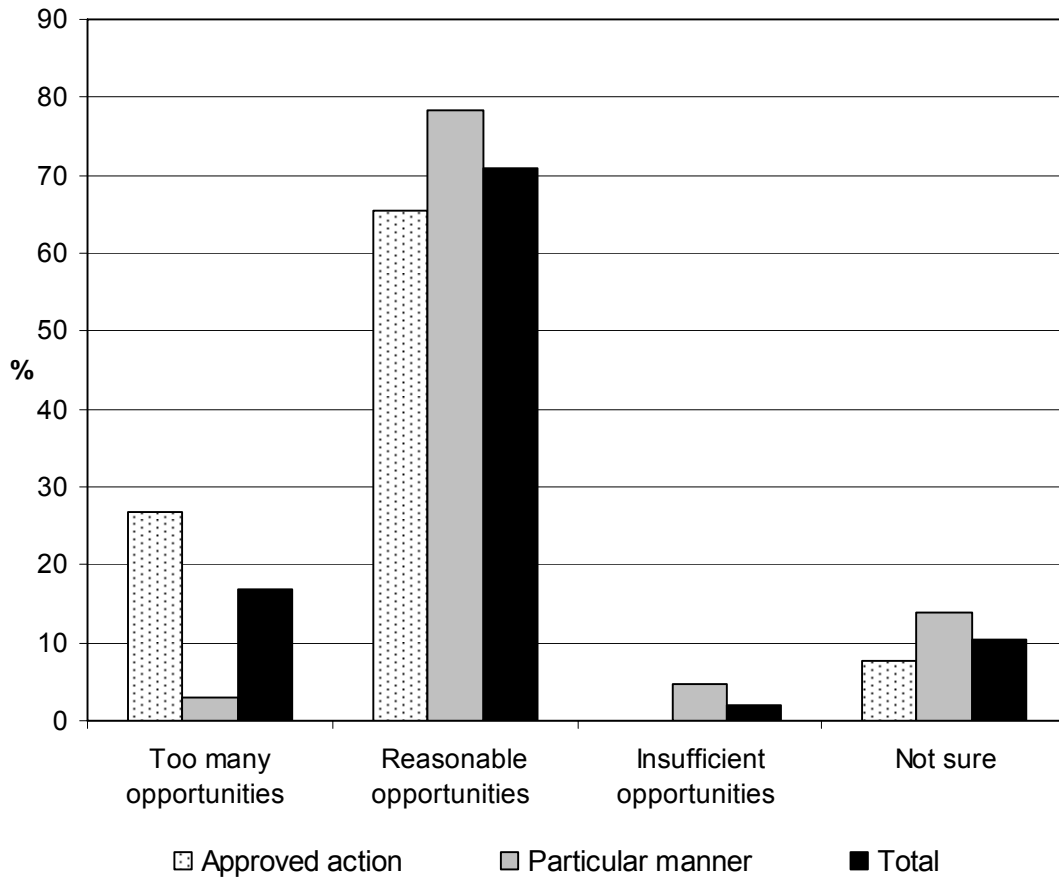


Response (%)	Govt	Non-govt	Total
Strongly disagree	9	7	8
Somewhat disagree	23	7	12
Somewhat agree	14	39	30
Strongly agree	50	45	47
Not sure	5	2	3
Total	100	100	100

Q20: In your opinion, were other interested parties (e.g. members of the public, environment groups etc.) given too many/reasonable/insufficient opportunities to participate in the EPBC Act decision making process?

By approval type

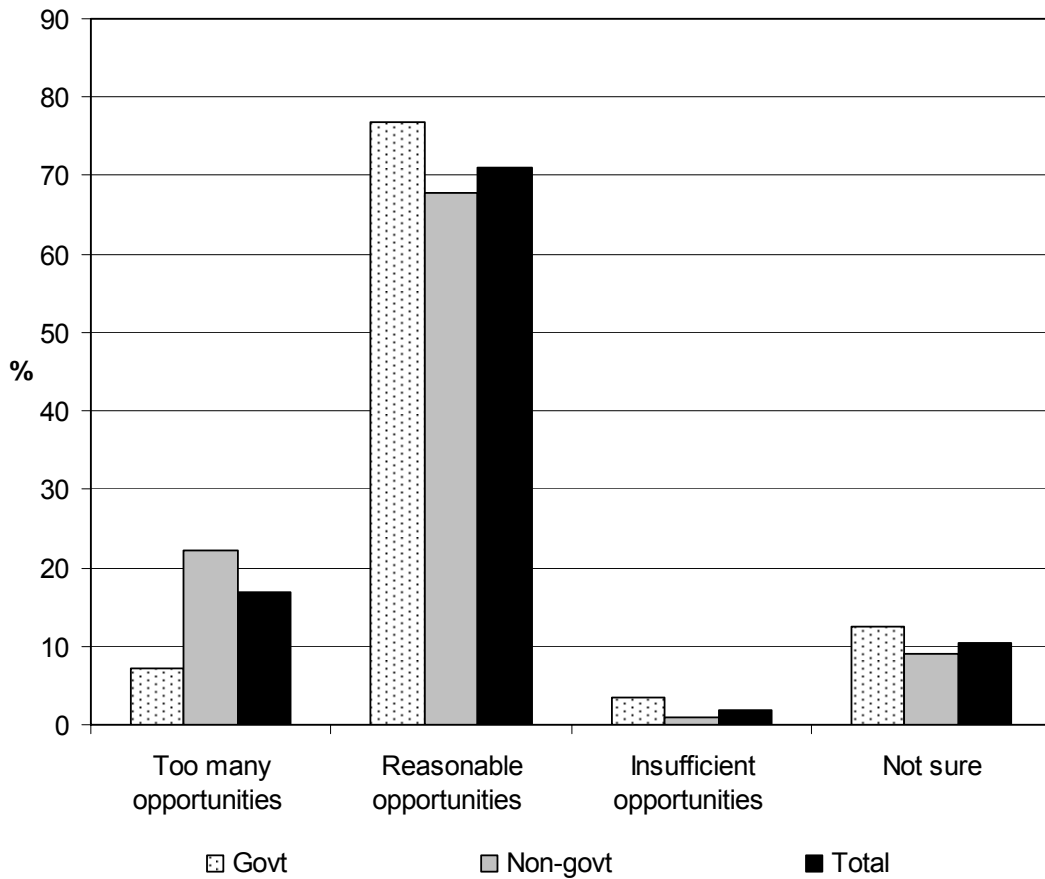
Respondents: Approved = 90, Particular manner= 65, Total = 155



Response (%)	Approved action	Particular manner	Total
Too many opportunities	27	3	17
Reasonable opportunities	66	78	71
Insufficient opportunities	0	5	2
Not sure	8	14	10
Total	100	100	100

By government/non-government proponent

Respondents: Government = 56, Non-government = 99, Total = 155



Response (%)	Govt	Non-govt	Total
Too many opportunities	7	22	17
Reasonable opportunities	77	68	71
Insufficient opportunities	4	1	2
Not sure	13	9	10
Total	100	100	100

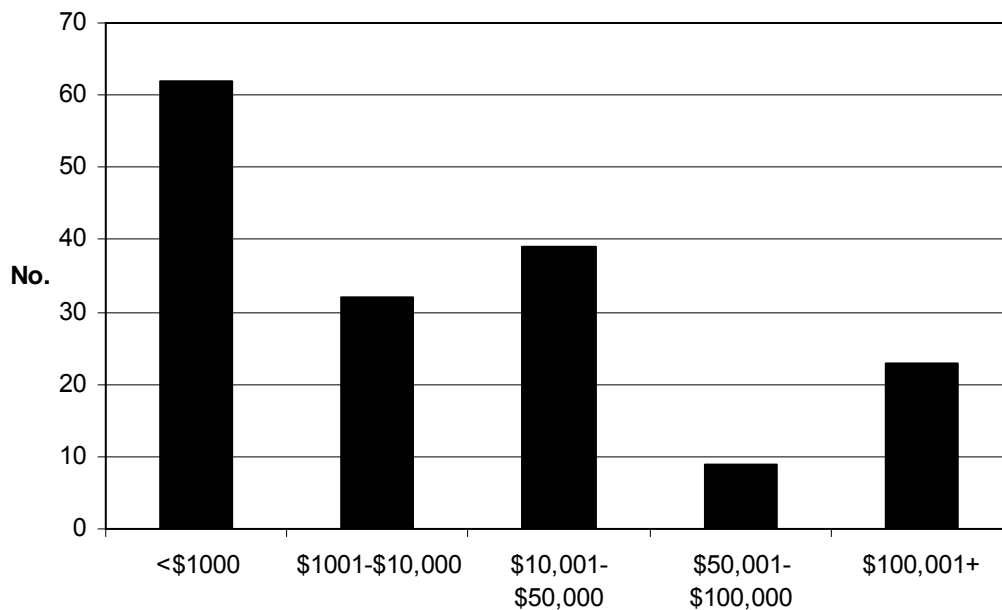
5.4 Proponent costs

Q21: Please estimate the cost of referring the project under the EPBC Act

Totals

Respondents: 165

Distribution of referral cost responses – totals



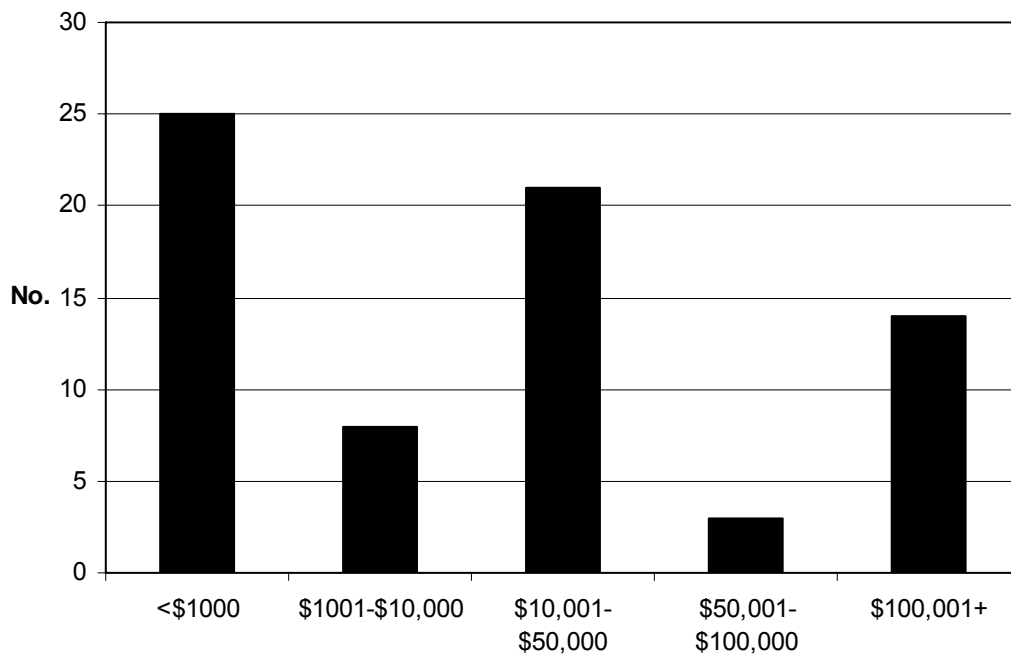
Mean and median: referral costs – totals

