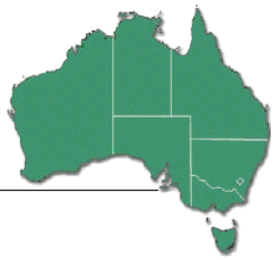
National Parks Australia Council

Working together for nature conservation areas



Environment and Communications Legislation Committee
Parliament House
Canberra ACT 2600

Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 201

The National Parks Australia (NPAC) council urges the committee to recommend the approval of this Bill.

NPAC is a cooperative group of national parks associations and environmental groups with a particular concern for the role of protected areas in protecting biodiversity and Australia's environmental assets. We have over 80 years experience in environmental issues. Our combined membership of over 10,000 include people working on rehabilitation and conservation projects for both marine and terrestrial areas; leading walks and work parties; studying and photographing the natural environment; representing the community on ministerial and statutory bodies; and generally promoting and protecting national parks and nature reserves for future generations.

Our members have been closely involved in all stages of the review of the federal EPBC Act. We have given very careful consideration to the Hawke recommendations and to the whole-of-government response published last year. We have remained firmly opposed to bilateral approval agreements.

We believe the inevitable outcome of a bilateral approval agreements in the foreseeable future will be the loss of species and ecosystems which will have a lasting impact on the ecological welfare of our nation. Therefore there is no point leaving the provisions in the legislation. Our reasons for holding this view are as follows.

1. Lack of evidence that the bilateral approval agreements will in any way contribute positively to the protection and conservation of our biodiversity.

NPAC members are not aware of a single piece of evidence that bilateral approvals will achieve any improvement in the status of listed matters. Business groups and some State governments continue to make various motherhood

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statements about bilateral approvals maintaining protection for listed matters but there is not one reference to how this will happen, or even to how it could be assessed and monitored.

2. **There has been no investigation as to its actual impact on the efficiencies of the environment regulatory regime**

Statements by business interests that bilateral agreements will improve efficiencies simply have not been substantiated and appear unlikely to be substantiated in the future. Throughout the extensive reviews of the EPBC Act over the past 6 years, there has been no work done in any sector which identifies specific efficiencies from the devolution of Federal approval powers to the States and Territories.

Common sense tells us that there must be a raft of measures which would improve national assessment and approval processes. The bilateral assessment agreements already in place were designed to start achieving these efficiencies during the project assessment phase. Differences in expertise, processes and resourcing across the various jurisdictions have created serious difficulties in making common assessment processes work. States and Territories have shown they are simply unable to meet existing national and international standards without root and branch legislative and institutional reform and a massive injection of funds.

In fact, the bilateral assessment processes have exposed great gaps between Federal and State processes, not ironed them out. The Queensland government's stand on the Federal decision around the Alpha coal project is a classic example of how the bilateral assessment processes remain misunderstood and mis-applied at the State level.

There is no available analysis of where the actual delays in the regulatory process actually occur but anecdotal evidence is that much of the delay blamed on the Federal process is in fact caused by proponent's own delays and inefficiencies. On the other hand, business groups have never addressed the issue of their members' reluctance to commit to sound environmental conservation. They refuse to accept that there are places in Australia where development should not occur at all.

Curtis Island, the case cited by the Business Council of Australia in making its case for removal of the Federal role in the approvals process, is a classic example of a location where industrial development places extreme risk on the area's environmental values. Conservationists argue that the conditions imposed by the

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assessment and approval processes under both State and Federal legislation were still not adequate to protect the area. Business argues that the conditions imposed on that development are onerous and uneconomic. The simple point is that development should not be undertaken in that area at all and the conditions imposed only go part way to mitigating the unacceptable level of risk.

Claims of efficiencies from devolution to States do not apparently transfer across to the federal Government assuming the States' decision making powers. If there are efficiencies to be made from joint processes then an obvious avenue of research is to investigate transferring State decision-making powers to the Federal Government, creating a national 'one stop shop'. We all accept this is not what the business sector and various State Governments want to talk about but it is a valid alternative to devolving Federal powers to States.

3. The capacity for State government to implement a bilateral agreement according to Federal processes,

Investigation by Federal officers as part of the COAG process to prepare for bilateral approvals in 2012 uncovered such diversity in capacity between jurisdictions that the Prime Minister was forced to announce a halt to the process. NPAC members concur with this finding. We are convinced that the international obligations which the current EPBC administration fulfils, could not be met by devolving Federal decision making to the States. States after all have their own interests in mind – not the national interest.

Different regimes of decision making, enforcement and monitoring would be strong grounds for legal challenges will undoubtedly be mounted which can only increase business uncertainty.

