Level 42
120 Collins Street
Melbourne 3000

GPO Box 1472
Melbourne 3001

Telephone +613 8664 2664
Facsimile +613 8664 2666
www.bca.com.au

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EPBC Act Cost Recovery Consultation
EPBC Reform Taskforce
GPO Box 787
CANBERRA ACT 2601

sent via email: epbc.costrecovery@environment.gov.au

Submission to the EPBC Act cost recovery consultation

Dear EPBC

The Business Council of Australia (BCA) is pleased to make this submission to the Department of Sustainability, Environment, Water, Population and Communities' consultation process on the proposed introduction from December 2012 of cost recovery under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The BCA recognises the importance of maintaining Australia's sound environmental regulatory standards. The maintenance of these standards should occur taking a risk management approach and ensuring regulations are streamlined and outcomes focused.

Recent decisions through Council of Australian Governments (COAG) aimed at streamlining aspects of environmental regulations are to be commended and every effort should be made to remove "green tape", complexity and duplication at different levels of government.

The agreement to progress commonwealth accreditation of state and territory environmental assessment and approval processes as a means of streamlining environmental regulation will contribute to a substantial reduction in regulatory burden and costs of major projects.

The costs and delays associated with environmental impact assessments are significant. An Australian National University study estimated a direct cost to all industries of up to $820 million over the life of the EPBC Act.[1]

Further, the referrals process under the EPBC Act is resource and cost-intensive, with referral costs ranging from $30,000 to $100,000.[2] But even these costs pale in comparison to the potential costs of delays. For instance, at a coking coal price of $200 tonne, a 12-month delay to a 10 million tonne per annum export coking coal mine in Queensland could reduce Queensland royalty revenue by $170 million.[3]

The processes that are now underway to implement the COAG decisions by way of bilateral agreements with each state and territory will help redress this situation while maintaining environmental regulatory integrity. Importantly COAG has scheduled March 2013 as when these bilateral agreements are in place. This time frame will help business plan for future projects and related regulatory processes.

It is our view that the negotiations on bilateral agreements should be pursued separately with each jurisdiction so that, should there be a problem reaching an agreement with one state or territory, it does not hold up bilateral agreements with other jurisdictions.

The BCA considers that for several classes of project, state government assessment and approvals processes may already satisfy the requirements for assessment under the EPBC Act and be sufficient to allow the Commonwealth to accredit the states to approve classes of projects – coal mining projects in New South Wales, residential building developments in Victoria and South Australia, and wind farm projects in most states, for example.

Priority should be given to entering into bilateral agreements for state approval of these classes of projects. This will require the Commonwealth to clearly articulate the minimum requirements for environmental impact assessments imposed by the EPBC Act to allow the states to determine where their processes are sufficient.

COAG should also use this experience as a basis for the consideration of having states and territories, rather than the Commonwealth, conduct strategic assessments under the EPBC Act, either by way of a bilateral agreement or some other agreed mechanism.

Achieving early bilateral agreements for classes of projects that already meet the obligations under the EPBC Act will be an important confidence building measure. It will demonstrate that this reform can be achieved, provide early efficiency gains for proponents of projects within these classes, and help maintain reform momentum for other classes of projects.

Given the March 2013 COAG implementation timeframe and the opportunities to accelerate aspects of this it is important that SEWPAC now reconsider the grounds for the current consultation on the application of cost recovery for a range of its current activities.

SEWPAC continuing these consultations and progressing the implementation of a cost recovery regime as described in the consultation papers appears now to be largely unnecessary. It also appears to be a poor use of resources for both SEWPAC and those participating in the consultations.

The BCA requests that the current process to implement a cost recovery regime for the environmental impact assessment regulatory functions of the Commonwealth be revisited so as to ensure efforts are not taken to establish cost recovery for processes which will be undertaken at the state level in future.

It should be acknowledged that with the finalisation of bilateral agreements with the states and territories under the EPBC Act the Commonwealth should not seek to recover costs it will not be incurring.

In light of this the cost recovery consultation process and proposed cost recovery regime should be deferred until the outcomes of the COAG process are known and the role the Commonwealth will take post the finalisation of the bilateral agreements is clear.

Similarly, proposed recruitment of additional staff needs to be reviewed given the likely diminution of assessment and approval processes by the Commonwealth and the change in role and relationship with the states and territories in relation the bilateral agreements currently being developed may well call for a different skill set.

Yours sincerely

Maria Tarrant
Deputy Chief Executive

cc: Mr Paul Grimes, Secretary, Department of Sustainability, Environment, Water, Population and Communities
Mr David Tune, Secretary, Department of Finance
Mr Ian Watt, Secretary, Department of Prime Minister and Cabinet

Notes

1. A. Macintosh, 'The Environment Protection and Biodiversity Conservation Act 1999 (Cth): An Evaluation of Its Cost-Effectiveness', *Environmental and Planning Law Journal*, 26, 2009, p. 337; and A. Macintosh, *The EPBC Act Survey Project: Preliminary Data Report*, Australian Centre for Environmental Law, Australian National University, 2009.

2. Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, Melbourne, 2011.
3. BCA calculation based on a Queensland royalty rate of 7% of value up to $100 million and 10% value above $100 million.