EPBC AMENDMENT (RETAINING FEDERAL APPROVAL POWERS) BILL 2012

QUESTIONS ON NOTICE

1. The Wentworth Group has proposed a raft of legislative changes to the EPBC Act which you consider are necessary prior to the establishment of any approvals bilateral, including the establishment of a sustainability commissioner, independent accreditation of consultants advising on environmental impacts of proposed projects, clear call-in powers by the Commonwealth, and more robust compliance and audit. Is it the Wentworth Group's position, that without these changes (most if not all of which would require amending the EPBC Act), approvals bilaterals should not go ahead?

The Wentworth Group considers that there is no justification for handing Commonwealth environmental approval powers to the states. Any delegation of project approval powers to state governments would substantially weaken environmental protections because state planning and environment laws do not currently meet Commonwealth standards.

We have instead recommended a suite of reforms that would achieve COAG's objectives of reducing regulatory burden and duplication for business and delivering better environmental outcomes.

We believe that the Commonwealth Environment Minister should continue to be the decision-maker on projects that affect matters of national environmental significance.

However, we do acknowledge that there are situations where some approvals powers might be delegated effectively in the future, but only where the following assurance mechanisms are in place:

1. The Australian Government establishes an independent National Environment Commission in legislation, with powers to recommend standards, and accredit and audit states' processes.
2. COAG agrees national environmental assessment and approval standards that cover both the environmental outcomes to be achieved and the processes that must be followed. The Hawke Review recommended minimum criteria for accrediting state approvals systems (para 2.37 of that report).
3. States codify project assessment and approval processes through science-based decision-making tools, and the National Environment Commission accredits these decision-making tools as meeting national environmental assessment and approval standards.
4. The National Environment Commission regularly audits states' approvals processes for compliance with standards.
5. The Commonwealth Environment Minister retains a power to call-in the assessment or approval of projects at any time, where in his or her opinion it would lead to more effective and efficient regulation, and where the state government is the project proponent.
6. The Commonwealth Environment Minister retains the right to withdraw from bilateral agreements at any time if national standards are not being adhered to.

Without these assurance mechanisms in place, the Australian Government should not enter into approval bilateral agreements. If it does try to do so, we believe the parliament should use its existing powers to disallow the agreement.

2. Is it the Wentworth Group's position, based on the law as it currently stands and in light of Australia's biodiversity crisis, that an appropriate precautionary approach would be to remove the ability to establish approvals bilaterals from the EPBC Act until (or unless) appropriate safeguards (such as those listed in question 1 above) have been inserted into our national environmental laws?

The Act already has a precautionary safeguard in that approval bilateral agreements are disallowable instruments.

The Wentworth Group believes that removing provisions for approval bilateral agreements would restrict the ability of the Commonwealth in the future to utilise regulatory approaches which could offer both greater protection to matters of national environmental significance and more efficient regulation.

In addition, it would weaken the Commonwealth's ability to use the EPBC Act to encourage state and territory governments to strengthen their environment and planning legislation in line with national standards.

For example, in New South Wales there is a detailed regulation that governs the assessment and approval of native vegetation clearing activities on farm land. This science-based regulation specifies standards and decision-making processes for determining whether the clearing will improve or maintain environmental outcomes. This type of codified process if broadened to: comprehensively cover all land uses (ie. mining and urban development); incorporate matters of national environmental significance; and incorporate comprehensive public participation mechanisms, may be suitable for accreditation by the Commonwealth. This would be conditional upon independent auditing of whether the state government is adhering to the accredited process.