WENTWORTH GROUP

OF CONCERNED SCIENTISTS

Dr Neil Byron, Mr Peter Cosier, Dr Richard Davis, Prof Tim Flannery FAA, Dr Ronnie Harding FEIANZ, Dr Terry Hillman AM,
Prof Lesley Hughes, Prof David Karoly, Prof Hugh Possingham FAA, Mr Robert Purves AM,
Dr Denis Saunders AM, Prof Bruce Thom AM, Dr John Williams FTSE.

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

3rd June 2014

Dear Secretary,

Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014

The *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014* before the Committee is designed to facilitate the hand-over of Commonwealth environmental approval powers to the states.

The Wentworth Group welcomes this opportunity to state its opposition to the handover of Commonwealth powers, and to propose alternative mechanisms that it believes will both reduce regulatory burden and duplication for business and deliver better environmental outcomes.

It is possible to promote new development, grow the economy and create jobs without causing further environmental degradation. This is the position of the *Business Council of Australia*, the *Minerals Council of Australia* and the *Australian Petroleum Production & Exploration Association*. Their joint submission to the recent House of Representatives inquiry into streamlining environmental regulation states: *"… there does not need to be a trade-off between environmental outcomes and economic growth and industry development"*.[1] The Wentworth Group agrees and encourages this inquiry to support such a finding.

By far the most effective way to reduce regulatory burden and duplication for business, and at the same time deliver better environmental outcomes for Australia, is to:

- Develop long-term regional strategic plans to guide land use and natural resource management;
- Put in place transparent national science-based standards so that new development does not significantly impact threatened species;
- Streamline and coordinate assessment processes; and
- Establish an independent National Environment Commission.

The Commonwealth Government should withdraw the Bill and abandon plans to hand environmental approval powers over to the states, for the following five reasons:

SUITE 3, 3b MACQUARIE STREET, SYDNEY, AUSTRALIA, 2000
TELEPHONE: +61 2 9251 3811 EMAIL: information@wentworthgroup.org ACN 128 963 431

1. **Industry groups have not been able to produce evidence that systemic delays by Commonwealth approvals are having a significant impact on economic development.**

   The Commonwealth Government Environment Department's 2010-2011 Annual Report stated that only 1,022 projects, Australia-wide, had ever required formal Commonwealth approval, and of these only 10 (one per year on average) were rejected.[2] In addition, conditions were placed on 1,773 projects.[3] Without conditions, these projects would have likely led to significant adverse impacts on the environment.

   Witnesses appearing before the recent House of Representatives "*Inquiry into streamlining environmental regulation, 'green tape', and one stop shops"* were again unable to produce systemic evidence of delay caused by Commonwealth approval processes. This confirms the finding of the Senate Environment and Communications Legislation Committee from its 2013 inquiry into *Retaining federal approval powers* that "the committee was presented with no empirical evidence to substantiate claims that Commonwealth involvement was hampering approval processes".[4]

2. **State laws are not capable of meeting Commonwealth standards and therefore cannot be comprehensively accredited.**

   The draft bilateral agreements released for Queensland and New South Wales propose only partial accreditation of state laws. This means that instead of having access to a 'one-stop-shop' assessment process, the system becomes more complicated because proponents will need to negotiate differing degrees of accreditation in each jurisdiction.

   There is no 'one-stop-shop.' Rather than reduce duplication, this process will create more red tape, more confusion, and less certainty for business.

3. **There is substantial evidence that national environmental standards will be reduced, a clear breach of the Commonwealth government's policy commitment to maintain high environmental standards.[5]**

   Proposed offset policies in Queensland and New South Wales are in breach of the Commonwealth Environmental Offsets Policy national standards. Both states have recently downgraded their offset policies to reduce biodiversity offset obligations. These new policies are in breach of the first principle of the Commonwealth offset policy that a suitable offset must "*deliver an overall conservation outcome that improves or maintains the viability of the aspect of the environment*…".