	Total sample	10-90% range
Number of respondents	165	134
Mean (\$)	144,523	26,090
Median (\$)	5,000	5,000

Approved action referrals

Respondents: 71

Distribution of referral cost responses – approved actions



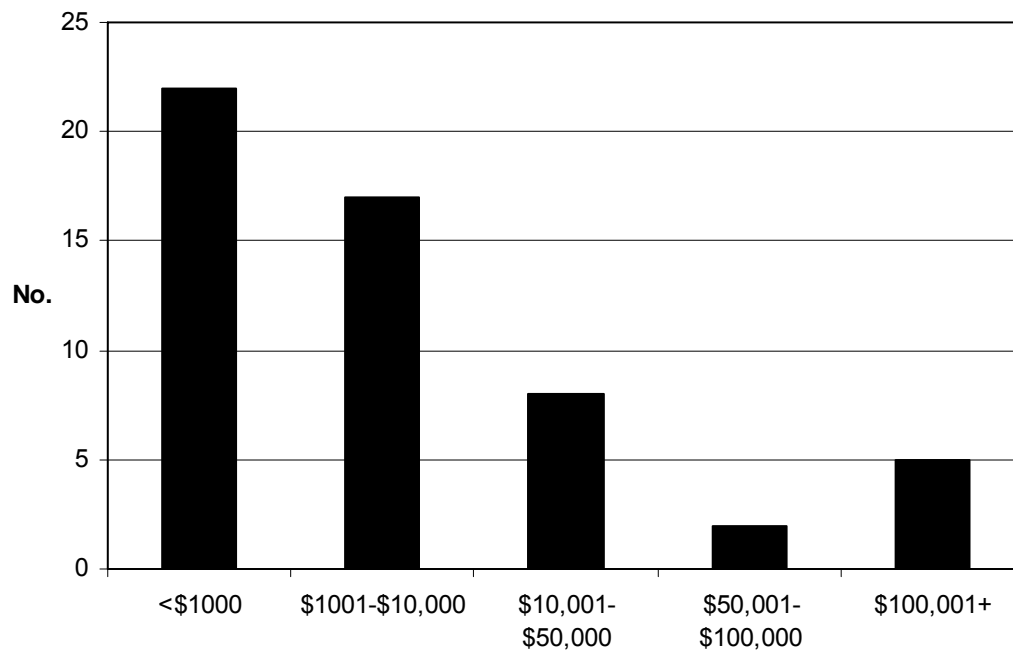
Mean and median: referral costs – approved actions

	Total sample	10-90% range
Number of respondents	71	58
Mean (\$)	247,998	41,513
Median (\$)	15,000	15,000

Particular manner actions

Respondents: 54

Distribution of referral cost responses – particular manner actions



Mean and median: referral costs – particular manner actions

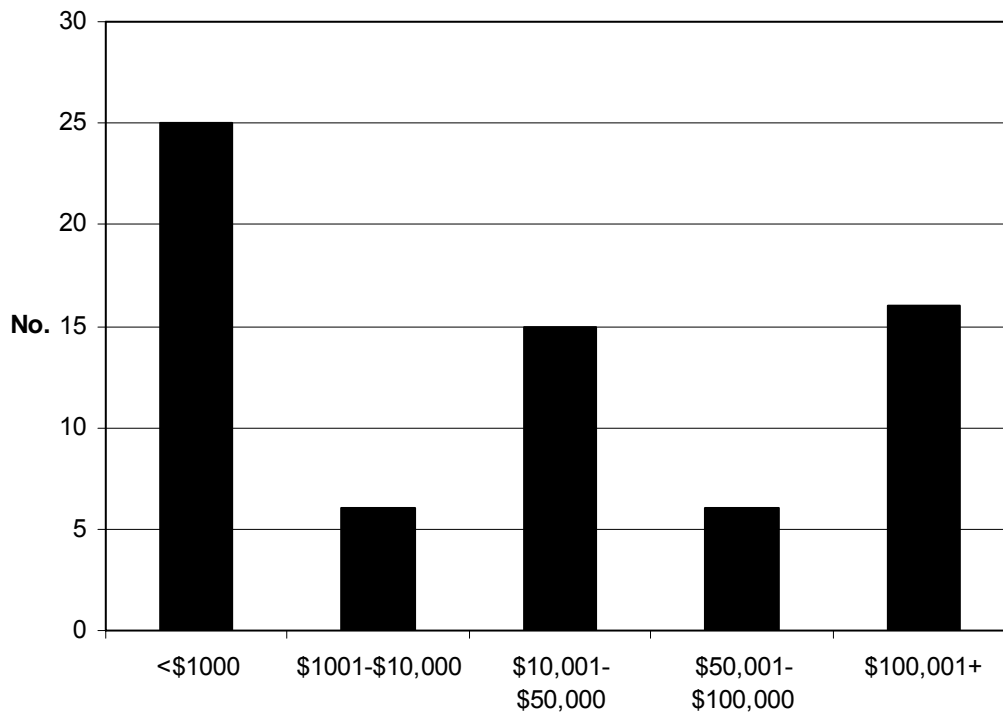
	Total sample	10-90% range
Number of respondents	54	45
Mean (\$)	34,062	11,430
Median (\$)	4,000	5,000

Q22: Please estimate the cost of the EPBC Act assessment process (If the project was assessed under the EPBC Act via an accredited state/territory or other federal process, only count the costs 'added' by the EPBC Act process)

Totals

Respondents: 68

Distribution of assessment cost responses – totals



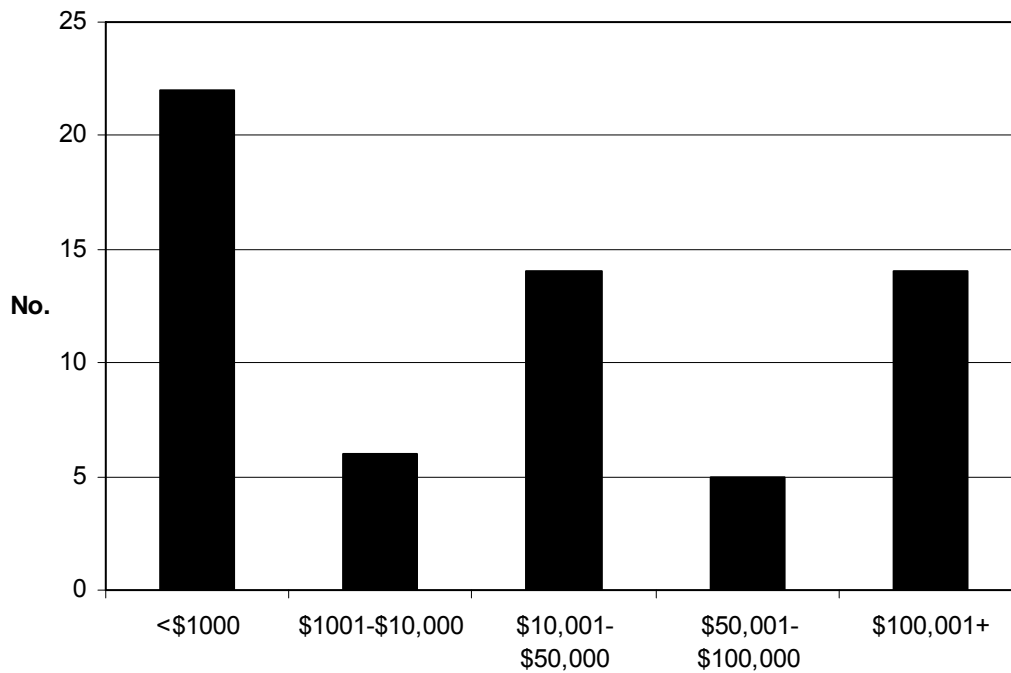
Mean and median: assessment costs – totals

	Total sample	10-90% range
Number of respondents	68	55
Mean (\$)	305,972	47,928
Median (\$)	20,000	20,000

Approved actions

Respondents: 61

Distribution of assessment cost responses – approved actions



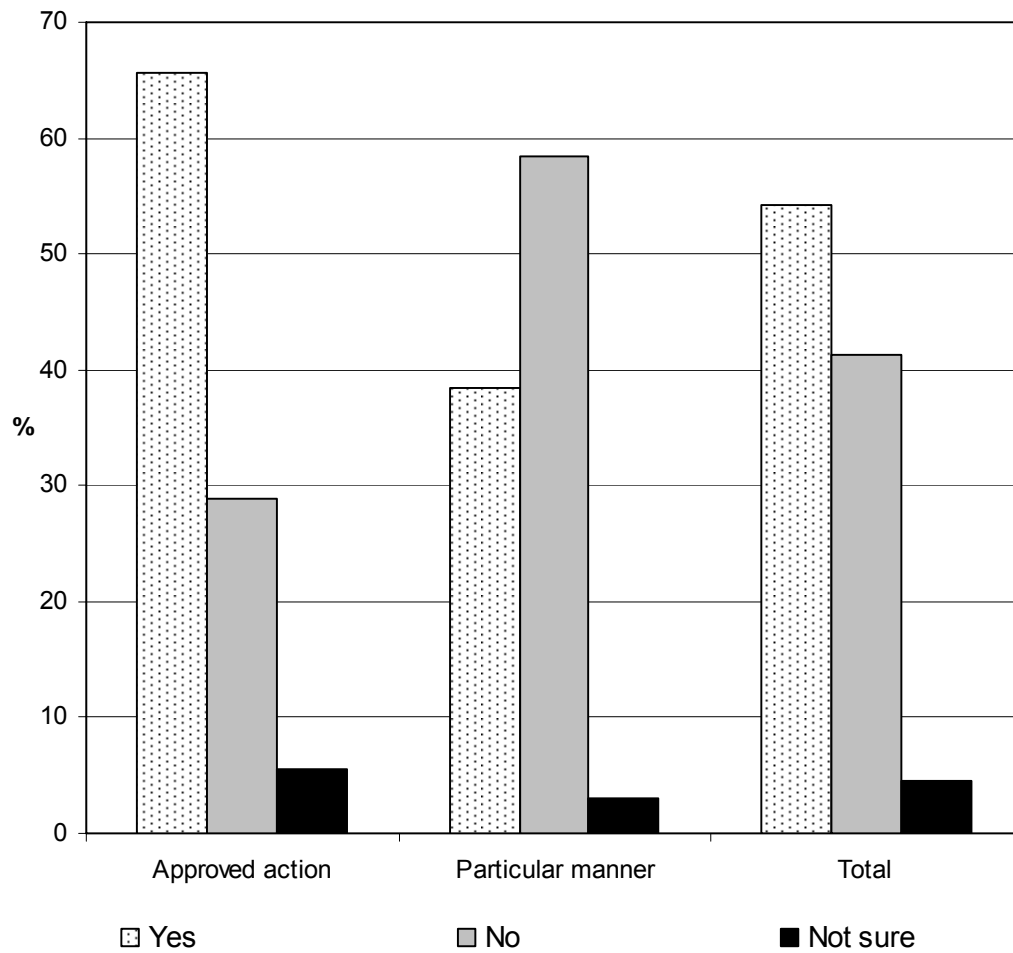
Mean and median: assessment costs – approved actions

	Total sample	10-90% range
Number of respondents	61	50
Mean (\$)	213,042	46,511
Median (\$)	20,000	20,000

Q23: Did the EPBC Act process delay the commencement of your project?

