ENVIRONMENT AND COMMUNICATIONS LEGISLATIVE COMMITTEE

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

Public Hearing – Friday, 15 February 2013

Department of Sustainability, Environment, Water, Population and Communities

Senate Questions

Senator Cameron asked the Australian Government Department of Sustainability, Environment, Water, Population and Communities on 15 February 2013:

1. Information on job losses in the Queensland and New South Wales Planning government departments.

   Answer: The following information is based on the Queensland government and New South Wales governments 2012-13 Budget statements.

   The department notes that on 11 September 2012 the Queensland Government Treasury and Minister for Trade Mr Nicholls said 'that by making tough decisions to repair Queensland's finances the Newman Government had found cost savings of $600 million, to reduce the number FTE losses in the public service to 14,000'. http://budget.qld.gov.au/media-releases/2012-13/for-queenslands-future-the-most-important-budget-in-a-generation.pdf

   The department notes that the on 12 June 2012 the NSW Treasurer, the Hon Mike Baird MP said 'A labour expense cap will be introduced as a new savings measure across the public sector. We have a target of a 1.2 per cent per annum reduction in labour costs growth.' 'Directors General will be given as much flexibility as possible to achieve the savings in the most appropriate way to meet the service requirements of their agencies. If it was solely achieved through headcount this would equate to up to 10,000 jobs over four years.' http://www.budget.nsw.gov.au/__data/assets/pdf_file/0019/18334/BP_No_1_Speech.pdf.

   More specific information on this is not readily available in the Public Domain.

2. Provide the department's view on the implications of the paper '*A New Planning System for NSW Green Paper'* on Accreditation under the EPBC Act.

   Answer: There is currently no assessment or approval bilateral agreement in place with New South Wales (NSW) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The previous assessment bilateral agreement expired on 18 January 2012.

   A New Planning System for NSW Green Paper (the Green Paper) proposes 'transformative changes to the planning system in NSW', including a new Planning Act. Many aspects of the Green Paper suggest there will be changes to assessment processes under the *Environmental Planning and Assessment Act 1979* (the EP&A Act). For example, it includes proposals to streamline assessment of state significant development and to simplify delivery of Public Priority Infrastructure.

Any changes to NSW assessment processes under the EP&A Act may impact on whether the Commonwealth Environment Minister could accredit those processes under a future EPBC Act bilateral agreement, or for the purposes of 'one-off' accreditation under section 87 of the EPBC Act. However, it is not possible to draw conclusions about this until the details are known. New or amended assessment processes would need to meet the requirements of the EPBC Act and EPBC Regulations before being accredited. The full implications of the Green Paper for accreditation of assessment approaches under the EPBC Act will therefore not be known until NSW passes legislation.

We understand that NSW is currently developing a White Paper for release in early 2013.

3. Provide details on the state and territory processes accredited under assessment bilateral agreements.

Answer: Details for state and territory assessment processes accredited under bilateral agreements are outlined below:

Processes currently accredited under Bilateral Agreements
Queensland
Chapter 9, Part 2 of the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009.* Part 4 of the *State Development and Public Works Organisation Act 1971* and the *State Development and Public Works Organisation Regulation 1999*. Part 1 of Chapter 3 of the *Environmental Protection Act 1994* and the *Environmental Protection Regulation 2008.*
Western Australia
Public Environmental Review under the *Environmental Protection Act 1986* and Environmental Impact Assessment Administrative Procedures 2010. Environmental Review and Management Programme under the *Environmental Protection Act 1986* and (Part IV Division 1) Administrative Procedures 2002. Public Environmental Review under the *Environmental Protection Act 1986* and (Part IV Division 1) Administrative Procedures 2002 (included for transitional arrangements).
Victoria
Environment Effects Statement under the Victorian *Environment Effects Act 1978.* Advisory Committee or joint Advisory Committee/Panel under the *Planning and Environment Act 1987*. Permit application under *Planning and Environment Act 1987*. Assessment under the *Environment Protection Act 1970*. Assessment by a Panel under *Water Act 1989*.

