

Coalition Additional Comments

Government's backflip on streamlining

1.1 Coalition Senators note with disappointment the majority report's statement, in relation to the COAG meeting of 7 December 2012 that:

While it was anticipated that COAG may have announced its intention to give the states and territories increased powers for approvals, this did not occur.¹

1.2 Coalition Senators highlight that the Government created this expectation, including through the 12 April 2012 COAG Communique statement that the "Commonwealth will work with the States and Territories to improve the process for approvals of these categories [projects within the Commonwealth's current jurisdiction affecting world heritage sites and specific areas of action, including nuclear actions, defence development and developments affecting Commonwealth waters] ... for consideration by COAG at its next meeting."²

1.3 The Government, including the Prime Minister, further fuelled such expectations through statements indicating the Government accepted the case made by business and industry groups regarding the need for delegated assessment and/or approval powers.

Look, what we want to work towards here is a streamlined system, so that projects don't go through two layers of assessment for no real gain. And so the classic examples that are brought by business is where people have gone through sequential assessments, so it's double the time, things that have been required for the first assessment are required in a slightly modified form for the second assessment, so they don't even get the benefits of just uplifting the work and re-presenting it, it's got to be redone. So clearly that is an inefficient system.³

At the inaugural meeting of the Business Advisory Forum yesterday, business leaders raised delays in environmental approvals and assessments as a major cost. These delays, due to duplicative processes across federal and state systems, can take businesses months or even years to resolve.

Today COAG acted on that concern and the Gillard Government and states and territories agreed to fast track arrangements to use state assessment and approval processes by March 2013.

1 Chair's draft.

2 COAG Communique, 13 April 2012, pp. 2-3, <http://www.coag.gov.au/node/313> (accessed 12 March 2013).

3 Prime Minister, joint press conference, 12 April 2012, <http://www.pm.gov.au/press-office/transcript-joint-press-conference-canberra-24> (accessed 12 March 2013).

The removal of these regulations will protect the environment whilst ending the costly delays that result from double-handling and duplication.⁴

1.4 Coalition Senators accept the case for streamlining of regulatory processes, including through the use of bilateral agreements for both assessments and approvals, as provided for by the EPBC Act but which would be prevented by the bill, as made in a number of submissions noted in the majority report and backed by a number of reports referenced in the majority report.

1.5 It was for these reasons that the Coalition in April 2012 committed to offer state and territory governments the opportunity to act as a one-stop-shop for environmental approvals as well as seeking to create a single lodgement and documentation process for environmental approvals.⁵ There is no reason why assessment and approvals procedures cannot be made more efficient without any diminution of environmental or heritage standards.

1.6 Coalition Senators are therefore disappointed at the Government's backflip as evidenced by COAG's failure to make the progress the Government was promising in April 2012.

Improving efficiency

1.7 Coalition Senators are disappointed at the majority report's dismissal, of submissions and evidence taken, as "no compelling evidence to show how an approval agreement would improve business efficiency".

1.8 Coalition Senators note, for example, that a Deloitte Access Economics report of April 2011, to which the majority report refers only briefly, includes a cost-benefit analysis of reforms to the EPBC Act proposed by the Hawke review. Of particular relevance is recommendation 4 of the Hawke review, as highlighted in the majority report.

1.9 The Deloitte Access Economics report found that:

There would be benefits to project proponents, Australian, state and territory governments and the economy from reducing delays in the assessment process.⁶

1.10 The Deloitte Access Economics report quantified some of the impacts of delays relating to assessments:

4 Media release, Prime Minister and Minister for Finance and Deregulation, 13 April 2012, p. 1, <http://www.pm.gov.au/press-office/coag-signs-proposals-cut-red-tape> (accessed 12 March 2013).

5 Leader of the Opposition, address to the Australian Industry Group, 20 April 2012, available at <http://liberal.org.au/latest-news/2012/04/20/tony-abbott-speech-australian-industry-group-coalitions-plan-cleaner> (accessed 12 March 2013).

6 Deloitte Access Economics, Cost Benefit Analysis – Reforms to Environmental Impact Assessments under the EPBC Act, 20 April 2011, p. 27, available at: <http://ris.finance.gov.au/2011/09/12/response-to-the-review-of-the-epbc-act-%E2%80%93-regulation-impact-statement-%E2%80%93-department-of-sustainability-environment-water-population-and-communities/> (accessed 12 March 2013).

Preliminary data in 2010-11 indicate that the assessment process under the EPBC Act is currently delaying projects as follows:

- Referral decisions – 28% delayed, average delay 8 days (235 decisions total).
- Assessment approach – 35% delayed, average delay 42 days (94 decisions total).
- Approval decisions – 22% delayed, average delay 69 days (64 decisions total).

Overall, the average length of delay faced (i.e. including those not delayed) was as follows:

- Referral decisions – 2 business days.
- Assessment approach – 15 business days.
- Approval decisions – 15 business days.

