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25 June 2014

The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000
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Dear Sir/Madam

Re: *State Development, Infrastructure and Industry Committee consideration of the State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014*

I write on behalf of North Queensland Conservation Council (NQCC) regarding the above Inquiry, and wish the following to be accepted as a formal submission.

NQCC opposes the sections of the *State Development, Infrastructure and Planning (Red Tape Reduction) and Other Legislation Amendment Bill 2014* (the Bill) at least to the extent that it seeks to repeal the *Wild Rivers Act 2005*.

Queensland's environment is magnificent, unique and rich in biodiversity. It contains waterways that are, in global terms, close to pristine. The need for strong state legislation protecting wild rivers in Queensland was broadly recognised and accepted more than a decade ago. The *Wild Rivers Act 2005* was passed with full support of the Queensland Parliament.

Our opposition is based on the fact that no case for the amendment of the Act and the resulting loss of protection has been successfully made. The Productivity Commission's Major Projects Development Assessment Inquiry did not demonstrate strong links between alleged delays and protective legislation. Please find attached, and accept as part of this submission, NQCC's submission to the Major Projects Development Assessment Inquiry.

In relation to the current proposal (the focus of this submission), the alternatives proposed are weak, complex and lack transparency. The proposed amendments have not been given wide public exposure, despite being a matter of high public concern.

The *Wild Rivers Act 2005*, and its associated Wild River Declarations, have sought to protect the ecological values and ensured that new destructive development such as mining, dams and intensive irrigated agriculture has been prohibited in the most sensitive parts of the respective river systems, while allowing a wide range of economic, cultural, social and recreational activities and uses. Rights under the Native Title Act were protected, and a number of commercial enterprises, including Indigenous-run ones, have operated in Wild River areas unhindered.

The alternative 'Strategic Environmental Area' (SEA) approach to rivers protection in Queensland being put forward by the government is too weak in its approach to restricting mining and other destructive development in sensitive river areas, and loses the capacity under Wild Rivers to ensure comprehensive management of whole river systems.

Critically, the proposed SEA alternatives to Wild Rivers are open to arbitrary amendment and lack the transparency and precision that Wild River Declarations have provided in terms of geographic boundaries. Parliament should retain the capacity to scrutinise Ministerially-endorsed mapped areas purporting to protect rivers.

NQCC's asks the Committee to recommend against the proposed repeal of the *Wild Rivers Act 1995*, as proposed in the Bill under examination.

Yours faithfully

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Re: Major Projects Development Assessment Processes Draft Report

I follow up the comments of North Queensland Conservation Council (NQCC) to the review of Major Projects Development Assessment Processes (submission 10) with the following non-exhaustive comments on the Draft Report.

NQCC supports the separation of policy from regulatory and enforcement functions; this is particularly important in Queensland where the Coordinator General (within the Department of State Development, Infrastructure and Planning) has the conflicting roles of promoting development and assessing environmental impact statements. Indeed, in Queensland, the system has been so fundamentally manipulated that, if the Coordinator General determines a project 'significant', other regulatory agencies are effectively excluded from the assessment process, and no legal challenge is possible on the merits the CG's decision.

NQCC also supports the recommendation that approval reasons be published, although sees this as having, in a situation where the power of objectors is so limited, little more than 'interest value'. Such is the take-over of power in Queensland, that, as noted in the draft report (p.129), 'The Queensland Government granted the Coordinator-General greater discretion whether an EIS will be publicly notified'. With the outcome of the recent election, the Queensland government will increase its power and influence in matters environmental.

Overall, however, NQCC is exceedingly disappointed that the Productivity Commission (the Commission), capable of excellent work, has, on this occasion, produced a report of exceedingly low quality.

While NQCC does not see the approval process as in any way perfect, 'unnecessary' 'tape' is one of the least of the problems. Of far greater concern, for example, is the fact that proponents commission and pay consultants for the 'independent' 'scientific' data which form the bases of EISs. As has been widely recognised for generations: He who pays the piper calls the tune.

This NQCC response to the draft report is not exhaustive but addresses some of the most egregious failings, which serve to demonstrate beyond doubt the inadequacy of the draft report.

1. Failure to comply fully with the terms of reference

The Commission has paid scant, if any, attention to its obligation to examine and assess 'the efficiency and effectiveness with which Australian DAA regulations and processes achieve the protection of social, economic, heritage, cultural and environmental assets compared with comparable international systems ' (p.38).

This is demonstrated throughout the report but specifically in Table 1, the Summary of Key Reforms. Only one of the fourteen reforms listed purports to result in 'better environmental and social outcomes'. (This reform is 'Increased use of Strategic Assessments' – see point 7 below). The beneficiaries of the thirteen other key reforms are project proponents.

