

Business  
Council of  
Australia



Submission to the Department of the  
Environment on the Draft Approval  
Bilateral Agreements between the  
Commonwealth, New South Wales  
and Queensland Governments

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The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

## About this submission

This is the BCA's response to the Environment Minister's invitation to comment on draft approval bilateral agreements with New South Wales and Queensland under Section 49A of the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act). The BCA is making this submission because many of our member companies will be directly impacted by the changes outlined in the draft agreements.

## Key points

- The Business Council of Australia supports the streamlining of environmental regulation while maintaining high environmental standards.
- The draft approval bilateral agreements between the Commonwealth and New South Wales and Queensland Governments, offer the potential to greatly reduce the regulatory burden on proponents without reducing environmental outcomes.
- The BCA notes that the draft agreements require or permit that in certain circumstances, New South Wales and Queensland will seek advice from various experts and committees – the Supervising Scientist in relation to nuclear actions, for example. So as not to delay an assessment or approval, provisions should be made to ensure timely advice is obtained and contingency arrangements put in place where such advice is not forthcoming within a reasonable time.
- The dispute resolution process, outlined in Section 16 of each draft agreement, is important to the proper functioning of these agreements. However, the BCA is concerned that there is no mechanism to ensure the dispute resolution process is brought to a timely conclusion once it is initiated.
- The draft agreements should provide for Queensland to approve actions that do not require a full environmental impact statement (EIS) under the EPBC Act, but that otherwise meet the standards of the EPBC Act.

## Key recommendations

- Provisions should be made to ensure timely advice is obtained from expert advisory bodies and contingency arrangements put in place where such advice is not forthcoming within a reasonable time. This could be achieved by the Commonwealth entering into service agreements with the advising bodies.
- The draft agreements should be amended to ensure the dispute resolution process is brought to a timely conclusion. This could be achieved by requiring that project proponents are notified when the 'escalation process' commences (at 16.1(a)(i)) and, after a set period, providing proponents the option of requiring the Commonwealth commence formal proceedings under Section 16.2.
- The agreements should be extended to cover projects that do not require the preparation of an EIS under the Queensland Environmental Protection Act that otherwise meet the standards of the EPBC Act. This should be done as a priority as part of the additional streamlining measures outlined in Schedule 4.

- If possible, and so as to avoid the need for subsequent amendment, the Queensland agreement should provide for Queensland to implement its offsets policy in the event that the Commonwealth determines that the Queensland offsets policy meets Commonwealth requirements.

## **Detailed comments**

### **Seeking advice**

The requirement for the Queensland and New South Wales Governments to seek advice from expert advisory bodies is an important inclusion in the draft bilateral agreements. These provisions will help demonstrate that the highest environmental standards are being maintained and that decisions are being made on the best possible advice. These requirements reflect obligations that are already in place at the Commonwealth and state level.

However, requiring third parties to provide advice to decision makers, introduces an additional step in the assessment process which can cause delays. We recommend that the Commonwealth work with the states and relevant third parties to reach an agreement on the timely provision of advice, for example, through service level agreements. Where possible, these agreements should be reflected in the bilateral agreements.

### **Dispute resolution and escalation process**

The BCA supports a graduated dispute resolution process that seeks to resolve disputes by way of negotiation in the first instance. However, such a process must not be allowed to continue indefinitely. This is particularly important for disputes between the Commonwealth and a state government.

We are concerned that the processes outlined in Section 16 of the draft agreements do not have a mechanism to force a timely resolution of the process where negotiation processes (as outlined in 16.1) do not yield a satisfactory result.

As it is ultimately the project proponent that carries the cost of a lengthy Commonwealth-state dispute it should be open to the proponent to bring such a dispute to a close. We recommend that the draft agreements be amended to require that project proponents are notified when the 'escalation process' commences (at 16.1(a)(i)) and, after a set period (say 30 days), provide proponents the option of requiring the Commonwealth commence formal proceedings under Section 16.2.

Once formal proceedings are initiated under Section 16.2, there should be a set period of time for the parties to resolve the dispute.

### **Coverage of the agreements**

We note that the classes of actions covered by the Queensland agreement relates to state approval processes under the Queensland Environmental Protection Act that require the preparation of an EIS. This is in contrast to current practice under the EPBC Act where the Commonwealth Minister may approve a project based upon the information contained in the referral documentation.

The bilateral agreements should be extended at the soonest opportunity to cover projects that do not require the preparation of an EIS under state law but that otherwise meet the standards of the EPBC Act. This should be done in these agreements or as part of the additional streamlining measures outlined in Schedule 4. This will ensure the maximum benefits of the 'one-stop-shop' are realised.

## **Offsets**

We support the Queensland Government implementing its own offsets policy where it meets the requirements of the Commonwealth offsets policy. If possible, and so as to avoid the need for subsequent amendment, the agreement should provide for Queensland to implement its offsets policy in the event that the Commonwealth determines that the Queensland offsets policy meets Commonwealth requirements.

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