Senate Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Retaining federal Approval Powers) Bill 2012

AFPA response to Questions on Notice

Question 1

You offer RFAs as a 'good example of strategic assessments and bilateral arrangements for achieving environmental outcomes'. Could you please explain how the RFA process, as a model for such arrangements, avoids the additional compliance costs that you say would arise from excluding bilaterally agreed approval processes, as the bill proposes to do?

Response:

The RFA process provided a strategic approach to environmental management in each of the RFA regions, through the undertaking of Comprehensive Regional Assessments (CRAs) that resulted in:

- the establishment of the comprehensive, adequate and representative (CAR) forest reserve system of formally protected areas (i.e. national parks) based on regional conservation planning criterion; and

- accreditation of state level ecologically sustainable forest management (ESFM) principles, legally enforceable codes of practice, and adaptive ESFM plans and zoning arrangements (e.g. to accommodate new information on species and habitat conditions) in forest areas where timber harvesting may be permitted. The net result of these codes and ESFM plans has been that around 1% of the area zoned available for timber production is actually harvested each year.

The RFAs and underlying CRA processes ensured that all requirements under the EPBC Act were fully met, which enabled administrative efficiencies and assured compliance with environmental standards via accredited state processes.

Prior to the establishment of the RFAs, timber harvesting operations were subject to EPBC requirements on a 'coupe by coupe' basis, which effectively triggered an environmental assessment and approval process whenever a parcel of wood was harvested in an area that contained a matter of national environmental significance (e.g. a listing of a threatened species that occurred in the region). This piecemeal approach to the environmental assessment of harvesting operations made it a highly costly and administratively burdensome process across the regions where native forestry operations were occurring on a routine basis. This led to significant costs to industry in terms of the time and resources needed to comply with both State and Commonwealth approval processes.

The RFAs addressed this duplicative and piecemeal approach by undertaking the CRAs and accrediting state processes that met the appropriate Commonwealth standards, thereby removing the need for Commonwealth approvals over the life of the RFAs. This has significantly reduced the administrative and compliance costs for designated forestry operations in the RFA regions.

The 2009 Hawke review into the EPBC Act recommended that the Commonwealth work with the States and Territories to improve the efficiency of environmental impact assessments and expand the role of strategic assessments and bioregional plans. AFPA suggests that the strategic assessments and bioregional approaches adopted in the RFAs are a useful model in the context of bilateral agreements for assessment and approval processes for other classes of activities or projects

in a defined area, where they have met the appropriate Commonwealth conditions and national standards.

A bilateral approach to environmental approvals, such as that taken with the RFAs, could reduce the timeframes for approvals and administrative costs incurred by businesses and other stakeholders for defined classes of activities, while meeting the requirements of the EPBC Act to deliver environmental outcomes. The existing provisions of the EPBC Act for bilateral arrangements include the rigorous requirements and prerequisites under sections 45, 46, 48, 49, and 51-55 of the Act, to ensure delivery of agreed environmental outcomes on matters of national significance.

Question 2

Your submission makes the claim that keeping approval powers with the Commonwealth where they have been for many years potentially further politicises the environmental approval process. I would like to take on notice again what your evidence base is; why you think the federal government are likely to make a more political decision than a state government; and your position on the countless examples where the Commonwealth has made a decision to step in and protect the environment where states have been willing to give an approval?

Response:

The AFPA submission states that:

> The proposed Bill would remove the ability for the Commonwealth to appropriately and responsibly recognise effective and complementary State/Territory based environmental assessment and approval processes. In doing so the Bill would reduce the flexibility of the current system and entrench an additional and often times unnecessary regulatory layer, thereby reducing the flexibility, efficiency and effectiveness of the current system.
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> In addition, it potentially further politicises environmental approval processes by requiring Commonwealth approval in all cases, regardless of whether the Commonwealth is already satisfied at the robustness of State/Territory assessment and approval processes.

AFPA is making the observation that the proposed Bill, in excluding the option for bilateral agreements on approvals, is denying a practical option for governments to work together in the national interest to deliver regulatory efficiency, subject to the stringent requirements of the EPBC Act to deliver outcomes on matters of national environmental significance.

Given the strong emphasis of COAG and the Australian Government on developing appropriate national standards for accrediting environmental impact assessments and approvals, a blanket exclusion of this option is unwarranted and is targeted at retaining full Commonwealth control of every approval. Where appropriate due diligence is carried out by the responsible Commonwealth Minister, including appropriate state resourcing and implementation of the national standards, it would appear reasonable and desirable to streamline assessment and approval processes and reduce compliance costs. By introducing a Bill to explicitly exclude this option, AFPA is making the point that an additional regulatory layer of Government is being imposed in all cases requiring approval, which could be construed as a political decision to simply retain centralist powers in all environmental matters.

Question 3

Could you provide to us some examples of where compliance costs to developers increase as a result of having separate Commonwealth and state approvals?

Response:

AFPA cannot provide specific examples for other industries or sectors, but can refer to the example of the Regional Forest Agreements (RFAs), which as a broad bilaterally agreed process, has directly reduced compliance costs for forestry operations in native forests within the RFA regions. By accrediting state assessment and approval processes that meet national standards over the 20 year life of the RFAs, forestry businesses do not have to incur additional administrative costs and timeframes for separate Commonwealth approval for defined forestry operations.

Question 4

Similarly to Question 3, AFPA can make a general response in relation to this question. AFPA notes that the RFA process has provided important environmental outcomes and reduced compliance costs to an industry that is acknowledged as being one of the most heavily regulated in Australia. These high environmental standards include ecologically sustainable forest management (ESFM) regulatory processes and systems (e.g. mandated codes of forest practice), state and Commonwealth endangered species and environmental planning legislation and the establishment of a comprehensive, adequate and representative forest reserve network.

By accrediting state assessment and approval processes that meet national standards over the 20 year life of the RFAs, forestry businesses do not have to incur additional administrative costs and timeframes for separate Commonwealth approval for defined forestry operations.

By contrast, forestry activities outside an RFA process would not be subject to the same strategic approach. In these cases routine forestry operations or development activities, such as the construction of a new mill, would not be able to draw on previous CRAs and accreditation of environmental management processes for relevant matters under the EPBC Act, thereby adding to the timeframes and costs of assessments and approvals.