By approval type

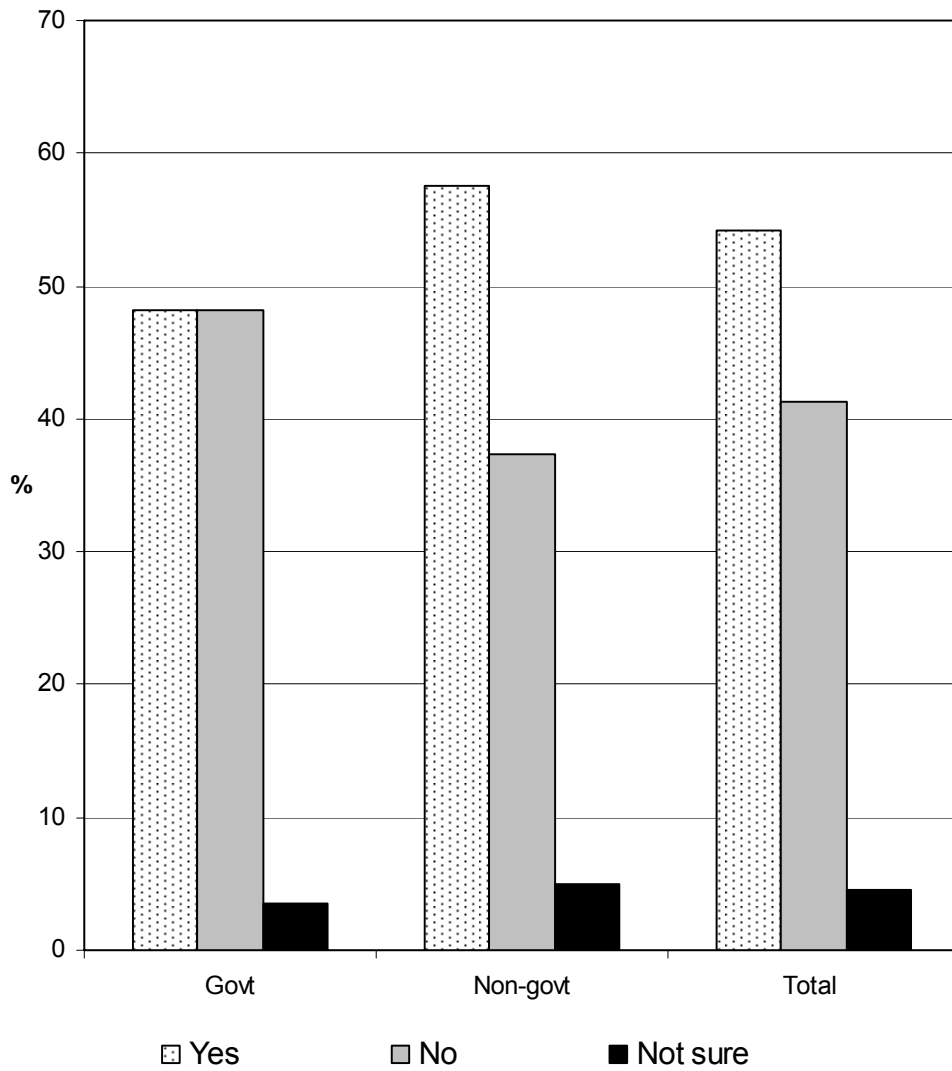
Respondents: Approved = 90, Particular manner= 65, Total = 155



Response (%)	Approved action	Particular manner	Total
Yes	66	38	54
No	29	58	41
Not sure	6	3	5
Total	100	100	100

By government/non-government proponent

Respondents: Government = 56, Non-government = 99, Total = 155



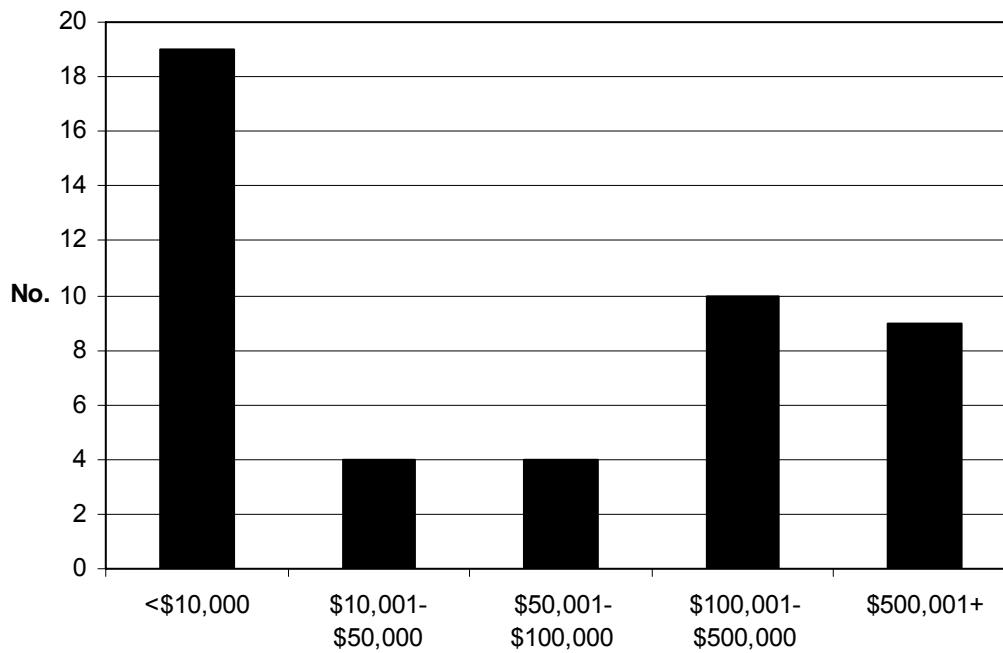
Response (%)	Govt	Non-govt	Total
Yes	48	58	54
No	48	37	41
Not sure	4	5	5
Total	100	100	100

Q24: Please estimate the cost of the delay that was due to the EPBC Act process

Totals

Respondents: 46

Distribution of delay cost responses – totals



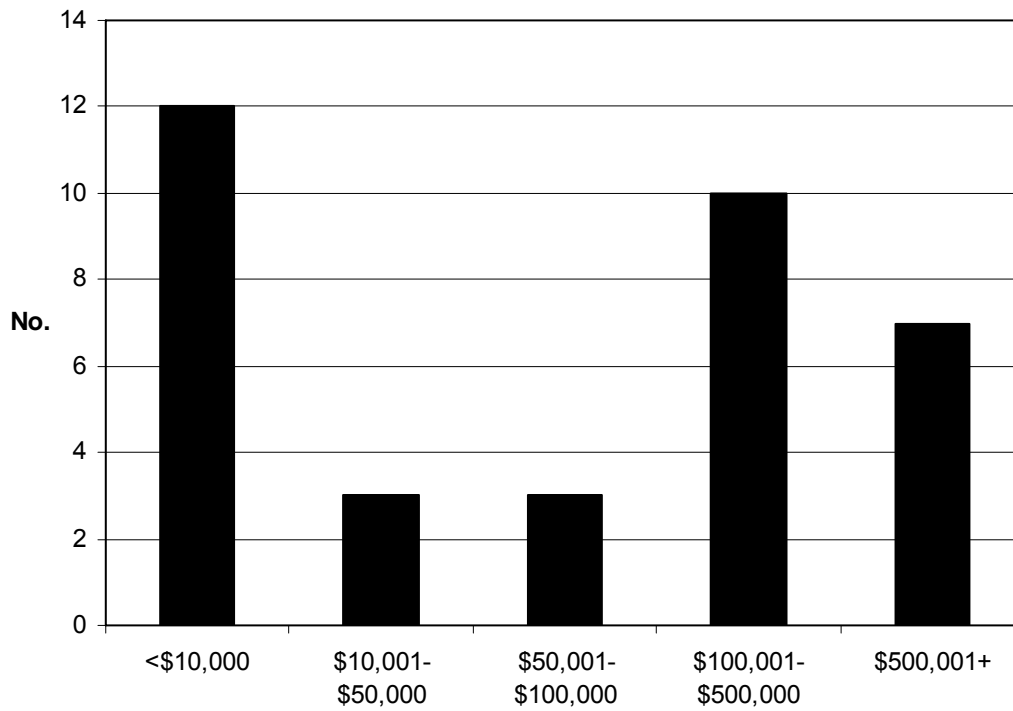
Mean and median: delay costs – totals

	Total sample	10-90% range
Number of respondents	46	37
Mean (\$)	633,165	212,581
Median (\$)	50,000	50,000

