

Defending Environmental Laws



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COAG Agenda

- 13 April 2012 meeting of the Council of Australian Governments (COAG)
- Agreed to major reforms of Australia's environmental laws proposed by the business community through COAG's Business Advisory Forum (nb: no similar forum for the conservation sector)
- Directed at both Federal and State laws particularly laws which assess new developments
- Stated aim: reduce what big business sees as 'unnecessary delays' and costs whilst maintaining environmental standards



Key Reforms Agreed

- Accelerated accreditation of state processes
 - will effectively end Federal involvement in the assessment and approval of environmentally sensitive developments under federal environmental laws
- Fast-tracking of approvals of major developments in each State
- Removing other environmental laws seen as ‘unnecessary’ and ‘costly for business’
- ‘Rationalising’/removing energy efficiency and climate change schemes in each State



Environmental regulation- who is responsible?

- Cwth has stopped some major projects , better conditions on others eg Franklin Dam, Traveston Dam, Coal Ports in the GBR, ie projects backed by States for short-term financial gain
- States and Cwth share responsibility - number of state laws but just one Cwth Act (EPBC Act) protecting biodiversity
- Not broad like State Acts as only covers matters of national environmental significance (MNES) ie World and National heritage areas, Ramsar wetlands, threatened species and communities, migratory species, nuclear actions, Cwth marine, GBR
- EPBC Act triggered if likely to be significant impacts on MNES – if so approval may be needed under both State and Cwth Acts



Accreditation of state processes

- Bilateral – agreement between Cwth and States - transfer of powers to the States - Cwth will no longer have any role in either assessing the environmental impacts of State developments on nationally significant environmental matters or in deciding whether to approve those developments
- Major concern – removes layers of protection
- Current Bilateral accredits the major projects assessment processes in the SA Development Act
- ? All new developments covered - maybe exceptions ie those that affect world heritage, Cwth marine waters and nuclear actions
- Timeline- Draft Bilaterals by December 2012, Finalise by March 2013



Fast-tracking of Major Projects etc

- Proposed reform at State rather than Cwth level
- Probably amend legislation to speed up the approval process for any development project the State deems to be 'major' eg large mining, gas projects, transport infrastructure, but could also include much smaller developments (eg tourist resorts or industrial estates)
- Usually results in;
 - an exemption from, or reduction in environmental assessments and approvals
 - a single decision-maker to make all relevant approval decisions (usually the Premier or Planning Minister)
 - reduction in community consultation and third party rights to seek review



Why Environmental Laws Matter

- Protect our fragile ecosystems, our health, our communities, our economy and future generations - not 'green tape' or a burden on business but an essential element of a healthy society
- Lead to better decision-making
 - must be consistent with ESD principles ie economic, env, social and equitable consideration
 - precautionary principle, inter-generational equity
- Secure the right to public involvement in decision-making



Why Environmental Laws Matter

- Promote transparency and accountability
 - Information, reporting by developers , government accountability
- Require rigour, objectivity and certainty in decision-making
 - Science based assessment of environmental impacts
- Ensure compliance, monitoring and enforcement
- Protect communities and provide environmental justice



Importance of Commonwealth leadership

Only the Cwth can provide national leadership on national environmental issues

“Our environment is a national issue requiring national leadership and action at all levels.... The prognosis for the environment at a national level is highly dependent on how seriously the Australian Government takes its leadership role.”

State of the Environment Report 2011



Importance of Commonwealth leadership

- States are not mandated to act in the national interest
- States may directly benefit from the projects they are assessing
- Commonwealth must ensure that Australia meets its international environmental obligations
- Only Commonwealth involvement can raise States up to a higher national standard
- US experience – federal laws since 1970s have been very successful in curbing water and air pollution of poor outcomes under state regulation prior to that time



Concerns –process

Cost shifting (will states have the resources?)

- Short timeframe to make important and complex changes including drafting of comprehensive Standards and legislative amendments
- Legislative inclusion of key EPBC Act provisions in state legislation
- Standards drafted but not available. Cwth - relevant thresholds are;
 - Adequate level of environmental assessment
 - No unsustainable impacts on MNES
- Standards should be specific and prescriptive rather than broad aspirational goals
- Formulation of standards should include good process eg independent objective environmental assessment
- Consultation on draft Bilaterals and the tabling of Agreements not qualitative safeguards
 - Lack of awareness by community may lead to failure to comment.
 - Whether disallowed depends on number of votes in Parliament not necessarily the merits

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