Senate Environment and Communications Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Submission to the Senate Environment and Communications Legislation Committee regarding the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*.

Thank you for the opportunity to make a submission on the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*.

Submissions:

- I support the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012* ('*The Bill*').

- The Bill removes those provisions of the *Environment Protection and Biodiversity Conservation Act* (*EPBC Act*) which empower the Commonwealth to accredit the Environmental Impact Assessment (EIA) approval processes of a state or territory. Division 1 of Part 4, which states that actions covered by bilateral agreements do not need approval under the *EPBC Act*, would be removed.

- The context of this Bill's introduction is the April 2012 agreement of the Council of Australian Governments (COAG) to reform national environment regulation. The stated promise of the COAG reforms is to increase efficiency by streamlining state and federal approval processes while maintaining high environmental standards. The COAG reform agenda envisages the increasing use of strategic assessments, approval bilateral agreements, and national standards for state and territory processes.

- While there are multiple assessment bilateral agreements in place, there are currently no approval bilateral agreements in place. The COAG reforms will thus be 'breaking new ground'.[1] My submission questions whether this is ground we as a nation want to break.

- There has been little to no opportunity for community input into these COAG proposals. This *Bill* will provide the opportunity to have a much-needed public discussion about the best way forward for national environmental governance. The 2009 Hawke Review Final Report into the EPBC Act made 71 recommendations for improving national environmental regulation, and any COAG-initiated reforms must be assessed in light of these sound recommendations.[2]

---

[1] Department of Sustainability, Environment, Water, Population and Communities, *Draft Framework of Standards for Accreditation of Environmental Approvals under the Environment Protection and Biodiversity Conservation Act 1999*, July 2012 http://www.environment.gov.au/epbc/publications/pubs/accreditation-standards-framework.pdf

[2] Hawke, A, The Australian Environment Act: Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 – Final Report, October 2009, available at http://www.environment.gov.au/epbc/review/publications/final-report.html

- The best argument for increasing the use of approval bilateral agreements is that they will potentially enable the cumulative effects of multiple projects to be assessed and planned for. However, whether these benefits would be realised depends largely on the quality of the state or regional planning instruments in place. It would be essential that the Commonwealth retain the power to monitor any state processes, revoke the accreditation if the state process is inadequate, and compel compliance with any conditions imposed on an approval.

- My concern is that the Commonwealth may give general approval to a state or territory and then withdraw from any involvement in monitoring or enforcing the agreement's implementation. This is essentially what has happened under Western Australia's Regional Forest Agreement (RFA). Historically, however, the Commonwealth has used its *EPBC Act* approval powers to step in to protect areas of national environmental significance from state-backed development proposals.

- I support this Bill because I believe it is essential that the Commonwealth government retain their environmental approval responsibilities for proposals that trigger the *EPBC Act*.

- The governance of forests in Western Australia under our bilateral Regional Forest Agreement (RFA) is a case study of Commonwealth devolution of their approval powers to the state government. As you would know, Commonwealth approval for logging operations that will have a significant impact on matters of national environmental significance is excluded under the *EPBC Act* exemption. Rather, the Commonwealth accredits state processes as meeting the requirements of the *EPBC Act* with regard to protecting threatened species.

- However, the state is not adequately protecting threatened species in WA's forests. My parliamentary work in the West Australian legislative council has enabled me to closely monitor the implementation of the RFA. Many of the actions prescribed in the state's Forest Management Plan to protect threatened flora and fauna have not been implemented. Multiple breaches of the guidelines for protecting threatened fauna have been recorded, for example, machinery incursions into fauna habitat zones. At least 200 breaches of the state logging regulations have been officially recorded, including logging in fauna habitat zones and in old-growth forest. While the Commonwealth is supposed to monitor and jointly report on the State's compliance, it has not done so in the last decade. The Commonwealth, as revealed in answers given by the Minister through the Budget Estimates process, does not monitor the implementation of the state management plan. While the Commonwealth has the power to terminate the bilateral agreement for serious breaches, it has never done so, despite potentially serious breaches.[3]

- In my opinion, although the state's forest management has been accredited as fulfilling the requirements of the *EPBC Act*, it is not consistent with the objects of the *EPBC Act* and does not provide adequate protection for threatened species.