It is also worth noting that many State government continue to announce staffing cuts on a regular basis. Environmental regulatory agencies have been severely affected by staff cuts in NSW and Queensland. It is clear that the standard of investigation, reporting and decision making on existing State legislation and regulations will be severely affected. Given that there will not be Federal funding accompanying the proposed bilateral approval agreements, it is impossible to conceive of State agencies meeting Federal standards of decision making.

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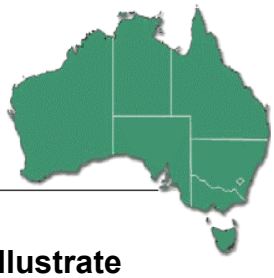

4. Past and present behaviours of some current State governments illustrate the dangers of handing over Federal powers to another jurisdiction.

Clear conflict of interest exists with States making assessments on their own development applications and on applications which purport to create increased income, jobs and productivity in that State.

State government are often in their own right, via various agencies or statutory authorities, large scale developers. Freeways, desalination plants, railway lines, port infrastructure and dredging are all often State government initiated projects. Removal of federal oversight puts the fox in change of the hen house.

Processes to manage this conflict of interest can only duplicate the Federal oversight currently provided so no regulatory efficiencies will in fact result.

Individual State government have demonstrated a strong desire to overturn the EPBC Act where it suits them. The current Victorian State Government has persistently pursued returning cattle to the Alpine National Parks system through the Federal courts, despite consistent court judgments determining that it would contravene regulations under the EPBC Act.

The current NSW government has allowed recreational shooting in national parks purely for political expediency. It is currently examining its Native Vegetation Legislation with a view to removing some environmental protections. It has put its marine parks program on hold as part of its election promises. It places mining interests ahead of environmental issues in nature reserves. It has a very poor record of reporting on and managing its Regional Forest Agreements and its poor management of logging in key habitats for listed or endangered species is well known.

The current Queensland government has announced and withdrawn a number of statements about logging and grazing in national parks and de-listing recently declared national parks. What is clear is an unyielding and very public hostility to conservation of the environment. Like its predecessor, the current Queensland government is pursuing changes to environmental regulations and laws which allows it to place recreation and tourism ahead of environmental values in the management of national parks.

The current Tasmanian government is also pursuing a policy of placing tourism interests ahead of environmental protection in national parks. The past record of

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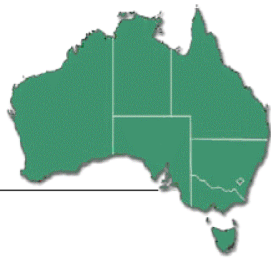

Tasmanian governments in protecting its unique wilderness areas is well documented and major environmental catastrophes have only been prevented by Federal government intervention.

The Western Australian government has made no secret of its hostility to intervention by the Federal Environment Minister in significant decisions including the most recent decision to prevent oil exploration beside Ningaloo Reef.

The ACT government has undertaken not to pursue bilateral approval agreements because it recognises the importance of Federal input into protection of federally listed species.

5. The COAG process to put in place bilateral agreements in 2012 has undermined community confidence in achieving any positive outcomes for the environment from this initiative.

Despite the very public role of the Business Council of Australia prior to the announcement of COAG's intention to move to bilateral approvals, there was no attempt to include consultation with environment groups. The subsequent process under the COAG work program to develop procedures and standards has only added to the confusion and concern around implementing a bilateral agreement.

For example, we were assured early in the process that key matters such as World Heritage sites were to be excluded form bilateral approval agreements. Release of the draft standards document late in 2012 showed that the bilateral agreements would in fact include these areas.

Monitoring and reporting on decisions was initially to be done by the States with no guarantee they would share this data with the Federal government. Then there was a suggestion that it would be shared but there was no indication of what or when. Then the standards document revealed that the heart of this critical element of bilateral approvals would be based on goodwill and mutual understanding. Where we find some measurability or clarity, it usually turns out to be in the "Considerations for Accreditation" section of the standards document. That is, if States refuse to accept specific measures on reporting, the bi-lateral process will still be accredited. States and Territories have a history of resisting detailed reporting to the Federal government, even on their use of Federal funds.

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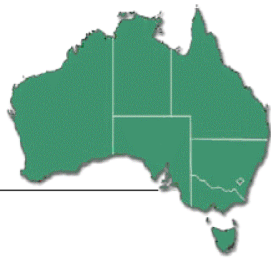

Summary

In the current era there is clearly an unacceptable level of risk to the environmental, social and political values of this continent if bilateral approvals were introduced. There is no business case to demonstrate the much touted economic gains which are being asserted. Removing this provision in the EPBC legislation would enable us to better focus attention on the real purpose of the Act: the long-term conservation of our unique species and ecosystems.

Thank you for giving us the opportunity to comment on this Bill.

Yours Sincerely

Christine Goonrey
President
25 January 2013

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