Approved actions

Respondents: 35

Distribution of delay cost responses – approved actions



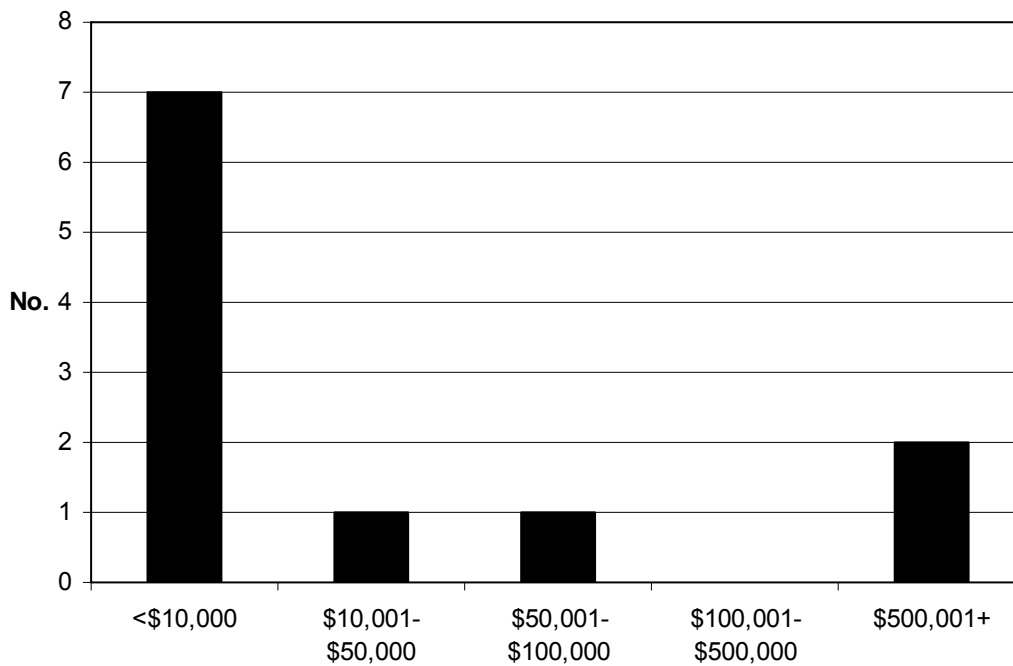
Mean and median: delay costs – approved actions

	Total sample	10-90% range
Number of respondents	35	29
Mean (\$)	756,995	301,195
Median (\$)	100,000	100,000

Particular manner actions

Respondents: 11

Distribution of delay cost responses – particular manner actions



Mean and median: delay costs – particular manner actions

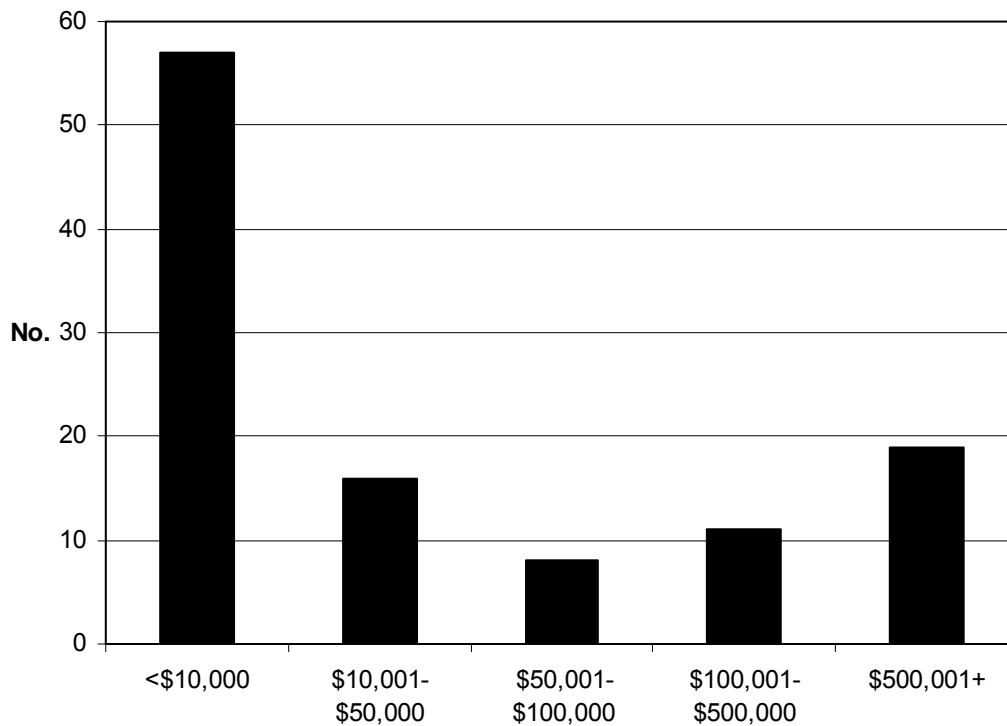
	Total sample	10-90% range
Number of respondents	11	10
Mean (\$)	239,162	263,070
Median (\$)	100	100

Q25: Please estimate the cost of complying with the EPBC Act conditions that were imposed on your project (If similar conditions were imposed under another regulatory regime, only count the ‘additional’ cost of complying with the EPBC conditions)

Totals

Respondents: 91

Distribution of compliance cost responses – totals



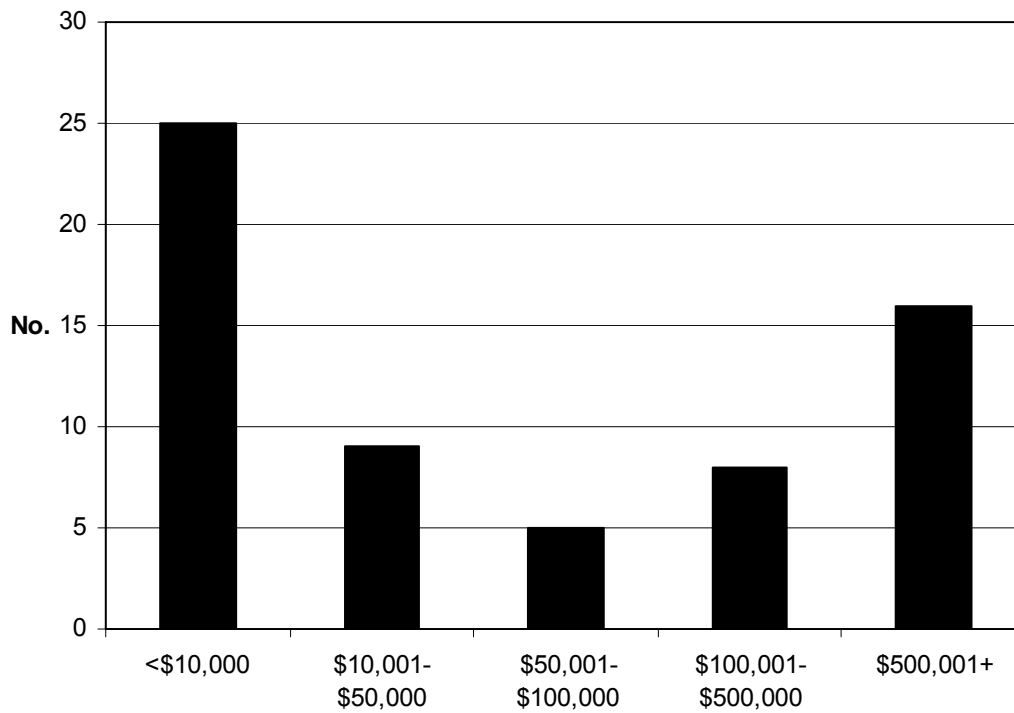
Mean and median: compliance costs – totals

	Total sample	10-90% range
Number of respondents	111	90
Mean (\$)	789,385	156,908
Median (\$)	10,000	10,000

Approved actions

Respondents: 63

Distribution of compliance cost responses – approved actions



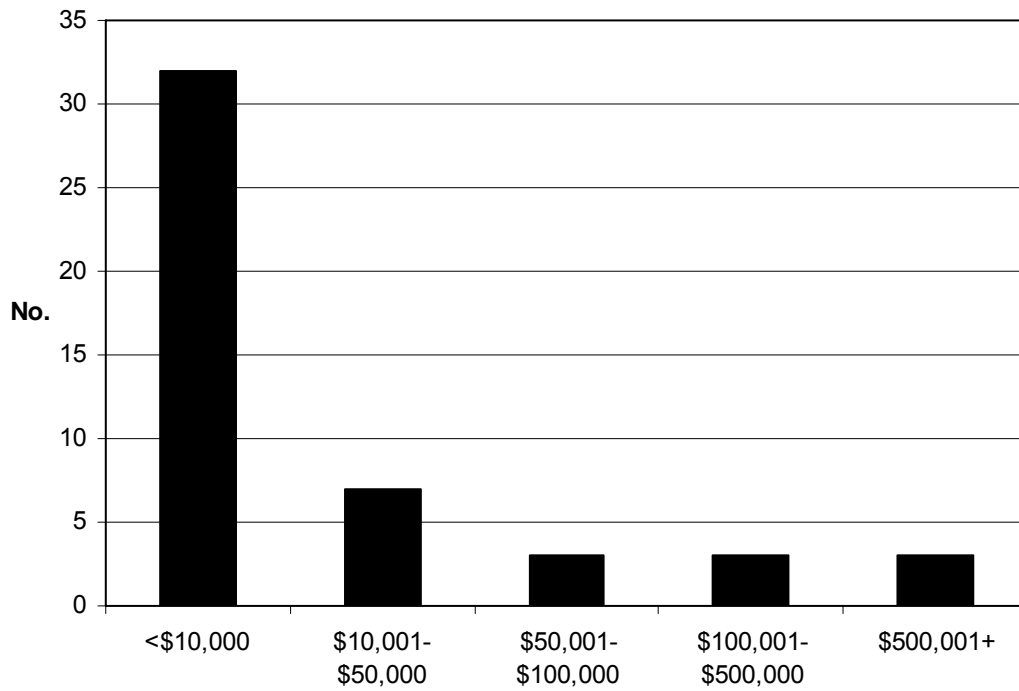
Mean and median: compliance costs – approved actions

	Total sample	10-90% range
Number of respondents	63	52
Mean (\$)	1,277,523	374,691
Median (\$)	50,000	50,000

Particular manner actions

Respondents: 48

Distribution of compliance cost responses – particular manner actions



Mean and median: compliance costs – particular manner actions

	Total sample	10-90% range
Number of respondents	48	39
Mean (\$)	148,704	16,354
Median (\$)	500	500

Estimated average proponent cost – approved projects (nominal AU\$)

	High estimate*	Low estimate*
<i>With delay</i>		
Referral	247,998	41,513
Assessment	213,042	46,511
Delay	756,995	301,195
Compliance	1,277,523	374,691
Total	2,495,558	763,911
<i>Without delay</i>		
Referral	247,998	41,513
Assessment	213,042	46,511
Compliance	1,277,523	374,691
Total	1,738,564	462,716
<i>Weighted average</i>		
Total	2,234,819	660,167

* The high estimate is calculated using the mean from the total sample. The low estimate is calculated using the mean from the 10-90% range of the sample.