- The operation of the RFA in Western Australia highlights that it is essential to examine the on-the-ground evidence of the effects of Commonwealth

---

[3] For detailed exposition of the operation of the Western Australian RFA, see my submission to the *Draft Forest Management Plan 2014-2023*. Please contact my office for a copy of the full submission. A summary is available at http://www.giz-watson.net/2011/wp-content/uploads/2012/11/Greens-submission-for-website.pdf

accreditation of state assessment processes. To date, there has been no thorough inquiry into the ability of accredited processes to meet the objects and substance of the *EPBC Act*. I recommend that the Senate Committee conduct hearings in all states to collect evidence on how the environmental assessment processes operate in practice, with special attention given to those cases set out in Part 4 under which environmental approvals are not needed, for example, RFAs and Strategic Assessments. Until this has occurred, the proposed COAG reforms should not be implemented.

Discussion of the Bill might consider the following issues:

- I have six key concerns with the move towards approval bilateral agreements. These concerns inform my belief that *EPBC Act* approval responsibilities should remain with the Commonwealth.

- First, there is no guarantee that State governments will meet the Commonwealth's environmental protection obligations under the *EPBC Act*. The Commonwealth government is proposing Accreditation Standards to ensure that the States' substitute is of an acceptable standard. However, the evidence from WA suggests that even such standards will not guarantee state compliance in practice.

- Second, the WA experience raises the worrying possibility that, once the Commonwealth has accredited a state process, it will effectively wash its hands of any responsibility for implementation. The Hawke Review of the EPBC Act recommended the creation of a Commonwealth monitoring, performance audit and oversight power to ensure that any process accredited achieves its intended outcomes. This would be absolutely necessary if the move to approval bilateral agreements were to occur.

- This raises the, third, practical issue that the state departments /bodies responsible for conducting environmental impact assessment would need to be funded to take on additional *EPBC Act* responsibilities. It is unclear whether the States or the Commonwealth will be providing this additional funding. If no additional funds are available, it is inevitable that back-logs and inefficiencies will result, which is precisely the opposite to the intention of the COAG reforms. Alternatively, the assessments will be inadequate due to under-resourcing. Over the past two decades funding for the state agencies tasked with environmental assessment has declined. This trend is likely to continue into the foreseeable future. The Commonwealth government has the tax base and capacity to resource comprehensive assessments.

- Fourth, the federal government – rather than a state or territory government - is best placed to understand, assess, and approve / disapprove matters of national environmental significance. The *EPBC Act* empowers the Commonwealth government to protect species and places of national environmental significance. Iconic places such as the Great Barrier Reef and James Price Point are important to many Australians, regardless of their state of residence. A national government has a mandate to make decisions in the best interests of the nation. A state government has a mandate to make decisions in the best interests of that state. State governments should not have the final say in whether to approve proposed actions that may have a significant impact on matters of national environmental

significance. It is more appropriate that Australia's federal government have the final say over nationally significant environmental matters.

- Fifth, Australia's environment and biodiversity are also of international significance. This is demonstrated by the recent letter by the Humane Society International, which urges the Commonwealth government not to abdicate its environmental protection responsibilities. The *EPBC Act* was intended to implement Australia's international biodiversity protection commitments. The Explanatory Memorandum of the Bill which became the *EPBC Act* explained that the Act would assist in the co-operative implementation of Australia's international environmental responsibilities. Bilateral agreements must be consistent with the objects of the Bill and meet any standards or criteria identified in the regulations. If the commonwealth's approval powers are effectively delegated to the states, each state will essentially have the discretion to decide how to meet the country's international biodiversity commitments. Australia should meet its international commitments in a united, rather than haphazard, manner.

- Finally, what Australia needs more urgently than ever is a coordinated effort to protect our national environment. The most recent State of the Environment report confirms that our ecosystems are degrading, and many species and areas of national environmental significance are approaching crises. We should be strengthening our environmental protection regimes, not diluting them.

For further detail on the implementation of the Western Australian RFA please do not hesitate to contact me.

Yours sincerely

Giz Watson MLC
Member for North Metropolitan Region,
Legislative Council of Western Australia

January 17 2012