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Submission on the Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014 and the Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014

WWF-Australia welcomes the opportunity to contribute to the work of the Senate Standing Committee on Environment and Communications (the Committee), in particular in relation to the inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill* 2014 and the *Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill* 2014.

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

Australia is home to about one million species of animals and plants, 4,000 fish species and 500 coral species in the northern reefs alone. About 85% of Australia's flowering plants, 84% of mammals, 45% of birds, 89% of freshwater fish and 80% of southern Australian marine species are found nowhere else on Earth.

Although some native animals and plants and ecosystems are flourishing, many are in decline (Australian Government, *State of the Environment 2011*). WWF believes that it is critical to stop and then reverse this decline, and there are ample opportunities to do so through more sustainable agricultural, coastal, fishery, forestry, industrial and urban management and development.

The fundamental purpose of the *Environment Protection and Biodiversity Conservation Act* is to conserve the Australian environment, and promote sustainable development, particularly in relation to nine matters of national environmental significance:

- World heritage properties;
- National heritage places;
- Wetlands of international importance;
- Nationally threatened species and ecological communities;
- Migratory species;
- Commonwealth marine areas;
- Great Barrier Reef Marine Park;
- Nuclear actions (including uranium mining);
- A water resource, in relation to coal seam gas development and large coal mining development.

Matters of national environmental significance are peculiarly issues for the Commonwealth Government and that is the appropriate level of Australian government to regulate them. It is also the case that some states and territories have environmental laws that are not as effective to the EPBC Act, or at least not as well administered.

This last issue was most recently and credibly illustrated by the Queensland Audit Office inquiry into the *Environmental Regulation of the Resources and Waste Industries in Queensland*[1].

The Queensland Department of Environment and Heritage Protection administers the *Environmental Protection Act* 1994, one of the Acts proposed to be accredited under the draft *Approval Bilateral Agreement made under Sections 45 and 48 of the Environment Protection and Biodiversity Conservation Act* 1999. The Audit Office found that the Department is "exposing the state to liability and the environment to harm unnecessarily"[2] and that:

> *Poor data have hampered past approaches to effective environmental regulation of the mining and waste industries. This issue is now brought into even sharper relief under the current regulatory strategy, based as it is on government policy to ease the burden on industry caused by regulation and its associated bureaucracy—red tape and green tape specific to environmental issues.*
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> *Green tape reduction aims to reduce costs for industry and government while maintaining environmental standards. To be effective, this requires the appropriate allocation of resources and effort according to the risks involved and outcomes to be achieved. The inability of both departments to assess risk effectively, and to target and coordinate their resources appropriately reduces confidence for the community that the environment is protected and standards have been met.*[3]

The findings of the Audit Office are particularly concerning given (a) credibility of the source and (b) the fact that Commonwealth proposes to delegate to the Queensland Government the power to approve developments which have a direct and significant deleterious impact on the Great Barrier Reef, five wetlands of international importance (Moreton Bay, Bowling Green Bay, Currawinya Lakes, Shoalwater and Corio Bays, Great Sandy), 14 national threatened ecological communities and 447 national threatened species of animals and plants.

Accordingly, WWF submits that the power to grant environmental approvals in relation to matters of national environmental significance should not be delegated to the state and territory governments and to do so is not consistent with the maintenance of high environmental standards.

WWF submits that there are opportunities to streamline environmental approvals without reducing environmental standards and that these opportunities are well explained in the Wentworth Group of Concerned Scientists *Statement on Changes to Commonwealth Powers to Protect Australia's Environment* – September 2012, a copy of which is attached to this submission.

Without prejudice to WWF's submission that environmental approval powers in respect of matters of national environmental significance should not be delegated to the states and territories at all, WWF believes that, if the Senate chooses to pass the Bill into law, the following provisions should be amended before doing so:

- CSG and large coal mining developments should remain exempt from being subject to an approval bilateral (as proposed in Schedule 3 of the Bill) as these classes of developments raise more significant conflicts of interests for states and territories than others.
- Processes that are reflected in policies and guidelines rather than laws should not be permitted to be accredited (as proposed in Schedules 3-5 of the Bill) as officials can (and in some situations must) depart from the terms of policies and guidelines.

