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Committee Secretary
Senate Environment & Communications Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600
Email: ec.sen@aph.gov.au

Dear Ms McDonald,

Submission to the Senate Inquiry into the Environment Protection & Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 and Environment Protection & Biodiversity Conservation Amendment (Cost Recovery) Bill 2014

Ports Australia is the peak industry body representing all port authorities and corporations, both publicly and privately owned, at the national level. Ports Australia is a constituted company limited by guarantee with a Board of Directors, comprising the CEOs of nine member ports. Our website is at www.portsaustralia.com.au

Environment Protection & Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014

Ports Australia strongly supports the Government's policy to improve the efficiency and certainty of the environmental assessments and approvals process.

In recent years Australia has evolved as a high cost economy with elevated regulatory risk. Industry views our ability to retain a competitive advantage in our overseas markets as dependent upon improved regulatory certainty and lower costs associated with regulatory processes.

Ports are continually striving to be good environmental citizens. We do not support a lessening in standards or the rigour applied to assessments and approvals. Rather, we identify strongly with the Government's intention to simplify and streamline the current cumbersome and expensive processes.

Our ports recognise that they are central to some of the biggest infrastructure developments along the Australian coast, a number of which are within the World Heritage Area and the Great Barrier Reef Marine Park in Queensland and, in other states, adjacent to sensitive environments. We recognise that major projects can cause community concern and one of the best ways of addressing those concerns is by fulfilling obligations with environmental assessments and by ports showing that they are willing participants in a clear and transparent assessment process.

We have listed below some key areas where we consider regulatory improvements are vital to ensure an efficient environmental management process for the port industry whilst maintaining the current high level of environmental protection.

One-Stop-Shop

We applaud the Government's "one-stop-shop" approach to reduce environmental assessment and approval duplication. However, we understand that this initiative will not apply to the majority of port projects particularly in Queensland as the Commonwealth will retain sole responsibility for activities in Commonwealth waters and areas within the Great Barrier Reef Marine Park, including dredging.

Broadening the scope of the MOU to include all port related dredging and activities in Commonwealth waters will improve the efficiency and clarity of the current process which is inefficient and generates uncertainty and doubt for proponents.

Impact Assessment Approvals Process

The Environmental Impact Assessment and associated approvals process is becoming increasingly complex, costly and time-consuming. Our ports are experiencing considerable delays with assessments and significant duplication with the state assessment process.

The impact assessment process for the Port of Townsville's Port Expansion project provides an example. The Project Referral was submitted to the Department in May 2011 and it took 11 months for the decision on the Commonwealth environmental assessment process to be made and EIS Guidelines (Scope of the EIS) to be finalised by the Department. This extended period to determine the project EIS Guidelines had significant contractual costs and impact on project timeframes and budgeting processes for the port. Alterations between the issued draft versions of the EIS Guidelines were significant and demonstrated a substantial shift in departmental requirements during this process. The cost difference of works from the first draft version provided by the Department and the approved EIS Guidelines was over $1.1 million, a cost that could not be reasonably foreseen by the proponent. The draft EIS was completed and publicly displayed from March to May 2013.

We suggest that greater clarity on process, the impact assessment requirements and timelines is required.

The Need for Certainty

Port proponents have increasingly less certainty of environmental process or approval conditions, as noted above.

An EIS approach and methodology needs to be agreed early in the assessment process to avoid uncertainty and project delays, such as has occurred with Townsville. Other projects have experienced similar issues with, for example, the Abbot Point referral having to provide ongoing information on a variety of onshore disposal options and trestle extensions (North Queensland Bulk Ports considers these have been comprehensively addressed) with no certainty on decision timeframes.

Importantly, our ports are experiencing new investigative requirements being raised during the assessment process that are difficult to anticipate and have significant cost and timing implications.

The trend towards requiring new issues to be addressed part way through the impact assessment process is highlighted by the increasing requirement to undertake major Supplementary

Environmental Impact Statements. The Department appears to regard the Supplementary EIS as a second phase of an EIS. All necessary issues should be raised by regulators during the initial EIS process so that they can be addressed in the EIS submission. The Supplementary EIS should only be required to address issues raised by the public and minor queries from the regulators with major issues resolved via consultation during the EIS.

Additionally, we are concerned that conditions associated with dredging approvals issued by the Department are inconsistent and often not relevant to the specific project. Environmental approval conditions are being incorporated from one project into the next without due consideration of their relevance and appropriateness in managing environmental risk. In other instances, conditions differ for similar developments in the one port.

