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Submission to the Productivity Commission on the 'Major Development Assessment Processes'

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We **do not** want this submission to be treated as **confidential** and/or **anonymous**.

This submission does not contain personal information of third party individuals.

Introduction

The Nature Conservation Society of South Australia (NCSSA) is a community based, not for profit organisation with a diverse membership drawn from all parts of the State. The Society's primary objective is to "foster the conservation of the State's wildlife and natural habitats through effective scientific research and education".

Since its' inception in 1962, the NCSSA has taken an active interest in the protection and conservation of South Australia's natural resources with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities.

The NCSSA appreciates the opportunity to provide a submission to the Productivity Commission's study of the Major Project Development Assessment Processes but feel strongly that, in order to achieve the best outcomes, the study must fully consider not only the economic costs of the Development Assessment Approval (DAA) processes on major developments but also the social and environmental costs of such developments. As stated on page 3 of the issues paper, "major projects can impose costs on, such as damage to the environment, reductions in community amenity and demands on existing (and for new) infrastructure". Without due consideration of these additional costs, the study will not be representative of all sectors of the community that may be influenced by its' outcomes.

The NCSSA offers the following comments in relation to the Issues Paper for consideration by the Productivity Commission in this study:

Background and Scope of the study

The NCSSA contests the rationale outlined in this section of the Issues Paper that unnecessary regulatory burdens are causing high costs to business in Australia. An assessment by Economists at Large (2012) found numerous flaws in the methodology used by the Business Council of Australia (BCA) to estimate costs and failure to consider the benefits of the current EPBC environmental assessment and approval processes in terms of the potential costs of streamlining it.

The BCA paper also insufficiently linked the stated objectives of lowering costs to business, lifting productivity and enhancing competition with the proposed reform – issues that warrant further consideration and costing in the current study.

The 2011 *State of the Environment Report* documents the continuing decline in the health of Australia's environmental assets: our land, water and marine ecosystems. Taxpayers are now contributing billions of dollars each year to repair past damage to our natural capital and these costs also need to be considered in the current study to provide a balanced overview of the real costs to the Australian economy.

The NCSSA commend the Productivity Commission for including an examination of the strategic planning context for major project approvals in the current study. We view this as an opportunity to strengthen the legislative power of the Environment Protection and Biodiversity Conservation Act while providing greater clarity for both business and the environment in terms of improving Australia's DAA processes.

Proposed criteria for evaluation

The NCSSA supports the proposed assessment criteria presented in the Issues Paper however also recommend that objective, evidence based decision making is added as an additional point and reporting incorporated into the last dot point. The additional criteria will mean the evaluation framework incorporates both quantitative and qualitative measures in relation to regulatory processes, while formal reporting is fundamental to effective process review and evaluation.

Information sources

The NCSSA recommends the Commission review the content of the report by Economists at Large (2012) cited above and aims to address the flawed methodology used by the Business Council of Australia (BCA) to estimate costs and failure to consider the benefits of the current EPBC environmental assessment and approval processes.

Comments on Section 5: What are the impacts of the current arrangements?

Delays

It is the view of the NCSSA and other environmental organisations across Australia that development and implementation of best practice environmental laws and standards is fundamental to enable and provide for long-term protection and conservation of our precious natural resources.

Members of the NCSSA and the broader community reasonably expect their environmental laws and regulatory processes to deliver transparency, rigour, opportunities for public comment/appeals/rights to review, compliance and adequate deterrents, and also to vigorously apply the principles of ecologically sustainable development as defined in Section 3A of the EPBC Act, namely:

- decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making; and
- improved valuation, pricing and incentive mechanisms should be promoted.

Although the NCSSA recognises that adherence to these principles may result in some delays and costs for project proponents, based on available research (McIntosh, 2010) we dispute that these costs are as large as those previously reported by the BCA Discussion Paper. We also believe that these principles are critical to the long term productivity and prosperity of Australia from an economic, social and environmental perspective.

Use of strategic planning

The NCSSA supports the proposal to enhance efficiency and effectiveness of DAA processes through the use of strategic assessments. Such mechanisms currently exist with the EPBC Act for regulating and managing activities impacting on MNES but have yet to be widely utilised or tested in South Australia. Further application of this process is required to determine if it will achieve the desired outcomes.

The NCSSA considers the current arrangements, in relation to assessments of the cumulative impact of major projects on protected species, grossly inadequate. Based on past experiences in this state, numerous actions, which individually have a 'small' impact on a particular MNES, may be approved without regard to whether the sum of these impacts (their combined effects) results in significant damage. From an ecological perspective, the impact of an action on a MNES cannot be conclusively evaluated due to factors such as low abundance and therefore detectability of species and the complexities of defining critical habitat. It is vitally important that the precautionary principle is applied in circumstances where there is uncertainty or lack of information.

Effectiveness of current processes

The NCSSA believes that the criteria for determining significant impact to trigger the EPBC Act within current DAA processes are comprehensive and allow for the indirect impacts of an action to be considered. However, in practice, the interpretation of these criteria has not been sufficiently rigorous and cautious. Actions which are likely to have a significant impact on the recovery of listed threatened species and ecological communities have gained approval due to a reluctance to employ the precautionary principle.