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[1] https://www.qao.qld.gov.au/files/file/Reports%20and%20publications/Reports%20to%20Parliament%202013-14/RTP15Environmentalregulationoftheresourcesandwasteindustries.pdf
[2] Ibid, page1.
[3] Ibid, page 2.

- The Minister's consideration should be limited to matters in section 46(3) the Environment Protection and Biodiversity Conservation Act.
- The Minister should not be entitled to make "minor amendments" to an accredited authorisation process without the process requiring reaccreditation (as proposed by Schedule 4 of the Bill) as this will result in amendments being made without public participation and parliamentary oversight. Furthermore, the requirement that such amendments can only be challenged if the changes can be demonstrated to result in a "material adverse impact" on a protected matter of national environmental significance should be removed as it introduces a new, unreasonable and unnecessary test into the process.
- The amendments that permit bodies other than State or Territory government agencies (such as local governments and advisory panels) can approve actions which are likely to impact on matters of national environmental significance should be removed (other than – if the legislation is passed – in relation to Courts).

Other matters

We believe that the broader context of the administration of environmental regulation should be considered as the Committee assesses the implications of this Bill.

WWF-Australia is concerned that significant pressures continue to be brought to bear on Australian governments, both national and state, as they seek to administer regulation designed to protect public health and environmental values. In particular, we are concerned that there is a misplaced belief that speed of approval should be prioritized over quality of assessment.

As Professor John Quiggan from the University of Queensland's School of Economics notes[4], mining companies operating in Australia are uniquely privileged in that the regulatory regime allows them to explore and exploit publicly-owned resources on private land without the consent of the land-owners. As a result Australian governments, both national and state, retain an important role in protecting public health and safeguarding environmental assets.

Concerns have been raised, for example by then Leader of the Opposition Tony Abbott[5], that the regulatory regimes designed to protect Australia's most precious environmental assets delay the plans of mining companies by up to three years, and to the extent that investment in their operation may become unviable. However, most projects subject to the Federal process are approved in less than twelve months, and mining investment has tripled since 2007[6].

It is of particular concern that debate around approvals for large and likely environmentally damaging projects is focused on how quickly the approvals should be given, rather than on how effectively the Australian Government is carrying its responsibility to administer a regulatory regime that government to prevent projects with unacceptable environmental impacts from progressing.

A number of previous inquiries, including the *Inquiry into the Operation of the Environment Protection and Biodiversity Conservation Act 1999*[7] undertaken in 2009 by the Senate Standing Committee on Environment and Communications, the *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*[8] undertaken by Dr Allan Hawke and completed in 2009, and the assessment by the Australian National Audit Office on *Referrals, Assessments and Approvals under the*

[4] The Conversation, *Factcheck: does it take three years to get approval for a mine?* 7 July 2013.

[5] Liberal Party, Tony Abbott: *Address to Victorian Federal Campaign Rally*, Melbourne Victoria, 2 July 2013.

[6] Australian Bureau of Statistics, *Actual and Expected New Capital Expenditure*, March 2012.

[7] Commonwealth of Australia, *Inquiry into the Operation of the Environment Protection and Biodiversity Conservation Act 1999*, April 2009.

[8] Department of Environment, Water, Heritage and the Arts, *The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, December 2009.

Environment Protection and Biodiversity Conservation Act 1999[9] tabled in Parliament in 2003, have suggested substantial improvements can be made to the operation and administration of the Act.

This Bill provides the Committee with an opportunity to look more deeply at issues surrounding the Act, its effectiveness and operation, and to re-visit the recommendations of past Senate inquiries and reports which are likely, in most part, to be both current and relevant.

Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014

WWF supports this reform.

Should you require further information on this submission, or would like to discuss any of its contents, please contact:

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[9] Australian National Audit Office, *Referrals, Assessments and Approvals under the Environment Protections and Biodiversity Conservation Act 1999*, April 2003.