Estimated total proponent cost – all approved projects from 16 July 2000 to 10 June 2009

	High estimate*	Low estimate*
Projects	299	299
Average cost (AU\$)	2,234,819	660,167
Total (AU\$)	668,210,927	197,389,957

* The high estimate is calculated using the mean from the total sample. The low estimate is calculated using the mean from the 10-90% range of the sample.

Estimated average proponent cost – particular manner actions (nominal AU\$)

	High estimate*	Low estimate*
<i>With delay</i>		
Referral	34,062	11,430
Delay	239,162	263,070
Compliance	148,704	16,354
Total	421,928	290,854
<i>Without delay</i>		
Referral	34,062	11,430
Compliance	148,704	16,354
Total	182,766	27,784
<i>Weighted average</i>		
Total	274,748	128,960

* The high estimate is calculated using the mean from the total sample. The low estimate is calculated using the mean from the 10-90% range of the sample.

Estimated total proponent cost – all particular manner actions from 16 July 2000 to 10 June 2009

	High estimate*	Low estimate*
Projects	538	538
Average cost (AU\$)	274,748	128,960
Total (AU\$)	147,814,489	69,380,694

* The high estimate is calculated using the mean from the total sample. The low estimate is calculated using the mean from the 10-90% range of the sample.

5.5 Respondent comments

Q26: In your opinion, how could the EPBC Act process be improved?

Respondents: 116

The Table below shows the main topic areas referred to by respondents.

Main topics of suggested changes

Topic	No. of responses that refer to the issue
Remove regulatory duplication – better integration with other federal/state/territory processes	66
Need for greater certainty in the process (e.g. when referrals should be made, application of significant impact test, nature of assessment/approval requirements)	18
Improvement in Departmental staffing (e.g. subject matter knowledge of staff, attitude of staff, lack of continuity in staff handling projects)	16
Stricter timelines and greater timeliness in handling projects	13
Conduct of site visits by Departmental staff to obtain project knowledge	9

The most common suggested change to the EPBC Act was the removal of duplication, or better integration, with other applicable federal, state and territory processes. This was usually coupled with the suggestion that the Commonwealth either partly or wholly withdraw from project-based assessment. Examples of the comments made on this issue are outlined below.

The Act should be abolished and the regulatory processes should be left to the states. The legislation unnecessarily duplicates state processes without improving environmental outcomes.

The process needs to be targeted at a higher level There needs to be greater effort to ensure that federal and state processes are integrated

The process would benefit from greater coordination with State Authorities. In particular, [the] agencies which have direct experience dealing with the particular issues.

Truly implement honest bilateral agreements that accredit state processes to undertake assessments and give the states approval powers.

EPBC Act process should be integrated with Local and State approvals process (referral co-ordination) not as an after thought.

It should be part of the DA [state development approval] process and assessments should be simultaneous. ... A register of land sensitive to development should be introduced like the Qld Contaminated Land Register so that information as to the sensitivities of sites may be easily searched.

Coordination of process & assessment with State authorities so that the EPBC approval is not an add on.

More coordination with state processes and reduce overlap of conditions with state.

Stop the doubling up of the state and federal process.

Should only be one environmental body (either state or federal) undertaking environmental assessments. Once assessment made by environment body it should remove any requirement for other third party government departments to revisit and add to the environment conditions set by the primary body.

There is substantial overlap between State and Federal laws governing environmental impacts on listed species. [This] inevitably means there is duplication in the assessment and approval process. Where overlap occurs, duplication should be avoided by deferring assessment and approval to the one authority, in this case the State.

Respondents from the oil and gas sector consistently suggested the removal of the EPBC Act requirements due to the application of offshore petroleum legislation. Examples of comments included the following.

Remove the requirement for seismic surveys to be referred and allow operators to manage environmental issues under Offshore Petroleum Act legislation.

Remove duplication with offshore petroleum legislation.

By removal of significant overlap with the Petroleum (Submerged Lands) (Management of the Environment) Regulations. Proponents of oil & gas exploration projects in Commonwealth waters are required to prepare an Environment Plan under those Regs, that duplicate, to some extent, the conditions that are routinely applied via a "Particular manner" decision under the EPBC Act.

The second most common suggested change related to ambiguity and uncertainty associated with the EPBC Act and its administration. Particular concerns were raised about the referral process and significant impact test.

Overall the EPBC Act provides a level over State requirements, and is important in the process of ensuring projects have minimal impact on [the] environment, what may help is some typical project examples listed giving a clearer indication if the project needs to be referred or not.

There needs to be greater clarity about when it applies. The significant impact test is too vague and ambiguous. The process also cost a lot and didn't improve environmental outcomes.

Be more prescriptive as to when referral is and isn't required.

Providing clearer criteria with regards to assessing significance and also for assessing whether or not a referral is required.

Respondents also suggested that changes be made to provide greater clarity about the assessment process.

An upfront meeting prior to lodgement of a referral to attain guidance and feedback on what the department will be expecting. In our experience we had to keep guessing what the Department may be seeking and then submit it. Greater direction and guidance on their expectations would have significantly cut the time involved in the application process.

Perhaps simplify or be more specific about what is required for the assessment.

Sixteen respondents made specific reference to problems with the Department, particularly staff capacity and constant staff turnover. Examples of the remarks on this issue are provided below.

(1) More experienced staff in the assessment team. The staff seem very young, inexperienced and somewhat ignorant. (2) More permanency among staff allocated to a project. We rarely knew who we were supposed to be dealing with since staff kept changing teams or roles, or were directed to different teams.

The problems we encountered were not so much with the Act itself but procedural issues. We had a complex issue to explain and every time we went to Canberra to explain it, we found that personnel had changed and we had to explain everything right from the start. Also we found that a very noisy individual was able to make unreasonable accusations without ever needing to back these with data or evidence but his repeated submissions were given the same weight as expert opinion backed by facts. The

credence that the department gave to this individual delayed our project by months, but were ultimately proven to be unfounded.

Assessors should have much better understanding of the issues and not ignore studies already undertaken as part of the EIS process.

There are 3 significant and fundamental improvements required immediately. The first is the time taken to assess and evaluate from application to final orders (even if the orders are not what the applicant wants). In this regard, EPBC staff are the major concern more so than the process timeframes. I can't speak to workload but staff attitude is in my experience extremely deficient. The second improvement is in the process taken by EPBC staff. Unqualified, junior or simply arrogant staff not listening to the recommendations and opinions of the qualified experts. .. The final matter and lessor than the first two are the overlap between state and fed requirements.

Canberra Officers are not familiar with State Government planning requirements which we comply to. Forward planning has been in place for 20 years or more.

... the EPBC Act staff seem to have difficulties in fully understanding all issues involved in a project. This lack of understanding is then translated into conditions that may not suit and may in fact result in poorer environmental outcomes.

Ensuring consistent knowledge, skills and attitudes as well as sufficient managerial and technical support for the EPBC Act officers will help foster consistent decision making as well as confidence in the EPBC Act process.

The department is running their own agendas and have no understanding of state approval process [sic].

DEWHA staff are not qualified

Have Environmental Officers understand the act better.

Consistent with the findings from questions 16-18, issues were raised about how offset conditions are determined. One respondent remarked:

Processing timelines under the regulations were good and achieved, except for the area of developing offset mitigation conditions. The Commonwealth did not provide any direction or assistance in developing conditions other than to reject offers until we had reached some unknown level that they were happy with. This process took far to long and probably ended up directing benefits to other areas to the detriment of the locality of the development.

In addition to making suggestions on how to improve the EPBC Act process, 33 respondents made remarks or complaints about aspects of the legislation or its administration being unfair. Examples of these types of comments are outlined below.

Some conditions relate to the need for ongoing monitoring. Private sector is not set up to monitor environmental matter for ever.

The EPBC Act process sits outside of the normal local and state governments approval process. The body is not a referral or concurrence agency in the approval process. Therefore my belief is that the body is unfair and lacks transparency. Considering the body has the power to refuse a development it should in fairness be transparent in the approval process and not sit outside the approval process like a wraith waiting to pounce on the unsuspecting

... in a project of state significance it should be either the state or federal conditions that should apply or if there was a bilateral agreement between State & Federal then it should be either condition that should apply The EPBC Act was imposed on us as an 'after thought' as it were thus significantly delaying the construction process and also increased the costs as we had to hire a set of consultants doing similar type of research as done in the State approval process.

For Business and Companys with resources the process may be ok but as an individual it was far too involved.

While many of the comments made by respondents were critical of the current structure or administration of the regime, a number of positive remarks were made. Examples include the following.

In this particular case the process ran smoothly for us. We were requested for additional information that took some time to produce [from] our end, but was going to be needed for us to proceed with the project anyway so did not really impact on us.

The process was good, and constructive in itself even though it did not affect the environmental outcomes of the project. It resulted in increased consideration of threatened species, and justification of the project in its own right

Avoid State Duplication – I think the EPBC process is better than the State based processes we were subject to.

I believe the current process is balanced and effective. An area for future concern is to ensure that each case continues to be determined on its merits and particular circumstances rather than have unreasonable conditions imposed based on conditions imposed on other projects.

Q27: Do you have any other comments about the EPBC Act process?

Respondents: 83

The Table below shows the issues that were most commonly referred to by respondents.

Issues most commonly mentioned

Issue	No. of responses that refer to the issue
Delay caused by EPBC Act process	21
Legislation or administration was unfair	21
Duplication and need for integration with other regulatory processes	19
EPBC Act was environmentally ineffective	13
Need for greater certainty in application of EPBC Act process	11
EPBC Act was well designed and administered	11
Failure to apply a risk-based approach to regulation under the EPBC Act (i.e. extent of regulation not determined on basis of threat to the environment)	8

The three issues that dominated the comments received in relation to this question were the delay the EPBC Act had caused to proponents' projects, inequity associated with the legislation and its administration, and the duplication of other federal and state regulatory process. Examples of the comments received in relation to delay are outlined below.

Cost and project delay of the whole environmental approval process is excessive. In the case of this project it contributed significantly to the project missing a period of sustained high demand and high prices for the metals it was to produce.

The delay in starting when Canberra reviewed all the paperwork caused the building to begin in the wet season which proved to be an environmental disaster. This was especially painful when no real improvements were made to the original design.

... the EPBC Act approval did delay the project by 12 months thereby causing the organisation to be non-compliant with its EPA licence.

It took 5 years from project conception to achieve Ministerial approval.

There needs to be a more streamlined process than present. It took 3 years ... for us to reach approval stage and there was virtually no change from our initial application.

It took 8-9 Months. This was too long and cost us a lot of money.