This lack of a consistent approach to both approval conditions and recognition of the outcomes of previous similar assessments creates considerable uncertainty both in terms of project costs and timelines.

Maintenance Dredging Projects

Maintenance dredging is an essential activity for ports. If maintenance dredging is not undertaken the port is unable to sustain declared depths which impacts shipping operations, volumes of goods able to be carried by ships and compromises the statutory responsibility of the port corporations to maintain safety and efficiency.

The Department is now requiring some routine maintenance dredging projects to be referred under the EPBC Act which has not been required in the past. Departmental information requirements are unclear and require urgent clarification.

Unanticipated delays in approvals for maintenance dredging can have major implications for ports. Certainty of approvals is essential to allow maintenance dredgers to be contracted. This is particularly the case in Queensland where ports share the availability of dredge plant the "*Brisbane*" and scheduling is completed up to a year in advance. Failure to have approvals in place for an allocated dredging slot with the dredger can have major ramifications.

Ports Australia's *Dredging and Australian Ports* Report

The regulatory processes associated with capital and maintenance dredging proposals have over time become more complex, uncertain and expensive imposing a direct cost on our trades to the extent that the notion of 'sovereign risk' has seeped back into the discussion.

In an effort to bring some factual and scientifically-based evidence to the debate about dredging, Ports Australia commissioned an independent review of recent port dredging projects in tropical and sub-tropical Australian ports. The report found that the environmental impacts were generally consistent with or less than those approvals granted by the relevant regulators. The report aims to bring some balance back to the debate about the impacts of dredging, many of the facts about which have been and continue to be deliberately misrepresented by some groups, particularly in relation to impacts on the Great Barrier Reef.

The report's findings confirm that dredging and dredged material placement are subject to detailed and complex approval processes under international, commonwealth and state legislation.

The vast majority of dredging in northern Australian ports involves clean sediments and, where any toxic materials are identified, they are disposed of on land and not at sea. The report also demonstrates the substantial effort and resources that ports put into responsibly assessing and managing dredging projects to protect areas of high conservation value.

The report further demonstrates that Australia's shipping channels are key pieces of national and economic infrastructure and, like our road and rail networks, need to be maintained and developed to support the competitiveness of our economy.

A copy of the *Dredging and Australian Ports* Report is provided to the Committee together with this submission.

Master Planning

Ports Australia is a strong advocate of port master planning. To that end, we commissioned a paper *Port Master Planning – Leading Practice* and released it in August 2013. A copy is provided to the Committee together with this submission. The framework developed envisages engagement with relevant stakeholders and planning commitment to leading practice environmental values.

Port master planning carried out to specified standards and aligned with regulatory benefits can commit agencies to certainty and consistency in regulatory requirements, certainty in timelines, and simplification of process generally.

There is a growing realisation that a transparent process of master planning offers genuine benefits including securing a community licence to operate and develop and to broadening recognition and ownership of imperatives such as protecting access corridors, buffer zones and freight precincts. While a transparent master planning process does not imply that there will be agreement by all, notably on the part of some NGOs, it sets aside the capacity for such groups to claim that plans are not out there for all to see. Political support for master plans then adds the element of certainty that then begins to build a more secure investment environment.

Assessments undertaken by the Great Barrier Marine Park Authority (GBRMPA) and the Department of Environment

The Department of Environment delegates impact assessment processes to GBRMPA for dredging projects within the GBRMP. However, ports are experiencing issues with the basis for some of GBRMPA's advice and the Department often conducts its own assessment and includes additional requirements.

As part of the Government's one-stop-shop process, we propose that assessments and referrals under the EPBC Act, Sea Dumping Act and the GBRMP Act should be undertaken by a single, Canberra based team.

One team working across all of the legislative requirements would provide a much higher degree of consistency and regulatory certainty and better communication with proponents. One team would reduce the burden on proponents, make the internal processes considerably more efficient, eliminate duplication and reduce the overlap between different regulators who are essentially undertaking a similar function.

The big decisions can be made and policies and statutes drawn up but streamlining the green tape approach will be completely ineffective unless it translates right through to the agency culture and behaviour.

Departmental Staffing Levels

Departmental staff involved in port developments are trained, well qualified in their respective fields and we are complimentary of this area of the Department. However, the number of approvals requiring assessment under the EPBC Act has increased significantly in recent times. Substantial growth in the maritime sector continues, not only in the ports community but also in the offshore oil and gas sector, generating ongoing pressure on departmental resources.