   In addition, both Queensland and New South Wales are winding back the laws that protect native vegetation from land clearing. These changes are likely to result in significant impacts on nationally listed threatened species:

   - Recent amendments to the Queensland *Vegetation Management Act 1999*, *Water Act 2000* and *Sustainable Planning Act 2009* which remove protection from high conservation value native vegetation, represent a substantial weakening of relevant environmental standards. These amendments have afforded greater scope for the clearing of in-stream vegetation, including in some catchments that drain into the Great Barrier Reef.

The removal of restrictions on clearing certain areas of regrowth vegetation of high conservation significance also means that nearly 700,000 hectares of native vegetation (of which nearly 250,000 hectares are classified as threatened ecological communities under the EPBC Act) can now be cleared under Queensland law. This has the potential to cause adverse impacts on over 300 EPBC listed threatened species known or likely to be present in those areas.

- In New South Wales, proposed changes to orders for clearing invasive native species, paddock trees and thinning under the regulations of the *NSW Native Vegetation Act* will result in the clearing of endangered ecological communities and other vegetation of high conservation significance. This is because under the proposed self-assessable codes, landholders will be able to clear native vegetation without knowing the type or conservation significance of the vegetation on their properties. Such clearing may be illegal under the EPBC Act.

4. **The proposed amendments to the EPBC Act would allow local government to determine whether a development is likely to have a significant impact on a matter of national environmental significance.**

   It is the responsibility of the Commonwealth government to protect the national interest.

   The proposed amendments to the EPBC Act give local government the power to make such decisions, without any standards in place by which they will be held accountable for those decisions. Local government has neither the expertise nor financial resources to adequately assess development that is likely to affect Matters of National Environmental Significance. Local government should not therefore be given the powers to determine what is and what is not in the national interest.

5. **These approval bilateral agreements remove the incentive for the states to conduct comprehensive strategic assessments.**

   Multiple studies and reviews have found weaknesses in states' planning systems and have recommended wider or better use of strategic planning. In particular, environmental issues are often not adequately considered.[6]

   Individual developments, when considered in isolation, may have a minor impact on the environment, but when combined, it is the cumulative impact of many smaller development decisions that is causing long-term damage to Australia's land, water and biodiversity assets.

   By far the most effective way to promote development and deliver better environmental outcomes, outcomes all parties agree are possible, is for both Commonwealth and state governments to undertake a systematic reform of our land use planning systems across Australia.

   If we don't get our land use planning systems right, no amount of money, or conditions on individual projects, will ever manage development in a way that grows the economy, creates jobs and maintains or improves the natural environment.

Instead of handing over powers, the Wentworth Group has offered the following mechanisms to reduce regulatory burden and duplication for business and to deliver better environmental outcomes:[7]

Develop long-term regional strategic plans to guide land use and natural resource management

Strategic assessments can be used to identify matters of both national and state environmental significance therefore streamlining and simplifying development planning by enabling all environmental values to be considered together.

Strategic assessments, when done well, can be of benefit to the environment. Rather than leaving the assessment until after a plan, policy or program has been finalised and actions are set in place, strategic assessments completed either before, or even at the same time as, the development of a major plan or policy are more likely to deliver better environmental outcomes. Strategic assessments and plans are the best way of addressing cumulative impacts.

Strategic assessments also benefit business. They provide certainty on where sustainable development can occur and the type of activities that will be allowed by considering broader landscape and ecological processes. They clarify environmental requirements and conditions up-front and early in the planning or project development process. Strategic assessments can also exempt certain actions from the need for further assessment under the EPBC Act.

Put in place national science-based standards so that new development does not impact on threatened species

The best way to streamline assessment processes so that high environmental standards are maintained is to put in place robust science-based assessment standards. The Wentworth Group has put forward a proposal for the Commonwealth to accredit a national science based standard to make sure new development does not cause a significant impact on threatened species.

