

6 June 2014

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Delivered by email: ec.sen@aph.gov.au

Re: Inquiry into the Environment Conservation Amendment (Bilateral Agreement Implementation and Cost Recovery Bills 2014)

Thank you for the opportunity to provide a submission to the Senate Environment and Communications Legislation Committee Inquiry into the Environment Conservation Amendment (Bilateral Agreement Implementation and Cost Recovery Bills 2014).

The Property Council is the peak body for owners and investors in Australia's \$600 billion property investment sector. Our members operate across all property asset classes – including office, shopping centres, residential development, industrial, tourism, leisure, aged care, retirement villages and infrastructure.

The Residential Development Council (RDC) is a national policy division of the Property Council of Australia. The leadership of the RDC represents the most senior management of Australia's leading residential development companies.

EPBC Amendment (Bilateral Agreement Implementation) Bill 2014

The EPBC Act has significant implications for the property industry and the residential development sector in particular. With over 200 residential and over 100 commercial property developments being referred to the Commonwealth in the past 12-months, construction costs and delays could be substantially reduced through the implementation of assessment and approval bilateral arrangements.

The experience of the industry with the EPBC Act has been characterised by a lack of clear definitions, rules and tests which has resulted little consistency or certainty in its administration.

The Property Council welcomes the 'one stop shop' reform by the Federal Government aimed at streamlining assessment and approval processes with State and Territory governments.

However, the Residential Development Council acknowledges the view expressed by the Queensland Premier that the Bill could go further to remove unnecessary complexity and duplicative process, to reduce approval timeframes, and to provide regulatory transparency in decision making.

Despite this, the proposed amendments are the right first-step toward fixing the EPBC assessment and approvals framework. The RDC supports the following:

Part 2, Schedule 3 - State processes made under a law

This amendment allows for an authorisation process to be made under or set out in an instrument made under (rather than wholly set out in) a State or Territory law.

- This recognises that states/territories have set up their processes in ways that best reflect the circumstances in their state/territory. The amendments will ensure the focus of accreditation is on the process meeting high environmental standards, rather than technicalities.
- This amendment will allow for the accreditation of processes in which all or part of the process is made under a law (e.g. administrative procedures or guidelines that are made under a law).

Recommendation: This amendment will streamline processes and remove duplication. It is important for processes that are non-statutory and will reduce duplication by permitting accreditation of State policies, including the South East Queensland Koala Conservation State Planning Regulatory Provisions.

Item 9 of Schedule 5 - Taking into account policies as in force from time to time

This amendment ensures that a bilateral agreement permits States and Territories to consider policies and standards as in force from time to time when making decisions under a bilateral agreement.

- The amendment addresses the limitations in section 46AA of the Acts Interpretation Act 1901, so that a bilateral agreement may refer to, apply, adopt or incorporate instruments or other writings (such as policy documents) as in force from time to time.

This amendment seeks to clear up a grey area that exists at the present time to recognise new policies and guidelines which recognise measurement, diagnostics and management practice as and when they are released.

As has been the case in relation to Draft Koala Guidelines, the potential for new 'draft' policies to be adopted as they are developed needs further consideration due to the risk of application to residential projects at the near ready or ready development assessment stage.

Any retrospective application of such policies can have substantial impact on residential developments that have been in the pipeline for upwards of three to five years.

Recommendation: A Senior Officers Committee or an equivalent body which oversees the Bilateral should monitor any emerging policies to ensure that retrospectivity or duplication for conditions and offsets are avoided.

EPBC Cost Recovery Amendment Bill 2014

The EPBC Act is the subject of broader reforms at the same time that the Department of Finance is reviewing the government's own Cost Recovery Guidelines.

This is of significant concern because the Cost Recover Guidelines do not provide guidance where reform is ongoing. It is unlikely that the Department could currently calculate the cost of their involvement in EPBC assessment and approval after the reforms are complete.

The proposed amendments also precede the Cost Recovery Impact Statement and Regulations package, to be released in June.

The RDC has the following comments on the proposed legislation:

Schedule 1, Div 7, 170CA - Fees

- The relevant fees will be specified in the regulations, except the fees in relation to assessment by an inquiry or strategic assessment.
- The bill allows the regulations to specify administrative requirements for applications, processes for payment, and for refunds, exemptions and waivers.
- The bill also allows for cost recovery for the assessment and approval of action management plans submitted after the minister has granted an approval under the EPBC Act, and for the variation of those plans.

The RDC does not support the imposition of cost recovery for the completion of the Commonwealth's environmental assessments responsibilities.

The charging of a fee for specific services undertaken by the Commonwealth for environmental assessments under the EPBC Act, should be resourced by the Government's tax base.

The development sector already contributes significantly to the compliance costs of development assessment. An indicative costing for this compliance burden is upward of 17 per cent of a \$600,000 greenfield house and land package in New South Wales today.

Furthermore, there has been no guarantee that the Cost Recovery amendments will introduce a service style mentality for EPBC assessment and approvals. Despite a request from the RDC, statutory approval timeframes are not a feature in any of the proposed EPBC bilateral agreements with the States and Territories.

If considered, the EPBC Amendment (Cost Recovery) Bill 2014, cost recovery should adhere the Department of Finance guidelines, which require that cost recovery should reflect efficient costs and should not be undertaken for processes which are duplicative.

Recommendation: Cost recovery should not be considered until after the broader reforms to the EPBC ACT have been completed. Regulation should categorically state that there will be no cost recovery by the Commonwealth for any processes by the States or Territories under the EPBC bilateral agreements.

We thank you for the opportunity to provide input on the proposed amendments to the EPBC Act.

If you have any questions regarding the Property Council or this submission, please do not hesitate to contact me on 0408 538 126 or William de Haer, Policy Manager—Residential Development Council on 0423 492 357 or wdehaer@propertyoz.com.au.

Yours sincerely

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