

**Australian Government
Senate Inquiry**

**Environment Protection and Biodiversity Conservation Amendment
(Retaining Federal Approval Powers) Bill 2012.**

Submission by Ralf Buckley, Griffith University.

1. Status & Credentials.

This submission is made in my professional capacity as a member of the academic staff of Griffith University, as part of my community service obligations in a field in which I have established research credentials and longstanding publication record.

2. Key Reasons to Retain Australian Government EIA and Development Control

2.1. *Responsibility and subsidiarity.* International obligations are the responsibility of national rather than subsidiary governments. In federated nations such as Australia, national governments are required to exercise these powers to the limits of their constitutional ability. This is demonstrated through numerous disputes under international trade law. High Court cases in Australia show that the external affairs power in the Australian Constitution gives the Australian Government the power to override state governments in matters where Australia has international obligations. These include, for example, those under the World Heritage Convention. Since it has this power, the Australian Government is required to exercise it. It cannot legally abrogate these powers to state governments, which are considered as subsidiary governments in international law.

2.2. *Public submissions.* One of the key components of environmental impact assessment processes is the opportunity for members of the public to lodge submissions, which must be considered responsibly by the determining authority. It is only under EIA conducted by the Australian Government that all Australian citizens have the right to have their views considered. For EIA conducted by state governments, submissions from residents in other States need not necessarily be considered. Where the Australian government has the constitutional power to conduct EIA and development control at national level, therefore, it has an obligation to do so, to ensure that all Australians can have their views considered on matters of national significance.

2.3. *Technical quality of EIA.* A national review of EIA in Australia showed that those conducted at national scale were technically better than those conducted at state scale. They focused more effectively on the most significant issues, compiled data in a more scientifically defensible way, and made more accurate predictions of impacts. Those subject to full Commissions of Inquiry, incidentally, were better still. This research was carried out in 1989 and is thus somewhat dated, but there are no indications that the pattern has changed. A more detailed but restricted review was carried out for the tourism sector alone in the 1990s. Copies of relevant publications are available if required.

3. Inaccurate Claims of Duplicate and Sequential Assessment

The Business Council of Australia has apparently complained that costs and delays may be occasioned by requirements for sequential assessment. This is nonsense.

Any project proponent, and their environmental consultants (and I speak as a former consultant myself) can easily determine at the outset whether or not a proposal will be subject to national EIA. If they have any doubt, they can inquire from relevant government agencies. Both state and federal EIA systems include scoping steps where proponents can establish whether or not EIA is required and, if so, what topics must be covered and in what detail.

It is perfectly possible for a project proponent to submit applications to local government, state government and Australian government processes simultaneously. Many proponents prefer to take these steps sequentially, in the same way that a new business proposal within a large corporation would be assessed at lower levels before being presented to the Board.

Proponents who believe they can override EIA processes through political patronage at state level, and try to avoid national-level EIA through political manoeuvring, have only themselves to blame if they are caught out.

The Business Council of Australia is pushing for greater devolution at present, because we happen to have a Labour Government nationally and conservative governments at state levels. They made no such requests historically when the situation was reversed.