Over 70 per cent of projects referred to the Commonwealth over the life of the EPBC Act have not needed further assessment and approval. For those developments that do trigger the Act, 73 per cent do so because of their potential to have a significant impact on threatened species and ecological communities and/or migratory species.[8]

One way of improving or maintaining environmental outcomes, and supporting more effective and efficient regulations to reduce the regulatory burden on business, is for the Commonwealth to develop or accredit an assessment methodology (such as the New South Wales *Environmental Outcomes Assessment Methodology*[9]*).* This would provide a transparent, science-based system for measuring the impact of a new development on Matters of National Environmental Significance.

The Wentworth Group has demonstrated through its work with the New South Wales government that it is possible to produce a scientifically robust, yet practical assessment methodology that can be used by government and accredited private sector certifiers to determine whether an action to clear native vegetation is likely to have a significant impact on the environment.

This approach offers a proven and transparent method for assessing the impact of an action to clear native vegetation, and guarantees the maintenance of high environmental standards. This will also significantly reduce the regulatory burden for business by providing certainty against a standard early in the project life cycle.

Streamline and coordinate assessment processes

The Wentworth Group's *Statement on Changes to Commonwealth Powers to Protect Australia's Environment* identified that efficiency savings could be achieved by better coordinating assessment processes, without compromising approval responsibilities. It is possible to design a single process – one application, one set of documentation, concurrent consultation and assessment periods, and one set of conditions on approval – whilst maintaining high environmental standards.

The draft bilateral approval agreements for Queensland and New South Wales as proposed, do not achieve this.

Establish a National Environment Commission

It is essential that the Commonwealth retains an independent audit over state processes where development is likely to impact matters of national environmental significance.

In addition to safeguards such as the Commonwealth Environment Minister retaining call-in or veto powers for individual projects, and the Commonwealth Environment Minister conducting project assessments in those instances where the state government is the project proponent, the Wentworth Group supports the Hawke Review's recommendation that an independent National Environment Commission be established as a particularly important safeguard to the delegation of more environmental assessments to states.[10]

The Hawke Review recommended that a National Environment Commission take on an assurance role in auditing the performance of states against standards and agreements and "take on responsibility for the provision of advice to the Minister for the purposes of making decisions about the environmental impact assessment and approval process under the Act."

Functions of the Commission should include:

- Auditing of annual reports, prepared by states, on the states' implementation of the bilateral assessment agreements.
- Biannual reviews of environmental assessments and approvals across Australia.
- Advice to the Minister on the terms of reference for, and the quality of, strategic assessments and regional plans.

In conclusion, the Wentworth Group encourages the Commonwealth government to withdraw the proposed amendments to the EPBC Act and the proposed bilateral agreements, and to instead adopt the alternative mechanisms that the Wentworth Group believes will both reduce regulatory burden and duplication for business and deliver better environmental outcomes.

Yours sincerely,

Peter Cosier
on behalf of the Wentworth Group of Concerned Scientists

References

[1] Australian Petroleum Production and Exploration Association, the Business Council of Australia and the Minerals Council of Australia (2014), Submission No 24 to House of Representatives Environment Committee, Parliament of Australia, *Inquiry into streamlining environmental regulation, 'green tape', and one stop shops*, 28 April 2014.

[2] Australian Government Department of Sustainability, Environment, Water, Population and Communities (2011) *Annual Report 2010-2011*, Canberra, Appendix A.

[3] Ibid.

[4] Environment and Communications Legislation Committee (2013), Parliament of Australia, *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*, [2.54].

[5] Coalition Policy (2013) *Our Plan: Real Solutions for all Australians*. p46.

[6] Productivity Commission (2013) *Major project development assessment processes*. Draft Research Report, Canberra

[7] Wentworth Group of Concerned Scientists (2012). *Statement on Changes to Commonwealth Powers to Protect Australia's Environment*, September 2012.

[8] Ibid, p9.

[9] The Environmental Outcomes Assessment Methodology is made under the NSW *Native Vegetation Act 2003*, and the *Native Vegetation Regulation 2013*.

[10] Australian Government Department of the Environment, Water, Heritage and the Arts (2009) *The Australian Environment Act – report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, Recommendation 71.