

Committee Secretary
House of Representatives Standing Committee on the Environment
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600

By email: Environment.Reps@aph.gov.au

30 April 2014

Dear Sir/Madam,

Inquiry into streamlining environmental regulation, 'green tape', and one stop shops

The Nature Conservation Council of New South Wales (NCC) is the State's peak environment organisation. We represent more than 100 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

NCC provides this submission to the inquiry into streamlining environmental regulation, 'green tape' and 'one stop shops' being conducted by the House of Representatives Standing Committee on the Environment.

The Committee has been asked to inquire into and report on the impact of 'green tape' and issues related to environmental regulation and deregulation.¹

NCC is disappointed that the Government continues to pursue the 'green tape' agenda being pushed by business and industry.

Australia's environment laws provide important protection for our valued natural landscapes and resources. These laws should be celebrated for protecting some of our most treasured natural areas, including the Great Barrier Reef and Kakadu National Park, and our most fragile landscapes, including wetlands, water resources, and threatened species and ecological endangered communities.

¹ The terms of reference require the inquiry to have particular regard to:

- jurisdictional arrangements, regulatory requirements and the potential for deregulation;
- the balance between regulatory burdens and environmental benefits;
- areas for improved efficiency and effectiveness of the regulatory framework; and
- legislation governing environmental regulation, and the potential for deregulation

This submission broadly addresses the terms of reference and focuses on the following key points:

- The public interest and need for environmental laws
- Key concerns with deregulation
- Areas for improved efficiency and effectiveness of the regulatory framework

The Nature Conservation Council of NSW supports a robust legal framework that delivers positive environmental outcomes and sustainably manages our country's natural resources. We oppose moves to weaken important environmental laws through deregulation and handing over of Federal powers to the States.

The public interest and need for environmental laws

The recent 'green tape' agenda was presented by the Business Council of Australia to the Council of Australian Governments at its inaugural Business Advisory Forum meeting in April 2012.

The Business Council of Australia has identified a number of priority areas for competition and regulatory reform including streamlining environmental assessments and approvals, and improving the efficiency of major project development approvals.

While we recognise the potential need for regulatory reform, and improved efficiency and effectiveness for Australian businesses, we do not think this should come at the expense of the environment and proper and effective management of our country's natural resources. We also note that those pushing for deregulation of major project development and approval processes, have the potential to profit from major project approvals and therefore have a vested interest in the 'green tape' agenda.

NCC is concerned that streamlining the regulatory framework will significantly weaken our fundamental environmental assessment and approval processes.

The efficacy of approval processes should not be judged solely on their ability to fast-track assessment processing timeframes. Just as important is the ability for a planning system to produce ecologically sustainable outcomes. Often, the cost of business fails to recognise the costs to communities if laws that protect their health and local ecosystems are lost. Fast approvals that deliver poor quality, high risk or unsustainable development are not in the public interest.²

The Productivity Commission has noted in its own benchmarking report on Australian Planning Systems:

...a combination of several benchmarks is often needed to reflect system performance. For example, while longer development approval times may seem to be less efficient, if they reflect more effective community engagement or integrated referrals, the end result may be greater community support and preferred overall outcome.³

We are concerned that the Government continues to pursue the 'green tape' agenda despite the recent finding of the Senate Standing Committee on Environment and Communications that federal-state duplication is minimal, and further findings that environmental standards would be put at risk if federal approval powers were delegated.⁴

The 2011 *National State of the Environment Report* shows that Australia is going backwards in biodiversity conservation, the health of our waterways and the protection of our forests and woodlands.

² See Nature Conservation Council of NSW, Total Environment Centre and EDO NSW *Our Environment, Our Communities – Integrating environmental outcomes and community engagement in the NSW planning system* (May 2012), available at <http://nccnsw.org.au/planningreport#attachments>

³ Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* (April 2011), Vol. 1, p xxviii.

⁴ Senate Environment and Communications Committee, Report on the *EPBC Amendment (Retaining Federal Powers) Bill 2013*.

Australia is facing many significant environmental challenges including, for example:

- loss and fragmentation of native vegetation and wildlife habitat,
- extinction of native species,
- conversion and loss of strategic agricultural land, and its implications on food security,
- degradation of rivers, wetlands and water catchments,
- urban sprawl, traffic congestion, air pollution and waste,
- carbon pollution and impacts of climate change.

Given the declining state of our environmental assets there is an indisputable need for the Federal Government to uphold and strengthen environmental laws to safeguard Australia's natural heritage for future generations.

Key concerns with deregulation

NCC does not support the deregulation of environmental assessment and approval processes, and handing over of Federal powers to the states and territories.

In particular, we have the following key concerns:

- *Only the Federal Government is suited to make environmental decisions in the national interest*

There needs to be national leadership on national environmental issues. Our rivers, critical ecosystems and endangered species do not adhere to state borders, so only the Federal Government can properly consider national or cross-border issues and make decisions in the national interest. This is why the EPBC Act focuses on matters of national environmental significance – they are matters that by their nature should be considered and protected at the national level by the national government.

History has shown federal oversight on matters of national environmental significance provides critical protection for Australia's lands, water and threatened wildlife. Ill-conceived development proposals, supported by state governments, have threatened Australia's natural heritage several times in the past, prompting the federal government to step in to prevent irreversible harm. Without federal intervention, the Franklin River would be dammed, there would be oil rigs on the Great Barrier Reef and pristine Shoalwater Bay would be home to a large coal port.

- *National environmental law enables Australia to meet its international environmental obligations*

The Commonwealth, not the states, is signatory to and responsible for upholding Australia's obligations to a number of international agreements for the protection of environmental assets, including matters of national environmental significance under the EPBC Act.⁵

There is strong concern that states do not have adequate approval and assessment processes in place to meet Australia's international obligations at a national level.