State environmental process timing out of sync with EPBC timing. Hence, delay to project approval.

The process is too slow and it seems to attract submissions from greenies who manufacture lies to hold up developers. ... Time delays have cost me several hundred thousand dollars in interest and other consultant charges.

Inequity was a regular theme in the responses. Examples are provided below.

The whole process has left myself and my partner emotionally scared and financially ruined.

The owner of an adjoining block was allowed to clear [removed to conceal identity] hectares. We are confused about why they got approval but we were subject to strict conditions for a far smaller impact.

The cost and financial stress I and my family have endured due to the process have been substantial.

Ability to influence process through Ministerial intervention is of concern.

There is no consideration of the economic impact on the land holder or compensation for the protection (locking up) in perpetuity of land in private ownership for the greater communities benefit.

The whole process was erroneous. We were misguided by the department and the treated very unfairly. We were threatened and intimidated by a certain member of the DEWHA and have witness to prove. The person basically didn't understand or know what he was talking about. The outcome was farcical.

I understand why [the EPBC Act] is needed tho I think they added an offset simply because they needed to be seen to be having an input to the project.

As with question 26, a large number of respondents made remarks about the extent of regulatory duplication and need for greater integration with other

regulatory processes. In a number of cases, this included calls for a more strategic role for the Commonwealth. For example, one respondent stated:

The assessment and approval process in toto is sound. Where it breaks down is the level at which the Commonwealth inserts itself into issues that are not really 'national' in their significance The focus should be on attacking regional issues through influencing planning and development controls implemented at the state level.

Other examples of comments about regulatory duplication are provided below.

It must be lined up beside the DA process in order to reduce costs and save time in assessment.

A necessary step in the protection of the environment as long as there is no duplication with state regulations and standard environmental reports for state and federal regulations

There needs to be much closer link between federal and state legislation and environmental objectives.

In our situation it just added another layer of red tape. The role was a duplication of the NSW DEC role.

Worked reasonably well but all commitments were being made to the State under their process anyway.

I think it is appropriate to involve Federal & State Authorities early in discussions to ensure conditions cover both sets of needs.

It is often difficult to assess how the process has affected the project given there is so much overlap with the state process.

All environmental issues should be dealt with by one organisation and at the one time ie when land is zoned.

Rather than ensure State Assessment is improved to a required level, the Federal Government duplicates the complete process. It is yet another level of review, creates excessive delays as it runs end on to the State Assessment, not in parallel, and the final decision can be compared to a kids lucky dip.

There is a significant amount of overlap between state and federal requirements and conflicting orders made placing the developer in the middle of bureaucratic nonsense.

A significant number of respondents made comments about the environmental ineffectiveness of the EPBC Act process. Examples include the following.

The particular manner decision only imposed conditions that were spelt out in the referral. While this holds us to what was originally proposed, it doesn't increase the environmental outcomes in anyway.

Unfortunately I cannot say that the process added any significant environmental benefit to the proposed development. In actual fact the process only frustrated and delayed the project.

In our situation we considered that the referral was unnecessary as all conditions imposed reflected conditions agreed under local planning law.

We have had quite a few phone calls from DEWHA on how this project is progressing. This is good as it shows that the dept is interested in making sure its conditions are being implemented. I don't think that all the conditions imposed are actually going to result in the best environmental outcome and some are very expensive to maintain and provide next to none environmental improvement

... we had to legitimise a process that we had been doing for over 25 years In the end we are conducting business as usual.

The delivery method of the project already facilitated good environmental management and therefore the EPBC referral process did not improve the outcomes of the project significantly.

The whole process was and is a complete waste of time, money and resources.

The most inefficient and time costing process I have ever come across.

Similar to the case with question 26, a significant number of respondents (11) raised concerns about the lack of certainty associated with the application and content of the EPBC process. Examples are provided below.

The department should clarify what is considered to be a significant impact. At the moment it is subjective and the department officials are trying to elevate their significance in the planning process.

... providing more certainty for those considering an activity which may be considered a significant action under the EPCB Act.

Our consultants advised that we didn't need to refer the project but advised that if we didn't the risk were financially too great. There was no scientific or factual reasons given by DEWHA why our land had to be referred other than the fact that we were within a kilometre of a known foraging area. To us it was just another way of taxing the developer and justifying the need for their existence.

The standard of solutions to environmental impacts appear to be based on the views of the DEWHA personnel involved and how good they are at negotiating an outcome. Published guidelines would be of benefit.

Criticisms were made about the approach to risk management, with allegations that the regulatory response was not always proportionate to the level of environmental risk associated with a project. For example, three respondents stated:

Need to ensure that risks are managed in proportion to their potential environmental/community impact at all times.

Seems more about managing public opinion rather than improving environmental outcomes. Conditions [are] not based on risk based approach.

The process makes it easier for a coal plant or mine to be an uncontrolled activity than a wind farm. That does not reflect their logical environmental impact.

Positive comments about the EPBC Act and its administration were made by 11 respondents. Examples are provided below.

In my experience it is the most focused and fairest of the environmental approval processes applying to development.

Overall staff at the Department were helpful and approachable ... they helped the project through the processes.

The EPBC process was transparent and officers were available to provide clarity regarding timeframes and conditions.

The process was fair and reasonable. Our contacts in the department communicated their requirements well which made compliance easy.

It reinforced the significance of the state gov. priorities and assessment.

The EPBC process is a good initiative to protect the environment. However, it has become a tool of environmental groups to stop unpopular projects.

6. Conclusion

The results from the survey support a number of conclusions.

6.1 Proponent costs are substantial

Based on the data provided by proponents, the estimated average proponent cost associated with the projects that have received final approval under the EIA regime is between \$660,000 and \$2.2 million. Extrapolating from this finding, the estimated total proponent cost associated with the projects that were approved between July 2000 and June 2009 is approximately \$200 million – \$670 million. For particular manner projects, the estimated average proponent cost is \$130,000 – \$275,000 and the estimated total proponent cost over the period July 2000 to June 2009 is \$70 million – \$150 million.

Combined, the total proponent costs associated with approved and particular manner projects for the first nine years of the EIA regime is likely to be around \$270 million – \$820 million in nominal terms. This does not include the costs incurred by proponents of not controlled or withdrawn projects, or those incurred by proponents that did not refer their actions under the regime.

Although further analysis is required of the responses provided by proponents, the available information strongly suggests that the proponent costs associated with the regime are large and probably more than double (possibly even triple) the administrative costs.

6.2 Proponent costs are highly variable

The cost data provided by respondents are not normally distributed. In all four cost categories – referral, assessment, delay and compliance – a large number of respondents report relatively low costs.

- 38% of respondents reported referral costs of ≤\$1,000.
- 37% of respondents of approved projects reported assessment costs of ≤\$1,000.
- 41% of respondents who stated that the EIA regime delayed the commencement of their project reported delay costs of ≤\$10,000.
- 51% of respondents who stated that conditions were imposed on their project under the EIA regime reported compliance costs of ≤\$10,000.

While a substantial proportion of respondents reported relatively low costs, a significant number reported large to very large proponent costs.

- 14% of respondents reported referral costs of >\$100,000.

- 24% of respondents of approved projects reported assessment costs of >\$100,000.
- 41% of respondents who stated that the EIA regime delayed the commencement of their project reported delay costs of >\$100,000.
- 27% of respondents who stated that conditions were imposed on their project under the EIA regime reported compliance costs of >\$100,000.

The skewed distribution of the proponent cost data is reflected in the median and mean data presented in Section 5.4. In the total sample, the mean in all four cost categories is more than 10 times larger than the median. Even when the top and bottom 10% of the sample is removed in these cost categories, the mean is still many times larger than the median.

This result is consistent with the nature of the EIA regime. It has captured small through to very large projects that pose different threats to the environment, some of which are not necessarily related to the size of the undertaking. It has also subjected projects to different types of assessment, evaluation and conditions. In addition, proponents have different levels of capacity, which rightly or wrongly has been reflected in the depth and complexity of the information requirements associated with the process. These factors mean that the costs of the process are likely to, and in fact do, vary significantly between proponents and project types.

6.3 Duplication of regulatory effort, lack of integration and delay

The responses provided by proponents of approved and particular manner actions support the contention that the EIA regime has, to a large extent, duplicated the regulatory effort that has been applied under other federal, state and territory processes.

- 73% of the respondents to Survey 1 agreed with the statement, 'The EPBC Act process duplicated other regulatory processes without significantly improving environmental outcomes'. 41% of respondents strongly agreed with this statement.
- When asked how the EPBC Act process could be improved, 57% of respondents to the question made reference to the need to address the degree of duplication and overlap between the EPBC Act and other federal, state and territory processes. Similarly, when asked whether they had any additional comments on the EPBC Act, duplication and the need for better integration with other regulatory regimes was raised by 23% of respondents to the question.

- 81% of respondents whose actions were subject to conditions under the EPBC Act and state/territory planning and environment permits reported some or substantial overlap in the conditions.
- 49% of respondents whose actions were subject to final approval conditions under the EPBC Act and conditions under state/territory permits reported that there was a substantial overlap in the conditions.
- 45% of respondents whose actions were subject to particular manner conditions under the EPBC Act and conditions under state/territory permits reported that there was a substantial overlap in the conditions.
- These trends held when the data were classified by government vs. non-government proponent. 81% of government respondents whose actions were subject to conditions under the EPBC Act and state/territory permits reported some or substantial overlap in the conditions. In 43% of cases, the government respondents reported that the overlap was substantial.
- There was also a large degree of overlap between EPBC conditions and those imposed under other federal regimes. 59% of respondents whose actions were subject to conditions under the EPBC Act and other federal laws reported some or substantial overlap in the conditions. Predictably, the overlap was more pronounced in particular manner actions than in approved actions (73% versus 47%). Still, almost half of respondents whose actions were subject to final approval conditions under the EPBC Act and conditions under other federal laws reported some or substantial overlap in the conditions.

The duplication and lack of integration between the EPBC Act and other regulatory processes appears to have caused significant delays and added to proponent costs.

- 54% of respondents to Survey 1 reported that the EPBC Act delayed the commencement of their project.
- 66% of respondents of approved projects reported that the EPBC Act delayed the commencement of their project. Even amongst particular manner actions, 38% of respondents reported that the EPBC regime delayed their project.
- When asked how the EPBC Act could be improved, over 10% of respondents to the question made reference to the need for stricter timelines and greater timeliness in the assessment and approval of projects.

- When given the opportunity to make open-ended comments, 25% of respondents who gave comments referred to the delay caused by the regime and the associated costs.
- For respondents who stated that the EPBC Act delayed their project and provided an estimate of the costs of the delay (46 respondents), the reported mean and median delay costs were \$633,165 and \$50,000 respectively.