This trend is likely to continue in the coming years and we are concerned that the port related areas of the Department may not have sufficient resources to assess applications in a timely and efficient manner. In this respect we would advocate that the foreshadowed tightening of fiscal policy should also recognise the importance of ensuring sufficient staff in those business centres of the Department that service growth areas of the Australian economy.

Environment Protection & Biodiversity Conservation Amendment (Cost Recovery) Bill 2014

Ports Australia appreciates the opportunity to comment on the draft Cost Recovery Impact Statement (CRIS) prepared for the purposes of implementing a cost recovery policy under the *Environmental Protection and Biodiversity Conservation Act (EPBC Act).*

There is a sustainable case that because environmental regulation is in place to protect the community then such regulation should be funded from the general tax base. In this particular respect there is now a discernible trend of cost shifting to industry (eg public safety and security) on the part of governments for responsibilities that historically and appropriately have been part of their domain.

In the first instance we state a general and strong reservation at the prospect that under certain scenarios the costs for a significant Environmental Impact Statement of reasonable complexity may cost some hundreds of thousands of dollars. This is inconsistent with the Government's commitment to reducing the costs of regulation and promoting a competitive economy.

Industry's support for the application of a cost recovery approach is based on the pragmatic notion that the recovery of costs will specifically lead to genuine improvements by way of efficient, timely, transparent approvals and assessments that provide the proponent with certainty.

It is acknowledged that the Department faces a large approvals and assessment task currently and into the future. Most proponents are prepared to pay a fair and reasonable set of fees to ensure that the approvals and assessments are done well and done in accordance with specified time frames.

Any cost recovery model must be accompanied by rigour in service levels and performance standards so that certainty is built into the model. In any fee for service approach the client, in this case the proponent, is entitled to the delivery of outcomes that are assured in terms of the process to which they are subject. This is an essential element in infrastructure planning and removes regulatory risk particularly that associated with capricious and ad hoc regulation that has now become endemic with environmental approvals and assessments.

The delivery of outcomes for the proponent should be the subject of a transparent process and subject to regular audit. The audit process need not be complex but carried out say on a random case study basis to measure whether certain baseline performance measures have been achieved.

Hypothecation is a threshold issue. As much as the Government advocates sustaining a robust economy through infrastructure development it, as a rule, applies tight fiscal policy on a broad basis across agencies, thus depriving the machinery of government of resources in key areas essential to supporting that development. This leads directly and predictably to regulatory bottlenecks

Ports Australia is on the record as emphasising the strong and constructive relationships we have with the maritime assessment team within the Department who are good at what they do. However given the wide span of their brief they are overly stretched and it stands to reason that they require an assured funding stream to underwrite the provision of resources consistent with the achievement of specified performance measures. Accordingly we seek an assurance from this process that the funds derived from proponents as part of the cost recovery process are separately identified and applied to the business that they are explicitly collected to support.

Reference is made in the draft Bill to a “complexity matrix”. In earlier discussions with the Department on these proposals we made the point that considerable rigour must be attached to the terms used in the complexity matrix. In discussions with the Department, a number of terms were proposed that provide too much scope for subjective judgement and which could feasibly be read by proponents in a different way to the Department leading potentially to immediate conflict. Proponents must have clarity with all of the elements of the cost recovery process so that there is no room for ambiguity and the delay that it will invariably generate. There are issues associated with the complexity matrix that could probably be resolved by workshops held by the Department, hopefully prior to the final drafting of the Regulations.

To summarise at the general level we advocate that the cost recovery regime should be underpinned by the following:

- Articulate specific performance standards associated with the approvals and assessment process that are audited,
- Ensures the revenue stream derived from proponents is specifically applied to the achievement of those standards and a recognition that success is not measured by increasing the size of the organisation,
- genuine improvements by way of efficient, timely, transparent approvals and assessments that provide the proponent with certainty, and
- Cost recovery fees must be hypothecated to the Department and applied to the service for which they are collected to support.

Conclusion

We are requesting that the Committee recommends that the Government continues to improve and streamline environmental impact assessment approval processes and delivers regulation that is based on sound scientific principles, and considers real-life operational practicalities, economic imperatives and cost effectiveness. This can only be achieved through a stable, predictable, timely and transparent assessment and approval process by a single team in Canberra. Further, while Ports Australia supports the principle of cost recovery, the focus must be on achieving best environmental outcomes, rather than purely on recouping administrative costs.

Thank you for the opportunity to provide our comments.

Yours sincerely,
David Anderson
Chief Executive Officer