

January 18, 2013

Committee Secretary
Senate Standing Committees on
Environment and Communications
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**Re: The Environment Protection and Biodiversity Conservation Amendment
(Retaining Federal Approval Powers) Bill 2012.**

Dear Committee,

BirdLife Australia welcomes the opportunity to participate in this inquiry into *The Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*.

BirdLife Australia is a highly respected, science-based, not-for-profit conservation organisation. With our specialised knowledge and the commitment of our Australia-wide network of 10,000 members, and more than 25,000 volunteers and supporters, we are dedicated to achieving outstanding conservation results for our native birds and their habitats.

BirdLife Australia supports the bill to amend the *Environment Protection and Biodiversity Conservation Act* (EPBC Act). Federal oversight over developments that are likely to affect **matters of national environmental significance** provides critical protection for Australia's nationally threatened species and places of national and international importance. History has shown us that state governments do not assess development proposals with the national interest in mind. States are inherently conflicted because they usually directly benefit from the projects they are assessing through royalties and political gain. When it comes to mining and major infrastructure projects states are more likely to prioritise short-term profits and political interests over the environment.

Examples of when federal environmental laws have protected Australia's unique natural heritage.

Our national environment laws protect some of our most iconic landscapes – from our tropical coral reefs to our snow-capped mountains – from destructive development that would otherwise go ahead under state approvals.

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Victoria's Alpine National Park is home to rare snow-adapted native species, including gnarled snow gums that survive heavy snow dumps and the endangered mountain pygmy possum, one of the world's only hibernating marsupials. Last year, to fulfil an election promise, the **Victorian government** let cattle graze in the national park, trampling the unique landscape, including endangered ecological communities. Thanks to Australia's national environment law, the Federal government was able to order cattle out of the heritage-listed park.

Great Keppel Island is part of the world heritage listed Great Barrier Reef and is surrounded by reefs with high coral cover. In 2009, the **Queensland government approved** a massive resort development on the island that would have included 300 apartments, a retail village, a golf course and a sports oval. The Federal government rejected the proposal under national environment law on the grounds that it would "clearly (have) unacceptable impacts" on the world heritage site.

In 2009 the Federal Minister for the Environment refused a proposal for rezoning and associated works to facilitate residential development in Jervis Bay, due to its potential impact on threatened species and Commonwealth land (Booderee National Park). A decade earlier, despite many of its state agencies expressing concern at the proposal, the **NSW government's Minister** for Urban Affairs and Planning directed a Commission of Inquiry in 1999 to consider planning options for the site; which recommended the site be rezoned to allow the development of 730 lots. Federal oversight was necessary to prevent activity that would have significantly increased the risk of extinction of the endangered Eastern Bristlebird and a threatened orchid, as well as a number of other listed species.

State governments regularly act as the proponents of large infrastructure projects. Allowing state governments to assess their own projects would create inherent conflicts of interest. In the past, we've seen that state governments are willing sacrifice the environment for short-term economic or political gain.

The **Queensland government proposed** a large dam on the Mary River in 2006. The Federal government found the dam would have significant environmental impacts. It would destroy habitat for endangered species found only in that river and would restrict freshwater inflow to the waters of the world heritage listed Fraser Island. Local Aboriginal people and farmers were opposed to the dam, as it would have seen their land inundated. Due to the significant social and environmental impacts, the Federal government refused the project under the national environment law.

The **Victorian government proposed** a freeway near Melbourne in 2003. The Federal Court found the state government's proposal misleading as it failed to mention that an additional link road would be required and would have to cross environmentally sensitive land.



Australia boasts wetlands unlike others anywhere in the world and hosts threatened bird species during their global migrations. To protect these special places and species, the nation is a signatory to international covenants. Our national environment law ensures these international obligations are upheld.

Shoalwater Bay and Corio Bay in Queensland are recognised as wetlands of international importance under the Ramsar convention. They boast a diverse array of habitats, including coral reefs, seagrass beds, rocky shores, mangrove forests and melaleuca woodlands. In fact, half the wetland types in Queensland exist in these bays. In 2008, a massive coal mine and railway line was proposed in the area and **supported by the Queensland government**. The Federal government refused the proposal under national environment law because it would have had “clearly unacceptable impacts” on the internationally significant wetlands.

In 2007 the Federal government refused an application to release water from Lake Crescent in Tasmania, for irrigation purposes. The release would have impacted a Ramsar site and the globally endangered golden galaxia (a fish). **The Tasmanian government**, a direct proponent of the project, referred it again in 2008. In this instance the Federal government said up front at referral stage that the project was ‘clearly unacceptable’ and that they were not even going to assess it.

The Commonwealth also has the ability to enforce environmental regulation when the States fail to do so. For example, in 2004, a NSW landholder was sued under the EPBC Act for clearing and ploughing in the internationally recognised Windella Ramsar wetland site without authorisation. 100% of the site was cleared in preparation to plant wheat. The farmer had to pay a \$450,000 penalty, court costs and rehabilitate the site. The state of NSW failed to enforce its own native vegetation legislation with regard to this clearing.

Our national environment laws ensure that the environmental effects of development are mitigated.

The Whitsunday islands on Queensland’s Great Barrier Reef are famous for their pristine white beaches, colourful coral reefs and towering hoop pines. The islands’ waters are important calving grounds for migrating humpback whales. In 2001, a marina was proposed for the area and the **Queensland government’s assessment** of this project omitted important environmental conditions. Fortunately the Federal government’s approval included plans to manage the project’s effects on threatened and migratory species and an independent audit to check these plans were being carried out.

In 2009, the **Northern Territory government assessed** a proposal to divert the McArthur River 5.5 kilometres east to allow for open-cut mining. The Federal Government’s approval resulted in important additional environmental conditions to mitigate the effects on migratory birds and the nationally listed freshwater sawfish.



Any person concerned by a development can use national environment laws to hold governments to account.

In 2002, a massive dam was proposed for the Dawson River in central Queensland, directly inland from the Great Barrier Reef. The dam would have generated cotton farming, creating chemical runoff that would have polluted the Great Barrier Reef. The **Queensland government supported** the proposal and the Federal minister decided only to assess the direct impacts of constructing the dam, not the resulting agriculture. Conservation groups challenged this in the Federal Court under national environment laws and the court found the minister had misinterpreted the Act. The minister announced he would consider the impacts of the agriculture on the Great Barrier Reef, resulting in the proponent withdrawing it's application.

Public participation and the Australian Communities right to be involved in decisions affecting matters of National Environmental Significance.

Handing final decision making powers to the states would remove the community's right to be informed of, and participate in, decision-making processes that affect environmental matters that are important to all Australians. Places like the Great Barrier Reef and species like the endangered swift parrot (that breeds in Tasmania, but winters in NSW, the ACT and Victoria), belong to all Australians, and all Australians should all be able to have a say in what affects it at the national level.

Australians overwhelmingly oppose the hand over of federal environmental powers to the states: 85 per cent of Australians believe the Federal Government should be able to block or make changes to major projects that could damage the environment¹.

So long as the provisions for approval bilateral arrangements remain in the EPBC Act, vested interests will continue to lobby for them to be used in order to remove federal oversight, and make it easier for states to approve developments that will destroy the habitat of nationally listed species. BirdLife Australia therefore supports this amendment bill.

I would welcome the opportunity to present to the committee to discuss further details

Yours sincerely,

Samantha Vine
Head of Conservation

¹ Polling released in November 2012 conducted by Lonergan Research