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Committee Secretary
House of Representatives Standing Committees on the Environment
PO Box 6100
Parliament House
Canberra, ACT 2600

Re: House of Representatives Inquiry into streamlining environmental regulation, 'green tape', and one stop shops.

Dear Committee Secretary,

Thank you for the opportunity to provide a submission into this important matter. I have addressed the terms of reference in my submission which appears on the following pages and includes the following sections:

- jurisdictional arrangements, regulatory requirements and the potential for deregulation;
- the balance between regulatory burdens and environmental benefits;
- areas for improved efficiency and effectiveness of the regulatory framework; and
- legislation governing environmental regulation, and the potential for deregulation.

In completing this submission I have not aimed for an 'essay-style', coherent argument. Instead, I have attempted to address each point individually, from the perspective of a long-term environmental practitioner with experience in all spheres of government, and across the research, teaching, facilities management, not-for-profit, consulting, agricultural and other sectors.

I trust that this will be a worthwhile contribution and wish you all the best with your deliberations.

Yours Sincerely



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Jurisdictional arrangements, regulatory requirements and the potential for deregulation

The potential for deregulation in general

The Coalition Government goal of removing doubled-up, outdated and unnecessary regulation is laudable. Such regulation does indeed create uncertainty for business, conservationists and governments. Wherever genuine over-regulation of these types are identified there is a good case for simplifying, clarifying and removing regulatory systems. Guidelines and industry-endorsed standards are good alternatives to regulation in many cases.

The difficulty is in being quite sure that all of the implications are taken account of. Key stakeholder liaison, genuine consultation, intergovernmental discussions (including with local governments and regional organisations) will be necessary to ensure that gaps are not created and new uncertainties generated.

Optimal regulation at the right level

There is a solid basis for the principle of devolving statutory powers to the lowest practical level. This approach maximises the detailed knowledge available to support regulatory decisions. Policy implementation in particular benefits from local delivery since it is here that 'the rubber hits the road', and regulation translates into on-ground action.

There are also exceptions to the rule of small-scale regulation being optimal. For instance, in rural and remote areas local government, or possibly a regional state government organisation are the only regulatory agencies and are the natural regulatory delivery agency for many matters. In these places, government officials build trust with local business leaders and negotiate practical conditions with due recognition of the importance of operations to the local community and economy and the unique local conditions. When things go wrong, it is difficult for these officials to step in with strong enforcement actions. In such cases, or to access broader options for helping to achieve beneficial outcomes. In these cases it may be necessary for enforcement actions, or for strong new requirements to clearly originate from 'outside' so that local relations can be maintained.

In terms of the potential for deregulation, this suggests a need to maintain regulatory partnerships across jurisdictions, rather than developing systems which irrevocably locate all regulatory power within the smallest, most local sphere. It suggests a need for ongoing knowledge-sharing, and the capacity for different spheres to step in with advice, assistance, and in some cases to wield the big stick of strong enforcement, although always with consultation of local people. Achieving this outcome may be in the realm of improvements to intergovernmental relations and support for decision support systems, more so than significant regulatory reforms. Investment to make existing systems work better can yield strong outcomes without the pain of developing new statutory systems.

Recommendation: devolve or delegate regulatory control to the most appropriate sphere, but maintain partnerships to support that regulation.

The balance between regulatory burdens and environmental benefits

In addressing the second point of the Inquiry, I'll refer in particular to the proposed Assurance Framework for developing a One Stop Shop for environmental regulation of matters of National Environmental Significance which are currently dealt with under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC). That framework includes proposals for both performance and outcome assurance. It is worth noting that these assurances must deliver the dual goals of being both technically sound, and generating confidence in the reformed regulatory framework.

Performance Assurance

Equivalent outcomes may require stronger architecture

The current proposal is to design the system so that state and territory systems are accredited as delivering equivalent performance outcomes as was achieved previously through EPBC. In general, this is a sound approach as it avoids the need for new regulatory systems, and streamlines the change process itself.

The public debate over the EPBC One Stop Shop has centred on the well-known tendency for the states and territories to favour the economic benefits of development over conservation outcomes. This is a structural political-economic issue, and cannot be addressed through the current regulatory reforms. But to achieve equivalent performance outcomes the structural imperatives must be taken into account in the system design.

An example of how this might be done is in the many EPBC policies and processes where environmental issues must be 'considered' before a decision. Empirical evidence shows that the Australian government has not only considered issues, but also carried over recommendations for conservation and protection into final conditions applied to projects. Where such outcomes have been ubiquitous, or at least common practice, then an equivalent architecture at the state and territory level may **require** conditioning to avoid harm, rather than just **consider** it.