There is no apparent attempt to ascertain whether or not environmental (let alone social, economic – other than financial benefits to the proponents – heritage or cultural) assets have benefited or borne (possibly huge) costs.

Indeed, the report (Chapter 5) evaluates the ***objectives*** of legislation, not the efficacy of processes to deliver on objectives.

2. Failure to investigate possible causes for any 'delays'

(a) Availability of assessment resources

Astoundingly, while the report notes that the number, size and complexity of major projects has increased over the last decade (p.6), the Commission has failed to make the most obvious of inquiries: ***Has the level of resources committed to assessing these projects kept up with the growth in their number, size and complexity***? This surely should have been the number one question; it was not asked.

Over the last decade we have seen cuts in staff numbers across the public service; this has been particularly the case in the State with the largest number of major projects, Queensland. It may well become the case at the Federal level. The dismal failure to consider this most obvious of factors allows the Commission to jump immediately to the conclusion, endlessly pushed by project proponents, that the processes are overly lengthy and detailed.

(b) Source of 'delays'

The Commission appears to have undertaken no research on the source of any so-called 'delays'. To what extent are 'delays' associated with the failure of proponents industry to provide required documentation in a timely manner? Or simply with the time taken to prepare for large and complex projects in a country that has high expectations when it comes to social and environmental health and well-being?

As NQCC noted in its submission on the Major Projects Issues Paper:

> *The Issues Paper refers to a Business Council of Australia 'contention' that the "costs and delays associated with environmental impact assessments are significant". They* [the BCA] *refer to an ANU study that estimated a direct cost to all industries of up to $820 million over the life of the EPBC Act". The EPBC was promulgated in 1999, so the average annual cost to all industries was $63 million. Given that, in 2001, just one company (Xstrata) in one industry recorded a profit of $2.8 billion dollars, the cost of ensuring compliance with environmental standards is paltry. In contrast, the benefits to the community and to the environment of rigorous assessment may well far exceed the private cost to Xstrata or other industries in the business of selling off Australia's resources.*

3. Failure to consider and assess the benefits of regulation

Despite being one of the Federal government's major users and protagonists of cost/benefit analysis, the Commission has made no attempt to determine the costs of changes to the system to the environment (nor to, for that matter, workplace health and safety, cultural heritage or community lifestyle aspirations).
While the Commission has come up with estimates of the costs to proponents of the time taken to comply with DAAs, it has made no attempt to quantify (*or even qualify*) the benefits to the environment of the protective regulation.

That the cost of a hypothetical one-year 'delay' is miniscule in relation to the annual returns to many of the proponents is not considered. Nor are the monetary and non-monetary cost of environmental damage and destruction.

Importantly, what is a 'delay'? Large, complex projects take time. Why is time to achieve approval a 'bad' thing? Is not the time taken to avoid enduring damage to a fragile environment, simply a necessary part of large complex processes? Does that time not pale into insignificance when weighed against the health and resilience of our environment, the base upon which both our economy and community depend, and without which both would falter.

The Commission notes (p.9) that navigating the approval system is 'daunting'.

It states that "Such complexity [of assessment processes] reflects the intrinsic nature of major projects and is a challenge that all parties to a major project have to manage. Nevertheless, navigating the regulatory system is daunting".

Why '*nevertheless*'? In this context, surely, it would be appropriate to say '*Not surprisingly*, navigating the regulatory system is daunting.' This is not a mere quibble about use of language. It reflects the underlying prejudice apparent throughout the draft report, which accepts industry assertions and biases without objective analysis.

Put simply, the task of establishing and operating any large business could also be described as daunting. But without careful and accurate planning, both necessarily time-consuming, both projects and their assessment will inevitably fail to achieve their respective desired results.

4. Failure to objectively analyse industry's claims

The Commission has failed to adequately analyse the claims of industry in the matter of the extent to which assessment processes impose costly delays on projects prior to making recommendations for changing the system in such a way as to advantage industry over the environment.

As is shown in Appendices to the report, Australia actually leads the world in approval processes, despite the fact that it works in a fragile and difficult environment, has to deal with vast distances, and has limited baseline data.

In relation to 'benchmarking', to which a whole chapter of the report is dedicated, the Commission notes (p.6) that it focuses on the 'similar' countries of Canada, the UK and the US (with NZ to come).

However, this does not prevent it from including under the heading 'Approval timeframes can be long and variable' (Box 9) claims of the BCA based on 'nations such as Canada, China, Columbia, Indonesia, Russia, Southern Africa [sic), the United States and Venezuela'.
As NQCC commented in its earlier submission: 'Does Australia aspire to the social and environmental standards of Indonesia, Russia, South Africa and Columbia?

From the Commission's report it would seem that there is no evidence of 'unecessary delays' unless these countries are taken into account.