6.4 Low to moderate level of environmental effectiveness for regulated projects

The responses to Survey 1 suggest that, where actions have been subject to direct control under the EPBC Act, the regime has struggled to generate significant environmental improvements.

- 62% of respondents to Survey 1 reported that the EPBC Act did not improve the environmental outcomes of their projects, with 14% claiming the regime made the outcomes worse.
- Only 11% of respondents to Survey 1 reported that the EPBC Act resulted in significant improvements in the environmental outcomes of the relevant project.
- There were notable differences in the responses provided by government versus non-government proponents, with government respondents reporting more positive outcomes. Still, 46% of government respondents reported that the EPBC Act did not improve the environmental outcomes of their project. In contrast, 71% of non-government respondents reported that the EPBC Act did not improve the environmental outcomes of their project.
- There were differences between industry categories. The oil, gas and mining sectors reported the lowest levels of environmental effectiveness. 86% of mining respondents and 72% of exploration respondents (i.e. oil and gas) reported that the EPBC Act did not improve the environmental outcomes of their project. Better results were reported in the transport and urban development categories, where 53% and 46% of respondents respectively reported that the EPBC Act did improve the environmental outcomes of the relevant project.
- Where respondents reported that the EPBC Act improved the environmental outcomes from their project, the improvements were mainly attributed to conditions imposed under the regime and negotiations with the Commonwealth Environment Department. However, the majority of respondents (58%) reported that the conditions imposed on their project,

either as final approval or particular manner conditions, did not improve environmental outcomes.

The low level of environmental effectiveness may be at least partly due to duplication with other regulatory processes. Support for this is found in the responses to the attitudinal questions in Survey 1.

- As noted, 73% of the respondents to Survey 1 agreed with the statement, 'The EPBC Act process duplicated other regulatory processes without significantly improving environmental outcomes' (41% strongly agreeing).
- 58% of respondents to Survey 1 disagreed with the statement, 'The EPBC Act process was an efficient way of improving the environmental outcomes associated with the project' (20% strongly).
- 47% of respondents to Survey 1 agreed with the statement, 'The EPBC Act process was a waste of time and resources'.
- 43% of respondents to Survey 1 disagreed with the statement, 'The EPBC Act process was constructive and beneficial for the environment'.

Similarly, when asked whether they had any additional comments on the regime, 16% of respondents who gave comments made specific mention of the EIA regime's environmental ineffectiveness.

Notably, the responses to Survey 1 raise concerns about the environmental effectiveness of other federal, state and territory planning and environment regimes. Only 50% of respondents to Survey 1 who were subject to state/territory environmental and planning processes reported that these processes improved the environmental outcomes of their project. Similarly, only 43% of respondents to Survey 1 who were subject to other federal regulatory processes reported that these processes improved the environmental outcomes of their project. In contrast, 37% of respondents reported that the EPBC Act resulted in environmental improvements. Although proponents regard the other applicable regulatory processes as more environmentally effective than the EPBC Act, they do not believe they are major drivers of positive environmental outcomes. Further research is required to determine the reasons for these trends.

6.5 Positive and negatives on the fairness of the process

The results on the fairness of the process were mixed. 80% of respondents to Survey 1 reported that the Commonwealth Environment Department treated them fairly or very fairly during the process. 6% reported they were treated unfairly and 8% reported they were treated very unfairly. There were differences in results between government and non-government respondents, with government respondents reporting more positive experiences. However, 75% of

non-government respondents still reported that they were treated fairly or very fairly.

Although the response to the broad fairness question were positive, equity issues arose in relation to more specific procedural issues. For example:

- 36% of respondents whose projects were subject to EPBC Act conditions disagreed with the statement, 'The EPBC Act conditions were devised in a transparent manner that allowed me to understand their basis and purpose';
- 33% of respondents whose projects were subject to offset conditions disagreed with the statement, 'The offset conditions were devised in a transparent manner that allowed me to understand their basis and purpose';
- 41% of respondents whose projects were subject to offset conditions disagreed with the statement, 'The size or financial value of the offset(s) was devised on the basis of the environmental impacts of the project';
- 47% of respondents whose projects were subject to offset conditions agreed with the statement, 'The offset conditions were unfair on my business';
- 16% of respondents who made comments on how the EIA process could be improved referred to need for greater certainty about the application of the regime and the content of the assessment and approval processes; and
- when asked whether they had any additional comments on the regime, 13% of respondents who made comments referred to problems caused by the uncertainty associated with the operation of the regime.

The comments provided by respondents also indicates that a small number of people feel particularly aggrieved by their treatment under the EIA regime. One respondent stated:

The whole process has left myself and my partner emotionally scared and financially ruined.

Another remarked:

The cost and financial stress I and my family have endured due to the process have been substantial.

Further research is required to determine the causes of these issues and whether they were avoidable.

6.6 Difficulties with monitoring

Consistent with the findings of previous reports prepared by the Commonwealth Auditor-General, the responses to Survey 1 suggest the Environment Department has struggled to monitor compliance with the conditions imposed under the EIA regime. Only 24% of respondents who were subject to conditions under the EPBC Act reported that a site visit had been conducted by the Federal Government to monitor compliance with the conditions. Generally, the trend from respondents was that the older the project the greater the likelihood a site inspection had been carried out. For example, respondents reported that site visits had been carried out for 33% of projects referred in 2000 and 2001, compared to only 10% for projects referred in 2008 and 2009. Notwithstanding these trends, it appears a significant number of projects have not been subject to any onsite monitoring of conditions.

6.7 General support for the EPBC Act's participatory processes

The EPBC Act provides members of the public with a number of opportunities to make comment on, and participate in, the decision making processes under the legislation. These participatory provisions are arguably 'best practice'. Undoubtedly, they ensure third parties have greater participation opportunities than under a number of EIA processes in the states and territories.

These participatory provisions appear to be accepted amongst most proponents. 71% of respondents to Survey 1 reported that other interested parties had 'reasonable' opportunities to participate in the EPBC Act decision making process. A further 2% reported that there were insufficient opportunities for third parties to participate.

There were notable differences in responses depending on the nature of the approval type. 27% of approved action respondents reported that third parties had too many opportunities to participate compared to 3% amongst particular manner respondents. However, the majority of approved action respondents (66%) reported that the opportunities given to third parties were reasonable. 83% of particular manner respondents stated that the opportunities were either reasonable or insufficient.

Appendix A: Survey 1 - approved and particular manner actions

The text from Surveys 1, 2 and 3 are provided in Appendices A, B and C. The survey was conducted online using *Professional Quest*, a software package that allows the survey to incorporate a logic that ensures respondents are only asked questions that are relevant to their experience. Due to this, the respondents to the surveys were not asked the same collection of questions. The questions they were asked was dependent on the answers they provided to certain questions asked during the survey. For example, if a respondent stated that their project was not subject to other federal regulatory processes, they were not asked questions about the environmental effectiveness or conditions associated with other federal regulatory processes. The survey was also designed in a way that grouped similar questions and presented them on a single page, usually in a grid format. This was intended to reduce the response time of the surveys and ensure respondents were asked related questions in context.

Introductory statement

The following survey is about a project that was referred and approved under the federal *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), with which you were involved. The approval would either have been a final approval after formal assessment or a so-called ‘particular manner’ approval (i.e. where the project does not require formal assessment and approval if it is undertaken in a particular manner).

The survey asks questions about: whether the EPBC Act process improved the environmental outcomes associated with your project; the conditions attached to EPBC Act approvals, and whether these conditions improved the environmental outcomes associated with your project; how much the EPBC Act process cost you or your business; whether the EPBC Act process was fair, transparent and worthwhile, and how the process could be improved.

The survey should take 10-15 minutes to complete.

You are under no obligation to complete this survey. Participation is voluntary. If you commence the survey and wish to withdraw, you may do so at any time by closing this window.

The survey is part of a collaborative research project by the Australian Centre for Environmental Law, The Australia Institute and the Minerals Council of Australia.

For further information on the survey, please contact Andrew Macintosh on (02) 6125 3832 or macintosh@law.anu.edu.au. If you have concerns about the content or conduct of this survey, please contact the Australian National University Human Research Ethics Committee on (02) 6125 7945 or at human.ethics.officer@anu.edu.au.

Survey questions

Was your project (or a similar project) the subject of another referral under the EPBC Act that was withdrawn before the final project was approved? [Yes/no/not sure]

[If yes] Because your project was the subject of another referral that was withdrawn, you may have received a separate email with a link to another survey. Please answer both this survey and the other survey by clicking on the link in the other email. This will enable the researchers to understand your experiences of the EPBC Act process from beginning to end.

[All respondents] The following questions are about the environmental effectiveness of the EPBC Act process. There are also questions about other federal, state and local regulatory regimes, so that we can distinguish between these regimes and the EPBC Act.

Was your project subject to state/territory environmental or planning laws (including local government regulations)? [Yes/no/not sure]

Was your project subject to other federal laws with an environmental component, in addition to the EPBC Act? [Yes/no/not sure]

In your opinion, were the likely environmental outcomes of your project improved or worsened by...? The EPBC Act process; State/territory environmental and planning processes; Federal laws other than the EPBC Act [Significantly worsened/slightly worsened/neither improved nor worsened/slightly improved/significantly improved/not sure]

In your opinion, were the improvements in the environmental outcomes that were associated with the EPBC Act process due to...? [Conditions imposed under the EPBC Act; Changes made as a result of negotiations/discussions with the Commonwealth Environment Department; changes made as a result of public submissions received through the EPBC Act process; other; not sure]

Were conditions imposed on your project under the EPBC Act? [Yes – as final approval conditions/yes – on the basis of the project being carried out in a ‘particular manner’/no/not sure]

Was your project subject to conditions imposed under state/territory planning or environmental permits (including local government permits)? [Yes/no/not sure]

Was your project subject to conditions imposed under federal laws other than the EPBC Act? [Yes/no/not sure]

In your opinion, was there overlap between the EPBC Act conditions and...? Conditions imposed under state/territory permits; Conditions imposed under

other federal laws [No overlap/very little overlap/some overlap/substantial overlap/not sure]

In your opinion, were the likely environmental outcomes of your project improved or worsened by...? The conditions imposed under the EPBC Act; The conditions imposed under state/territory permits; The conditions imposed under other federal laws [Significantly worsened/slightly worsened/neither improved nor worsened/slightly improved/significantly improved/not sure]

Thinking about the manner in which the EPBC Act conditions were devised and imposed, do you agree or disagree with the following statement? 'The EPBC Act conditions were devised in a transparent manner that allowed me to understand their basis and purpose' [Strongly disagree/somewhat disagree/somewhat agree/strongly agree/not sure]

Offset conditions are conditions requiring you to take positive measures to counterbalance the negative environmental impacts of your project. Were offset conditions imposed on your project under the EPBC Act? [Yes/no/not sure]

Thinking about the offset conditions, would you agree or disagree with these statements? 'The offset conditions were unfair on my business'; 'The offset conditions were devised in a transparent manner that allowed me to understand their basis and purpose'; 'The size or financial value of the offsets were devised on the basis of the environmental impacts of the project'; 'The offset conditions were the main way the Commonwealth Environment Department tried to improve the environmental outcomes of the project' [Strongly disagree/somewhat disagree/somewhat agree/strongly agree/not sure]

Has the Federal Government, or an agent acting on behalf of the Federal Government, conducted a site visit to monitor compliance with the conditions imposed on your project? [Yes/no/not sure]

The following questions are designed to work out the costs incurred by businesses/proponents in participating in the EPBC Act process. The costs are broken into four categories: referral; assessment; delay; compliance with conditions. Please divide your costs into these categories. If you do not know the exact amounts, please provide a best estimate. Also, please include labour costs by assigning a dollar value to the time spent by employees on the relevant tasks. If the project (or a similar project) was the subject of an earlier referral under the EPBC Act process that was withdrawn, do not include the costs of the earlier referral in evaluating the costs of the final project.