South Australia
Environmental Impact Statement under the *Development Act 1993*. Public Environment Report under the *Development Act 1993*. Development Report prepared under the *Development Act 1993.*
Northern Territory
Environmental Impact Statement under the *Environmental Assessment Act*. Public Environment Report under the *Environmental Assessment Act*. Inquiry under the *Inquiries Act.*
Australian Capital Territory
Environmental Impact Statement under Chapter 8 of the *Planning and Development Act 2007* and *the Planning and Development Regulations 2008* (for proposals in the 'Impact Track').
Tasmania
Assessment under the *State Policies and Projects Act 1993.* Assessment under the *Environmental Management and Pollution Control Act 1994.* Assessment under Division 2A of Part 4 of the *Land Use Planning and Approvals Act 1993.*

Processes previously accredited under Bilateral Agreements
New South Wales The NSW assessment bilateral agreement expired at the end of its five year term on 18 January 2012. The processes listed as currently accredited are those that were accredited under the expired agreement.
Part 3A of the *Environmental Planning and Assessment Act 1979* [now repealed]. Part 4 of the *Environmental Planning and Assessment Act 1979*. Part 5 of the *Environmental Planning and Assessment Act 1979*. Where the only controlling provision was threatened species and communities (ss.18 or 18A) and the action was not otherwise assessed by one of the methods set out above, assessment under Part 6 of the NSW *Threatened Species Conservation Act 1995*, or assessment under Part 7A of the NSW *Fisheries Management Act 1994.*

4. In a submission to the Senate Inquiry, Dr Chris McGrath, outlined a timeline of the assessment and approval process of the Wandoan Coal Mine. The department advised that it would confirm the timeframe of the EPBC Act process.

   Answer: Timeframe, Xstrata Coal Queensland, ICRA Wandoan & Sumisho Coal Australia/Mining/Wandoan/QLD/Wandoan Coal Project Mine and Infrastructure Reference Number: EPBC 2008/4284

   - Date of referral received – 23 June 2008
   - Invitation for Public Comment on Referral/Comments received - 23 June 2008
   - Decision on Assessment Approach: Bilateral Agreement - 21 July 2008
   - S74(A) Decision to accept or not accept split referral/Does not apply - 21 July 2008
   - Decision whether action needs approval/Approval Required - 21 July 2008
   - Correction Notice - 02 September 2008
   - Assessment Process Notice: Extension to time in which to make a decision whether to approve a controlled action - 24 November 2010
   - Assessment Process Notice: Extension to time in which to make a decision whether to approve a controlled action - 02 February 2011
   - Decision on approval of action: Approved with conditions - 14 March 2011
   - Notification of Variation to Approval - 05 February 2013

   Further information on the referral is found on the department's website: http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=current_referral_detail&proposal_id=4284

   The department notes that Dr Chris McGrath submission indicated that the EPBC Act approval for the proposed action occurred on 21 March 2011. The department's records indicated that the approval for this action was given by the Hon Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities on 14 March 2011.

Senator Waters asked the Australian Government Department of Sustainability, Environment, Water, Population and Communities on 15 February 2013:

1. Provide a summary of proposed actions assessed under assessment bilateral agreements where the department has requested further information.

   Answer: The statutory decision time period can be paused if the Minister believes on reasonable grounds that he or she does not have enough information to make an informed decision (Section 132). The relevant decision period can be extended if the Minister specifies a longer time for making a decision whether or not to approve the action (Section 130(1A)).

   The statutory decision period can be paused or extended for a number of reasons, for example requesting additional information on protected matters, seeking expert reports or advice, clarification of impacts of the action, further details on avoidance, mitigation and offset measures.

Since the commencement of the EPBC Act around 67 proposed actions assessed under an assessment bilateral agreement have had the approval decision statutory time period paused or extended.

2. Provide details on the work proposed to be undertaken on assessment bilateral agreements.

   Answer: In December 2012, the Council of Australian Governments agreed that the Commonwealth will continue to work with states to eliminate duplication, avoid delayed approval processes, and to utilise common information requirements for regulatory processes. The Commonwealth proposes to continue to work with states to further streamline environmental regulation and this may include work to improve existing arrangements.

Additional questions on notice from EPBC (Retaining Federal Approval Powers) Bill inquiry Committee Secretary (Toni Matulick) 19 February 2013

1. The department's submission states that the department is working with states and territories on streamlining environmental regulation with a focus on improving assessment bilateral agreements. Please provide details on the scope of this work, and detail how could such improvements be made?