5. Failure to convene balanced meetings

Table A.2 of the Report llsts the 90 participant organisations invited to meet with the Commission. Despite the fact that arguably the main reason for development and assessment and approval (DAA) regulations lie in environmental protection, the overwhelming majority of participants in the meeting represented the resources industry and Government Departments. Seventeen of the invitees represented the environment, a mere two represented traditional owners and, with the exception of the Tasmanian Department of Primary Industries, there was no representation from the agricultural sector.

With the meetings stacked as they were, it is little surprise that the largely unsubstantiated complaints of the resources sector (and their bureaucratic supporters) dominated the discussion and the outcomes.

6. Failure to consider varying environments

The Commission has assumed that because Australia has economic, political and social concerns that are similar to those of other developed countries, its environment is no different in the amount of protection it requires. This is fallacious. Australia is a huge, sparsely populated, dry island, with ancient and fragile land, extraordinary endemic biodiversity and high dependence on underground water basins. In the circumstances it is quite possible that Australia needs a different level of environmental protection.

7. Failure to assess the efficacy of Bilateral Assessments, Strategic Assessments and Cumulative Impact Assessments

The report supports the theoretical concepts of Bilateral Agreements, Strategic Assessments and Cumulative Impact Statements while making no attempt to assess how well these techniques work in practice in Australia.

In relation to ***Bilteral Agreements*** it ignores the findings of the Senate Committee Inquiry, it ignores the recent dissatisfaction of the Federal Government with state assessments and it ignores the conflict of interest inherent in the role of the Coordinator General in the Queensland government. Once a project is declared "significant" by the CG, concurrence by for instance any environmental protection agencies is removed. So if the CG, for whatever reason, 'errs', those charged with the protection of the environment can do nothing about it. Once approved by the CG, NO legal challenge is possible on the merits of his/her decision.

The anti-environmental bias of the Queensland Government was openly demonstrated in the Media Release of 30 August 2013 from the Acting Minister for Infrastructure and Planning in Brisbane, which, commenting on the *draft* PC report, included the statement "*Acting Deputy Premier and Minister for State Development Tim Nicholls today called on Kevin Rudd and the Federal ALP to make the right move for Australia's economy and reject radical green policies to stall and stymie major projects set to provide thousands of new jobs and opportunities for Queenslanders.*"

In relation to ***Strategic Assessments*** (which it notes are "broadly focused with a low level of detail"),it seems to accept the faulty analysis of Access Economics, which in its Cost Benefit Analysis of Strategic Assessments assumed that the benefits of both Strategic and Case-by-Case Assessments were, the same, and defined 'costs' solely as

bureaucratic hours spent on assessments, ignoring cost to, for example, the environment.

In relation to ***Cumulative Impact Assessments*** (CIAs), the Commission appears to have accepted that the reports currently prepared by proponents and accepted by governments are, indeed, CIAs. The reports that currently pass for CIAs fail to address synergistic impacts, they rely on wrong baseline data and they fail to identify trigger levels.

8. Failure to appreciate the theory or practice of offsets

Destroying area A while protecting area B results in a net loss of habitat. There is no getting away from the fact that the concept of offsets is flawed.

Furthermore, in practice, offsets often result in no benefit at all – let alone a net benefit.

As an example, the Townsville Port expansion offset offered by the proponent for loss of one of Australia's most important seagrass meadows in a dugong protection area, was a promise to withdraw its objection to an expansion of a Fish Habitat area over which it had no control!

In an earlier decision (**EPBC Reference Number: 2012/63750),** Queensland Government's Coordinator-General considered the provision of the Port of Townsville Limited (the proponent's) offer of lands for boat ramp facilities at the Fifth-Seventh Avenue site in South Townsville an acceptable offset for loss of fisheries habitat as part of the approval process for development of the Townsville Marine Precinct Project

9. Use of unsubstantiated assertions

Early in the report (p.6) the Commission makes the assertion: 'The growth in investment in major projects is one of the reasons why Australia weathered the global recession and its aftermath better than other advanced economies'. This fallacy behind this common belief, fostered by the resources industry, is demonstrated in the following comment by Former Treasury Secretary, Ken Henry:

> In the first six months of 2009, in the immediate aftermath of the shock waves occasioned by the collapse of Lehman Brothers, the Australian mining industry shed 15.2 per cent of its employees.
>
> Had every industry in Australia behaved in the same way, our unemployment rate would have increased from 4.6 per cent to 19 per cent in six months.

This is but one example of the way in which the Commission has, in this report, accepted without questioning and further entrenched the views of the resources industry.

NQCC looks forward to a substantially amended Final Report from the Commission.

Wendy Tubman
Coordinator
6 September 2013