

Race to the Bottom ?

Submission to Senate Environment and Communications

Legislation Committee inquiry into:

EPBC Amendment (Retaining Federal Approval Powers) Bill 2012

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* This submission is made in my capacity as an independent researcher and does not represent the views of the University of Queensland.

Race to the Bottom ?

In most federal systems of government, such as those of the United States and Australia, state responsibility for various forms of environmental management, such as the approval of large and potentially damaging projects, has been subjected to oversight by the central government. The primary concern, is the risk of a 'race to the bottom', that is, a relaxation of environmental standards as states compete to attract projects.

This concern is not unique to environmental issues, or to federal systems. The phrase itself is generally trace to US Supreme Court Justice Louis Brandeis whose 1933 judgement in the case of *Ligget vs Lee*, observed that, as states competed to establish attractive rules for company incorporation 'the race was one not of diligence but of laxity'. Concern about a 'race to the bottom' has also arisen in relation to international competition and the possibility that polluting businesses, regulated in one jurisdiction, may simply shift to another.

Returning to the specific question of environmental regulation in federal systems, the 'race to the bottom' rationale for involvement in the national government was the subject of extensive debate in the 1990s. Overall, it appears that, although a race to the bottom is not inevitable in a purely state-based system it is likely to arise when interstate market for industrial development and environmental benefits are distorted, and when governments are more responsive to business interests than to the concerns of the general public.

These conditions appear to apply in relation to suggestions that federal approval powers should be removed from the *Environment Protection and Biodiversity Conservation Act 1999*. Discussion of this idea has taken place in response to pressure from business lobby groups, most notably the Business Council of

Australia, and has been driven by emotive, but empirically unsupported, claims of adverse impacts from ‘green tape’.

Additional evidence supporting the relevance of the ‘race to the bottom’ hypothesis may be derived from experience with payroll tax, which was transferred from the Commonwealth to the States in the 1970s, with the aim of provide a secure and growing stream of own-source revenue. Instead, state governments have competed to raise thresholds and lower rates, while becoming ever more dependent on transfers from the Commonwealth. By contrast, there has been almost no erosion of the tax base for the Goods and Services Tax, introduced and administered by the national government.

It is in Australia’s national interest that environmental standards for the approval of major projects should be nationally consistent and predictable over time. Attempts by competing state governments to attract investment by offering favorable treatment under such slogans as ‘fast-tracking’ and ‘cutting green tape’, will undermine this goal.

Maintenance of federal approval powers under the EPBC Act will promote this goal.