⁵ The Commonwealth is responsible for ensuring Australia meet its obligations under conventions and agreements such as:

- The Convention on Biological Diversity
- The Convention for the Protection of World Cultural and Natural Heritage
- The Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar)
- The Convention on the Conservation of Migratory Species of Wild Animals
- The China-Australia Migratory Bird Agreement (CAMBA) and
- The Japan- Australia Migratory Bird Agreement (JAMBA)

If the Commonwealth devolves its obligations under international law it will be up to the states to ensure that development activities comply with Australia's international obligations – a task that they are unlikely to be willing or able to do. The Commonwealth holds primary responsibility for ensuring these international obligations are met, and it is in the best position to do so.

- *States have a poor record of establishing and administering environmental laws*

In a number of states and territories environmental impact assessment is currently weak and inadequate, and the states alone cannot be relied upon for protection of environmentally sensitive assets in the national interest.

Recent evidence shows that conflicting interests will result in state and territory governments undermining essential environmental protection for short-term economic and political gain. Examples include the Queensland Government's inadequate environmental assessment of the Alpha coal mine project that would harm the Great Barrier Reef and the NSW Government's approval of trial cattle grazing in national parks. States are often the lead proponents of large-scale infrastructure projects, resulting in a direct conflict of interest when assessing high-impact developments.

The Australian Network of Environment Defender's Office conducted a thorough assessment of threatened species laws and planning legislation in each jurisdiction and it found that no state or territory planning laws met best-practice standards for environmental assessment.⁶

- *A patchwork of standards provides less, not more certainty*

A recent argument in favor of transferring federal approval powers to the states is that unnecessary duplication is causing high costs to business in Australia. The claimed duplication is a fallacy. An assessment by Economists at Large found numerous flaws in the methodology used by the Business Council of Australia to estimate costs.⁷

The Senate Environment and Communications Committee has also found that federal-state duplication is minimal, and that environmental standards would be put at risk if federal approval powers were delegated.⁸

There is no evidence the transfer of federal approval powers to the states and territories is the most efficient way to transform the system of environment assessment and approvals. In reality the Commonwealth and the states have distinct interests in particular outcomes. It is beneficial, particularly for environmental approval processes, to have multiple, independent arbitrators. Devolving approval powers to states and territories would leave Australia with a patchwork of inconsistent and ineffective environmental protections that would lead to more, not less uncertainty for business.

- *Protection of environmental assets requires a system of checks and balances*

The EPBC Act delivers important environmental safeguards by placing checks and balances on the exercise of state power. The ability to hand over that power solely to states should be removed from our national environmental law.

⁶ *An assessment of the adequacy of threatened species and planning laws in all jurisdictions in Australia*, December 2012, Australian Network of Environment Defender's Offices Inc. (ANEDO). http://www.edo.org.au/edonsw/site/policy_discussion.php,

⁷ *A response to the Business Council of Australia's Discussion Paper for the COAG Business Advisory Forum*, 2012, Economists at Large, Melbourne, Australia.

⁸ Senate Environment and Communications Committee, Report on the *EPBC Amendment (Retaining Federal Powers) Bill 2013*.

History has shown that when the Federal Government exempts the states or gives them powers under the EPBC Act, environmental protection will be undermined and the Federal Government struggles to retain an oversight role. There is no evidence the Federal Government could effectively monitor and oversee the operation of bilaterals, including at the referral stage. Experience with Regional Forests Agreements indicates that non-compliance or ineffective implementation will not lead to any significant response from the Commonwealth.

- *There must be proportionate assessment of impacts*

It is a basic tenet of planning and development assessment that the level of scrutiny should be proportionate to the impacts of a project. That is, high impact development should be subject to the most rigorous assessment.

Major projects, by their nature, require the highest level of assessment. Conversely, matters of national environmental significance require the highest level of protection. The regulation surrounding major project assessment and matters of national environmental significance is an important and necessary part of our environment and planning framework.

Areas for improved efficiency and effectiveness of the regulatory framework

We do not consider the weakening of environmental assessment and approval frameworks, and the handing over of Federal powers, as the solution to improving efficiency and effectiveness in the regulatory framework.

If the Government is genuinely committed to improving the efficiency and effectiveness of the regulatory framework then it should carefully consider issues of resourcing and expertise.

We also acknowledge the recommendations made in the following reports as providing alternative mechanisms for improving efficiency and effectiveness of environmental regulation:

- The ANEDO best practice principles for environmental and planning laws.⁹
- The Wentworth Group of Concerned statement on changes to Commonwealth powers to protect Australia's environment.¹⁰
- The recommendations of the independent Hawke Review of the Environmental Protection and Biodiversity Conservation Act 1999.¹¹

The Nature Conservation Council of NSW does not support the deregulation of important environmental laws and handing over of Federal powers to the States.

Please do not hesitate to contact Cerin Loane, Policy and Research Coordinator, on (02) 9516 1488 if have any questions or require any additional information.

Yours faithfully,



Pepe Clarke
Chief Executive Officer

⁹ ANEDO, *Best practice standards for planning and environmental regulation* (June 2012)

¹⁰ Wentworth Group of Concerned Scientists, *Statement on Changes to Commonwealth powers to protect Australia's environment* (2012), available at: www.wentworthgroup.org.

¹¹ *Report of the Independent Review of the EPBC Act* (2009) (Hawke Review), at <http://www.environment.gov.au/legislation/environment-protection-and-biodiversity-conservation-act/epbc-review-2008>

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