Recommendation:

- Recognise that equivalent performance may be achieved through a strengthening of systems to avoid or mitigate environmental impacts. Refusals or strong conditions may need to be a requirement, not just a consideration in some cases in order to maintain parity with current performance outcomes.

Audit, review and reporting

It is worth considering the New Zealand system where a similar One Stop Shop is already in operation. It is common practice in this system for both the proponent and the government to each engage separate consultants to provide specialist advice outside of the technical expertise of government officials. Environment Institute of Australian and New Zealand (EIANZ) networks suggest that the system works quite well in driving environmental consultants to deliver expert, impartial advice partly because they do not know whether they will be hired next by a proponent, or by the government and so fair and frank advice is always the best policy.

Transparency is a highly valued element of the current EPBC system. This transparency must be maintained as part of the One Stop Shop. For this to be achieved, public reporting is required in each jurisdiction, to at least the same extent as is currently the case. A central, searchable portal linking to the various jurisdictions would assist.

Recommendations:

- Maintain or enhance current levels of transparency at all stages of decision making. This is likely to require enhanced public reporting at the state level in many cases.
- Develop an Australian government portal which connects to the relevant state government portals for finding information on proposals.

Outcome Assurance

The existing proficiency assurance frameworks of the environment professional peak body EIANZ could also be drawn on more strategically to support quality outcomes. EIANZ has systems in place to guide and accredit environmental professionals as they gain proficiency in different environmental and professional areas. This includes a Certified Environmental Practitioner Program which is subscribed by senior environmental professionals nation wide. A system that requires sign-off by suitably qualified environmental professionals would be a stronger assurance framework than is now the case. We envisage a system similar to that used for financial auditing, which requires sign-off by certified accountants, or building certification by suitably qualified engineers. By supporting and building the environment profession, the One Stop Shop could expect to deliver genuinely better decisions than is currently the case.

Recommendation:

- Require sign-off of proposals and assessments by suitably qualified environmental professionals.

Efficiencies for business

One implication of this system is the need for the government assessment and approval agency to have a budget for obtaining technical advice to support decisions. The Australian government has already developed a policy for cost recovery, but at present, applications for EPBC assessment do not come at a cost to proponents. A cost recovery system must be provided to the state and territory agencies at the time that the system is designed. This must be delivered with clear, public supporting information from the Australian Government that addresses the likely business concerns about increased costs from the One Stop Shop. This could be addressed in terms of genuine financial savings that will be achieved through regulatory reform. These savings may manifest in terms of time taken for decisions, streamlined approval conditions, greater certainty that specific conditions cover all concerns or other features. If these are expressed clearly by the Commonwealth, then states and territories will be more able to charge sufficient fees to support quality decision making.

Recommendation:

- Provide a cost recovery system and support this with data and other information demonstrating that increased up-front fees will deliver overall savings.

Information and data

One of the 'make-or-break' elements of the One Stop Shop will be the information available to decision makers. There is a significant opportunity here to enhance long-standing efforts to make valuable databases available to all stakeholders. All parties will benefit from better general access to environmental data that has been captured by Australian, state, territory, NGO and private organisations over decades of Australian environmental management.

- If business has access to better data, then there is a better ability for proponents to scope the projects to avoid the more costly impacts.
- If the states and territories have better data, this will enhance their ability to make better informed and better targeted decisions.
- If the community has access to better data they will be in a better position to hold governments accountable for trajectories of environmental assets.

Recommendation:

- Improve the public and inter-agency access to the multitude of environmental data sets currently held by different agencies and entities across Australia. This will require new funds for enhanced systems, but will deliver strong benefits including financial benefits over time.

Advice and guidance

There is a real opportunity here to raise the level of professionalism in the environment sector to provide better environmental outcomes, business certainty and community assurance. Greater government recognition of the growing maturity of the environment professional would assist. The EIANZ has worked diligently to establish a strong basis for a mature profession, and has done so with very little government support or recognition. Now is the time to provide that support.

Other professions such as accounting and engineering are bolstered by formal recognition in regulation and policy. Such recognition takes the form of requirements for audits and reports to be approved by suitably qualified and certified individuals. It is partly for this reason that Australian buildings and bridges rarely fall down and financial impropriety is a rare and shocking crime. No such formal requirements exist to support the systems we have established to assure government, business and the community of the rigour with which environmental advice is given. It follows naturally that environmental decisions remain fraught with conflict and uncertainty. Regulatory streamlining provides the perfect opportunity to raise the bar for the environment profession and the government is urged to support this.