Please estimate the cost of referring the project under the EPBC Act. This might include: field surveys; preparing and submitting relevant referral documentation; any consultant fees incurred to do this.

Please estimate the cost of the EPBC Act assessment process. If the project was assessed under the EPBC Act via an accredited state/territory or other federal process, only count the costs 'added' by the EPBC Act process.

Did the EPBC Act process delay the commencement of your project? [Yes/no/not sure]

Please estimate the cost of the delay that was due to the EPBC Act process.

Please estimate the cost of complying with the EPBC Act conditions that were imposed on your project. If similar conditions were imposed under another regulatory regime, only count the 'additional' cost of complying with the EPBC conditions.

Overall, did the Commonwealth Department of the Environment treat you and your project...? [Very fairly during the EPBC Act process/fairly during the EPBC Act process/unfairly during the EPBC Act process/very unfairly during the EPBC Act process/not sure]

In your opinion, were other interested parties (e.g. members of the public, environment groups etc.) given...? [Too many opportunities to participate in the EPBC Act decision-making process/reasonable opportunities to participate in the EPBC Act decision-making process/insufficient opportunities to participate in the EPBC Act decision-making process/not sure]

Thinking about the EPBC Act process as a whole, do you agree or disagree with the following statements? 'The EPBC Act process was an efficient way of improving the environmental outcomes associated with the project'; 'The EPBC Act process was a waste of time and resources'; 'The EPBC Act process was well designed and administered effectively'; 'The EPBC Act process duplicated other regulatory processes without significantly improving environmental outcomes'; 'The EPBC Act process was constructive and beneficial for the environment'; [Strongly disagree/somewhat disagree/somewhat agree/strongly agree/not sure]

In your opinion, how could the EPBC Act process be improved?

Do you have any other comments about the EPBC Act process?

Appendix B: Survey 2 – withdrawn projects

Introductory statement

The following survey is about a project you were involved in that was withdrawn from the federal environmental impact assessment process under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The survey asks questions about: why the project was withdrawn; whether the withdrawn project was re-referred under the EPBC Act; how much the EPBC Act process cost you or your business; whether the EPBC Act process was fair, transparent and worthwhile, and how it could be improved.

The survey should take 5-10 minutes to complete.

You are under no obligation to complete this survey. Participation is voluntary. If you commence the survey and wish to withdraw, you may do so at any time by closing this window.

The survey is part of a collaborative research project by the Australian Centre for Environmental Law, The Australia Institute and the Minerals Council of Australia.

For further information on the survey, please contact Andrew Macintosh on (02) 6125 3832 or macintosh@law.anu.edu.au.

If you have concerns about the content or conduct of this survey, please contact the Australian National University Human Research Ethics Committee on (02) 6125 7945 or at human.ethics.officer@anu.edu.au.

Survey questions

What were the main reasons for your decision to withdraw the project from the EPBC Act process? [Business or financial issues; Risk of project being refused under EPBC Act; Risk of conditions being imposed under EPBC Act that would make the project unviable; Project refused under another state/territory/federal regulatory process; Conditions imposed under another state/territory/federal regulatory process that made the project unviable; Risk of project being refused under another state/territory/federal regulatory process; Risk of conditions being imposed under another state/territory/federal regulatory process that would have made the project unviable; Other; None of these]

What was the primary reason for your decision to withdraw the project from the EPBC Act process? [[Business or financial issues; Risk of project being refused under EPBC Act; Risk of conditions being imposed under EPBC Act that would make the project unviable; Project refused under another state/territory/federal regulatory process; Conditions imposed under another state/territory/federal regulatory process that made the project unviable; Risk of project being refused under another state/territory/federal regulatory process; Risk of conditions being imposed under another state/territory/federal regulatory process that would have made the project unviable; Other; None of these]

imposed under another state/territory/federal regulatory process that would have made the project unviable; Other]

Did you re-refer the project, or a similar project, under the EPBC Act after it was initially withdrawn? [Yes/no/not sure]

[If yes] Were modifications made to the project prior to its re-referral in order to meet the anticipated EPBC Act requirements? [Yes/no/not sure]

[All respondents] Because your project was re-referred, you may have received a separate email with a link to another survey. Please answer both this survey and the other survey by clicking on the link in the other email. This will enable the researchers to understand your experiences of the EPBC Act process from beginning to end.

The following questions are designed to work out the costs incurred by businesses/proponents in participating in the EPBC Act process. The costs are broken into two categories: referral and assessment. Please divide your costs into these categories. If you do not know the exact amounts, please provide a best estimate. Also, please include labour costs by assigning a dollar value to the time spent by employees on the relevant tasks. If you re-referred the project after it was originally withdrawn, do not include the costs of the referral and assessment associated with the re-referred project – only the original application.

Please estimate the costs of referring the project under the EPBC Act. This might include: field surveys preparing and submitting relevant referral documentation; any consultant fees incurred to do this.

Was your project assessed under the EPBC Act? [Yes/no/not sure]

Please estimate the costs of the EPBC Act assessment process. If the project was assessed under the EPBC Act via an accredited state/territory or other federal process, only count the costs 'added' to the other applicable assessment by the EPBC Act process.

Overall, did the Commonwealth Department of the Environment treat you and your project...? [Very fairly during the EPBC Act process/fairly during the EPBC Act process/unfairly during the EPBC Act process/very unfairly during the EPBC Act process/not sure]

In your opinion, were other interested parties (e.g. members of the public, environment groups etc.) given...? [Too many opportunities to participate in the EPBC Act decision-making process/reasonable opportunities to participate in the EPBC Act decision-making process/insufficient opportunities to participate in the EPBC Act decision-making process/not sure]

Thinking about the EPBC Act process as a whole, do you agree or disagree with the following statements? 'The EPBC Act process was an efficient way of

improving the environmental outcomes associated with the project'; 'The EPBC Act process was a waste of time and resources'; 'The EPBC Act process was well designed and administered effectively'; 'The EPBC Act process duplicated other regulatory processes without significantly improving environmental outcomes'; 'The EPBC Act process was constructive and beneficial for the environment'. [Strongly disagree/somewhat disagree/somewhat agree/strongly agree/not sure]

In your opinion, how could the EPBC Act process be improved?

Do you have any other comments about the EPBC Act process?

Appendix C: Survey 3 - Not controlled actions

Introductory statement

The following survey is about a project you were involved in that was referred under the federal *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and declared not to be a controlled action. The survey asks questions about: whether the EPBC Act process improved the environmental outcomes from your project; how much the EPBC Act process cost you or your business; whether the EPBC Act process was fair, transparent and worthwhile, and how it could be improved.

The survey should take 5-10 minutes to complete.

You are under no obligation to complete this survey. Participation is voluntary. If you commence the survey and wish to withdraw, you may do so at any time by clicking on 'exit'.

The survey is part of a collaborative research project by the Australian National University's Australian Centre for Environmental Law, the Australia Institute and the Minerals Council of Australia.

For further information on the survey, please contact Andrew Macintosh on (02) 6125 3832 or macintosh@law.anu.edu.au.

If you have concerns about the content or conduct of this survey, please contact the Australian National University Human Research Ethics Committee on (02) 6125 7945 or at human.ethics.officer@anu.edu.au.

Survey questions

In your opinion, were the likely environmental outcomes of your project:
[Significantly improved by the EPBC Act process; slightly improved by the EPBC Act process; neither improved nor worsened by the EPBC Act process; slightly worsened by the EPBC Act process; significantly worsened by the EPBC Act process; not sure]

In your opinion, were the improvements in the environmental outcomes that were associated with the EPBC Act process due to...? [Conditions imposed under the EPBC Act; Changes made as a result of negotiations/discussions with the Commonwealth Environment Department; changes made as a result of public submissions received through the EPBC Act process; other; not sure]

The following question is designed to work out the costs incurred by businesses/proponents in referring projects under the EPBC Act. If you do not know the exact amount of the referral costs, please provide a best estimate. Also, please include labour costs by assigning a dollar value to the time spent by employees on the relevant tasks.

Please estimate the costs of referring the project under the EPBC Act. This might include: field surveys preparing and submitting relevant referral documentation; any consultant fees incurred to do this.

Overall, did the Commonwealth Department of the Environment treat you and your project...? [Very fairly during the EPBC Act process/fairly during the EPBC Act process/unfairly during the EPBC Act process/very unfairly during the EPBC Act process/not sure]

In your opinion, were other interested parties (e.g. members of the public, environment groups etc.) given...? [Too many opportunities to participate in the EPBC Act decision-making process/reasonable opportunities to participate in the EPBC Act decision-making process/insufficient opportunities to participate in the EPBC Act decision-making process/not sure]

Thinking about the EPBC Act process as a whole, do you agree or disagree with the following statements? 'The EPBC Act process was an efficient way of improving the environmental outcomes associated with the project'; 'The EPBC Act process was a waste of time and resources'; 'The EPBC Act process was well designed and administered effectively'; 'The EPBC Act process duplicated other regulatory processes without significantly improving environmental outcomes'; 'The EPBC Act process was constructive and beneficial for the environment'. [Strongly disagree/somewhat disagree/somewhat agree/strongly agree/not sure]

In your opinion, how could the EPBC Act process be improved?

Do you have any other comments about the EPBC Act process?