On that basis, a project that is determined to be a CA [controlled action] (and undergoes the three stages of assessment) in 2010-11 faces an average delay of 32 business days, or more than six weeks. That does not include time spent by the proponent gathering information while the statutory clock is stopped, or time spent during environmental approval processes in state/territory or local governments.⁷

1.11 The Deloitte Access Economics report also found that:

The estimated benefit from reduced delays...was thus estimated as \$135.1 million in 2012-13 increasing to \$288.4 million in 2020-21 (Table 5.15). In NPV [net present value] terms, this represents a total gain to society of \$1.19 billion.⁸

1.12 Among submissions cited by the majority report but disappointingly dismissed as offering “no compelling evidence to show how an approval agreement would improve business efficiency” was that made by the Business Council of Australia.

The community must be assured that under the approvals system, Australia’s unique environment and heritage values will be maintained or enhanced. This can and should be achieved without compromising the competitiveness of project proponents.

7 Deloitte Access Economics, Cost Benefit Analysis – Reforms to Environmental Impact Assessments under the EPBC Act, 20 April 2011, pp 27–28, available at: <http://ris.finance.gov.au/2011/09/12/response-to-the-review-of-the-epbc-act-%E2%80%93-regulation-impact-statement-%E2%80%93-department-of-sustainability-environment-water-population-and-communities/> (accessed 12 March 2013).

8 Deloitte Access Economics, Cost Benefit Analysis – Reforms to Environmental Impact Assessments under the EPBC Act, 20 April 2011, p. 33, available at: <http://ris.finance.gov.au/2011/09/12/response-to-the-review-of-the-epbc-act-%E2%80%93-regulation-impact-statement-%E2%80%93-department-of-sustainability-environment-water-population-and-communities/> (accessed 12 March 2013).

Australia's planning and environmental laws, at all levels of government, must facilitate the efficient approval of major capital projects upon which Australia's economic wellbeing is increasingly dependent.

The Australian economy is more reliant on the successful delivery of major capital projects than ever before. Business Council of Australia research indicates that by 2013, expenditure on capital investment is likely to grow to 30 per cent of GDP. A large part of all Australian economic activity will therefore be dependent on the success of major capital projects. Given Australia's increased reliance on major capital projects, it is imperative that all governments configure their environmental approvals processes to ensure decisions are predictable and timely.⁹

1.13 Another submission, made by the Pyrenees Shire Council in Victoria but cited by the majority report only in passing, expressed concern about the Commonwealth's ability to make timely decisions reflecting local knowledge and experience:

The Pyrenees Shire Council is committed to protecting and where possible enhancing environmental values within its area of responsibility. The most efficient and effective way of achieving this is to reduce the number of layers and steps involved when submitting a proposal for review and approval. Considerable time and effort goes into providing information, receiving feedback, developing strategies, formulating a submission and negotiating a final outcome. The process can become very cumbersome the more layers and organisations that are involved.¹⁰

1.14 The Victorian Farmers Federation also supported the use of bilateral agreements and therefore strongly opposed the bill:

The VFF considers that there are significant advantages to retaining the ability to delegate to state governments the approval of referred actions under the Environment Protection and Biodiversity Conservation Act...Furthermore, bilateral agreements for this delegation will not change the EPBC Act, but rather take a more practical approach to its administration.

...

State governments are in a stronger position than the Commonwealth to administer the EPBC Act because:

- They have greater experience with administering environmental regulation
- There is a higher level of recognition for state based regulation
- They are closer geographically to the proponents of referred actions.¹¹

9 Business Council of Australia, *Submission 91*, p. 1.

10 Pyrenees Shire Council, *Submission 83*, p. 1.

11 Victorian Farmers Federation, *Submission 83*, p. 1.

Labor's blame game

1.15 Coalition Senators are aghast at the attacks in the majority report on the capacity, conduct and approach of the states.

1.16 While it is no surprise given their own enthusiasm for wasteful, debt driven spending that Labor Senators would attack what they describe as “austerity measures” within the states, Coalition Senators note that such “austerity” is required due to years of Labor waste, deficits and mismanagement at a state level.

1.17 Should expanded use of assessments or approvals bilaterals with states be undertaken, states would have to appropriately resource the relevant agencies to ensure the requirements of such bilaterals were met and standards of assessments and approvals were upheld.

1.18 Coalition Senators find the argument that a state or territory may have “an incentive to approve” proposals because they may receive “economic benefits from the development under consideration” especially perverse. Arguably the federal government has as much if not more to gain from projects proceeding, given the benefits that flow directly to federal finances from increased revenue associated with income tax or company tax receipts generated by a project. Labor's support for this argument is symptomatic of their general ignorance of the broad benefits that flow from economic development.

1.19 Similarly, Coalition Senators find the attack by Labor Senators on the concept of competitive federalism, which they suggest risks a “race to the bottom on environmental protection” as concerning. Seeking smarter and more efficient ways to deliver environmental regulation without reducing environmental standards should be an objective of all levels of government. Competitive tension between the states should be used to harness this result. Simply having more public servants and more red tape does not guarantee better environmental outcomes, it simply guarantees higher costs.

Conclusion

1.20 Unlike Labor, when the Coalition promises to achieve streamlined approvals processes, as advocated in recommendation four of the Hawke Review, we actually intend to do so.

1.21 Accordingly, we support the majority report's recommendation that this bill not be passed, but do so without the extensive reservations made by Labor Senators.

Senator Simon Birmingham
Deputy Chair

Senator Bridget McKenzie

Senator Anne Ruston