Recommendation:

- Build a requirement for certification of environmental professionals and decisions into the architecture of the One Stop Shop and other regulatory reforms.
- Further support the environment profession through greater government engagement as members, conference and forum participants and through representation in key stakeholder consultation.

Areas for improved efficiency and effectiveness of the regulatory framework

There are many statutory systems that support different reporting regimes, but which seem similar from a reporting perspective. I came across this problem while tasked with completing several statutory reports for the Australian National University (ANU). I was responsible for the National Greenhouse and Energy Report, the National Pollutant Inventory Report and the Australian Bureau of Statistics Environment Report, as well as several sector-specific reporting requirements. Most of these systems required ANU to report on its electricity and gas usage, its use of petrochemicals for vehicle fuel and other environmental parameters. There were significant overlaps in the substances being reported, but the organisational boundaries involved in reporting differed for each report. The result was that the costly data capture and reporting exercise had to be repeated nearly entirely for each separate report.

In addition, the on-line reporting systems were highly inconsistent, and each required a degree of learning and familiarity in order to achieve correct results. These systems also appear not to have been developed with the user perspective as a priority. These challenges would not be nearly so obvious to the government officers managing the reporting regimes, as their day-to-day use of the systems would achieve familiarity. However I found that I needed to essentially re-learn the systems each year when reporting came around.


As one example, there was no explanatory material easily found within NGER documentation to explain whether ANU should report its usage of natural gas for heating as 'town gas' or 'gas delivered in a pipeline'. During my last reporting year, I identified that I had used the wrong category. I then had to arrange for the NGER officials to unlock the ANU data sets so that I could amend my errors. It really would have been better to have had the material on hand to get this right the first time. I have read most of the NGER "Determination", and so I am aware that the overall system is highly complicated and that it is difficult to present issues succinctly. However matters like the use of natural gas for heating purposes must be far more common than thousands of the other emission source details covered by NGER. I would think that common reports could be simplified.

A similar example was in earlier years of NPI reporting. Our same natural gas usage had to be reported as 'gas flared in a boiler' (or something like that), and the relevant reporting tool was buried within a range of other equally obscurely-named tools. Surely heating with gas is so common as to warrant tools to be named "heating with gas" and placed at the top of the list of tools provided for gas usage reporting. It would really help if the front end of reporting systems were easier to follow and used standard terminology to guide users through.

It also always seemed like government experts may have been able to translate our NGER reporting data into the required results for NGER and the ABS. I do understand that the result would be approximate rather than perfect. Or would need an email exchange confirming the type of usage in order to achieve perfect reporting. Perhaps, given other information leakages within systems, there is the capacity to allow such imperfections or else to place the burden of achieving a perfect result onto government experts, rather than industry operators.

What I am suggesting here is not a reduction in the scope of government data capture, or of the international reporting undertaken. Rather it is a call for better coordination of reporting requirements with view to significantly reducing the time invested by businesses in complying with reporting requirements.

Our industry experience of reporting would be even further enhanced through interpretive reporting of the results of our efforts. For instance, there has been little public reporting of the knowledge gained through the NPI. I would love to see an Australian Research Council or other similarly funded project that makes something of this data and provides results back to the organisations who have contributed so much data to government.



Legislation governing environmental regulation and the potential for deregulation

There are instances where a higher bar could be set before an activity is covered by regulation. The recent reductions in thresholds for activities requiring licensing as Environmentally Relevant Activities under the *Queensland Environmental Protection Act 1994* (EPA) is an example of a possible justification of a raised licensing threshold. The changes resulted in the abolishment of thousands of environmental licences while (as I understand it) maintaining the general application of the EPA. However such changes come with a cost, and in this case, the cost is the loss of licensing fees to fund a statutory enforcement regime. Loss of implementation capacity such as this must be considered where regulatory reductions are proposed, and budgets established to support ongoing monitoring and enforcement. This is particularly the case when the enforcement falls to local governments and other agencies with extremely low funding bases for regulatory activities.

I note that the threshold changes achieved in the Queensland EPA were backed up by a highly effective, modern environmental regulatory system. Current Australian EPAs follow a risk management framework where pollution or impact events with higher likelihood or consequences attract more significant penalties than those with lower potential impacts. These modern systems allow due diligence as a defence against prosecution, and pathways such as Environmental Management Programs for entering into legally binding agreements even if a core activity (prior to an incident) falls outside of the statutory threshold. These types of systems have proven to be readily enforceable even if environmental harm cannot be proven. So long as the implementation budget issue is addressed, these types of systems do seem feasible targets for careful deregulation in some instances. The use of industry and community-backed guidelines to encourage best practice, and the recognition and promotion of best practice operators would further assist.