Re: Senate Environment Committee - EPBC Approval Powers Inquiry - opportunity to respond

Dear Senators

Thank you for the opportunity to respond to the critique offered by Dr McGrath.

Dr McGrath appears to have misunderstood both the nature of, and conclusions in, my research. None of the research I have conducted has involved a cost-benefit analysis (CBA), as he suggests. A CBA of the EPBC Act's environmental impact assessment and approval (EIAA) regime would involve a comparison of the full economic benefits (including environmental) achieved by the regime with the full economic costs, including the opportunity costs of referral, assessment, delay, compliance, and administration. That is, it would seek to evaluate whether, and to what extent, the EIAA regime has increased social welfare. The studies I have conducted have involved partial *cost-effectiveness analysis*, not CBA. As such, they have not attempted to place a monetary value on non-market items (e.g. threatened species, heritage etc).

In broad terms, the object of the research I have conducted has been to evaluate the environmental outcomes from the EIAA regime (i.e. to what extent has it improved environmental outcomes compared to the counterfactual scenario where the regime did not exist) and estimate the costs of achieving them. In some of the earlier papers, the 'costs' were confined to government administration costs (i.e. how much did the Australian Government spend on the administration of the regime?). A later study, involving a survey of approximately 150 proponents, went a step further and tried to evaluate the costs to proponents, broken into four cost categories - referral, assessment, delay and compliance costs (McGrath seems to blend administration costs with these other cost categories, which are likely to be far more significant). All of the papers I have published on this topic have outlined the method applied and acknowledged their limitations. This is evident in the attached papers, which are a selection of my key publications on this issue.

At the core of Dr McGrath's critique is that he does not believe it is possible to evaluate, in any meaningful way, the cost-effectiveness or net welfare effects of any EIAA process (or any environmental regulation it seems). There is a grain of truth to this position (particularly in relation to welfare impacts) and it is certainly true that there are significant (even substantial) hurdles to overcome in trying to evaluate the cost-effectiveness of these types of regulatory regimes. Despite this, my position is simply that, given the resources expended on EIAA processes, and the scarce resources available for conservation, researchers and government owe it to the community to attempt to evaluate their cost-effectiveness and to inquire into whether the desired economic, social and environmental outcomes could be achieved at lower cost.

My conclusions on the EPBC Act's EIAA regime over the periods I have reviewed it have been that it is not cost-effective and that changes could be made to lower the cost and improve outcomes (note that the period of review has been from July 2000 to 2009). This conclusion has rested on a number of key facts, including:

(a) the low rate of referrals from the sectors that have the greatest impacts on the matters of national environmental significance (MNES), agriculture, fisheries and forestry;

(b) the relatively low rate of referrals overall (around 300-400 per year, which is similar to the rate from the previous EPIP Act that had a far narrower scope);

(c) the extent of duplication with other Commonwealth, state and territory laws (the existence of these laws reduces the scope for the EPBC Act to achieve improved outcomes);

(d) the high rate of 'not controlled actions' (around 70% of all referrals are not controlled actions, which suggests that the regime is triggering a large number of unnecessary referrals, seemingly because of the vague nature of the 'significant impact test');

(e) the extent of duplication in manner specified and approval conditions (many of the conditions mirror, or are very similar to, those applied under other regulatory processes);

(f) the fact that the regime has focused so heavily on urban development and mining projects (this appears to be disproportionate to their impacts on the MNES);

(g) the low rate of refusals;

(h) the fact that, when asked, only 11% of proponents said that they believed the EIAA regime had significantly improved the environmental outcomes from their project;

(i) the extent of the administration costs (arguably the Australian Government could have achieved better environmental outcomes had it redirected the EIAA resources to other programs, or been more strategic in the way it engaged in environmental regulation); and

(j) the extent of the referral, assessment, delay and compliance costs reported by proponents (note that there were methodologies issues associated with the survey responses, including that the data were not adjusted for inflation and there is the potential that some respondents did not understand the meaning of compliance costs - we intend to repeat this survey in the near future with a refined method).

My conclusion that the EIAA regime could be designed and administered in a more cost-effective manner is consistent with the findings of the Commonwealth Auditor-General (in 2003 and 2007), and was (at the very least implicitly) accepted by the Hawke Review. Given the emphasis on reforming the process in COAG since 2007, it appears there are some within the Commonwealth and state and territory governments, that also agree. This does not place the matter beyond dispute but it provides general support for the notion that the EPBC Act's EIAA regime does not reflect best practice and that it falls short of being a highly effective policy instrument. Further evidence for this can be gleaned for the mounting evidence of continual decline in key environmental indicators.

Yours sincerely
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