



Committee Secretary
Senate Standing Committees on Environment and Communications
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Parliament House
Canberra ACT 2600
Australia

24 January 2012

Dear Secretary

Submission to inquiry into Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012

The Wilderness Society supports this Bill. The Wilderness Society is Australia's largest and most effective community-based, environmental advocacy organisation. Our purpose is protecting, promoting and restoring wilderness and natural processes. We have over 40,000 members and hundreds of thousands of supporters around Australia. Our members and supporters have a strong interest in ensuring that Australia has robust environmental protection.

We are vigorously opposed to recent efforts by some corners of the resources sector who intend to reduce environmental protection and are attempting to do so by framing environmental protections as 'unnecessary green tape'. We consider that this Bill goes some way to entrenching important environmental protections.

Without the protection of this Bill, it is likely that environmental protections by the EPBC Act may be undermined. If the federal approval powers under the EPBC Act are undermined, Australia's environment and heritage is likely to be inflicted with state-based assessments and approvals. State-based assessments and approvals will readily result in situations where:

1. There is an obvious conflict of interest by a resource state eager for short-term development
2. There is no oversight from federal government agencies.
3. States will be required to assess projects which are too large and complex for their environmental watch-dogs
4. Ill-equipped states must be relied upon to enforce their own approvals.
5. Poor decisions by state governments will result in more litigation and consequently more assessment delays.

We have recent, in-depth experience with the WA Environmental Protection Authority's assessment of James Price Point. The EPA's assessment of James Price Point provides an

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example of what Australia can expect if federal environmental powers are undermined. We deal with each of these points in turn, as they relate to the James Price Point proposal.

1. The Obvious Conflict of Interest in State-Based Assessment

The goal of most state governments appears to be to develop resources on a very short term basis. This goal conflicts with the objects of the EPBC Act which is protect matters of national environmental significance.

The West Australian Premier has been vocal in his support for an LNG precinct at James Price Point. He has made it a fundamental goal of his Premiership. The Premier has been forthright in his intention to “turn the Kimberley into the next Pilbara”.

In a telling example, the WA Environment Minister has said that the National Heritage Listed dinosaur footprints which are in the way of the proposed James Price Point development will “have to go”. The WA government has demonstrated that it obviously cannot fulfil its goal to develop state resources at the same time as bringing a necessary level of independence to assess matters of National Environmental Significance.

The WA government has gone to extreme lengths to force development at James Price Point. It has:

- a) Endorsed unlawful activity and changed the planning orders so that Woodside did not require approval.
- b) Knowingly allowed 4 of the 5 EPA board members to remain on the board, even though they knew those members had conflicts of interest in James Price Point.
- c) Rushed to compulsorily acquire the land from the Traditional Owners and in doing so, twice bungled the process and attracted the ire of the Supreme Court.
- d) Accepted environmental studies which have been widely condemned by independent scientists.

A state government which is prepared to use these tactics is not equipped to be administering the EPBC Act and overseeing Australia’s Matters of National Environmental Significance.

2. The Necessity of Oversight from the Federal Government

One of the benefits of the federal government retaining powers under the EPBC Act, and the benefits of this Bill, is that the federal government agencies currently provide oversight on very important environmental decisions.

In the James Price Point example, the WA EPA took 19 months in between the release of the Strategic Assessment Report and the finalisation of the EPA report. In all this time, the EPA did not independently pick up any environmental issue for further investigation. The EPA took almost no steps of its own volition.

A major issue in the assessment of the James Price Point proposal was the inadequacy of the proponent’s dredging proposal. The dredging problem was picked up by SEWPaC (the federal environment department), not the EPA. SEWPaC had to arrange for further work to be carried out on the dredging proposal. This further work revealed that the dredging works were far greater than anticipated and had a much larger environmental impact than previously envisioned. If SEWPaC had not discovered the problem with the dredging, the issue would never have been brought up at all and the EPA would have approved a proposal which wreaked far greater environmental damage than anybody imagined.

Based on the EPA's assessment of the Browse LNG proposal, we have no confidence that a state-based assessor can adequately scrutinise proponent information and raise its own issues of concern unless it has assistance from SEWPaC.

3. The Magnitude of the Assessment was too Large for WA

Following the release of the James Price Point Strategic Assessment Report, the EPA took over 19 months to finalise its report. While some of the delay was the fault of the proponent, the EPA appeared not to have the resources or expertise to conduct this enormous assessment. To our knowledge, the EPA had only two staff working on the James Price Point proposal, which was WA's largest ever environmental assessment.

The magnitude of the assessment might have been one of the reasons why the EPA was prepared to accept grossly sub-standard environmental studies. The EPA may simply not have had the internal expertise to appreciate the extent of its poor decision-making.

Independent scientists from Murdoch University, Melbourne University and Queensland University have scathingly criticised the EPA for the standard of information it has been prepared to accept from the proponent. As just one example, the EPA accepted the proponent's conclusions that consider that dolphin or dugong populations would not be adversely affected. Yet at the same time the EPA readily acknowledged that it had no knowledge whatsoever of dolphin and dugong populations. The EPA appeared to simply lack the wherewithal to realise that it cannot reach conclusions about dolphin and dugong populations if it knows absolutely nothing about them.

It is now up to SEWPaC to correct the problems left by the EPA. In future, if this Bill is not passed, SEWPaC will not be able to correct these obvious mistakes which are made by the EPA.

4. States are Ill-Equipped to Enforce their Own Approvals

In September 2011 the WA Auditor General found that environmental enforcement in Western Australia is grossly inadequate. Less than half of WA's mines have been inspected in the past 5 years. Only a third of mines comply with their reporting obligations and, in any case, the Department of Mines and Petroleum rarely reviews the reports it receives.

Although the Auditor General was specifically examining the DMP, as DMP has the most extensive responsibilities and is better resourced than either the Department of Environment and Conservation or the EPA. There is no evidence to suggest that DEC and the EPA are adequately enforcing environmental regulations and approval conditions. On the contrary, the Audit General's Report indicates that environmental compliance in WA is extremely problematic.

If this Bill is not passed, there is a real danger that responsibility for compliance will be foisted entirely upon the states.

5. Poor Decisions by State Governments will Result in More Litigation and Delays

There is no evidence to suggest that federal oversight through the EPBC Act results in project delays. In our experience, delays are caused by an inept state government.

As the state government allowed conflicted EPA board members to determine the James Price Point matter, the EPA and the state environment minister now face Supreme Court proceedings. The consequence of this is that the EPA's entire assessment of James Price Point may be quashed.

If this Bill is not passed, and if federal powers are not retained under the EPBC Act, more catastrophic mistakes in state government assessments are likely. These catastrophic mistakes will inevitably lead to more litigation from community members and these mistakes will ultimately slow down project assessments.

The best way to ensure fast and efficient project assessments is to ensure that there is a robust state based system. That way, the federal environment minister and federal departments are not left to rectify the state's mistakes. This Bill goes some way to ensuring that our system remains robust.

Yours sincerely

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Acronyms

DEC – Department of Environment and Conservation Western Australia
DMP – Department of Mines and Petroleum Western Australia
EPBC Act – Environment Protection and Biodiversity Conservation Act 1999 cwt
EPA – Environmental Protection Authority of Western Australia
SEWPaC – Department of Sustainability, Environment, Water, Population and Communities