Although the Act does provide scope for public participation in the approval process, there are significant barriers in place which disable the capacity of the public to participate from an equal platform, compared to that of action proponents. These barriers can be summarised by the insufficient length of public comment periods and the lack of resources available for collecting and communicating critical ecological information relating to matters of national environmental significance.

The minimum time period for public comment on referrals is 10 working days, while under the Bilateral Agreement, 28 days is the minimum period for public comment on major development assessments. For a community member with full time employment (and family commitments), it is often extremely difficult to comprehensively research and evaluate the potential impacts of a major development within 28 days. In addition to the considerable time required to gather information, there are also time constraints presented by the governance structures of communities groups.

The NCSSA believes that delegation of approval processes from the Federal Government to the state through a bilateral agreement accreditation has not improved efficiencies of DAA processes. We would recommend strongly if such agreements are to continue that they are not accredited under the current South Australian *Development Act 1993*, as the objects of this Act are fundamentally different from the objects of the EPBC Act. For example, neither the *Development Act 1993*, nor any other South Australian legislation currently contains provisions for adequately protecting threatened species, communities or ecosystems.

Another area of concern by the NCSAA regarding current DAA processes relate to deficiencies in information management that have posed a barrier to effective evaluation of the Act and assessment processes. A recent request made to the EPBC section of the Australian Government for a list of referrals relating to a listed threatened species, could not be met. The Australian Government had no ability to search for past referrals relating to the species (other than by geographic area) and could not provide information to identify on what evidence referral decisions were made. This situation demonstrates further inadequacies of the current DAA processes from an environmental stakeholder perspective.

Comments on Section 6: Possible measures to improve the efficiency and effectiveness of processes

Risk-based regulation

The NCSSA does not support the concepts outlined in the Issues Paper regarding adoption of a 'risk-based' approach to major project assessment and approval based on relative size of the project. The actual location of a project and potential impact on MNES are the key concerns regardless of the size of the project.

Reducing duplication between levels of government

The NCSSA is strongly opposed to the extension or expansion of bilateral agreements between the Commonwealth and State Governments for a number of reasons:

- The NCSSA considers the claimed duplication in assessment and approval processes is a fallacy; in reality the Commonwealth and the states are recognised to have distinct interests in particular outcomes.
- As the national government, the Commonwealth has a legitimate role in protection of matters of national environmental significance. In fact we believe it is the only entity that can efficiently assess impacts that cross state boundaries.
- Furthermore it is the Commonwealth that is signatory to a number of international agreements for the protection environmental assets, including matters of national environmental significance under the EPBC Act, not the states. The Commonwealth is responsible for ensuring Australia's obligations are met under conventions and agreements such as: the Convention on Biological Diversity, Convention for the Protection of World Cultural and Natural Heritage, Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar), Convention on the Conservation of Migratory Species of Wild Animals, China-Australia Migratory Bird Agreement (CAMBA) and Japan-Australia Migratory Bird Agreement (JAMBA).

- There are numerous examples of Commonwealth involvement leading to clear, improved outcomes that were not assured by state processes, such as helicopter flights over Kangaroo Island or cattle grazing in the Victorian Alps.

The NCSSA do not believe that bilateral agreements have improved either the efficiency or effectiveness of major project DAA processes in South Australia. We strongly oppose any streamlining of regulatory processes to enable fast tracking of major developments that could be beneficial for project developers but adversely impact on other stakeholders and matters of national environmental significance (MNES).

The Productivity Commission also needs to consider the risks and associated costs if bilateral agreements are extended or expanded. These include:

- Increased workload for SA government agencies linked with compliance and enforcement actions under the EPBC Act. Considerable extra resourcing would be required for these activities that are not evident given current budget cuts within the public sector in South Australia.
- The state also risks being involved in regular legal challenges currently brought under the EPBC Act regarding determinations and approvals, and similarly increased direct action by community interests who no longer have the "safety valve" of referral of projects to the Commonwealth for decisions.
- State approval of projects will reduce the capacity for cross-border impacts to be effectively and objectively assessed. The Murray Darling dispute is a perfect testament to the risks in leaving decision-making regarding shared environmental assets to individual states, and clearly this is not the only shared asset that SA has an interest in.

References

Economists at Large (2012) *A response to the Business Council of Australia's Discussion Paper for the COAG Business Advisory Forum: Priority 2 – Streamline environmental assessments and approvals*, prepared for an alliance of Australian environment groups, prepared by Economists at Large, Melbourne, Australia.

State of the Environment 2011 Committee (2011) *Australia: State of the Environment 2011*. Independent report to the Australian Government Minister for Sustainability, Environment, Water, Population and Communities. Canberra: DSEWPaC, 2011.

McIntosh, A. (2010) The Australian Government's environmental impact assessment (EIA) regime: using surveys to identify proponent views on cost---effectiveness. *Impact Assessment and Project Appraisal* 28 (3) (September 1): 175---188.