   Answer: In December 2012, the Council of Australian Governments agreed that the Commonwealth will continue to work with states to eliminate duplication, avoid delayed approval processes, and to utilise common information requirements for regulatory processes. The Commonwealth proposes to continue to work with states to further streamline environmental regulation and this may include work to improve existing arrangements, such as assessment bilateral agreements.

2. Where a project is assessed under an assessment bilateral agreement, and this agreement is fully complied with and the federal government is provided with all the relevant information required to make its final decision on a project, please outline how long this decision takes, including the statutory timeframes that apply under the various assessment approaches.

   Answer: The Minister has a statutory timeframe of 30 business days to make a final decision, after receiving the assessment report for a proposed action assessed under a bilateral agreement (Section 130(1B)(a)). The timing of approval decisions for all environmental impact assessment processes, is outlined in Section 130(1B) of the EPBC Act.

   130 Timing of decision on approval

   Basic rule

   (1) The Minister must decide whether or not to approve, for the purposes of each controlling provision for a controlled action, the taking of the action.

   (1A) The Minister must make the decision within the relevant period specified in subsection (1B) that relates to the controlled action, or such longer period as the Minister specifies in writing.

   *(1B) The **relevant period**, in relation to a controlled action, is as follows:*

(a) if the action is the subject of an assessment report—the period of 30 business days beginning on the first business day after the Minister receives the assessment report;

(b) if Division 3A of Part 8 (assessment on referral information) applies to the action—the period of 20 business days beginning on the first business day after the Minister receives the finalised recommendation report under subsection 93(5);

(c) if Division 4 of Part 8 (assessment on preliminary documentation) applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the documents under subsection 95B(1) or the statement under subsection 95B(3), as the case requires;

(d) if Division 5 (public environment reports) or Division 6 (environmental impact statements) of Part 8 applies to the action—the period of 40 business days beginning on the first business day after the Minister receives the finalised public environment report or the finalised environmental impact statement, as the case requires;

(e) if a commission has conducted an inquiry relating to the action—the period of 40 business days beginning on the first business day after the Minister receives the report of the commission.

Further information on the EPBC Act assessment process can be found in fact sheets on the Department of Sustainability, Environment, Water, Population and Communities (the department) website: www.environment.gov.au/epbc/publications/pubs/assessment-process.pdf.

3. When a project is assessed under an assessment bilateral agreement, and the final decision takes longer than the applicable timeframe (due to the use of 'stop the clock' provisions), what are the usual causes for delay?

   Answer: The statutory decision period can be paused or extended for a number of reasons, for example requesting additional information on protected matters, seeking expert reports or advice, clarification of impacts of the action, further details on avoidance, mitigation and offset measures.

4. Has the department undertaken detailed analysis of the causes of these delays? If so, please provide details of what analysis has been undertaken, and any findings.

   Answer: The independent report *Cost Benefit Analysis – Reforms to Environmental Impact Assessments under the EPBC Act*, Deloitte Access Economics, 20 April 2011, included analysis of the time delays and associated costs for environmental approvals under the EPBC Act. The full report, which includes findings, is publicly available on the Department of Finance and Deregulation Website:

   http://ris.finance.gov.au/2011/09/12/response-to-the-review-of-the-epbc-act-%E2%80%93-regulation-impact-statement-%E2%80%93-department-of-sustainability-environment-water-population-and-communities/

The department also undertook an analysis of the active bilateral and accredited assessments in November 2012. The reasons for the stop clock or extension ranged from seeking additional information from the proponent, expert advice and further advice from the state.

5. Is it the federal government's position that major projects which take years to develop and that will involve significant impacts on matters of national environmental significance should not have to wait even thirty days for federal environmental approval?

   Answer: The department assesses proposed actions in accordance with the EPBC Act, and the *Environment Protection and Biodiversity Conservation Regulations 2000*. The timing of approval decisions is outlined in Section 130(1B) of the EPBC Act.

6. The department has stated that since December of last year the department has stopped work on the version of approvals bilateral agreements COAG announced in early 2012. Is the department now exploring or negotiating internally or with the states alternate options to transferring EPBC approvals responsibilities to the states?

   Answer: The department is not currently exploring or negotiating internally or with states transferring EPBC Act approval responsibilities to the states.