Nature Conservation Council of NSW
The voice for the environment since 1955

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Submission to the Senate inquiry into the Environment Protection and Biodiversity Conservation Amendment.

Dear Secretary,

The Nature Conservation Council of NSW (NCC) welcomes the opportunity to provide comment to the Senate inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012 (the Bill).

NCC is the peak environment group for NSW, representing more than 100 community environment groups across the state. We have long-standing experience in state environmental planning and assessment law, and feel strongly about the role of the Federal Government in environmental regulation. If the Federal Government hands over its approval powers under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) to the states, as it is currently legally able to do, important environmental protections, established over 30 years, will be in jeopardy.

We are unequivocally opposed to the delegation of approval powers to the states and territories under the EPBC Act and therefore support the Bill.

The requirement to obtain Federal Government approval for projects that impact upon matters of national significance is important for several reasons.

Only the Federal Government is suited to make environmental decisions in the national interest.

There needs to be national leadership on national environmental issues. Our rivers, critical ecosystems and endangered species do not adhere to state borders, so only the Federal Government can properly consider national or cross-border issues and make decisions in the national interest. This is why the EPBC Act focuses on matters of national environmental significance – they are matters that by their nature should be considered and protected at the national level by the national government.

History has shown federal oversight on matters of national environmental significance provides critical protection for Australia's lands, water and threatened wildlife. Ill-conceived development proposals, supported by state governments, have threatened Australia's natural heritage several times in the past, prompting the federal government to step in to prevent irreversible harm. Without federal intervention, the Franklin River would be dammed, there would be oil rigs on the Great Barrier Reef and pristine Shoalwater Bay would be home to a large coal port.

The *2011 National State of the Environment Report* shows the country is going backwards in biodiversity conservation, the health of our waterways and the protection of our forests and woodlands. Given the declining state of our environmental assets there is an indisputable need for the Federal Government to uphold and strengthen environmental laws to safeguard Australia's natural heritage for future generations.

National environmental law enables Australia to meet its international environmental obligations.

The Commonwealth, not the states, is signatory to and responsible for upholding Australia's obligations to a number of international agreements for the protection of environmental assets, including matters of national environmental significance under the EPBC Act. The Commonwealth is responsible for ensuring Australia meet its obligations under conventions and agreements such as:

- The Convention on Biological Diversity
- The Convention for the Protection of World Cultural and Natural Heritage
- The Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar)
- The Convention on the Conservation of Migratory Species of Wild Animals
- The China-Australia Migratory Bird Agreement (CAMBA) and
- The Japan- Australia Migratory Bird Agreement (JAMBA)

There is strong concern that states do not have adequate approval and assessment processes in place to meet Australia's international obligations at a national level.

If the Commonwealth devolves its obligations under international law it will be up to the states to ensure that development activities comply with Australia's international obligations – a task that they are unlikely to be willing or able to do. The Commonwealth holds primary responsibility for ensuring these international obligations are met, and it is in the best position to do so.

States have a poor record of establishing and administering environmental laws.

In a number of states and territories environmental impact assessment is currently weak and inadequate, and the states alone cannot be relied upon for protection of environmentally sensitive assets in the national interest.

Recent evidence shows that conflicting interests will result in state and territory governments undermining essential environmental protection for short-term economic and political gain. Examples include the Queensland Government's inadequate environmental assessment of the Alpha coal mine project that would harm the Great Barrier Reef and the NSW Government's approval of trial cattle grazing in national parks. States are often the lead proponents of large-scale infrastructure projects,

resulting in a direct conflict of interest when assessing high-impact developments.

The NSW Government is currently reviewing its planning system. During this process, the development and mining industry have lobbied strongly to weaken state environmental protections and reduce community participation.

The new planning system green paper places strong emphasis on delivering rapid approval for development but gives limited commitment to achieving social and environmental outcomes. For example:

- there is no clear commitment to ecologically sustainable development (ESD);
- there is no clear guarantee that existing environmental protections, particularly those in existing environmental protection policies will be transferred to the new planning system
- there is no clear indication of how merit assessment will be carried out, in particular, what matters will need to be considered by decision-makers in determining development applications

Without clear provisions for environmental protection, we will continue to see environmental interests losing out to economic interests.

In August 2012, the NSW government released its final regional strategic land use plans for the Upper Hunter and New England North West. These plans fail to protect critical environmental assets from mining, coal seam gas and other damaging development, including RAMSAR listed wetlands, threatened species habitat and drinking water catchments.

The Australian Network of Environment Defender's Office conducted a thorough assessment of threatened species laws and planning legislation in each jurisdiction[1] and it found that no state or territory planning laws met best-practice standards for environmental assessment.

Another issue of great concern is the lack of resources at both the federal and state level for the listing process. The data required to make a proper assessment of whether a species or population should be listed often does not exist, in large part due to consistent under-funding of relevant state agencies.

Serious under-resourcing means that even when limited data indicates that further research is required which would likely support the listing or upgrading of threatened flora and fauna, the required work is rarely undertaken. One major stumbling block in the success of recovery plans is the lag time between the listing of species and the development and implementation of effective plans. NSW has over 1,017 listed species and communities and only about 96 recovery plans.

Any new responsibilities in environmental approvals would add to the workload of state government agencies, including compliance and enforcement actions under the EPBC Act. Considerable extra resourcing will be required at a time when state governments are reducing their budgets and personal.

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[1] *An assessment of the adequacy of threatened species and planning laws in all jurisdictions in Australia*, December 2012, Australian Network of Environmental Defender's Offices Inc. (ANEDO). http://www.edo.org.au/edonsw/site/policy_discussion.php,

The transfer of Federal approval powers to the states will expose the environment to significant risk and effectively exclude local communities from important decision-making processes.

A patchwork of standards provides less, not more certainty.

A recent argument in favor of transferring federal approval powers to the states is that unnecessary duplication is causing high costs to business in Australia. The claimed duplication is a fallacy. An assessment by Economists at Large[2] found numerous flaws in the methodology used by the Business Council of Australia to estimate costs.

There is no evidence the transfer of federal approval powers to the states and territories is the most efficient way to transform the system of environment assessment and approvals. In reality the Commonwealth and the states have distinct interests in particular outcomes. It is beneficial, particularly for environmental approval processes, to have multiple, independent arbitrators.

Devolving approval powers to states and territories would leave Australia with a patchwork of inconsistent and ineffective environmental protections that would lead to more, not less uncertainty for business.

Protection of environmental assets requires a system of checks and balances.

The EPBC Act delivers important environmental safeguards by placing checks and balances on the exercise of state power. The ability to hand over that power solely to states should be removed from our national environmental law.

History has shown that when the Federal Government exempts the states or gives them powers under the EPBC Act, environmental protection will be undermined and the Federal Government struggles to retain an oversight role. There is no evidence the Federal Government could effectively monitor and oversee the operation of bilaterals, including at the referral stage. Experience with Regional Forests Agreements indicates that non-compliance or ineffective implementation will not lead to any significant response from the Commonwealth.

For the above reasons, we believe it will never be appropriate for the Federal Government to hand over their federal approval powers to the states. Accordingly, the power to do so should be removed from the EPBC Act. The recent law reform agenda progressed through COAG to 'cut green tape' has highlighted the problematic nature of this section existing in the Act.

NCC supports the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012 that will ensure that the Federal Government continues to have the important role in protecting Australia's unique natural heritage for this and future generations.

Yours sincerely,

Katherine Smolski
Campaigns Director

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[2] *A response to the Business Council of Australia's Discussion Paper for the COAG Business Advisory Forum*, 2012, Economists at Large, Melbourne, Australia.